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DEPARTMENT OF PUBLIC WORKS
COUNTY OF MAUI
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www.mauicounty.gov/publicworks

November 14, 2023

Honorable Richard T. Bissen, Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

APPROVED FOR TRANSMITTAL

Richard T. Bissen, Jr. 11-15-23

Signature Date

For Transmittal to:

Honorable Tom Cook, Committee Chair
Water and Infrastructure Committee
Maui County Council
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Committee Chair Cook:

**SUBJECT: BILL 42 (2023), AMENDING THE SUBDIVISION ORDINANCE
RELATING TO HISTORIC PROPERTY (WAI-8)**

The Department of Public Works (Department) is in receipt of your correspondence dated July 12, 2023 requesting the Department's review and comment to the proposed Bill 42 (2023). Subsequent to your correspondence, an amendment summary form dated November 13, 2023 that contained Bill 42, CD1 (2023) was transmitted from yourself to the WAI Committee.

The Department offers the following comment to Bill 42, CD1 (2023) for your consideration:

1. The Bill proposes to amend the following language throughout section 18.04.020:

"... consolidation [/] or resubdivision..."

This amendment is opposed by the Department. A "consolidation/resubdivision" is a term defined in section 18.04.111. The amendment as proposed completely changes the applicability of this section and should be omitted from the bill.

Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Tom Cook, Committee Chair
November 14, 2023
Page 2

2. The Bill proposed to amend the following language throughout section 18.04.020:

“The requirements [of this title shall]...”

This amendment is opposed by the Department. The proposed deletion of the language “of this title” creates ambiguity in which requirements do not apply. The subdivision code contains a multitude of requirements so there must be specificity when referencing the requirements of this code.

3. The Department recommends consulting with the other agencies that regularly review subdivision applications and whose requirements would be exempted by the proposed bill. These agencies, which include but are not limited to Planning, Water, Wastewater, Fire, and SHPD, should comment as to whether they have concerns with the proposed exemptions and whether they want to be part of the review process for approving the creation of preservation lots.
4. The Bill proposes under subsection 18.04.020.H.7.b. that historic preservation lots may contain a variety of areas which are listed in the subsection. It is difficult to understand the requirements for these areas as currently presented. The Department recommends this paragraph be deconstructed to more clearly convey the Bill’s intent.

The Department offers the following language as a substitute:

“b. Areas necessary to provide pedestrian and vehicular access to the preservation areas from a public street, private street, or access easement from an adjacent parcel;
c. Areas necessary to provide on-site parking.”

5. The Bill stipulates under subsection 18.04.020.H.8 that historic preservation lots must include amenities and improvements from an explicit list that includes parking, walkaway, roadways, utilities, irrigation, landscaping, signage, walls, fencing, and open space. The Department opposes mandating such amenities and improvements because these improvements may be inconsistent with the preservation plan. Instead, the Department proposes that these amenities and improvements be simply allowed rather than required and to let the property owner determine if and when such improvements or amenities are appropriate to provide.

The Department offers the following language as a substitute:

“8. The historic preservation lot must be encumbered by a restrictive covenant limiting its use to purposes related to the

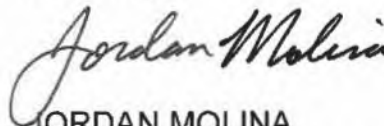
Honorable Richard T. Bissen, Jr.
For Transmittal to:
Honorable Tom Cook, Committee Chair
November 14, 2023
Page 3

preservation and the following uses: parking, pedestrian walkways, roadways, utilities, irrigation, landscaping, interpretative signage, walls, protective fencing, and open space."

6. The Department notes a potential concern for preservation lots becoming abandoned once created. This situation already occurs with private cemeteries that have a defunct ownership entity. We see that when issues affecting neighboring properties arise on such lands that, there is no landowner to respond or to enforce against. The County ends up expending its resources to resolve the issue on behalf of the abandoned property. The historic preservation lots contemplated by the Bill are very similar to private cemeteries in terms of having restricted land uses that limited the landowner's ability to generate revenue to support perpetual maintenance obligations. Because of these conditions, there is potential for historic preservation lots becoming abandoned similar to what we see with private cemeteries.

Should you have any questions, please do not hesitate to contact me at Ext. 7845.

Sincerely,



JORDAN MOLINA
Director of Public Works

JM:sec

[PWADMIN\Summer\Council\Committees\WAI\Bill 42 \(2023\) Amending the SUBD Ord Relating to Historic Property \(WAI-8\)\Response to Cook Historic Property Subdivisions 2023-11-13.doc](#)

WAI Committee

From: Estrelita Dahilig <Estrelita.B.Dahilig@co.maui.hi.us>
Sent: Friday, November 17, 2023 10:28 AM
To: WAI Committee
Cc: Cynthia Sasada; Jordan Molina; Kekuhaupio Akana; Leo Caires; Pili Nahooikaika; Summer Enfield-Carlos; Wendy Taomoto
Subject: MT#10383-Bill #42 (2023), Amending The Subdivision Ordinance Relating to Historic Property (wai-8)
Attachments: MT#10383-WAI Committee.pdf