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COUNTY COUNCIL
COUNTY OF MAUI
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WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

July 20, 2017

Mr. Lester I. Yano, President
Board of Directors
Wailuku Heights Extension – Unit II Homeowners Association
P.O. Box 1432
Wailuku, Hawaii 96793

Dear Mr. Yano:

**SUBJECT: CONDITIONAL PERMIT FOR PROPERTY LOCATED
AT 588 KULAIWI DRIVE (WAILUKU) (LU-23)**

At its meeting of July 19, 2017, the Council's Land Use Committee discussed a request for a Conditional Permit for property located at 588 Kulaiwi Drive, Wailuku, Maui, known as Lona Ridge, LLC ("Property"). The Committee inquired about the applicability of the Wailuku Heights Extension – Unit II Homeowners Association ("HOA") Covenants, Conditions, and Restrictions ("CC&Rs") to the Property.

In correspondence dated August 1, 2016, you noted in part that "when purchasing the Property, [the Applicant] explicitly agreed that the Property would continue to be part of Wailuku Heights II and subject to the CC&Rs." In support of this statement, you referred to a 2005 deed to the property and stated "Applicant acknowledged explicitly the portion of the Property that come from Wailuku Heights II, would continue to be bound by the CC&Rs (Exhibit 7, page 2, ¶3), and Applicant promised further to obey the CC&Rs (Exhibit 7, page 2, ¶6)." Exhibit 7 is a copy of the Warranty Deed conveying the property to the Applicant in June 2005 ("Deed").

The language referred to in the deed on page 2, ¶3 states, ". . . and that the portion of the Property formerly identified as Lot 144 remains bound by the terms and conditions of the documents governing and controlling actions and activities within the Subdivision, including the [CC&Rs]." [Underscore added.] The Deed on page 2, ¶4 states, "that Grantee has requested that the [Wailuku

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Heights II Homeowners Association] consent to and approve the use . . . of the portion of the Property formerly identified as Lot 144 for a driveway . . . and . . . landscaping . . . and that said HOA has agreed to such use and landscaping subject to certain conditions.” The Deed on page 2, ¶6, states that, “as to the portion of the Property formerly identified as Lot 144 . . . Grantee will observe and perform all of the terms [of the CC&Rs].” [Underscore added.]

At the Land Use Committee meeting held on July 19, 2017, the Applicant through her attorney, stated that the CC&Rs apply only to the portion of the Property formerly identified as Lot 144 of the Wailuku Heights II Subdivision and that the use of this portion, for driveway and landscaping purposes, is consistent with the CC&Rs.

Accordingly, may I respectfully request that you provide the following:

1. Clarify whether it is the position of your association that the CC&Rs apply to the entire parcel identified as TMK (2) 3-5-002:010 located at 588 Kulaiwi Drive, or to only that portion of the Property formerly identified as Lot 144 of the Wailuku Heights II Subdivision.
2. If your position is that the CC&Rs apply to the entire parcel, please explain the basis for this position and provide copies of any documents or agreements upon which you rely to support your position.
3. Correspondence or other documentation confirming that the Applicant, or prior owner of the Property, requested and received consent from your HOA to use the portion of the Property formerly identified as Lot 144 for landscaping and driveway purposes. Please include the conditions under which the landscaping and driveway uses were approved.
4. Submit documentation notifying the Applicant of the HOA’s decision to deny her request for approval to host special events at the property.
5. Submit documentation, if any, showing steps taken by the HOA to enforce the provisions of the CC&Rs against the entire Property, the portion of the Property formerly identified as Lot 144, or the Applicant. Please indicate if any civil action has been initiated in court, and if so, provide a copy of the complaint.

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Thank you for your consideration of this request. May I also request that you submit your written response by Wednesday, **July 26, 2017**.

To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Gary Saldana at 270-7137, or Clarita Balala at 270-7668).

Sincerely,

A handwritten signature in cursive script that reads "Robert Carroll".

ROBERT CARROLL, Chair
Land Use Committee

lu:ltr:023a01:grs