
From: DBEDT LUC <dbedt.luc.web@hawaii.gov>

Sent: Friday, May 13, 2022 1:33 PM

To: Orodenker, Daniel E <daniel.e.orozenker@hawaii.gov>; Gary Okuda <gary@leu-okuda.com>; Jonathan Likeke Scheuer <scheuerluc@gmail.com>

Cc: Hakoda, Riley K <riley.k.hakoda@hawaii.gov>; Segura, Martina T <martina.t.segura@hawaii.gov>

Subject: FW: Testimony Item V May 19, 2022 LUC Executive Session Case No. 3CCV-21-0000178

FYI – received today regarding recent circuit court decision overturning LUC decision in DR20-69/70 Rosehill et.al.

From: Cindy Tuttle <cindyuttule@msn.com>

Sent: Friday, May 13, 2022 1:00 PM

To: DBEDT LUC <dbedt.luc.web@hawaii.gov>

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Subject: [EXTERNAL] Testimony Item V May 19, 2022 LUC Executive Session Case No. 3CCV-21-0000178

Please find below and attached testimony for Item V of the May 19, 2022 LUC Executive Session. Thank you for the opportunity to provide comments.

Respectfully,
Cindy and Thomas Fisher

Aloha,

In light of the recent court ruling reversing the LUC and County declaration (Case Number 3CCV-21-178) regarding short term rentals in farm dwellings on State Agricultural Land, we are writing to provide you, the County and the LUC, with our concerns related to this recent decision; and, respectfully request that the County and the LUC seriously consider appealing this decision or, at a minimum, put immediate safeguards into place to preserve and protect agricultural lands from the nuisance, traffic, safety and social impacts of short term transient rentals on ag land and the potential economic impact to the Island.

In addition, the Hawaii County Planning Director's recent opinion and directive ("Memo 2021-18" to department staff dated August 16, 2021 attached) pertaining to "Hosted

Rentals”, neither used nor defined in law (Code or Rule), may have the unintended consequence of driving up the number of unregulated vacation rental homes even higher. Particularly in zoning districts that *currently* prohibit STVRs (e.g., residential and agricultural districts) and otherwise require special or use permits for other short term (transient accommodation) rental uses such as Bed and Breakfast stays. Unfortunately, the use of this non-codified, extra-legal term “Hosted Rentals” in agricultural and some residential zones has made it possible for property owners to violate and circumvent State law, County code and permit requirements.

For example, the Hawaii County planning department is allowing “Hosted Rentals” in agricultural districts without a permit (see the attached Warning Letter item 2). Whether food is served or not, a Hosted Rental (and a STVR) carries all the same social impacts of a Bed and Breakfast rental which requires a special or use permit. The social considerations that led the County to adopt Bed and Breakfast regulations in the 1996 Zoning Code rewrite/update (special permits if in Agricultural or Rural Land Use Districts (State classification), use permits if Residential urban districts), are PRECISELY identical to those for “hosts” who may or may not be serving undefined “breakfasts” or living on site. The social impacts have nothing to do with “breakfast” service or whether someone lives on site. In addition, Hosted Rental is not listed in State Law or the County’s zoning code and thus (even with the Planning Director’s Hosted Rental opinion) we would argue that his opinion allowing a transient accommodation/rental in an agricultural district without a special or use permit is a violation of State Law. Specifically, HRS 205-5 Zoning (b) which states:

(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants;
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of operation; and
- (5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. **Other uses may be allowed by special permits issued pursuant to this chapter.** ...

The County’s zoning code states under section 25-4-4 Uses Prohibited, that any use NOT listed in a zoning district is prohibited. Hosted Rental and STVRs are NOT listed as a permitted use in the Agricultural zoning code (Section 25-5-72) or under the Agricultural Tourism zoning code (Section 25-4-15). In addition, a Bed and Breakfast use requires a special permit. Again, the only difference between a Hosted Rental/STVR and a Bed and Breakfast use is the service of food for “breakfast” (undefined) and a “host”. Thus, Hosted Rentals and STVRs (if the Court ruling is allowed to stand) should **at a minimum**, require a special or use permit in order to mitigate the social impacts of short term rentals related to tourism in residential and agricultural areas.

HOW TO FIX THE PROBLEM:

HOSTED RENTAL: Amend the definition of Bed and Breakfast in the zoning code to state “whether breakfast is served or not”. In fact, this was done in Sonoma County, CA (Napa Valley wine tourism) to address (and prevent) this exact same problem there. (See attached Sonoma County

code) Simple and sensible, as serving food is irrelevant to the impacts on the neighborhood and should be discretionary anyway. If this simple tweak were made, Hosted Rentals would then be regulated in the same manner as Bed and Breakfast operations: the maximum numbers of guests, bedrooms, etc. Currently no restrictions for managing Hosted Rentals exists other than the difficult to enforce definition of “family.” Thus, large groups of tourists convene under the auspices of being “one family” at a Hosted Rental.

For example, a Hosted Rental in our agriculturally designated neighborhood advertises for up to 35 people bringing with it the noise, traffic, safety and other issues attributable to short term tourism. By the time you prove these 35 people aren’t related you’re dealing with the next unruly, loud and obnoxious group. In addition, this unregulated use subjects us to over 60 vehicle trips per day on a private, hilly, and blind cornered road. (For comparison the National Average of vehicle trips for single family residential is 10. They are six times that amount.) Requiring a special or use permit would at least allow the impacted surrounding neighborhood to address the legislative bodies as to the practicality of the use and to condition the permit with mitigations to address adverse impacts (noise, traffic, safety, etc.). As it currently stands Hosted Rentals are popping up everywhere in our agricultural neighborhood contributing to all of the transient related issues as to why bed and breakfasts and STVRs were regulated in the first place. In addition, the County is currently not collecting any transitory taxes on Hosted Rentals. Requiring a permit would allow a process to register and collect additional tax dollars for oversight and policing.

STVRs: If the LUC and County decide to allow the ruling to stand it is imperative that a Special or Use Permit be required for STVRs on Ag land. This is in addition to the standard STVR application. In addition, if STVRs must be allowed in Ag zoned areas, density limits should be set to avoid over saturation. If not, what little affordable homes that are left in ag will be gobbled up by out of state investors for STVRs. This will impact not only locals looking for an affordable place to live, but also the resort areas where tourism should be concentrated. Where are the workers going to live to service all these tourists? Not to mention the unintended consequence for the West side economy. For example, in our opinion the Kona area could easily become 75% vacation rentals. During the next pandemic, (if you think COVID was bad for the local economy), imagine if there are only 25% of current residents trying to support local Kona businesses.

Finally, Hawaii County zoning code section 25-5-70 states that, “...The A (agricultural) district provides for agricultural and *very low density agriculturally-based residential use*. (Emphasis added) A Hosted or Short Term Rental with the ability to “sleep 35” even if it meets the definition of family for a short term basis, is far from being “very low density”. Mechanisms need to be put in place to protect one of the last areas on this Island free from the social impacts of tourism.

Thank you for your consideration. We are happy to answer any questions or provide testimony, gather groups of like minded individuals, etc. in order to protect our community.

Mahalo for your consideration.

Cindy and Thomas Fisher
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Link to Sonoma County Code: <https://sonomacounty.ca.gov/PRMD/Regulations/Vacation-and-Hosted-Rentals/Code-for-B-and-Bs-and-Hosted-Rentals/>