

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

January 20, 2012

Committee
Report No. _____

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

Chair and Members:

Your Land Use Committee, having met on January 4, 2012, makes reference to County Communication 11-283, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING ROY O'CONNOR AND SUSAN ENGELHARD O'CONNOR, TRUSTEES OF THE O'CONNOR FAMILY GRANTOR TRUST DATED MARCH 3, 1992, A CONDITIONAL PERMIT TO OPERATE A SPIRITUAL RETREAT CENTER WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT TMK: (2) 1-3-004:008, HANA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from the O'Connor Family Trust for a five-year Conditional Permit to operate Ala Kukui, a spiritual retreat center with overnight accommodations and other nonagricultural uses, within the County Agricultural District on approximately 12.008 acres situated at TMK: (2) 1-3-04:008, Hana, Maui, Hawaii.

Your Committee received a revised proposed bill incorporating revisions to clarify the completion deadlines for construction of the proposed structures, the maximum number of overnight accommodations, and the permitted nonagricultural uses on the subject property, and to change the year of the bill from 2011 to 2012.

Your Committee notes that pursuant to Section 19.30A.060(J), Maui County Code ("MCC"), churches and religious institutions are permitted in the Agricultural District with a State Special Use Permit. However, some of the uses proposed, including nonreligious education and community programs and overnight accommodations, are not permitted as a special use under Section 19.30A.060, MCC. Therefore, a Conditional Permit pursuant to Chapter 19.40, MCC, is required to allow those uses within the Agricultural District.

Your Committee further notes that the Maui Planning Commission granted a State Special Use Permit on May 24, 2011, and recommended that the Council grant the Conditional Permit with seven conditions. At your Committee's meeting, the Planner

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indicated that the Department of Planning also recommended approval of the Conditional Permit because the proposed uses are compatible with the surrounding areas.

Your Committee expressed concern that while Condition 3 prohibits the transfer of the Conditional Permit without a hearing before the Hana Advisory Committee, it allows the Conditional Permit to be transferred without Council approval. Your Committee revised Condition 3 to state that the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance.

Your Committee notes that Section 3.48.305(B)(2), MCC, states that a parcel that has been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit to operate a transient vacation rental pursuant to Title 19, MCC, shall be classified as “commercialized residential”, without regard to its highest and best use, for purposes of calculating the parcel’s real property taxes. Your Committee further notes that the rate for the commercialized residential classification is lower than the rate for the agricultural classification. Your Committee questioned whether the parcel should be classified as “hotel and resort” if overnight accommodations are allowed in connection with the spiritual retreat center. The Real Property Tax Administrator stated that the Department will look at all of the relevant factors to determine the appropriate real property tax classification.

Your Committee voted 8-1 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, Couch, Mateo, Pontanilla, and Victorino voted “aye”. Committee member Hokama voted “no”.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s recommended revisions, and nonsubstantive revisions.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill _____ (2012), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE GRANTING ROY O’CONNOR AND SUSAN ENGELHARD O’CONNOR, TRUSTEES OF THE O’CONNOR FAMILY GRANTOR TRUST DATED MARCH 3, 1992, A CONDITIONAL PERMIT TO OPERATE A SPIRITUAL RETREAT CENTER WITHIN THE COUNTY

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AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT
TMK: (2) 1-3-004:008, HANA, MAUI, HAWAII", be PASSED ON
FIRST READING and be ORDERED TO PRINT; and

2. That County Communication 11-283 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE GRANTING ROY O'CONNOR AND SUSAN ENGELHARD O'CONNOR, TRUSTEES OF THE O'CONNOR FAMILY GRANTOR TRUST DATED MARCH 3, 1992, A CONDITIONAL PERMIT TO OPERATE A SPIRITUAL RETREAT CENTER WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT TMK: (2) 1-3-004:008, HANA, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Roy O'Connor and Susan Engelhard O'Connor, Trustees of the O'Connor Family Grantor Trust, to operate a spiritual retreat center within the County Agricultural District. The site is identified for real property tax purposes by Tax Map Key Number: (2) 1-3-004:008, comprising approximately 12.008 acres of land situated at Hana, Maui, Hawaii.

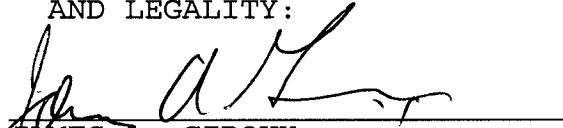
SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for five (5) years from the effective date of this ordinance; provided that, an extension of this Conditional Permit beyond this time period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall not be transferable unless the Council approves the transfer by ordinance.
4. That the subject Conditional Permit shall not be extended without a hearing in Hana before the Hana Advisory Committee. Upon the date of the hearing, if a quorum is not met or a majority vote is not achieved by the Hana Advisory Committee, this requirement shall be waived and the decision shall revert back to the Planning Director.

5. That Roy O'Connor and Susan Engelhard O'Connor, Trustees of the O'Connor Family Grantor Trust, their 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 their 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) naming the County of Maui as an additional insured, insuring and defending Roy O'Connor and Susan Engelhard O'Connor, Trustees of the O'Connor Family Grantor Trust, and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Conditional 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 , 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 Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.
6. That Roy O'Connor and Susan Engelhard O'Connor, Trustees of the O'Connor Family Grantor Trust, shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
7. That construction of the Hale (four overnight units totaling approximately 900 square feet) and the Hale Pule (approximately 400 square feet) shall be completed in 2012, and construction of the Zendo Pavilion (approximately 1,000 square feet) shall be completed in 2014. The overnight accommodations shall be limited to 15 people.
8. That the non-agricultural uses shall be limited to: (1) overnight accommodations; and (2) non-religious educational and community programs, including writing workshops, music and dance lessons, nonprofit organization meetings, and craft workshops.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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