

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 7, 2007

Committee
Report No.

07-144

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

Chair and Members:

Your Land Use Committee, having met on November 14, 2007, makes reference to County Communication No. 02-135, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING SAMADHI BUTTERFLY A CONDITIONAL PERMIT TO OPERATE A ONE-BEDROOM VACATION RENTAL, KNOWN AS THE ALA AINA VACATION RENTAL, WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT HCR 1, BOX 184A, HANA, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Samadhi Butterfly for a one-year Conditional Permit to operate a one-bedroom vacation rental, known as the Ala Aina Vacation Rental, on approximately 4.118 acres in the County Agricultural District, situated at HCR 1, Box 184A, Hana, Maui, Hawaii (TMK: (2) 1-6-09:018-4A2).

Your Committee notes that a 1,308 square-foot house and a 384 square-foot cottage are on the subject property. Ms. Butterfly resides in the cottage. Her daughter resides in the house, where the one-bedroom, 320 square-foot vacation rental is located.

Your Committee also notes that the Department of Planning, in its recommendation report to the Hana Advisory Committee for its January 10, 2002 meeting (Department's Recommendation), recommended that the granting of the Conditional Permit would be justified because there is no evidence that the proposed use would be significantly detrimental to the public interest, convenience and welfare, and that the proposed use of one bedroom for vacation rental purposes would be in harmony with the area. However, the Department went on to note that the Hana Community Plan contains the following policy: "Discourage transient rental accommodation uses outside of the Hana urban area." According to the Department's Recommendation, based solely on this one policy, the Department recommended denial of the permit. The Department nonetheless noted that a number of policies would favor the application.

Your Committee notes that the Hana Advisory Committee held a public hearing on the application on January 10, 2002.

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Your Committee further notes that the Hana Advisory Committee, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE HANA ADVISORY COMMITTEE JANUARY 10, 2002, MEETING" (Department's Report), and the conclusions and recommendations presented in the Department's Recommendation, voted to forward the Conditional Permit application to the Maui Planning Commission without a recommendation on January 10, 2002.

By correspondence dated January 17, 2002, the Chair of the Hana Advisory Committee transmitted a summary of proceedings before the Committee to the Maui Planning Commission, along with the Department's Report, the Department's Recommendation, and the draft minutes of the Committee's January 10, 2002 meeting. In that summary, the Chair advised that a motion to recommend approval of the application to the Maui Planning Commission had been made, predicated on the following: (1) that granting the Conditional Permit would not affect zoning of the area; (2) that granting the Conditional Permit would not affect the property taxes of the surrounding property owners; and (3) that granting the Conditional Permit would not set any precedent for considering other applications. She noted that three members had voted in favor of the application based on this understanding, and one member had voted against the application as contrary to the policy in the Hana Community Plan. As a result, the Hana Advisory Committee had voted to forward the application to the Maui Planning Commission without a recommendation.

Your Committee notes that the Maui Planning Commission held a public hearing and a meeting on the application on March 5, 2002, and a further meeting on April 9, 2002.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the Department's Report, the conclusions and recommendations presented in the Department's Recommendation; the January 17, 2002 summary from the Chair of the Hana Advisory Committee, and draft minutes of the Hana Advisory Committee's meeting, voted to recommend approval of the Conditional Permit application, with five conditions, on April 9, 2002.

Your Committee also notes that the Council (2001-2003 Council term) referred County Communication No. 02-135 to its Land Use Committee at the Council meeting of July 5, 2002.

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At its meeting of January 10, 2003, the Council (2003-2005 Council term) referred County Communication No. 02-135 to its Planning and Land Use Committee (County Communication No. 03-10).

By correspondence dated January 28, 2003, the Chair of the Committee requested that the Planning Director transmit the relevant portions of the minutes of the March 25, 2002 and April 9, 2002 meetings of the Maui Planning Commission.

By correspondence dated February 13, 2003, the Planning Director transmitted a copy of the relevant portions of the requested minutes.

At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred County Communication No. 02-135 to its Land Use Committee (County Communication No. 05-13).

By correspondence dated July 5, 2006, the Planning Director transmitted a copy of the relevant portion of the minutes of the January 10, 2002 meeting of the Hana Advisory Committee.

At its meeting of January 5, 2007, the Council referred County Communication No. 02-135 to your Land Use Committee (County Communication No. 07-5).

By correspondence dated November 12, 2007, William Spence, The William Spence Company, Samadhi Butterfly's consultant, transmitted 23 letters of support and a petition containing 32 signatures in support of the application.

At its meeting of November 14, 2007, your Committee met with a Planner, Department of Planning; a Civil Engineer, Engineering Division, Department of Public Works; a Deputy Corporation Counsel; Samadhi Butterfly, the applicant; and William Spence, The William Spence Company, the applicant's consultant.

There was no oral testimony. Your Committee received written testimony from Warren Watanabe, Maui County Farm Bureau, dated November 13, 2007, noting concerns arising from nonagricultural activities occurring on agriculturally zoned lands.

The Planner provided a brief procedural overview of the application.

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Mr. Spence provided a computer-generated presentation in which he described the property and the application. He noted that the property has a private water system and is “off the grid” (the property does not receive County water or wastewater, or public utility services). He displayed a location map; plot plan; photographs of the grounds, guest parking, main house and cottage; floor plans for the structures; and fire safety measures that had been implemented. He noted that Ms. Butterfly had voluntarily stepped forward to apply for the Conditional Permit. He reviewed relevant excerpts from the Hana Community Plan; noted difficulties in implementing a State Special Use Permit (SUP) condition requiring a hold harmless agreement for fire protection; and noted the receipt of letters of support and a petition in support of the transient vacation rental. Mr. Spence also advised your Committee of updates to the application, including the assignment of a permanent TMK number, a change in ownership to the Samadhi Baron Butterfly Living Trust, and Ms. Butterfly’s request to add her daughter, Mercurial Bleu, as a permittee.

Mr. Spence distributed a printout of his presentation; a printout of the County’s real property tax information and a TMK map for the property, reflecting the newly assigned TMK number of (2) 1-6-09:023, and a parcel area of 4.000 acres; correspondence dated November 12, 2007 from Samadhi Baron Butterfly, Trustee, Samadhi Baron Butterfly Living Trust dated November 1, 2001, consenting to the operation of a transient vacation rental on the property; and a copy of a Declaration of Trust for the Samadhi Baron Butterfly Living Trust.

Your Committee discussed the fire protection requirements for the property and steps Ms. Butterfly had taken to comply with those requirements. Your Committee was advised that the Department of Fire and Public Safety had indicated it would not enter into a hold harmless agreement for fire protection; therefore, should a time extension be granted for the State SUP, that provision would be deleted.

The Planner noted that no formal complaints had been filed with the Department, and that no Americans with Disabilities Act requirements apply for a one-bedroom transient vacation rental. She also noted that parking need not be paved in order to meet the on-site parking requirement.

Your Committee discussed the Hana Community Plan policy statement discouraging vacation rentals outside of the Hana urban area, and the contention that the word “discourage” should not be interpreted as a prohibition. The Planner noted that one of the challenges for the Department is that all of the community plans have a number of competing objectives and policies that must be weighed.

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The Planner advised that, in 2002, the Department had no stated policy or preference regarding whether transient vacation rentals should be located on State Agricultural lands or not. She advised that the Department at the time was more concerned that agricultural operations were first occurring on the property, and if so, then the Department would consider whether a transient vacation rental could be compatible with that use. The Planner further advised that, today, the Department's focus is on enforcement regardless of the zoning district or State land use classification, and that policies are in the process of being developed for transient vacation rentals and bed and breakfast operations. She also advised that an inventory of Hana vacation rentals had not been completed.

Mr. Spence informed your Committee that there is no commercial farming on the property. He noted that Ms. Butterfly has two fairly large stands of bananas, and that the bananas are given away to others. Ms. Butterfly also has coconuts, cherries, star fruit, and citrus on the property. However, no significant revenues are generated from farming.

Mr. Spence further advised that the structures on the property are at least several hundred feet away from neighbors on all sides.

Ms. Butterfly noted that she has been living on the property for 18 years. She stated that she has not spoken with anyone in Kipahulu who is opposed to her operating a transient vacation rental.

The Planner noted that the Department has been advising applicants that, if they do not obtain their required permits by December 31, 2007, they would need to cease their transient vacation rental operation until the permits are obtained.

Your Committee noted that Ms. Butterfly has done her best to comply with applicable requirements; that she relies upon the transient vacation rental as her means of income; that the structures on her four-acre parcel are removed from neighbors and do not appear to be impacting them; that she has received many letters of support from her community; and that a one-year recommendation would provide an opportunity to further demonstrate compliance before returning for a time extension.

Your Committee discussed revisions to the proposed bill that are needed to reflect updated information, including the assignment of a new TMK number, Ms. Butterfly's capacity as trustee of the Samadhi Baron Butterfly Living Trust, a slight adjustment to

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the size of the parcel (from approximately 4.118 acres to 4.000 acres), and a more accurate statement of the name of the operation as the “Ala `Aina Ocean Vista Vacation Rental”. Your Committee also noted formatting and nonsubstantive revisions to be incorporated in the proposed bill, given the passage of time since the bill had been drafted.

Your Committee voted to recommend passage of a revised proposed bill incorporating these changes, and filing of the communication.

Your Committee is in receipt of a revised proposed bill, incorporating the revisions requested by your Committee.

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

1. That Bill No. _____ (2007), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE GRANTING SAMADHI BARON BUTTERFLY, TRUSTEE OF THE SAMADHI BARON BUTTERFLY LIVING TRUST, DATED NOVEMBER 1, 2001, A CONDITIONAL PERMIT TO OPERATE A ONE-BEDROOM TRANSIENT VACATION RENTAL, KNOWN AS THE `ALA `AINA OCEAN VISTA VACATION RENTAL, WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT HCR 1, BOX 184A, HANA, MAUI, HAWAII”, be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 02-135 be FILED.

Adoption of this report is respectfully requested.

