

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

July 5, 2002

**Committee
Report No.**

02-80

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on June 17, 2002, makes reference to County Communication No. 02-11, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE FOR A CONDITIONAL PERMIT IN ORDER TO OPERATE A SNACK STAND WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KEANAE, MAUI, HAWAII".

The purpose of the proposed bill is to grant Carmen Joanne (Mitchell) Gabin a Conditional Permit to operate a roadside snack stand ("Uncle Harry's" fruit stand") on approximately 2.22 acres of land for property situated at Keanae, Maui, Hawaii (TMK: (2)1-1-008:por of 011).

Your Committee notes that the Hana Advisory Committee held a meeting on the Conditional Permit application on June 14, 2001. After reviewing the findings presented in the documents entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATIONS REPORT TO THE HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION JUNE 14, 2001 MEETING" and "MAUI PLANNING DEPARTMENT'S REPORT TO THE HANA ADVISORY COMMITTEE TO THE MAUI PLANNING COMMISSION JUNE 14, 2001 MEETING", the Hana Advisory Committee recommended approval to the Maui Planning Commission.

Your Committee further notes that the Maui Planning Commission held a public hearing and meeting on the Conditional Permit application on July 10, 2001. After reviewing the Hana Advisory Committee's recommendation and supporting documents, the Maui Planning Commission voted to recommend approval of the request for a County Conditional Permit subject to the following conditions:

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1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of the ordinance; provided that an extension of this permit beyond this period may be granted pursuant to Section 19.40.090 of the Maui County Code.
3. That the Conditional Permit shall be nontransferable without the prior written approval of the Maui County Council.
4. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the permit.
5. That full compliance with the conditions of the State Land Use Commission Special Use Permit SUP2 900009 shall be rendered.

Your Committee further notes that the recommendation of the Maui Planning Commission was based upon the following conclusions:

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1. There is no evidence that the ongoing use will be significantly detrimental to the public interest, convenience, and welfare.

2. The proposed use will be in harmony with the area.

At its meeting, your Committee met with a Staff Planner from the Department of Planning; a Deputy Corporation Counsel; and Carmen Joanne (Mitchell) Gabin, the applicant.

Ms. Gabin and the Staff Planner provided your Committee with background information on the application and the operations of “Uncle Harry’s” fruit stand, which has been in operation for longer than a decade. They informed your Committee that Ms. Gabin had recently obtained a 10-year State Special Use Permit. She informed your Committee that the fruit stand has proven to be an important economic in East Maui, as area residents are her employees and food suppliers.

Your Committee commended Ms. Gabin for operating a successful enterprise. Your Committee voted to recommend the passage of the proposed bill on first reading, as revised, to grant the Conditional Permit for 10 years, and filing of the communication.

Your Committee is in receipt of a revised proposed bill, entitled “A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO CARMEN JOANNE (MITCHELL) GABIN TO OPERATE A SNACK STAND WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KEANAE, MAUI, HAWAII”, incorporating your Committee’s recommended revision and technical revisions, including the addition of the applicant’s name to the bill title.

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Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2002), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO CARMEN JOANNE (MITCHELL) GABIN TO OPERATE A SNACK STAND WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT KEANAE, MAUI, HAWAII", PASS FIRST READING and BE ORDERED TO PRINT; and

2. That County Communication No. 02-11 be FILED.

Adoption of this report is respectfully requested.

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