

COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHUE, KAUAI

SUBJECT TO CHANGE

STAFF REPORT – SUPPLEMENT 2

DEADLINES:	Transmittal Date	January 15 th 2009
	Hearing Date	April 28 th 2009
	Hearing Close	May 12 th 2009
	Action Deadline	July 11 th 2009
		June 23 rd 2009 - Meeting

PROJECT: ZA-2009-9

APPLICANT: Kawai'i County Council

Additional Findings *June 9th AM (AMENDED)*
ON FLOOR

At the July 11th meeting staff recommended denial of the bill and requested a deferral to work on an alternative language to the bill. The alternative legislation has been prepared following the staff evaluation, conclusion and recommendation given at the June 9th hearing.

The proposed alternative language has been reviewed by the County Attorney and can be considered as an amendment to Bill 2298.

Evaluation:

The Department's alternate proposal to Bill 2298 will require operators of existing Transient Vacation Rentals within the State Land Use Agriculture district be given one year to apply for and receive both a Non-Conforming Use Certificate and a Special Permit within one year of the effective date of the ordinance, during which time they will be allowed to continue operation. The operator will be required to meet the standards of each permit and the Special Permit will be re-evaluated at the time the County institutes regulation relative to Agricultural lands of importance. TVR operations on Ag land that met the prior standard of Construction prior to July of 1976 will still be honored as holding a valid Non-Conforming Use Certificate.

The proposed changes are attached in bill form.


Conclusion and Recommendation

To be consistent with County procedure it is recommended that Bill 2298 be amended as attached and recommended for approval to County Council.

D.1.

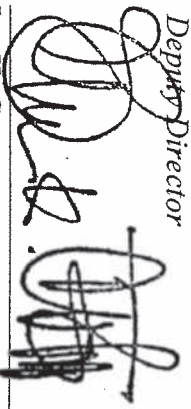
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JUN 23 2009

By 
Imai Aiu

~~Deputy~~ Director

Approved



Ian K. Costa
Director

ORDINANCE NO. _____

BILL NO.2298

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8
OF THE KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF
HAWAII:

SECTION 1. Findings and Purpose.

The Council of the County of Kaua'i hereby finds that recent unprecedented events have caused major upheaval in the national and world economy, producing a significant reduction in visitor arrivals to Kaua'i and a negative impact on Kaua'i's economy, small businesses and families. These events include volatile oil prices and the financial disaster caused by the subprime mortgage crisis and failure of long standing financial institutions. In a briefing of the County Council on October 1, 2008, Kaua'i Visitor Bureau Executive Director Sue Kanoho reported that Kaua'i Visitors Bureau and the Hawai'i Tourism Authority are now focusing on visitors who CAN come to Kaua'i, as opposed to those who WANT to come. Some of the visitors who can come to Kaua'i want to stay in single family transient vacation rentals in rural settings.

The Council finds that Ordinance No. 864, the law regulating single family vacation rentals, passed by the County Council and signed into law by Mayor Bryan Baptiste on March 7, 2008, was necessary to stop the uncontrolled proliferation of single family transient vacation rentals outside Visitor Destination Areas (VDAs). However, in accordance with the General Plan policy statements relating to Agriculture Lands (5.2.1), to Alternate Visitor Accommodations (4.2.8.2) and to Agro-tourism (4.2.5) it is reasonable to permit existing TVR operations within the State Land Use District Agriculture subject to the TVR operation proving their compatibility with Hawai'i Revised Statutes, Section 205, through the Special Permit process.

The purpose of this bill is to provide a process for operators of Transient Vacation Rentals within the State Land Use District Agriculture a process to legitimize their operation by complying with the existing regulations governing agricultural land and the County ordinance governing transient vacation rentals.

SECTION 2. Section 8-17, Kaua'i County Code 1987, as amended, is hereby amended by adding or amending the following definitions to read as follows:

Sec. 8 - 17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals

(a) The purpose of this section is to provide a process to identify and register those single family transient vacation rentals as nonconforming uses which have been in lawful use prior to the effective date of this Ordinance and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this Section.

(b) The owner, operator or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of

this ordinance shall by March 30, 2009, obtain a nonconforming use certificate for single family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family transient vacation rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant provides a sworn affidavit and demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a transient vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws, including but not limited to, HRS[,] Chapter 205, the Comprehensive Zoning Ordinance, Special Management Area, Flood Plain Management and Shoreline Setback laws at the effective date of this ordinance, up to and including, the time of application for a nonconforming use certificate. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawai'i General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to the effective date of this ordinance, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to the effective date of this ordinance, with a pattern of consistency that evidences an ongoing and lawful enterprise.

(d) Pursuant to HRS Chapter 205, no nonconforming use certificate shall be issued for any single-family transient vacation rental located on land designated "Agricultural" by State law, unless:

(1) It was built prior to June 4, 1976. or

(2) [The Applicant has a special permit under Hawai'i Revised Statutes, Section 205.6 which specifically permits a vacation rental and the permit was secured prior to the enactment of this ordinance.] The vacation rental has first received a Special Permit pursuant to Hawai'i Revised Statutes, Section 205-6, subject to the following conditions:

(A) Applications for both an NCU and Special Permit shall be made within one year of effective date of this Ordinance during which time the TVR may continue operation.

(B) Any Special Permit granted under this Article shall be subject to re-evaluation or revocation as necessary upon identification of Kaula's agricultural lands of importance to the State pursuant to HRS Chapter 205 Part III or identification of agricultural lands of importance to the County and adoption of ordinance(s) regulating said lands.

(3) In accordance with provision (g) of this section Non Conforming Use Certificates shall be granted by the Planning Commission.

(4) Applications for both the Non Conforming Use certificate and Special Permit may be heard concurrently by the Commission but the standards for each shall be applied separately.

(e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawai'i income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

(f) The Planning Director shall make available to the public at the Planning Department counter and on the County of Kana'i website a list of all completed applications for non-conforming use certificates. Applications deemed completed shall concurrently be made available to the public. All applications shall be made available no later than March 2, 2009. Copies of applications shall also be made available to the public as public information, as provided by Haw. Rev. Stat. Chapter 92F (the Uniform Information Practices Act). Such list shall include the names of the applicants and the tax map key number of the parcels which are the subject of the applications. The Planning Department shall physically inspect every single-family transient vacation rental prior to a non-conforming use certificate being issued. No non-conforming use certificate shall be issued without a physical inspection.

The Planning Commission shall promulgate administrative rules prior to the July 31, 2009 application deadline for annual renewal of nonconforming use certificates for single-family vacation rentals required by Section 8-17.10 (h) to allow members of the public to contest the re-issuance of any nonconforming use permit based on complaints related to the loss of quiet enjoyment or transgressions of visitor industry standard 'rules of occupancy,' as well as non-compliance with all State and County land use or planning laws. As part of the 2009 annual certificate renewal process, the Planning Commission shall also develop a standardized list of requirements and information entitled 'For the Safety and Comfort of You and Your Neighbors' for use as prescribed in Section 8-17.8 (b)-(3)

(g) Failure to apply for a nonconforming use certificate by October 15, 2008 or failure to obtain a nonconforming use certificate by March 30, 2009 shall mean that the alleged nonconforming use is not a bona fide nonconforming use, and it shall be treated as an unlawful use, unless the applicant demonstrates to the satisfaction of the Planning Commission that the alleged transient vacation rental use meets the criteria under Section 8-17.10(c) and (d). The Planning Director shall prepare an application form which shall be available to the public by March 30, 2008.

(h) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate by July 31 for every year.

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(1) Each application to renew shall include proof that:

(A) There is in effect a State of Hawai'i general excise tax license and transient accommodations tax license for the Nonconforming use.

(B) Notwithstanding any other ordinance or rule to the contrary, the use has been ongoing, with a presumption that if the nonconforming use has occurred less than a total of thirty (30) days, said use has been abandoned, and

(C) That at the time of renewal the dwelling unit was in compliance with all State and County land use or planning laws, including, but not limited to, HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plain Management, and Shoreline Setback laws.

(2) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificates.

(3) Applicant shall pay a renewal fee of One Hundred Fifty Dollars (\$150.00) which shall be deposited into the County General Fund.

SECTION 3. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kawa'i County Code 1987, the brackets, bracketed material, and underscoring shall not be included.

SECTION 4. If any provision of this ordinance or the application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall take effect upon its approval.