

REQUEST FOR LEGAL SERVICES

Date: October 17, 2023
From: Tom Cook, Chair
Water and Infrastructure Committee

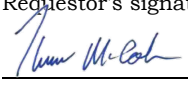
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Caleb P. Rowe, Esq.

Subject: PROPOSED CD1 VERSION OF BILL 42 (2023), A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, RELATING TO GENERAL PROVISIONS FOR SUBDIVISIONS AND HISTORIC PROPERTY (WAI-8)

Background Data: Please see the attached bill. Please submit your response to wai.committee@mauicounty.us with a reference to WAI-8.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

<p>Requestor's signature</p>  <p>Tom Cook</p>	<p>Contact Person</p> <p><u>Jarret Pascual or Richard E. Mitchell</u> (Telephone Extension: <u>7141 or 7662, respectively</u>)</p>
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☒ [X] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☐ [] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ [] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

wai:ltr:008acc01:jpp

Attachment

ORDINANCE NO. _____

BILL NO. 42, CD1 (2023)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04,
MAUI COUNTY CODE, RELATING TO GENERAL PROVISIONS
FOR SUBDIVISIONS AND HISTORICAL PROPERTY

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. This Ordinance's purpose is to enable the creation of separate lots within a subdivision for preservation of historic properties as defined by chapter 6E, Hawaii Revised Statutes.

SECTION 2. Section 18.04.020, Maui County Code, is amended to read as follows:

“18.04.020 Authority and scope. A. [Pursuant to] Under section 8-5.3 of the revised charter of the County of Maui (1983), as amended, all subdivisions and consolidations, and all streets or ways within the County created for the purposes of subdividing land, [shall] must be approved by the director [in accordance with this title].

B. Any person desiring to subdivide or consolidate land [shall] must submit plans and documents for approval [as provided by this title]. No subdivision plat may be filed with the bureau of conveyances or land court or state department of taxation until submitted to and approved by the director. Land [shall] must not be offered for sale in any subdivision, nor [shall] must options or agreements for the sale of land in any subdivision be made until approval for recordation of the final plat is granted by the director [as provided in this title], unless [such] the offer, option, or agreement expressly provides in writing that [such] the sale of land in the subdivision [shall] must not occur nor become effective unless and until all applicable agreements and bonds are executed in accordance with section 18.20.190, and approval for recordation of the final plat is granted by the director [as provided in this title].

C. The requirements [of this title shall] do not apply to a consolidation [/] or resubdivision of two or more developable lots

resulting in the same or fewer number of developable lots that existed before the consolidation [/] or resubdivision action or to the establishment of easements for ingress and egress where no new developable lots are created together with the establishment of the easement subject to the following conditions:

1. Compliance with title 19 [of this code] or chapter 205, Hawaii Revised Statutes, or both[;].
2. Compliance with chapter 18.08 [of this title], except for section 18.08.090[;].
3. Compliance with chapter 18.12 [of this title], except for section 18.12.070[;].
4. Compliance with chapter 18.24 [of this title].

D. Parcels that have undergone consolidation [/] or resubdivision under this subsection [shall] do not qualify for this exception with respect to any subsequent consolidation [/] or resubdivision of any of the parcels.

E. If the director finds that the subdivision will have a significant or substantial impact [upon] on public facilities or infrastructure, the director may impose [those] requirements in title 18 that are appropriate.

F. Except for family subdivisions as described in section 18.20.280 [of this code], a consolidation and a concurrent resubdivision that does not create additional developable lots, road widening lots, utility lots, and easements for access or utility purposes, the director [shall] must not approve any subdivision unless the subdivider provides written verification of a long term, reliable supply of water issued by the director of [the department of] water supply as [set forth] established in section 14.12.040 [of this code].

G. The requirements [of this title shall] do not apply to subdivisions initiated or co-sponsored by the department, solely, and for no other purpose than the acquisition of property for road widening lots, roadway extension lots, roadway improvement projects, roadway realignment projects, drainage lots, utility lots, park lots, and easements for access or utility purposes, [provided that such] if the subdivisions [shall] comply with sections 18.12.020, 18.12.030, 18.12.060, and 18.12.080 [of this title]. All applicable provisions [of this code shall] still apply to the subsequent development of the remainder [lot(s).] lots. Further, this provision [shall] does not extinguish pre-existing agreements or conditions imposed by shoreline management area permits, building permits, or land entitlement agreements required as conditions of subdivision applications and approvals. All pre-existing conditions and roadway improvement obligations and agreements [shall] remain in effect and must be enforced solely by the director authorized to administer the subject agreements. "Notices of Intent

to Collect" [shall] must be sent to property owners with outstanding obligations at the commencement of project funding, followed by collection notices to property owners at the time of right-of-way acquisition of County initiated or co-sponsored roadway projects.

H. The requirements do not apply to a subdivision initiated by a landowner solely for the purpose of creating and conveying a historic preservation lot to a nonprofit land conservation organization or a government agency, subject to the following conditions:

1. Compliance with title 19 or chapter 205, Hawaii Revised Statutes, or both.

2. Compliance with chapter 18.08.

3. Compliance with chapter 18.12.

4. Compliance with chapter 18.16.250.

5. Compliance with chapter 18.24.

6. The proposed nonprofit land conservation organization complies with section 501(c) of the Internal Revenue Code and any other federal, state, and county laws regulating the conduct of charitable or nonprofit organizations.

7. The historic preservation lot does not contain areas other than:

a. Preservation areas identified in a preservation plan approved under chapter 6E, Hawaii Revised Statutes, which may include historic sites, buffer zones, or other similar areas in the preservation plan.

b. Areas necessary to provide pedestrian or vehicular access from a public or private street, an access easement on an adjacent parcel, or parking, which may be limited or controlled for cultural and environmental resource protection and public safety to the historic sites.

8. The historic preservation lot must be encumbered by a restrictive covenant limiting its use to purposes related to the preservation plan, which must include without limitation, parking, pedestrian walkways, roadways, utilities, irrigation, landscaping, interpretative signage, walls, protective fencing, and open space.

9. Prior to issuing the final subdivision approval the subdivider must present the department with a copy of a fully executed deed for the conveyance of the proposed historic preservation lot to a government agency or a nonprofit land conservation organization that will be recorded or filed with the appropriate entity by the subdivider, at the cost of subdivider, on the issuance of the final subdivision approval.

10. All applicable provisions of this section apply to the subsequent development of the remainder lots and the historic preservation lot.”

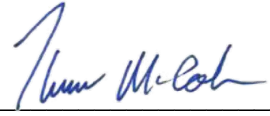
SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

wai:misc:008abill01:rem

INTRODUCED BY:

A handwritten signature in blue ink, appearing to read "Tom Cook", positioned above a horizontal line.

TOM COOK