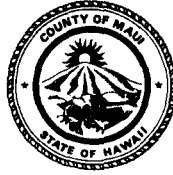


CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
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September 18, 2007

MEMO TO: Michael J. Molina, Chair
Land Use Committee

F R O M: James A. Giroux, Deputy Corporation Counsel

SUBJECT: **COMMUNITY PLAN AMENDMENTS AND CHANGES IN ZONING FOR
CENTRAL MAUI BASEYARD (PUUNENE) (LU-8)**

I. Introduction.

This memorandum is in response to your memorandum dated August 29, 2007, requesting legal advice regarding proposed Community Plan Amendments and Changes in Zoning for three portions of parcels within the Central Maui Baseyard located in Puunene, Maui, Hawaii.¹

¹ See transmittal letter dated July 20, 2007 from Department of the Corporation Counsel to Land Use Committee Chair, Michael Molina, which contains the following revised proposed bills:

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 9.811 ACRES SITUATED AT PUUNENE, MAUI, HAWAII

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 58,091 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 43,810 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 9.811 ACRES SITUATED AT PUUNENE, MAUI, HAWAII

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A&B Properties, Inc., is the fee simple owner of all of the subject parcels at the Central Maui Baseyard, and S&F Land Company, Inc., is the master lessee/sublessor of those parcels. A&B Properties, Inc., has authorized S&F Land Company, Inc., to apply for the Community Plan Amendments and Changes in Zoning.²

The subject parcels are existing lots within the Central Maui Baseyard. Lot 221 is approximately 1.006 acres. Lot 59 is approximately 1.334 acres. Lot 1C is approximately 9.811 acres. The development is not anticipated to include any dwelling units.³ No hotel uses are anticipated for the development as such uses are not allowed in the M-2 Heavy Industrial District.

II. Question Posed.

Your memorandum posed the following question:

If a lessee (who is not the landowner) applies for a Change in Zoning from Agricultural District or M-1 Light Industrial District to M-2 Heavy Industrial District and/or a Community Plan Amendment from Light Industrial to Heavy Industrial, would that alone trigger the

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 58,091 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII

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² See letter dated April 25, 2005 from A&B Properties, Inc.

³ M-2 Heavy Industrial District does not allow any building, structure, or portion thereof to be erected, converted, or moved onto any lot in an M-2 district for dwelling purposes, except living quarters used by watchmen or custodians of industrially used property. (MCC Section 19.26.020). The term "dwelling units" is not defined in MCC Chapter 2.96. MCC Section 19.04.040 defines "dwelling unit" as a room or group of rooms connected together constituting an independent housekeeping unit for family and containing a single kitchen. MCC Section 19.04.040 defines "living quarters" as one or more rooms in a building designed for occupancy by one or more persons for living or sleeping quarters.

application of Chapter 2.96, Maui County Code (the Residential Workforce Housing Policy)?

III. The Subject Land Use Applications for the Central Maui Baseyard Do Not Trigger the Application of Chapter 2.96, Maui County Code (Residential Workforce Housing Policy).

Section 2.96.030(A), Maui County Code, states in relevant part:

A. Any development, including the subdivision of land and/or the construction of single-family dwelling units, two-family dwelling units, multifamily dwelling units, or hotels, as defined in section 19.04.040 of this code, whether constructed at one time or over several years, shall be subject to this chapter upon final subdivision or building permit approval, whichever is applicable and occurs first, if it will result in the creation of the following:

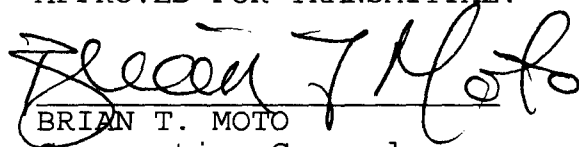
1. Five or more dwelling units, excluding farm labor dwellings or a second farm dwelling, as defined in section 19.04.040 of this code; provided that, such farm labor dwelling or farm dwelling is in full compliance with chapter 205, Hawaii Revised Statutes, and is not part of a condominium property regime, as set forth in chapter 514A, Hawaii Revised Statutes;
2. Five or more new lots;
3. A combination of dwelling units and new lots totaling five or more;
4. Three or more lodging, dwelling, or time share units in a hotel;
5. A conversion of one or more hotel units to dwelling units or time share units; or
6. Any hotel redevelopment or renovation project that increases the number of lodging or dwelling units in a hotel.

The Central Maui Baseyard development, as represented by the applicant, S&F Land Company, Inc., will not result in any of the six actions listed in Section 2.96.030(A), Maui County Code.

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Therefore, based on the facts presented and representations made, Chapter 2.96, Maui County Code, does not apply to the subject land use applications for the proposed heavy industrial uses of the parcels.

APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel

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cc: Jeff Hunt, Planning Director
Colleen Suyama, Deputy Director of Planning
Vanessa A. Medeiros, Director, Department of Housing and Human
Concerns
Michael Hopper, Deputy Corporation Counsel
Michele White, Legal Assistant