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COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 11, 2017

MEMO TO: Patrick K. Wong
Corporation Counsel

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

F R O M: Robert Carroll, Chair
Land Use Committee

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

The Land Use Committee is in receipt of correspondence dated October 6, 2017, from the Director of Housing and Human Concerns, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR PROPERTY SITUATED AT 4356 HANA HIGHWAY, HANA, MAUI, HAWAII, TAX MAP KEY NO. (2) 1-3-004:001 (POR.), CONTAINING A TOTAL OF 7.226 ACRES." A copy of Exhibit "C" (Conditions) to the proposed bill is attached.

May I please request you provide a legal analysis for proposed Condition 2, which appears to provide for the automatic termination of an ordinance granting a District Boundary Amendment, without enactment of another ordinance, should the 201H resolution expire. In the past, the Department of the Corporation Counsel has opined a land use entitlement cannot automatically revert to a prior designation absent enactment of an ordinance, even if zoning conditions are not timely fulfilled.

Apart from the authority for the condition, there are related concerns of how such a reversion of the District Boundary Amendment would be noticed to the public and meet other procedural requirements for land use ordinances and amendments, and how a validly enacted ordinance would be subsequently identified as no longer valid.

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May I also request you advise whether Condition 1 is necessary, given the timing of consideration for the related Chapter 201H, Hawaii Revised Statutes, application. In the event the 201H application is not approved by the Council, the proposed District Boundary Amendment bill will not advance. May it, therefore, be deleted?

Because I have scheduled a meeting in Hana on October 18, 2017, to consider this application, I would appreciate receiving a response by **Tuesday, October 17, 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 (Carla Nakata at ext. 7659, or Clarita Balala at ext. 7668).

lu:ltr:046acc02:cmn

Attachment

cc: Jeffrey Ueoka, Deputy Corporation Counsel
Brett Davis, Chris Hart & Partners, Inc.
William Spence, Planning Director

EXHIBIT "C"
CONDITIONS

1. This ordinance is conditional upon the Council's passage of a resolution approving, with modifications, the independent development of Hana Housing Development, pursuant to Section 201H-38, Hawaii Revised Statutes (the "201H Resolution").
2. If the 201H Resolution shall expire due to the developer's failure to start physical construction on the Property by the time deadline set forth in the 201H Resolution, this ordinance shall also terminate concurrently with the expiration of the 201H Resolution.
3. Developer shall act in good faith and with its reasonable best efforts to complete all of the 25 residential workforce housing lots on the Property with all related roads and infrastructure not later than the fifth anniversary of the effective date of the 201H Resolution.
4. The Property shall be developed as a residential workforce housing project in accordance with the 201H Resolution.
5. The Property shall be developed in strict compliance with the representations made to the Council in obtaining approval of the State District Boundary Amendment.