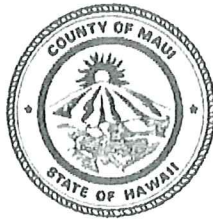


MICHAEL P. VICTORINO
Mayor
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DEPARTMENT OF PLANNING
COUNTY OF MAUI
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2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

August 10, 2020

Mr. Jonathan Scheuer, Chair
and Members of the State of Hawaii Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804-2359

via email: dbedt.luc.web@hawaii.gov

Dear Chair Scheuer and Members,

SUBJECT: DR20-69, COUNTY OF HAWAII

Please accept this testimony in support of Hawaii County's request for a Declaratory Ruling and their position in this matter.

As you may know, Maui County's zoning code defines transient or vacation rentals as a period of less than 180 days. Maui County adopted its most recent ordinances relating to Bed and Breakfast Homes (B&Bs) and Short-Term Rental Homes (STRHs) in 2012. The key differences between the two are that B&Bs must have an on-site owner/proprietor while STRHs are not required to (and rarely do) have an on-site owner, proprietor or manager.

(For the purposes of this testimony, properties that are zoned Agricultural District pursuant to Chapter 19.30A, Maui County Code (MCC), are also considered to be situated in the State Agricultural District pursuant to Chapter 205, Hawaii Revised Statutes (HRS). It is rare that a property falls under one but not both, and I do not believe that Maui County has issued any B&B or STRH permits for such properties.)

MCC Chapter 19.30A allows, as an accessory use, two farm dwellings per lot, one of which cannot exceed 1,000 square feet. There are cases where an Ag property has more than two farm dwellings when they were lawfully constructed prior to December 31, 1998, when Chapter 19.30A

was enacted. I am not aware of any such farm dwellings that have been recognized as a lawful nonconforming (grandfathered) vacation rental. Therefore, for the purposes of this testimony, all B&Bs and STRHs on Ag land were established after 1998.

Pursuant to MCC Sec. 19.30A.050.B, a B&B in the County Agricultural District must comply with the following requirements:

- a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 Schedule F filings; or
- b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawaii Revised Statutes:
 - i. The lot was created prior to November 1, 2008.
 - ii. The lot is comprised of five acres or less.
 - iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or
- c. Located in sites listed on the State of Hawaii Register of Historic Places or the National Register of Historic Places.

Similarly, though strangely more lenient, STRHs only have to demonstrate that “an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.”

In addition to these zoning restrictions, Maui County also requires B&Bs and STRHs in the State Agricultural District to obtain a State Special Permit pursuant to HRS 205-6. This has created somewhat of a contradiction for applicants, who must meet the MCC requirement of having income generated by agricultural production or an implemented farm plan, while having to meet the test for a State Special Permit that “the land upon which the proposed use is sought is unsuited for the uses permitted within the district” pursuant to Sec. 15-15-95(c)(5), Hawaii Administrative Rules (HAR). In other words, Maui County tells applicants that they must engage in agricultural activity, while arguing that they meet the permit criteria that the land is unsuitable for agriculture.

However, the explanation for this contradiction is that the State Special Permit is needed for the farm dwelling and not for the rest of the parcel. Once it becomes used for vacation rental purposes, it is no longer considered to be a farm dwelling under HRS 205; the remainder of the property, though, must continue to comply with MCC 19.30A and HRS 205, and be used for agriculture.

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On a related note, Maui County is considering no longer requiring the State Special Permit for B&Bs because the owner/proprietor still occupies the farm dwelling and, presumably, operates the farm. This could apply to situations where the B&B use occurs in the same farm dwelling where the owner/proprietor lives; it would not apply to situations where the owner/proprietor lives in one farm dwelling and runs the B&B in another.

I believe that Maui County's overall administration of HRS 205 is consistent with Hawaii County's and, therefore, support their request for a Declaratory Ruling on the applicability of HRS 205 to vacation rentals in the Agricultural District.

If you have questions or require additional information, please do not hesitate to contact me. Thank you, in advance, for your consideration of this testimony.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

xc: Michael Yee, Planning Director, Hawaii County
Kaaina Hull, Planning Director, Kauai County
Kathy Sokugawa, Acting Planning Director, City and County of Honolulu
Michael Hopper, Deputy Corporation Counsel

MCM:atw

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