

MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



**DEPARTMENT OF PLANNING**  
COUNTY OF MAUI  
ONE MAIN PLAZA  
2200 MAIN STREET, SUITE 315  
WAILUKU, MAUI, HAWAII 96793

June 16, 2020

Honorable Michael P. Victorino, Mayor  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P Victorino* 6/17/20  
\_\_\_\_\_  
Mayor Date

For Transmittal to:

Honorable Tamara Paltin, Chair  
Planning and Sustainable Land Use Committee  
Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

Dear Councilmember Paltin:

**SUBJECT: CHANGE IN ZONING FOR THE PROPOSED KILOHANA  
MAKAI WORKFORCE HOUSING PROJECT (KIHEI) (PSLU-56)**

Thank you for your June 10, 2020 letter with questions about the above-referenced project and property. The responses from the Department of Planning (Department) are as follows:

1. Pursuant to Chapter 19.07, Maui County Code (MCC), the OS-1 Open Space District is intended for passive use, while OS-2 is intended for active use. The chart provided in Section 19.07.030 indicates that only park, passive land uses and recreation, Native Hawaiian traditional and customary uses, and restoration of cultural sites are allowed in OS-1. These uses, plus agriculture, outdoor recreation and assembly areas are allowed in OS-2. Open Zone does not have a district defined in the Maui County Code. This designation was used in older land zoning maps but there were not, and still are not, any accompanying codified uses and standards.
2. The subject property, TMK (2) 3-9-004: 141, was zoned Open Zone by Land Zoning Map No. 5, adopted on December 19, 1969, which zoned hundreds of properties, presumably in accordance with various master plans for this region. The original "master plan" for Kihei

was adopted by Ordinance No. 318, effective on April 6, 1962. This was amended by Ordinance No. 633, effective on August 18, 1969, known as the "Kihei 701 Plan" and the "Kihei Civic Development Plan."

2a. The Department has not retrieved the relevant files from the 1960s from the Office of the County Clerk relating to the adoption of these plans in order to determine why the subject property was so zoned; however, given that it was part of a comprehensive regional zoning from Maalaea to Makena, it is unlikely that it was zoned Open Zone in order to fulfill open space requirements for another development.

3. The subject parcel has a narrow leg or stub-out that extends to Kilohana Drive. On Land Zoning Map No. 5, this leg is shown as Open Zone, bordered by R-3 Residential on one side and Proposed Street on the other. When the digital zoning map was adopted in 2018, the subject parcel was shown entirely as Open Zone, using the 2014 parcel layer (see attached).

The boundaries of the subject parcel, like all parcels in the County, are regularly clarified and updated by the Real Property Tax Administration when they update their GIS parcel layer. The latest parcel layer on RPA's website shows the leg to be wider than the 2014 layer, making it appear as if the leg is zoned both Open Zone and R-3 Residential, and a narrow band along the entire mauka border of the property is zoned R-2 Residential. The Department has not yet modified the digital zoning map to follow the latest parcel layer; when it does, the entire parcel, including the leg, will be zoned Open Zone because the zoning follows the parcel boundaries.

3a. KIVA has not been updated; it shows the subject parcel to be zoned both Open Zone and R-3 Residential District because of the changing parcel layers.

4. The subject property is not within the Sea Level Rise Exposure Area (SLR-XA) according to the Hawaii Sea Level Rise Viewer. As your letter indicates, there is a drop-off in the SLR-XA (shown in blue shading) and coastal erosion (red line) makai of the subject property. According to Tara Owens, Coastal Processes and Hazards Specialist with the University of Hawaii Sea Grant, this is due to those properties occupied by the Mana Kai Resort, Kihei Surfside condominiums and the Kihei Boat Ramp are located on top of a volcanic headland composed of basalt that is erosion resistant. The headland separates the Keawakapu and Kamaole III beaches. Because of the headland, there is no historical presence of sandy beach. Therefore, along the headland, there are no historic erosion rates or future erosion projections, as represented by the red line and the SLR-XA. The narrow band of blue shading that continues along the volcanic headland represents only projected high wave flooding with sea level rise on the headland.

5. The update to the 1998 Kihei-Makena Community Plan has just started with the hiring of a consultant and the drafting of a public engagement strategy. An estimated target date for the adoption of the updated South Maui Community Plan is late 2022 or early 2023.

The advantages of waiting for the update to be adopted before acting on the zoning for the subject property include: having recent community input on the use of the property from a long-term planning perspective, knowing what other areas in the community plan region are designated to accommodate future growth, and understanding recent planning policies and objectives for regional infrastructure to support future growth.

The disadvantages of waiting include: delaying the development of new housing units (assuming the necessary permits can be obtained) when there is a serious housing crisis today, sending the message that older community plans should not be followed and do not truly guide future land use, and further discouraging the private development of housing.

5a. During the Community Plan Advisory Committee deliberations of the three recent community plan updates, more time was spent on policies and actions than on specific projects and the land use maps. This is appropriate, as CPACs should have a broader, long-term version for future land uses and not focus on individual projects or parcels.

6. All property owners in Maui County are able to purchase flood insurance for the structures (flood insurance is only available for structures, not parcels). The only instance where flood insurance is not available is when an applicant builds a structure without a permit in the regulated floodway (Zone AEF), which does not apply to the subject property.

The most updated FEMA flood hazard map shows that the entire property is situated in Zone X, which is outside the Special Flood Hazard Area. As such, there is a less than one percent chance of flooding in the event of a 100-year flood event. This means that flood insurance rates for each structure will be relatively low and there is very low risk of flooding, and flood development permits and elevated structures are not required.

That being said, the Department still encourages property owners to elevate their structures as much as is financially and structurally feasible to prevent damage in the event of more severe flood events. Higher building elevations further decrease the cost of insurance premiums and contribute to a safer and more resilient community.

7. Because the applicant is following the regular entitlement process and not the expedited processes allowed by Chapter 2.97 MCC or Chapter 201-H, Hawaii Revised Statutes (HRS), there is no mechanism for the project to be exempt from any permit fees or any development standards.

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8. If the Council approves the requested change in zoning, it is expected that the applicant will pursue obtaining a Special Management Area (SMA) use permit from the Maui Planning Commission. Pursuant to Chapter 205A, HRS, the County Council does not have authority over this SMA permit application.
9. Pursuant to Section 19.510.050, the County Council may impose zoning conditions "if the council finds them necessary to prevent circumstances which may be adverse to the public health, safety, convenience and welfare. The conditions shall be reasonably conceived to mitigate the impacts emanating from the proposed land use...." If the Council finds that prohibiting detached accessory dwellings is needed to mitigate potential detrimental impacts to the public health, safety, convenience and welfare, then it could adopt such a zoning condition. However, given the current housing crisis, there could be a more compelling argument for maintaining or increasing, rather than decreasing, residential density in areas where new housing is appropriate and needed.

We hope this letter adequately responds to your questions. Please feel free to contact me should you have any questions.

Sincerely,



MICHELE MCLEAN, AICP  
Planning Director

Attachment  
MCM:atw  
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