

MAUI VACATION RENTAL ASSOCIATION

www.mvra.net

Maui County Planning Commission
c/o Maui Department of Planning
250 S. High Street
Wailuku, HI 96798-2155
By Hand Delivery

Oct. 9, 2007

Re: Bills for Ordinances to Regulate B&Bs and TVRs

Aloha Planning Commission Chair and Members:

The Maui Vacation Rental Association (MVRA) was incorporated in 2001. According to the Charter Statement filed with the State of Hawaii DCCA, our purpose is

To legitimize the existence of Maui vacation rentals on Residential, Agricultural and Rural zoned land, and to promote compliance with County and State regulations, such that local government, visitors, residents and owners of vacation properties benefit mutually.

Our input on the proposed legislation covers the following six points, each of which is further detailed in an Appendix attached to this letter:

1. The Planning Department's Oct. 10, 2007 Report and Recommendation to the Planning Commissions begins with a "Brief History". Statements in the Brief History are untruthful, and the Department's Recommendations are unsupported by facts, inconsistent with the Maui County Charter, and in conflict with democratic principles governing the legislative process. Please see Appendix 1 for details.
2. In view of the current General Plan Revision process, the Department's Recommendations are untimely. The Molokai and Lanai Planning Commissions and the Hana Advisory Committee have all advised deferral of this legislation, but the Department has ignored their advice. Please see Appendix 2 for details.
3. Eliminating the Conditional Permit, as recommended by the Department, will deny procedural due process to hundreds of existing visitor rentals, causing irreparable harm to families and resulting in liability for the County. Please see Appendix 3 for details.
4. The Department's proposed regulations are unreasonable and will discourage or prevent compliance. Please see Appendix 4 for details.

5. The Department has *intentionally* deprived decision-makers of adequate and accurate information, thereby preventing them from making informed decisions. Please see Appendix 5 for details.

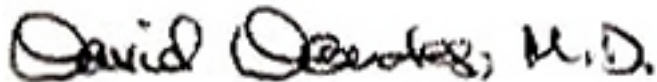
6. There is a compromise solution which would:

- Protect the character of neighborhoods
- Limit proliferation
- Protect jobs and small businesses
- Support the economy, and
- Preserve beneficial B&Bs and TVRs.

Please see Appendix 6 for details.

Thank you for kind attention.

Respectfully Submitted,

A handwritten signature in black ink that reads "David Dantes, M.D." The signature is written in a cursive, slightly slanted style.

David Dantes, M.D.
President, MVRA

Appendix 1

The Planning Department's Oct. 10, 2007 Report and Recommendation to the Planning Commissions begins with a "Brief History". Statements in the Brief History are untruthful, and the Department's Recommendations are unsupported by facts, inconsistent with the Maui County Charter, and in conflict with democratic principles governing the legislative process.

The problematic statements are:

- A. "The Department reviewed the proposed bill [referring to draft legislation referred to the Planning Commissions by the Council in 2006] and determined it would be a major shift in policy regarding the tourism industry and its impact on the local population. The Department found the bill to be contrary to the General Plan, several community plans, State land use law, and section 19.35 of Title 19."

The above determinations and findings were based on "feelings", opinions and misinterpretations of General and Community Plan language. Furthermore, public testimony *supporting* the proposal outnumbered opposition by a ratio of greater than 10:1. Before accepting its conclusions, please require the Department to specify what *facts* it relied upon in making these determinations.

- B. "The Council requested the Planning Department to ...draft proposed legislation consistent with Planning Department's recommendations..."

This statement is untruthful. Article 4, Sec. 4-1 of the Maui County Charter provides that "every legislative act of the Council shall be by ordinance. Other acts of the Council may be by resolution." Therefore, the Council could not have "acted" (requesting the Department to draft proposed legislation) *except* by ordinance or resolution.

There has been no Council ordinance or resolution consistent with the Department's statement, and the Department is falsely claiming to have acted under authority of the Council in proposing this legislation. Please require the Planning Department to provide written evidence that the Council requested the Department to draft proposed legislation consistent with Planning Department's recommendations.

- C. “The Council ...encouraged the Planning Department to enforce the laws...”

The Department apparently interpreted comments by a couple of individual Council members as a *mandate* for aggressive and selective enforcement, targeting only one type of land use violation.

According to Planning Committee Report 07-27, the Committee “expressed serious concern... about enforcement policies... noted that enforcement is within the executive branch’s purview... stated its desire to exercise legislative oversight... and noted that zoning laws need to be enforced fairly and consistently...”

There has been no Council ordinance or resolution encouraging enforcement by the Department, and the Department is falsely claiming to have acted under authority of the Council in changing its customary enforcement practices.

Had the Council directed the Department to change its enforcement practices, such an action would have violated Maui County Charter Sec. 3.8.2, which provides:

“Neither the Council nor its members shall give orders to any county employees or county officers..”

TVRs account for around 2% of all complaints reported to the Planning Department. This is an improvement over a figure of 7% in 2002, despite the presumed proliferation of these businesses.

MVRA recommends that the Planning Department continue its time-honored practice of enforcing land-use code based on actual complaints. Limited enforcement resources should be reserved for instances where an actual impact affects neighbors or threatens community health or safety.

Appendix 2

In view of the current General Plan Revision process, the Department's Recommendations are untimely. The Molokai and Lanai Planning Commissions and the Hana Advisory Committee have all advised deferral of this legislation, but the Department has ignored their advice.

- A. The Molokai and Lanai Planning Commissions "voted to recommend that the matter [of regulating vacation rentals] be discussed/determined *during the General Plan process.*"
- B. The Hana Advisory Committee "voted to recommend...that the County hold a series of workshops with the Hana community to develop a Hana vacation rental ordinance."

The General Plan process is only in the beginning stages, and a series of community workshops has not been held by the County in Hana. Please require the Department to explain why it recommends premature adoption of this legislation, disregarding the express wishes of the Molokai and Lanai Planning Commissions and the Hana Advisory Committee.

The General Plan is about to come before this Commission for public hearings, and regulation of home-based visitor accommodations will be part of that discussion. We recommend that adoption of regulations be deferred until the General Plan process is complete. Only then will it be possible to draft B&B and TVR ordinances which are consistent with the new General Plan.

In the meanwhile, we advise continuation of complaint-driven zoning enforcement, and the industry will cooperate with self-regulation.

Appendix 3

Eliminating the Conditional Permit, as recommended by the Department, will deny procedural due process to hundreds of existing visitor rentals, causing irreparable harm to families and resulting in liability for the County.

Pursuant to Maui County Code Sec. 19.40, dozens of families have applied for Conditional Permits to operate vacation homes. Applications have not been processed by the Planning Department in a timely manner, as required by State Statute, and some applications have been pending since 1998!

The Department's legislation offers no provision by which permit applicants who have been "on hold" for years, at the County's convenience, can complete the permit process. They will lose their businesses without the benefit of a hearing on their application.

Literally *hundreds* of other operators were discouraged by the Department from applying for permits during the past five years. They were told it was "OK to wait for easier rules" before applying, because the Department wished to avoid the work of processing burdensome applications. Abolishing the Conditional Permit will leave these businesses with no way to comply, after they followed advice which was consistently given out to the public by the Department.

Under these scenarios, families which lose their businesses – and possibly their homes – would accrue a cause of action against the County for damages. Grounds for suit would include, but not be limited to, denial of procedural due process, and maintenance of illegal customs and practices by the Department.

Please do not accept the Department's recommendation to eliminate Conditional Permits for vacation homes. Pending applicants, and would-be applicants who were turned away by the Department, should be given a fair opportunity to comply.

Appendix 4

The Department's proposed regulations are unreasonable and will discourage or prevent compliance.

Unreasonable provisions in the proposed bills are too numerous to mention, so we will confine ourselves to three examples:

- A. An impossible test (requiring proof of \$35,000 annual farm income) is imposed on families wishing to have a B&B on their small agricultural parcel. This income test was designed for parcels with a minimum size of five acres, and with farm production sufficient to require construction of a building to house "farm labor." It was not intended to limit how a family uses non-labor dwellings.

Moreover, the County's Upcountry water supply, delivery infrastructure, and water meters are inadequate to support crop irrigation at the required level of production.

- B. B&Bs are limited to a single dwelling per parcel. Even if there is a second permitted dwelling, a family cannot take advantage of it for economy of scale. This is sometimes called "hamstringing". While the law *appears* to encourage family businesses, hamstringing provisions subtly interfere with their success.
- C. The proprietor's family must share their living space with visitors and cook in the same kitchen. Another hamstring, this will discourage visitors who value privacy from using B&Bs, and deprive the proprietor's family of a sanctuary from their work.

Please reject "hamstring provisions" and encourage the Council to work with the industry to adopt regulations which allow and encourage compliance.

Appendix 5

The Department has *intentionally* deprived decision-makers of adequate and accurate information, thereby preventing them from making informed decisions.

The Planning Department customarily supports the legislative process by providing decision-makers with adequate and accurate information, and objective guidance. However, with respect to home-based visitor accommodations, the personal intolerance of planning staff toward these businesses has overshadowed their customary objectivity and professionalism. The Department is not a trustworthy source of information or guidance on this subject matter.

In separate written testimony, we document the extent of personal bias by planning staff, demonstrating how this bias is interfering with the democratic legislative process. Please refer to the article in front of you, entitled "Government Moving the Goal Post Again: A Crisis for Maui's Vacation Rentals."

Appendix 6

There is a compromise solution which would:

- **Protect the character of neighborhoods**
- **Limit proliferation**
- **Protect jobs and small businesses**
- **Support the economy, and**
- **Preserve beneficial B&Bs and TVRs.**

Studies made or relied upon by the Department indicate that there are 800-1000 unlicensed B&Bs and TVRs in Maui County. Despite lack of conformance with antiquated zoning regulations, these businesses have been encouraged and supported by the Maui Visitor Bureau, County Office of Economic Development, and State Tourism Authority for more than a decade.

An estimated 85% of Maui B&Bs and TVRs are owned and managed by permanent residents on-site. These are small-scale, quiet operations which blend into neighborhoods and seldom create a disturbance. Annual visitor spending by guests, exclusive of rent, amounts to \$40 million, which remains in the local economy.

B&Bs and TVRs create six hundred full-time equivalent jobs for Maui residents, and provide self-employment income for eight hundred families. County-sponsored research found the industry's impact on affordable housing to be "insignificant" (at *most* 1.1%). We recommend grandfathering these existing operations, provided they can prove tax compliance, and have not caused neighborhood impacts.

After grandfathering existing operations, a cap can be placed on the number of permits. The industry will cooperate by self-regulating to protect the character of neighborhoods and limit proliferation. This approach will protect jobs, help small businesses which depend on visitor spending, support the economy and avoid depriving operators of their livelihood.

Please support grandfathering.