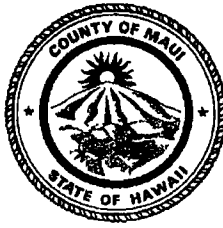


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MEMO TO: Robert Carroll, Chair
Land Use Committee

FROM: Jeffrey Ueoka *JU*
Deputy Corporation Counsel

DATE: October 16, 2017

SUBJECT: **DISTRICT BOUNDARY AMENDMENT FOR 4356 HANA
HIGHWAY, HANA** (LU-46)

We are in receipt of your memorandum dated October 11, 2017, regarding the 100% Affordable Hana Housing Project ("Project"), requesting response to the following:

1. Whether a district boundary amendment may automatically terminate in the event that the requirement to commence construction within an established time period as set forth in the Chapter 201H Resolution for the Project, is not met.

It is our belief that nothing prohibits the Council from including a condition that the District Boundary Amendment ordinance automatically terminates in the event that the developer fails to start physical construction on the project by the time deadline set forth in the 201H Resolution, and that such a condition is defensible in a court of law. The 201H exemption list for this Project, like many other exemption lists approved by the Maui County Council, requires that the Project commence construction within a certain time period or all the exemptions will automatically terminate. In analyzing this situation we focused on the fact that this Project is being processed under Chapter 201H, HRS, and is afforded many exemptions from the requirements of the entitlement process. In this specific instance the Project application requested exemptions from various provisions of Chapter 19.68, State Land Use District Boundaries. These exemptions establish a direct link between the Project's district boundary

amendment and the Chapter 201H, HRS, process. The link provides, what we feel is the justification, for allowing the automatic termination of the district boundary amendment ordinance in the event that the time deadline set forth in the 201H Resolution is not met. Also supporting this position is that the District Boundary Amendment ordinance automatically terminates only in the event that physical construction on the Project has not commenced and the 201H Resolution or exemptions therein also expire.

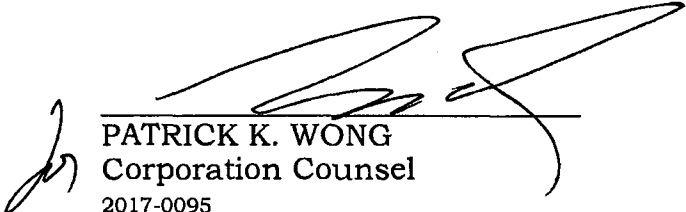
We are not aware of any requirements for terminating changes made in a district boundary amendment for an area less than 15 acres and therefore believe this situation is distinguished from conditional zoning pursuant to Section 19.510.050, MCC, and a district boundary amendment for an area greater than 15 acres pursuant to Section 205-4, HRS, in that each respective section contains requirements regarding how zoning is restored or how a land use classification should revert to its former classification. In light of the preceding and the fact that the applicant is agreeing to this as a condition in the 201H process and the district boundary amendment, we do not have issue with the automatic termination of the district boundary amendment ordinance.

Furthermore, if the Council determines that the district boundary amendment does not automatically terminate in the event that the commencement of physical construction requirement of the 201H Resolution is not met, then the assumption would be that the County would need to initiate a district boundary amendment to revert the land use classification to the former classification. It seems counterintuitive that the County would be required to go through the formal district boundary amendment process to revert the land use classification of a project area, when the applicant elected to exempt the project from many of the requirements of the process via Chapter 201H, HRS.

2. Whether the requirement of approval of a Resolution for the Project in accordance with Chapter 201H, HRS, for the district boundary amendment is necessary.

We see no harm in having a condition requiring passage of the 201H Resolution in order for the district boundary amendment to be approved and would prefer that it remain as a condition.

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel
2017-0095

LU-46 2017-10-16 Advisory on 100% Hana Affordable Housing Project DBA Conditions