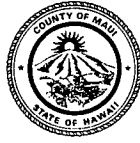


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COUNTY COUNCIL
COUNTY OF MAUI
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WAILUKU, MAUI, HAWAII 96793
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October 31, 2017

Patrick Wong, Corporation Counsel
Department of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Mr. Wong:

**SUBJECT: COUNCIL AUTHORITY TO APPROVE STATE LAND
USE DISTRICT BOUNDARY AMENDMENTS**

On Wednesday November 1, 2017 the Land Use Committee is scheduled to discuss Bill 67 (2017) Relating to Amending the State Land Use District Classification from Agricultural District to Rural District for Property Situated at Polanui, Launiupoko, Lahaina, Maui, Hawaii (LU-35)

May I request that your department please come prepared to respond to the following inquiry at tomorrow's Land Use Committee meeting, so that the committee members are well-advised before we are asked to make a decision that may or may not be within our authority or jurisdiction.

Hawaii Revised Statutes-201H-38 (in relevant part) states:

(3) The legislative body of the county in which the housing project is to be situated shall have approved the project with or without modifications:

(a) The legislative body shall approve, approve with modification, or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not

submitted by member Cochran 11/1/17 LU committee

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disapproved, it shall be deemed approved by the legislative body;

(4) **The land use commission shall approve, approve with modification, or disapprove a boundary change** within forty-five days after the corporation has submitted a petition to the commission as provided in **section 205-4**. If, on the forty-sixth day, the petition is not disapproved, it shall be deemed approved by the commission.

Please confirm or prove false that since Makila Kai submitted their project as a 201H application, that the district boundary amendment request should be submitted to the land use commission, not the council for review.

Furthermore, **Maui County Code- Chapter 19.68.010 STATE LAND USE DISTRICT BOUNDARIES – Purpose** section states:

“It is the purpose of this chapter to establish procedures in order to implement the provisions of section 205-3.1, Hawaii Revised Statutes, pertaining to petitions for boundary change/reclassification of state land use district boundaries involving lands **fifteen acres or less** presently classified as agricultural, rural or urban and to delegate certain responsibilities for the administration of this chapter to the Maui planning commission.”

If Corporation Counsel opines that 201H application district boundary amendment requests do fall under council jurisdiction to approve or disapprove, please confirm or prove false that Makila Kai (76.135 acres) qualifies under the 15 acres or less threshold that provides council the ability to approve or disapprove the DBA.

Background on the TMKs in question:

The original application to the State of Hawaii Land Use Commission was for ‘Makila Rural Community’ (approx. 278.59 acres in total) comprised of four separate projects now known as: Polanui Gardens (approx. 48.87 acres), Makila Kai (approx. 76.135 acres), and Makila Rural East (approx. 79.306 acres) (three separate 201H affordable housing projects), and Makila Ranches (approx. 74.28 acres).

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Makila Kai (approx. 76.135 acres), consists of three TMKs: 47013003000 (approx. 27.19 acres), 470130040000 (approx. 25.862 acres), 470130050000 (approx. 23.083 acres), yet their application for a DBA is only for 14.6 acres.

Is it legal for the applicant to carve out a section of their project's total acreage, and further carve out a section of one of their project's TMKs to apply for a DBA through the council in order to avoid proper review and procedure through the appropriate governing agency (LUC)?

Is it appropriate for the Council to engage in this potential illegal circumvention of State and County laws?

The Land Use Commission objects to the process, believing it is illegal also having issues with the DBA being only for the 14.6 acres, and does not believe the County has authority to process it.

While it is true that the council approved the 201H application by way of Resolution 17-108, exempting the applicant from DBA application processing procedures, the council did not exempt the applicant from council approval of the DBA.

Since the 201H application and DBA are being processed separately and the 201H exemption was only a partial exemption of DBA, if the council proceeds in passing the proposed bill for an ordinance for the DBA, are we still protected by the grant of immunity in 201H-38 (3)(b) OR are we subject to suit for that decision?

If it is okay to move forward on the DBA how is it that the council may make its determination? With the 201H exemption in place we have no report and recommendation from the Planning Director, no Planning Commission recommendation, no public notice or input, no assessment of impacts or desirability of granting the DBA etc.

Our understanding is that no Environmental Assessment was done for the project. Without that assessment and information on what grounds can the council make its ruling?

I request that these issues be investigated by the Corporation Counsel and opined on before the Council takes any formal action on Bill 67 (LU-35). Please provide comment in response to these inquiries at tomorrow's 9:00 a.m. Land Use Committee meeting.

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Mahalo,

Elle Cochran

ELLE K. COCHRAN
Councilmember

cc: Robert Carroll, Land Use Committee Chair

Attachment: Letter Addendum