

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

February 18, 2005

Committee
Report No.

05-7

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

Chair and Members:

Your Land Use Committee, having met on February 2, 2005, makes reference to County Communication No. 04-67, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2949 (2001) PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO OPERATE AN ART GALLERY AND GIFT SHOP SELLING MADE-IN-HAWAII ART WORK AND CRAFTS WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT TMK: (2) 3-1-002:021, KAHEKILI HIGHWAY, KAHAKULOA, MAUI, HAWAII". The purpose of the proposed bill is to extend, by ten years, a Conditional Permit for the operation of Kaukini Gallery & Gift Shop (gallery) on approximately 2.51 acres at Kahakuloa, Maui.

Your Committee notes that the Maui Planning Commission held a public hearing and meeting on the Conditional Permit extension request on January 27, 2004.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION TO THE MAUI PLANNING COMMISSION JANUARY 27, 2004 Meeting", voted to recommend approval of the proposed bill.

Your Committee further notes that County Communication No. 04-67 was referred to the prior Council's Planning and Land Use Committee at the Council meeting of February 20, 2004.

By correspondence dated April 28, 2004, the Council Chair transmitted correspondence dated April 15, 2004, from the Planning Director, transmitting minutes of the Maui Planning Commission's January 27, 2004 meeting.

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By correspondence dated May 18, 2004, the Chair of the Planning and Land Use Committee requested that the Planning Director return the matter to the Maui Planning Commission and seek a different recommendation relating to the duration of the extension, which he deemed excessive.

By correspondence dated May 24, 2004, the Planning Director responded that it was inappropriate to return the application to the Maui Planning Commission.

At its meeting of January 21, 2005, the Council referred County Communication No. 04-67 to your Land Use Committee (County Communication No. 05-13).

By correspondence dated January 31, 2005, the Chair of your Committee transmitted photographs of the gallery from the applicant.

At its meeting, your Committee met with the Planning Director; the Planning Program Administrator, Current Planning Division, Department of Planning; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Deputy Corporation Counsel; and Karen Noland, the applicant.

Your Committee received public testimony from three individuals in support of the application, all of whom are artists whose work is displayed for sale in the gallery. A testifier described the benefits provided to the community by the gallery.

Ms. Noland, the owner of the gallery, informed your Committee that the gallery is situated on property once owned by her grandparents and still used primarily for ranching purposes. The gallery is on the first floor of the building, and Ms. Noland resides upstairs. The gallery sells arts and crafts that are made in Hawaii.

The Planner provided a brief overview of the application, noting that the State Land Use Commission granted a ten-year extension of the Special Use Permit on November 27, 2004. She informed your Committee that the applicant maintains a website advertising the gallery, but does not offer products for sale

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on the website. The Department of Planning does not object to having the Conditional Permit amended to allow for the website under Condition No. 7.

Your Committee discussed the lapse between the date the original permit would have expired and the effective date of the proposed ordinance. The Planner advised that when an applicant timely requests an extension, the Department does not consider the Conditional Permit expired. Your Committee further discussed clarifying that the ten-year extension would begin on the date the original three-year permit would have expired, or March 21, 2004.

Your Committee questioned the applicable tax rate for mixed-use property, with a business on the first floor and a residence on the second. Your Committee noted that a majority of the subject property is still used for agricultural purposes. Your Committee requested that the Real Property Tax Division, Department of Finance, be consulted.

Although the applicant is not currently conducting sales from the gallery's website, your Committee questioned the need for restricting the gallery from doing so in the future. Your Committee discussed the advantages of allowing the sale of arts and crafts that are made in Hawaii on the website.

Your Committee voted to recommend passage of the revised proposed bill, further revised as follows, and filing of the communication:

1. Change the year from (2004) to (2005).
2. On page 1, paragraph no. 2, delete "for [a period of three (3)] ten (10) years from the effective date of this ordinance"; and insert "until March 21, 2014".
3. On page 2, paragraph no. 7, line 3, insert ", website," following "telephone directory listings".

Your Committee is in receipt of the further revised proposed bill from the Department of the Corporation Counsel incorporating your Committee's requested revisions.

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Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2005), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2949 (2001) PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO OPERATE AN ART GALLERY AND GIFT SHOP SELLING MADE-IN-HAWAII ART WORK AND CRAFTS WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT TMK: (2) 3-1-002:021, KAHEKILI HIGHWAY, KAHAKULOA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 04-67 be FILED.

Adoption of this report is respectfully requested.

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ROBERT CARROLL **Chair**

DAIN P. KANE **Member**

JOSEPH PONTANILLA **Vice-Chair**

DANNY A. MATEO **Member**

MICHELLE ANDERSON **Member**

MICHAEL J. MOLINA **Member**

G. RIKI HOKAMA **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**