

WRIGHT & KIRSCHBRAUN

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July 27, 2017

Via Email: robert.carroll@mauicounty.us &
USPS First Class Mail

Robert Carroll
Chair, Land Use Committee
Maui County Council
200 S. High Street
Wailuku, HI 96793

RE: Special Use Permit and Conditional Permit Applications of Leona R. Wilson-Lona Ridge, LLC/588 Kulaiwi Drive, Wailuku (LU-23)

Dear Mr. Carroll:

I am writing in response to your letter dated July 20, 2017, addressed to my clients Leona R. Wilson and Lona Ridge, LLC. I did not receive a copy of your letter until July 25, 2017, I am responding as soon as I am able to, and apologize that I am unable to meet your deadline of July 26, 2017.

Please note that many of the items mentioned in your letter have already been addressed by me in a comprehensive letter and supporting documentation sent to Deputy Corporation Counsel, James Giroux, on July 25, 2017. I request that you please contact Mr. Giroux for the content of that letter.

While we are unable to provide the committee with a legal opinion, I am able to respond to certain of the factual inquiries in your letter based on information from our clients and documents we have and will respond to them in the number in which you listed them:

1. No.
2. Not applicable.

3. It is our position that the Wailuku Heights II Declaration does not apply to any part of my client's property. Please see my July 25th letter to James Giroux, Esq. for a detailed review with the supporting documentation. To briefly summarize, the Property which is the subject of the current applications is identified as Lot 171, was created in August 2004 as a result of a consolidation and resubdivision which the previous owners, Niehaus and Rhodes, completed prior to Lona Ridge, LLC's purchase in June 2005. The Association's former President confirmed to the previous owners that the Association had no control over the portion of the newly configured Lot 171 which is outside the boundaries of the Wailuku Heights II subdivision and this was disclosed to my client prior to her purchase of the property. There is no provision in the Wailuku Heights II Declaration for part of a "Lot" to be subject to its Declaration. Moreover, Lot 171 is zoned agricultural and HRS Chapter 205 specifically prohibits the imposition of restrictive covenants upon agricultural lands. No agricultural tourism or commercial activities have occurred or are occurring on that four percent former Lot 144 portion of the Property. Therefore, we believe the Association's attempts to regulate the entire Property or impose penalties against the Property's owner are not supported by the Declaration, Hawaii statute or any independent agreement. The former Lot 144 portion is only being used as a driveway access and its current use and proposed use as a driveway is consistent with the Declaration and the agreement reached between the Association's former Board of Directors and Ms. Wilson and her late husband, Bill Wilson, that Lot 144 may be used as a driveway, that the driveway would be landscaped as approved by the Association, and the Wilsons would not further subdivide Lot 171, all of which has occurred.
4. See our letter to James Giroux, Esq. While my client has received what we believe are baseless and harassing notices from the Association, each of those notices has been withdrawn to our understanding and no fines have ever been imposed upon my client by the Association. Nonetheless, we will provide copies of communications between Ms. Wilson (by and through her counsel) and the Association by separate cover to Mr. Giroux.
5. No civil action has been initiated at any time. Please see my response to paragraph 4 above regarding documentation received from the Association.

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6. We are not aware of any such documentation. Before submitting her special use permit and conditional permit applications, my client and her planner at the time met with and had discussions with the previous Association Board of Directors in an attempt to obtain their input and support regarding her proposed uses. However, my client did not request approval from the Association to host special events at her property because there is only no obligation to do so and she understands that such uses must only be approved by the appropriate government agencies. There simply is no need to get any approval of the Association at all for use of the former Lot 144 as a driveway or for any use on any other part of the property.

Please let me know if you have any other questions concerning our responses and the information provided in this letter. Thank you for your consideration.

Respectfully,

WRIGHT & KIRSCHBRAUN
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DEBORAH K. WRIGHT

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cc: James Giroux, Esquire (via email)
Leona R. Wilson (via email)