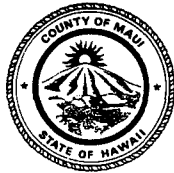


JAMES "KIMŌ" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI

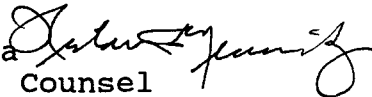
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April 19, 2002

MEMO TO: The Honorable Charmaine Tavares
Chair, Planning Committee

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

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

This is in addition to our advisory memorandum to you dated today 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.

We indicated in our memorandum that the foregoing appears to conflict with two County Charter provisions.

First, the requirement that the Council "shall" revise the agricultural district ordinance is inconsistent with County Charter Section 8-8.6.2, which provides:

Section 8-8.6. Adoption of General Plan and Other Land Use Ordinances.

* * *

2. Any revisions of the general plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission as if prepared by the planning director. Any such revision shall be referred to the appropriate planning commission by resolution. If the planning commission disapproves the proposed revision or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of the hundred twenty (120) days after receipt of the referral, the council may nevertheless pass such revision, but only by the affirmative vote of at least two-thirds of the council's entire membership.

(Emphases added). This charter provision establishes a specific procedure for the review and enactment of any revisions of the zoning ordinance or other land use ordinances proposed by the Council.

The language proposed for inclusion in the Wailuku-Kahului Community Plan would appear to mandate that the County Council enact specific revisions to the agricultural district ordinance (i.e., a zoning ordinance) prior to complying with the established Charter procedure for revisions of this nature.

Second, and more significantly, the proposal also mandates that the County Council revise the zoning ordinance to authorize the Council, rather than the Director of Public Works and Waste Management, to approve agricultural subdivisions that are 15 acres or larger. This provision is contrary to County Charter Section 8-5.3.2, which provides:

Section 8-5.3. Powers, Duties and Functions. The director of public works and waste management shall:

* * *

2. Approve proposed subdivision plans which are in conformity with the subdivision ordinance.

* * * *

(Emphasis added). Thus, under the existing County Charter, the Director of Public Works and Waste Management has been granted the sole authority to approve proposed subdivision plans. The

The Honorable Charmaine Tavares
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proposal, as set forth above, is contrary to this County Charter provision. See HRS Section 226-58(a) ("... any amendment to the county general plan of each county shall not be contrary to the county charter...").

We apologize for not being more specific in referencing these County Charter provisions from our earlier opinion.

RKM:ln

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APPROVED:



JAMES B. TAKAYESU
Corporation Counsel