

August 30, 2016

MEMO TO: PIA-4(2) File

F R O M: Michael P. Victorino, Chair 
Policy and Intergovernmental Affairs Committee

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
2017 MAUI COUNTY LEGISLATIVE PACKAGE** (PAF 16-149)

The attached legislative proposal pertains to Item 4(2) on the Committee's agenda.

paf:kcw:16-149d

Attachment

Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2017 MAUI
COUNTY LEGISLATIVE PACKAGE A STATE BILL TO
ALLOW COUNTIES TO PETITION THE STATE LAND
USE COMMISSION FOR REGIONAL DISTRICT
BOUNDARY AMENDMENTS AFTER ADOPTION OF
GENERAL PLAN UPDATES AND TO GRANT TO THE
STATE LAND USE COMMISSION ADDITIONAL
ENFORCEMENT AUTHORITY OVER ITS DECISIONS
AND ORDERS

WHEREAS, under current law, the State Land Use Commission has a single remedy, reversion of land back to its original designation, to address violations of conditions imposed on district boundary amendment approvals; and

WHEREAS, enforcing conditions by reversion is reserved for instances of violation of conditions on developments that have not substantially commenced on the site; and

WHEREAS, the process of enforcing conditions on the reclassification of land would be improved by providing the land use commission with the authority to amend, revise, or modify a decision and order granting a district boundary amendment for a property; and

WHEREAS, State law requires the counties to adopt general plans and update them on a regular basis; and

WHEREAS, there is no specific provision for the counties to comprehensively seek district boundary amendments for lands identified for reclassification pursuant to the general plans; and

WHEREAS, allowing the counties to petition the land use commission for regional district boundary amendments needed after adoption of updates to their county general plans would ensure that recommendations made in the plan are processed in an orderly, efficient, and timely manner; now, therefore,

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BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to expand the enforcement powers of the State Land Use Commission and to specifically allow the counties to engage in comprehensive, regional reclassification of land after the adoption of updates to the counties' general plans, is approved for inclusion in the 2017 Maui County Legislative Package; and
2. That certified copies of this resolution be transmitted to the Mayor, County of Maui; the Governor, State of Hawaii; the Senate President, State of Hawaii; and the Speaker of the House of Representatives, State of Hawaii.

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A BILL FOR AN ACT

RELATING TO LAND USE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature enacted the state land use
2 commission law in 1961 because of the perception that inadequate
3 controls allowed many of Hawaii's limited and valuable lands to
4 be used for the short-term gain of a few, resulting in a long-
5 term loss to the growth and potential of Hawaii's economy.

6 The legislature finds that over the past half century,
7 various commissions and task forces have reviewed the state land
8 use commission chapter to ensure proper conservation, control,
9 and development of resources.

10 The legislature further finds that only one remedy
11 currently exists to address violations to conditions imposed by
12 the land use commission: reversion of the land back to the
13 land's original designation. The land use commission is
14 restricted in its ability to enforce conditions by reversion to
15 only instances of violation of conditions on developments that
16 have not been "substantially commenced" on the site.

17 The purposes of this Act are twofold: (1) to amend chapter
18 205, Hawaii Revised Statutes, to specifically allow the counties

EXHIBIT "A"

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1 to petition the land use commission for regional district
2 boundary amendments needed after adopting updates to their
3 general plan; and (2) to provide the land use commission with
4 the power to amend, revise, or modify a decision and order
5 granting a land use district boundary amendment when there has
6 been a finding by the land use commission that a petitioner or
7 its successor or assign has not adhered to the representations
8 made to or conditions imposed by the commission.

9 SECTION 2. Section 205-3.1, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§205-3.1 Amendments to district boundaries. (a)

12 District boundary amendments involving lands in the conservation
13 district, land areas greater than fifteen acres, or lands
14 delineated as important agricultural lands shall be processed by
15 the land use commission pursuant to section 205-4.

16 (b) Any department or agency of the State, and department
17 or agency of the county in which the land is situated, or any
18 person with a property interest in the land sought to be
19 reclassified may petition the appropriate county land use
20 decision-making authority of the county in which the land is
21 situated for a change in the boundary of a district involving
22 lands less than fifteen acres presently in the rural and urban

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1 districts and lands less than fifteen acres in the agricultural
2 district that are not designated as important agricultural
3 lands.

4 (c) District boundary amendments involving land areas of
5 fifteen acres or less, except as provided in subsection (b),
6 shall be determined by the appropriate county land use decision-
7 making authority for the district and shall not require
8 consideration by the land use commission pursuant to section
9 205-4; provided that such boundary amendments and approved uses
10 are consistent with this chapter. The appropriate county land
11 use decision-making authority may consolidate proceedings to
12 amend state land use district boundaries pursuant to this
13 subsection, with county proceedings to amend the general plan,
14 development plan, zoning of the affected land, or such other
15 proceedings. Appropriate ordinances and rules to allow
16 consolidation of such proceedings may be developed by the county
17 land use decision-making authority.

18 (d) The county land use decision-making authority shall
19 serve a copy of the application for a district boundary
20 amendment to the land use commission and the department of
21 business, economic development, and tourism and shall notify the
22 commission and the department of the time and place of the

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1 hearing and the proposed amendments scheduled to be heard at the
2 hearing. A change in the state land use district boundaries
3 pursuant to this subsection shall become effective on the day
4 designated by the county land use decision-making authority in
5 its decision. Within sixty days of the effective date of any
6 decision to amend state land use district boundaries by the
7 county land use decision-making authority, the decision and the
8 description and map of the affected property shall be
9 transmitted to the land use commission and the department of
10 business, economic development, and tourism by the county
11 planning director.

12 (e) After the completion of county proceedings to amend
13 the county's general plan, including adoption by the county
14 council, each county may submit the general plan to the land use
15 commission for review and petition the commission to approve any
16 boundary amendments as may be required under subsection (a), to
17 be processed pursuant to section 205-4."

18 SECTION 3. Section 205-4, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§205-4 Amendments to district boundaries involving land**
21 **areas greater than fifteen acres. (a) Any department or agency**
22 **of the State, any department or agency of the county in which**

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1 the land is situated, or any person with a property interest in
2 the land sought to be reclassified, may petition the land use
3 commission for a change in the boundary of a district. This
4 section applies to all petitions for changes in district
5 boundaries of lands within conservation districts, lands
6 designated or sought to be designated as important agricultural
7 lands, and lands greater than fifteen acres in the agricultural,
8 rural, and urban districts, except as provided in section 201H-
9 38. The land use commission shall adopt rules pursuant to
10 chapter 91 to implement section 201H-38.

11 (b) Upon proper filing of a petition pursuant to
12 subsection (a) the commission shall, within not less than sixty
13 and not more than one hundred and eighty days, conduct a hearing
14 on the appropriate island in accordance with the provisions of
15 sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

16 (c) Any other provision of law to the contrary
17 notwithstanding, notice of the hearing together with a copy of
18 the petition shall be served on the county planning commission
19 and the county planning department of the county in which the
20 land is located and all persons with a property interest in the
21 land as recorded in the county's real property tax records. In
22 addition, notice of the hearing shall be mailed to all persons

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1 who have made a timely written request for advance notice of
2 boundary amendment proceedings, and public notice shall be given
3 at least once in the county in which the land sought to be
4 redistricted is situated as well as once statewide at least
5 thirty days in advance of the hearing. The notice shall comply
6 with section 91-9, shall indicate the time and place that maps
7 showing the proposed district boundary may be inspected, and
8 further shall inform all interested persons of their rights
9 under subsection (e).

10 (d) Any other provisions of law to the contrary
11 notwithstanding, prior to hearing of a petition the commission
12 and its staff may view and inspect any land which is the subject
13 of the petition.

14 (e) Any other provisions of law to the contrary
15 notwithstanding, agencies and persons may intervene in the
16 proceedings in accordance with this subsection.

17 (1) The petitioner, the office of planning, and the county
18 planning department shall in every case appear as
19 parties and make recommendations relative to the
20 proposed boundary change.

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1 (2) All departments and agencies of the State and of the
2 county in which the land is situated shall be admitted
3 as parties upon timely application for intervention.

4 (3) All persons who have some property interest in the
5 land, who lawfully reside on the land, or who
6 otherwise can demonstrate that they will be so
7 directly and immediately affected by the proposed
8 change that their interest in the proceeding is
9 clearly distinguishable from that of the general
10 public shall be admitted as parties upon timely
11 application for intervention.

12 (4) All other persons may apply to the commission for
13 leave to intervene as parties. Leave to intervene
14 shall be freely granted, provided that the commission
15 or its hearing officer if one is appointed may deny an
16 application to intervene when in the commission's or
17 hearing officer's sound discretion it appears that:

18 (A) the position of the applicant for intervention
19 concerning the proposed change is substantially the
20 same as the position of a party already admitted to
21 the proceeding; and (B) the admission of additional
22 parties will render the proceedings inefficient and

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1 unmanageable. A person whose application to intervene
2 is denied may appeal such denial to the circuit court
3 pursuant to section 91-14.

4 (5) The commission shall pursuant to chapter 91 adopt
5 rules governing the intervention of agencies and
6 persons under this subsection. Such rules shall
7 without limitation establish: (A) the information to
8 be set forth in any application for intervention; (B)
9 time limits within which such applications shall be
10 filed; and (C) reasonable filing fees to accompany
11 such applications.

12 (f) Together with other witnesses that the commission may
13 desire to hear at the hearing, it shall allow a representative
14 of a citizen or a community group to testify who indicates a
15 desire to express the view of such citizen or community group
16 concerning the proposed boundary change.

17 (g) Within a period of not more than three hundred sixty-
18 five days after the proper filing of a petition, unless
19 otherwise ordered by a court, or unless a time extension, which
20 shall not exceed ninety days, is established by a two-thirds
21 vote of the members of the commission, the commission, by filing
22 findings of fact and conclusions of law, shall act to approve

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1 the petition, deny the petition, or to modify the petition by
2 imposing conditions necessary to uphold the intent and spirit of
3 this chapter or the policies and criteria established pursuant
4 to section 205-17 or to assure substantial compliance with
5 representations made by the petitioner in seeking a boundary
6 change. The commission may provide by condition that absent
7 substantial commencement of use of the land in accordance with
8 ~~[such representations,]~~ representations made to the commission,
9 the commission, on its own motion or upon motion by any party,
10 shall issue and serve upon the party bound by the condition an
11 order to show cause why the property should not revert to its
12 former land use classification or be changed to a more
13 appropriate classification[.—Such]; provided that, if the
14 commission finds that the petitioner's failure to adhere to or
15 comply with the representations or conditions does not warrant
16 reversion to the land's former land use classification or change
17 to a more appropriate classification, the commission may modify
18 the conditions or impose new conditions to ensure compliance
19 with the decision and order and to mitigate any injury resulting
20 from the failure to adhere to or comply with conditions
21 regardless of whether there has been substantial commencement of

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1 use of the land. All conditions, if any, shall run with the
2 land and be recorded in the bureau of conveyances.

3 For purposes of this section "substantial commencement"
4 shall mean completion of all public improvements and
5 infrastructure required by conditions imposed pursuant to this
6 chapter, both within the project area and outside the project
7 area and completed construction of twenty per cent of the
8 physical private improvements such that they are usable or
9 habitable.

10 (h) No amendment of a land use district boundary shall be
11 approved unless the commission finds upon the clear
12 preponderance of the evidence that the proposed boundary is
13 reasonable, not violative of section 205-2 [~~and part III of this~~
14 ~~chapter~~], and consistent with the policies and criteria
15 established pursuant to sections 205-16 and 205-17[-] and part
16 III of this chapter. Six affirmative votes of the commission
17 shall be necessary for any boundary amendment under this
18 section.

19 (i) Parties to proceedings to amend land use district
20 boundaries may obtain judicial review thereof in the manner set
21 forth in section 91-14, provided that the court may also reverse

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1 or modify a finding of the commission if such finding appears to
2 be contrary to the clear preponderance of the evidence.

3 (j) At the hearing, all parties may enter into appropriate
4 stipulations as to findings of fact, conclusions of law, and
5 conditions of reclassification concerning the proposed boundary
6 change. The commission may but shall not be required to approve
7 such stipulations based on the evidence adduced.

8 (k) Regardless of whether there has been substantial
9 commencement of the use of the land, if there has not been
10 compliance with representations made or a condition imposed
11 under this chapter relating to infrastructure, the environment,
12 cultural resources, archaeological resources, or the public
13 trust doctrine, the commission, on its own motion or upon motion
14 by any party, may issue and serve upon the party bound by the
15 representation or condition an order to show cause why the
16 commission should not take action under this section to ensure
17 compliance with the representation or condition or mitigate
18 injury. Regardless of whether there has been substantial
19 commencement, as defined in this section, of the use of the
20 land, if the commission finds that one or more such
21 representations or conditions contained in a decision and order
22 made pursuant to this chapter have not been adhered to, the

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1 commission may assess an administrative fine against the party
2 bound by the representation or condition of an amount not to
3 exceed \$50,000 per day and the costs of enforcement, including
4 but not limited to associated hearing expenses, until the party
5 bound by the representation or condition provides evidence to
6 the commission showing that the violation has been cured and is
7 not likely to be repeated. If the party bound by the
8 representation or condition fails to pay the fine as ordered by
9 the commission, the commission may issue a notice of non-
10 conformance to be recorded on the title of the property at the
11 bureau of conveyances and pursue collection procedures in
12 circuit court."

13 SECTION 4. Statutory material to be deleted is bracketed
14 and in strikethrough. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

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