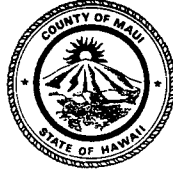


JAMES "KIMO" APANA
Mayor



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April 19, 2002

MEMO TO: The Honorable Charmaine Tavares
Chair, Planning Committee

F R O M: Richard K. Minatoya *Richard K. Minatoya*
Deputy Corporation Counsel

SUBJECT: **PROPOSED WAILUKU-KAHULUI COMMUNITY PLAN (PC-3)**

This is in response to your request dated March 19, 2002 regarding Councilmember Jo Anne Johnson's proposed addition to the Wailuku-Kahului Community Plan by inserting the following into the plan as a Land Use Implementing Action:

Prohibit agriculture [sic] subdivisions of 15 acres or larger until the Department of Planning certifies that the proposed subdivision fully complies with county zoning laws, HRS Chapter 205, the general plan and community plan policies; and, that the landowner records with the Bureau of Conveyances that the proposed subdivision will be engaged in active agricultural endeavors.

The agricultural district ordinance shall be revised to provide for a public hearing process and approval by the County Council for agricultural subdivisions of 15 acres or larger, and to require active agricultural endeavors for agricultural subdivisions of 15 acres or larger. The County Council will enact requirements within the zoning ordinance to implement this action

BRIEF ANSWER:

It is our department's opinion that the text would more properly be included in a proposed bill for an ordinance to amend the subdivision ordinance standards and/or agricultural district chapters of the Maui County Code (Chapters 18.16 and 19.30A, respectively).

ANALYSIS:

Hawaii Revised Statutes ("HRS") § 226-2 provides in relevant part.

§ 226-2. Definitions.

As used in this chapter, unless the context otherwise requires:

* * *

"County development plan" means a relatively detailed plan for an area or region within a county to implement the objectives and policies of a county general plan.

* * * *.

In the County of Maui, the community plans are the "county development plans."

For the state-required content of the community plans, HRS § 226-58 provides in relevant part:

§ 226-58. County general plans.

(a) The county general plans and development plans shall be formulated with input from the state and county agencies as well as the general public.

County general plans or development plans shall indicate desired population and physical development patterns for each county and regions within each county. In addition, county general plans or development plans shall address the unique problems and needs of each county and regions within each county. The county general plans or development plans shall further define applicable provisions of this chapter; provided that any amendment to the county general plan of each county shall not be contrary to the county charter. The formulation, amendment, and implementation of county general plans or development plans shall take into consideration statewide objectives, policies, and programs stipulated in state functional plans approved in consonance with this chapter.

* * * *.

(Emphasis added). In addition, the Maui County Code ("MCC") provides the following for community plans:

2.80A.020. Community plans.

A. Community plans shall set forth, in detail, land uses within the nine regions of the county hereafter designated. The objectives of each community plan shall be to implement the policies of the general plan. Each community plan shall include a map of the region to which it is applicable. There shall be nine regions as follows:

1. Molokai;
2. Lanai;
3. West Maui;
4. Wailuku-Kahului;
5. Kihei-Makena;
6. Makawao-Pukalani-Kula;
7. Paia-Haiku;
8. Hana; and
9. Kahoolawe.

B. Exhibit B attached to the ordinance codified in this chapter is a map showing, in general, the regions referred to in subsection A of this section and an indication of the boundaries thereof.

C. In determining specific boundaries for each community plan region, the planning director shall preserve the physical integrity of established land parcel boundaries to the extent practicable.

D. Each community plan shall contain but not be limited to:

1. A statement of the major problems and opportunities concerning the needs and development of the region;
2. A statement of the social, economic and environmental effects of such development;
3. The desired sequence, patterns and characteristics of future development;
4. A description of the region;
5. A declaration of planning standards and principles relative to land uses within the region;
6. A statement of urban or rural design principles and objectives for the region;

7. An identification of areas, sites and structures recognized as having historical or archaeological significance;
8. A highway system showing existing and proposed highways and major thoroughfares;
9. Statements of intention relative to the location or improvement of:
 - a. All public service facilities,
 - b. Transportation facilities;
10. Statements setting forth:
 - a. Problems relating to land uses,
 - b. Projections relative to social, economic, and environmental effects of proposed development;
11. Desired population density including visitors and residents; and
12. Specific land use designations based on property lines, to the extent practicable.

E. Notwithstanding the provisions of subsection (D)(12) of this section, a community plan may contain one or more project districts wherein permitted land uses are identified; provided, however, that the council shall subsequently zone each project district consistent with the identified land uses after holding a public hearing in the applicable region.

Thus, neither the HRS nor the MCC require subdivision standards are not specified to be part of the community plans.

Moreover, for lands identified by the Land Study Bureau's Detailed Land Classification with a master productivity rating class of A or B, HRS § 205-4.5 provides in relevant part:

§ 205-4.5. Permissible uses within the agricultural districts.

* * *

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless the said A and B lands within the subdivision shall be made subject to the restriction on uses as prescribed in this

section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition as prescribed in this section which restriction and condition shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and said requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as such mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that such conditional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

* * * *

(Emphases added). Thus, for prime agricultural lands, the HRS already restricts subdivisions of such lands unless a restriction on use runs with the land when the land is leased or sold.

Finally, the intent of the proposed addition is to protect agricultural lands. It appears that the intent would be better served by amending the applicable MCC chapters to affect the entire county rather than just one community plan region.

The Honorable Charmaine Tavares
April 19, 2002
Page 6

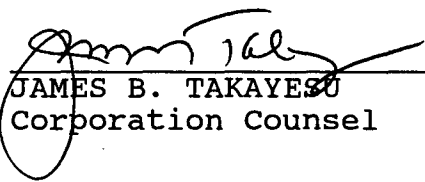
Accordingly, we opine that the proposed substantive changes in procedure and requirements would more properly be included as amendments to the subdivision ordinance and/or the agriculture district chapters of the Maui County Code and not the Wailuku-Kahului Community Plan.

Also, an amendment to the County Charter would be required to transfer the authority to approve subdivisions from the Director of Public Works and Waste Management to the County Council.

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APPROVED:



JAMES B. TAKAYESU
Corporation Counsel