

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008

Committee
Report No.

08-145

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

Chair and Members:

Your Land Use Committee, having met on October 31, 2007 and October 29, 2008, makes reference to County Communication No. 02-98, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING GREGG BLUE, DBA HAIKU RECREATION AND MAUI DREAM COTTAGES, A CONDITIONAL PERMIT TO USE ONE ONE-BEDROOM COTTAGE FOR TRANSIENT VACATION RENTAL WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 265 WEST KUIAHA ROAD, HAIKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Gregg Blue, dba Haiku Recreation and Maui Dream Cottages, for a one-year Conditional Permit to operate a transient vacation rental in a one-bedroom/one-bath cottage on approximately two acres located at 265 West Kuiaha Road, Haiku, Maui, Hawaii (TMK: (2) 2-7-07:072).

Your Committee notes that the Maui Planning Commission held a public hearing on the Conditional Permit application on February 12, 2002, and another meeting on the application on February 26, 2002.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION FEBRUARY 12, 2002 MEETING", and the conclusions and recommendations presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION REPORT TO THE MAUI PLANNING COMMISSION FEBRUARY 12, 2002 MEETING", voted to recommend approval of the Conditional Permit on February 26, 2002.

Your Committee notes that the Council (2001-2003 Council term) referred County Communication No. 02-98 to its Land Use Committee on May 3, 2002.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 2

Committee
Report No. 08-145

By correspondence dated July 3, 2002, the Acting Council Chair transmitted correspondence dated June 26, 2002, from the Planning Director, transmitting a copy of excerpts of minutes of the Maui Planning Commission's February 12, 2002 and February 26, 2002 meetings.

At its meeting of January 10, 2003, the Council (2003-2005 Council term) referred County Communication No. 02-98 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 a copy of the relevant portion of the minutes of the Maui Planning Commission's February 26, 2002 meeting.

By correspondence dated February 5, 2003, the Planning Director transmitted a copy of excerpts of the Maui Planning Commission's February 26, 2002 meeting, noting that the Department had inadvertently failed to note the transmittal of such minutes in its earlier (June 26, 2002) correspondence.

At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred County Communication No. 02-98 to its Land Use Committee (County Communication No. 05-13).

By correspondence dated April 21, 2006, the Chair of the Committee asked Mr. Blue whether he remained interested in pursuing the Conditional Permit application, due to the passage of time since his application was submitted.

By correspondence dated April 26, 2006, Mr. Blue responded that he wished to continue the Conditional Permit process.

By correspondence dated May 3, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel incorporate certain nonsubstantive revisions into the proposed bill.

By correspondence dated May 3, 2006, the Chair of the Committee requested that the Planning Director provide an update as to changed circumstances, if any, impacting the request or the Department's recommendations. The Chair also requested copies of relevant correspondence postdating the County Communication, including documents referenced in the Special Use Permit (SUP) approval letter dated April 10, 2002. In

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 3

Committee
Report No. 08-145

addition, the Chair requested that the Planning Director respond to certain questions relating to the number of transient vacation rentals being operated; internet listings for, and the name of, the operation; compliance with SUP requirements; and whether the Department continued to recommend a condition prohibiting the operation as a food service establishment.

By correspondence dated May 11, 2006, Mr. Blue requested that the Chair of the Committee defer scheduling his application until a new transient vacation rental ordinance is passed. Mr. Blue advised that the Department of Fire and Public Safety had requested that he build a 20-ton capacity access road across his property to his cottage.

By correspondence dated May 15, 2006, the Chair of the Committee confirmed that the Committee would honor Mr. Blue's request to defer scheduling of his application.

At its meeting of January 5, 2007, the Council referred County Communication No. 02-98 to your Land Use Committee (County Communication No. 07-5).

By correspondence dated September 20, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel transmit a revised proposed bill, as requested by correspondence dated May 3, 2006.

By correspondence dated September 20, 2007, the Chair of your Committee requested that the Planning Director respond to the May 3, 2006 request. The Chair also requested that the Planning Director address certain comments contained in correspondence dated September 5, 2007, from Mary Lou Kobayashi, Planning Program Administrator, Office of Planning, State Department of Business, Economic Development & Tourism (Office of Planning) to the Planning Director, concerning proposed amendments to Chapter 19.64, Maui County Code (MCC), relating to bed and breakfast operations, as well as amendments to Chapter 205, Hawaii Revised Statutes (HRS), that had been enacted in June 2006.

By correspondence dated September 25, 2007, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING GREGG BLUE, DBA HAIKU RECREATION AND MAUI DREAM COTTAGES, A CONDITIONAL PERMIT FOR A ONE-BEDROOM TRANSIENT VACATION RENTAL WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 4

Committee
Report No. 08-145

PROPERTY SITUATED AT 265 WEST KUIAHA ROAD, HAIKU, MAUI, HAWAII”, incorporating the requested revisions.

By correspondence dated September 27, 2007, the Chair of your Committee requested that the Fire Chief comment on Mr. Blue’s correspondence dated May 11, 2006, wherein Mr. Blue stated that the Department of Fire and Public Safety had requested that he build a 20-ton capacity access road.

By correspondence dated October 1, 2007, the Chair of your Committee requested that Anthony Ching, Executive Officer, State Land Use Commission (LUC), clarify whether a transient vacation rental in the State Agricultural District, including but not limited to a bed and breakfast operation, is permissible under Chapter 205, HRS, with an SUP.

By correspondence dated October 15, 2007, the Fire Chief advised that his Department had reviewed its files and had not been able to locate any written communication to Mr. Blue requiring that he build a 20-ton capacity access road to his cottage. He further advised that the Department’s position is that such a road is not required. The Fire Chief reiterated the Department’s requirements of a fire extinguisher, a posted evacuation plan, and interconnected smoke detectors. He also confirmed that there does not appear to be a problem with water for fire protection.

By correspondence dated October 26, 2007, the Chair of your Committee transmitted a copy of correspondence dated October 23, 2007, from Mary Lou Kobayashi, Planning Program Administrator, State Office of Planning, to David Dantes, clarifying that a bed and breakfast operation may be allowed on lots classified as Agricultural or Rural with a special permit.

By correspondence dated October 30, 2007, Anthony Ching, Executive Officer, State LUC, responded that he had no comments to offer on the County’s consideration of an SUP involving 15 acres or less, which is within the exclusive jurisdiction of the County; and transmitted a copy of correspondence dated October 23, 2007, from Mary Lou Kobayashi, Planning Program Administrator, State Office of Planning, to David Dantes.

By correspondence dated October 31, 2007, the Planning Director provided comments on correspondence from the State Office of Planning. He advised that the Department had not received correspondence from Mr. Blue that would respond to the

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 5

Committee
Report No. 08-145

May 3, 2006 request; that the Department had received a complaint on October 10, 2007, of an illegal transient vacation rental operating on the property, for which a first Notice of Warning had been issued; that information provided for the property indicates that there may be more than one transient vacation rental operating on the property; that a zoning inspector had been denied access to the property for purposes of conducting an inspection; and that the name of the operation should be revised to conform to the name provided by Mr. Blue to the State for general excise tax and transient accommodation tax purposes.

At its meeting of October 31, 2007, your Committee met with the Planning Director; a Planner, Department of Planning; a Captain, Fire Prevention Bureau, Department of Fire and Public Safety; two Deputy Corporation Counsel; and Gregg Blue, the applicant.

A Deputy Corporation Counsel provided a brief overview of the standards applicable to a review of a Conditional Permit application under Chapter 19.40, MCC, and requested the opportunity to consult with your Committee on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on issues pertaining to such powers, duties, privileges, immunities, and liabilities in the matter, pursuant to Section 92-5(a)(4), HRS.

At its executive meeting, your Committee met with two Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session.

There was no public testimony.

Councilmember Michelle Anderson provided your Committee with a copy of Chapter 19.40, MCC, relating to Conditional Permits.

The Planner provided a brief overview of the application. She informed your Committee of the complaint that had been received, concerning the illegal operation of a transient vacation rental on the subject property. She advised that the complaint could

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 6

Committee
Report No. 08-145

not be verified because a zoning inspector had not been granted permission to inspect the property.

Your Committee deferred the matter pending further discussion.

By correspondence dated October 13, 2008, the Chair of your Committee requested that the Planning Director advise whether an inspection had been conducted of the subject property since your Committee's meeting of October 31, 2007, and for the findings of any such inspection. The Chair also asked whether Mr. Blue is using only the one-bedroom cottage as a transient vacation rental; whether he is in compliance with the requirements set forth by the Fire Chief; and for any other comments germane to the application.

By correspondence dated October 24, 2008, Gregg Blue advised that a zoning inspection had been conducted on his property. He transmitted a listing of monthly expenses associated with the operation of the cottage as a transient vacation rental and the monthly income derived from the operation. He also transmitted unsigned correspondence dated October 15, 2008, from Steve Smith, Owner, Da Kine Herb Farm, L.L.C., regarding avocado and citrus sales from a farm on the subject property.

By correspondence dated October 24, 2008, Gregg Blue requested that the Conditional Permit be granted for three years, and that the name of his operation be changed from "Maui Dream Cottages" to "Maui Dream Cottage".

By correspondence dated October 27, 2008, Gregg Blue transmitted unsigned correspondence from his neighbor, Mika Nakamura, in support of the application.

By correspondence dated October 27, 2008, the Planning Director advised that three inspections had been conducted on the subject property over the course of the last year. He further advised that a zoning inspector had confirmed that only the one-bedroom cottage is being used as a transient vacation rental and that the requirements set forth by the Fire Chief had been met.

By correspondence dated October 28, 2008, the Director of Water Supply informed your Committee that fire flow calculations for the property had been reviewed and found acceptable by the Department, and that the existing waterline and standpipe on West Kuiaha Road are adequate for fire protection for the cottage. He advised that a backflow prevention device is required by the Department.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 7

Committee
Report No. 08-145

At its meeting of October 29, 2008, your Committee met with the Planning Director; two Planners, Department of Planning; a Deputy Corporation Counsel; and Gregg Blue, the applicant.

There was no public testimony.

The Planner provided a brief overview of the application.

Mr. Blue requested that your Committee consider a longer duration for the Conditional Permit. He advised your Committee that the only condition recommended by the Maui Planning Commission that he had not yet complied with is the installation of a backflow preventer, and that he does not object to that requirement.

The Planning Director responded to questions relating to the proposed transient vacation rental and bed and breakfast bills pending before your Planning Committee, and whether Mr. Blue's operation might technically qualify as a bed and breakfast operation under the current version of the proposed bed and breakfast bill.

Your Committee discussed the name of the transient vacation rental operation, including Mr. Blue's request to make the reference to "Maui Dream Cottages" singular, but declined to revise the proposed bill on that basis.

Your Committee discussed the duration of the proposed Conditional Permit bill. Your Committee noted that other transient vacation rental Conditional Permits that had received their initial approvals this Council term were generally granted a two-year duration. Your Committee also noted that the SUP would expire concurrently with the subject Conditional Permit, if granted.

Your Committee recommended that the proposed duration of the Conditional Permit be changed from one year to two years.

Your Committee voted to recommend passage of a revised proposed bill incorporating your Committee's requested revisions, and filing of the communication.

Your Committee is in receipt of a revised proposed bill incorporating your Committee's requested revisions.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 8

Committee
Report No. 08-145

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING GREGG BLUE, DBA HAIKU RECREATION AND MAUI DREAM COTTAGES, A CONDITIONAL PERMIT FOR A ONE-BEDROOM TRANSIENT VACATION RENTAL WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 265 WEST KUIAHA ROAD, HAIKU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 02-98 be FILED.

Adoption of this report is respectfully requested.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 21, 2008
Page 9

Committee
Report No. 08-145



MICHAEL J. MOLINA Chair

JO ANNE JOHNSON Member

JOSEPH PONTANILLA Vice-Chair

DANNY A. MATEO Member

MICHELLE ANDERSON Member

BILL KAUAKEA MEDEIROS Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

G. RIKI HOKAMA Member

ORDINANCE NO. _____

BILL NO. _____ (2008)

A BILL FOR AN ORDINANCE GRANTING GREGG BLUE, DBA HAIKU RECREATION AND MAUI DREAM COTTAGES, A CONDITIONAL PERMIT FOR A ONE-BEDROOM TRANSIENT VACATION RENTAL WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 265 WEST KUIAHA ROAD, HAIKU, 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 Gregg Blue, dba Haiku Recreation and Maui Dream Cottages, for the operation of a transient vacation rental in a one-bedroom cottage within the County Agricultural District. The site is identified for real property tax purposes by Tax Map Key Number: (2) 2-7-007:072, comprising approximately two acres of land situated at 265 West Kuiaha Road, Haiku, 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 a period of two years from the effective date of this ordinance; provided that, an extension of this Conditional Permit beyond this two-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the Conditional Permit shall be nontransferable, unless the Council approves the transfer by ordinance.
4. That Gregg Blue, his 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 his 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 a named additional insured, insuring and defending Gregg Blue, dba Haiku Recreation and Maui Dream Cottages, 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 Gregg Blue 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 a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

5. That Gregg Blue, dba Haiku Recreation and Maui Dream Cottages, 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.

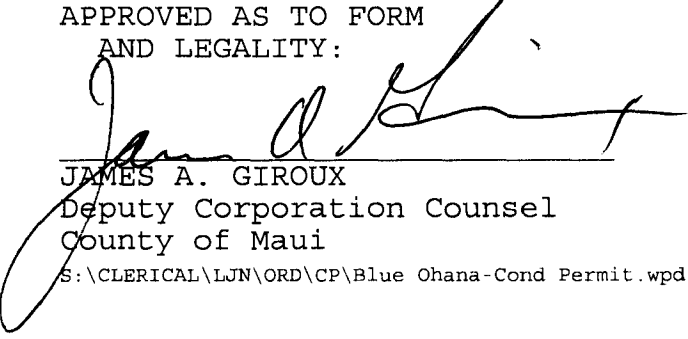
SPECIAL CONDITIONS:

6. That the transient vacation rentals shall be limited to the one-bedroom cottage as identified by Exhibits 6, 6A, and 6B, in the Department of Planning's Report to the Maui Planning Commission for the February 12, 2002, meeting.
7. That Gregg Blue shall submit to the Department of Planning a detailed report addressing his compliance with the conditions established with the Conditional Permit ninety days prior to filing for an extension of the subject Permit.
8. That any group activity on the property shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
9. That the property shall not qualify for real property tax exemptions pursuant to Chapter 3.48, Maui County Code.
10. That all advertising for the transient vacation rental shall include the number of the Conditional Permit.
11. That Gregg Blue, dba Haiku Recreation and Maui Dream Cottages, shall be a resident of the County, shall be the owner-proprietor of the farm dwelling, identified as the main dwelling, and shall reside on the property on a full-time basis.

12. That Gregg Blue, dba Haiku Recreation and Maui Dream Cottages, shall have and maintain a current and valid transient accommodations tax (TAT) license and general excise tax (GET) license for the transient vacation rental on the property.
13. That Gregg Blue shall have legal title to the property on which the transient vacation rental is located.
14. That full compliance with the conditions of State Land Use Commission Special Use Permit, Docket No. SUP2 2001/0008 shall be rendered.

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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