

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

July 22, 2005

**Committee**  
**Report No.**

05-92

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 27, 2005 and June 30, 2005, makes reference to County Communication No. 02-99, from the former Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3008 (2001) PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO KENN AND ANJULE DESURE TO OPERATE A TRANSIENT VACATION RENTAL, KNOWN AS THE 'MAUI OCEAN BREEZES BED AND BREAKFAST', ON PROPERTY SITUATED AT 240 NORTH HOLOKAI ROAD, HAIKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant Kenn and Anjule Desure a Conditional Permit amendment for the operation of a transient vacation rental known as "Maui Ocean Breezes Bed and Breakfast" on approximately 2.212 acres located at 240 North Holokai Road, Haiku, Maui (TMK: (2) 2-8-04:104). The amendment seeks to add a transient vacation rental unit in a second farm dwelling to the Conditional Permit.

Your Committee notes that the Maui Planning Commission met on the Conditional Permit request on March 12, 2002.

Your Committee further notes that at its meeting of March 12, 2002, 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 MARCH 12, 2002 MEETING", voted to recommend approval of the proposed Conditional Permit amendment.

Your Committee notes that County Communication No. 02-99 was referred to the Council's Land Use Committee at the Council meeting of May 3, 2002 (2001-2003 Council term).

By correspondence dated May 21, 2002, the Council Chair transmitted correspondence dated May 9, 2002, from an anonymous writer, relating to alleged violations of the Conditional Permit.

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By correspondence dated July 2, 2002, the Acting Council Chair transmitted correspondence dated June 27, 2002, from the former Planning Director, transmitting a copy of the minutes of the March 12, 2002 meeting of the Maui Planning Commission.

At its meeting of January 10, 2003, the Council referred County Communication No. 02-99 to the former Council's Planning and Land Use Committee (County Communication No. 03-10).

At its meeting of January 21, 2005, the Council referred County Communication No. 02-99 to your Land Use Committee (County Communication No. 05-13).

At its meeting of June 27, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Public Works and Environmental Management; a Lieutenant, Department of Fire and Public Safety; the Planning Program Manager, Department of Water Supply; a Deputy Corporation Counsel; and Kenneth and Anjali DeSure, the applicants.

Your Committee received public testimony from three individuals in support of the application.

David Dantes, President of the Maui Vacation Rental Association, supported the application on three grounds. First, he referred to the Maui Planning Commission's recommendation that the use of the second farm dwelling in the Agricultural District be permitted. Second, he suggested that use of the second farm dwelling as a long-term rental may not meet the applicants' financial needs. Finally, he commented that public policy concerns favor having the owner come forward to have transient vacation rentals legalized.

Ms. DeSure, one of the applicants, provided background information on the request. Ms. DeSure stated that four years ago she obtained a five-year Conditional Permit to operate two units on her property as transient vacation rentals. In order to compete with others in Haiku who were renting stand-alone cottages, she decided to also use the cottage on her property as a short-term rental. She requested the amendment to include the cottage in her permitted operation four years ago. On the issue of affordability, she testified that 50 percent of her guests are relatives of residents of Haiku, Paia, and Makawao because she provides affordable units. She also noted that she is actively conducting agricultural operations on her land.

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Peter Cahill, Esq., who represents the DeSures in a lawsuit brought against them by a neighbor arising from their transient vacation rental operations, testified that the applicants have done everything possible to pursue legal compliance.

Your Committee recessed its meeting to June 30, 2005.

By correspondence dated June 29, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel make nonsubstantive revisions to the proposed bill, including corrections to the spelling of the applicant's first names.

By correspondence dated June 30, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3008 (2001), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO KENNETH AND ANJALI DeSURE TO OPERATE A TRANSIENT VACATION RENTAL KNOWN AS THE 'MAUI OCEAN BREEZES BED AND BREAKFAST', ON PROPERTY SITUATED AT 240 NORTH HOLOKAI ROAD, HAIKU, MAUI, HAWAII", incorporating the requested revisions.

At its reconvened meeting of June 30, 2005, your Committee met with the Planning Director; the Planning Program Administrator, Current Planning Division, Department of Planning; the Director of Public Works and Environmental Management; a Lieutenant, Department of Fire and Public Safety; a Deputy Corporation Counsel; and Kenneth and Anjali DeSure.

Ms. DeSure presented information relating to her application, stating that she bought the house six years ago, and four years ago she obtained her Conditional Permit to operate two rooms as transient vacation rentals. The units rent for \$90 to \$125 per night. Ms. DeSure stated that allowing transient vacation rentals that are legitimate to operate and shutting down illegal operations will help the overall rental market on Maui. She noted that affordable tourism in Maui is needed.

The Planning Program Administrator provided background information relating to the application. He circulated photographs of the first farm dwelling and the smaller, second farm dwelling. He noted that no one had testified before the Maui Planning Commission when it reviewed the application on March 12, 2002. The Maui Planning Commission recommended approval subject to additional Conditions 5 through 10.

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The Lieutenant informed your Committee that he had no knowledge of the Department of Fire and Public Safety ever conducting an inspection of the transient vacation rental operation to verify whether concerns in the Department's January 23, 2002 comments had been addressed. Your Committee further discussed fire flow requirements.

Ms. DeSure informed your Committee that smoke detectors are in each of the units being rented, fire extinguishers are available within the units, fire flow calculations had been supplied to the Department of Water Supply, and an evacuation plan is discussed with all guests.

Your Committee expressed concerns regarding enforcement of conditions, noting that inspections of property should occur when necessary to check that owners are in compliance.

Your Committee recommended that the revised proposed bill be further revised to extend the Conditional Permit by four years, or through November 20, 2010.

Your Committee voted to recommend passage of the further revised proposed bill and filing of the communication.

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

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. 3008 (2001), PERTAINING TO THE GRANTING OF A CONDITIONAL PERMIT TO KENNETH AND ANJALI DeSURE TO OPERATE A TRANSIENT VACATION RENTAL KNOWN AS THE 'MAUI OCEAN BREEZES BED AND BREAKFAST' ON PROPERTY SITUATED AT 240 NORTH HOLOKAI ROAD, HAIKU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and

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2. That County Communication No. 02-99 be FILED.

Adoption of this report is respectfully requested.

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**ROBERT CARROLL** **Chair**

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**DAIN P. KANE** **Member**

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**JOSEPH PONTANILLA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**MICHAEL J. MOLINA** **Member**

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**G. RIKI HOKAMA** **Member**

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**CHARMAINE TAVARES** **Member**

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**JO ANNE JOHNSON** **Member**