



DEPARTMENT OF PLANNING
THE COUNTY OF KAUAI

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

KA'ĀINA S. HULL
DIRECTOR

JODI A. HIGUCHI SAYEGUSA
DEPUTY DIRECTOR

August 10, 2020

VIA Email: dbedt.luc.web@hawaii.gov

Mr. Jonathan Scheur, Chair
And Members of the State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

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LAND USE COMMISSION
STATE OF HAWAII

Aloha Chair Scheuer and Land Use Commissioners,

SUBJECT: DR20-69 Petition for Declaratory Order, County of Hawai'i

The County of Kaua'i provides the following testimony in **SUPPORT** of the County of Hawai'i's request for a Declaratory Ruling and their position in this matter.

In 2008, the County of Kaua'i adopted its first ordinance concerning Transient Vacation Rentals (TVRs). Under Kauai County Code Section 8-1.5, "transients" are defined as "any person who owns, rents, or uses a dwelling unit or a portion thereof for one hundred eighty (180) days or less, and which dwelling unit is not the person's primary residence under the Internal Revenue Code," and a TVR is defined as "a dwelling unit which is provided to transient occupants for compensation or fees . . . with a duration of occupancy of one hundred eighty (180) days or less." Much like Hawai'i County, Kaua'i's TVR ordinance limits TVRs to operating in specific areas designated to accommodate transient uses. In addition, like Hawai'i County, Kaua'i's TVR Ordinance established a process for non-conforming TVR operators to register to certify their respective non-conforming TVR use and to annually renew these non-conforming use certificates. Also, pursuant to Hawaii Revised Statutes (HRS) 205-2 and 205-4.5, Kaua'i does not allow TVRs within the State Land Use Agricultural District to outright register to apply for a non-conforming use certificate.

Subsequent to Kauai's 2008 TVR Ordinance, no TVR qualified as a permissible use under HRS 205-2 and HRS 205-4.5. If an applicant cannot meet the criteria of HRS 205-2 and 205-4.5, then the use is not an outright use permitted within the Agricultural District, TVR or otherwise; and should an applicant fail to meet this criteria, there is still the HRS 205-6 Special Permit process, which was specifically created to review and permit those uses that are not generally permissible within the Agricultural District. Pursuant to HRS 205-2 and 205-4.5, a TVR is not listed as a permitted use. HRS 205-4.5(a)(4) specifically lists farm dwellings as a permissible use. Farm dwellings have

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the same form and design as a TVR in that both have the necessary facilities for habitation, such as a kitchen, a bathroom, and bedrooms. However, HRS 205-4.5(a)(4) qualifies a farm dwelling as:

- 1) A dwelling used in connection with a farm; or
- 2) Where agricultural activity provides income to the family occupying the dwelling.

Kaua'i received applications for a non-conforming use certificate for TVRs on properties located within the State Land Use Agricultural District and the County of Kaua'i's Agriculture Zoning District, and none of them could meet the definition of a farm dwelling unit specified in subsections 1) or 2) referenced above. Specifically, no applicant could prove that the use of farm dwellings by persons who "owns, rents, or uses a dwelling unit . . . for one hundred eighty (180) days or less" for "compensation or a fees" was connected to the farm or farming operations on the property. In addition, no applicant could prove the agricultural activity provided income to the occupants of the dwelling. HRS 205-4.5(a)(4) clearly requires the agricultural activity to provide income to the occupants of the dwelling, whether the occupant leases or rents the dwelling for a period of time.

In response to these applications for TVR non-conforming use certificates in the Agricultural District, the County of Kaua'i allowed these applicants to apply for a Special Permit pursuant to HRS 205-6, which is the process to review and permit certain unusual and reasonable uses within the State Land Use Agricultural District that are not generally permissible under HRS 4.5. The Kaua'i Planning Commission reviewed approximately 90 applications for TVR Special Permits during this time. Those that were able to meet the criteria for Special Permits were granted their Special Permits and their corresponding TVR non-conforming use certificates. Those that could not meet the criteria for Special Permits were ultimately denied and are not operating.

The Special Permit process under HRS 205-6 underscores the regulatory regime's process to entertain TVR uses on agricultural lands dependent upon each respective county's zoning regime; however, it also further underscores that TVRs are not Farm Dwellings, and TVRs are not an outright permissible use on agricultural lands. In addition, the regulatory regime governing TVRs in the Agricultural District has helped to discourage the proliferation of "Gentleman's Farms" with little to no agricultural activities, which drives up prices and reduces the availability of land for farming.

Mahalo for your time and consideration.

A handwritten signature in black ink, appearing to read 'Ka'aina S. Hull', written over a horizontal line.

Ka'aina S. Hull
Director of Planning

Xc:

Michael Yee, Planning Director, Hawai'i County

Kathy Sokugawa, Acting Planning Director, City and County of Honolulu

Michele McClean, Planning Director, Maui County