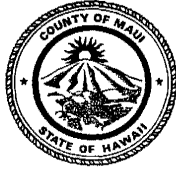


ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
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May 16, 2006

MEMO TO: Ken Fukuoka, Director
Office of Council Services

FROM: Traci Fujita Villarosa *TFV*
First Deputy Corporation Counsel

SUBJECT: Lanai City Project District (PAF 06-104)

Introduction.

The purpose of this memorandum is to provide legal advice regarding the "Lanai City Project District", a proposed development on a 115-acre County-owned property. To meet your deadline an abbreviated opinion is provided herein.

Question posed.

Is there any legal objection to the Council appropriating \$100,000 for the "Lanai City Project District - planning for 115-acre County property" for expenditure by the Office of Council Services ("OCS"), or to OCS using the funds to hire a consultant to prepare an environmental assessment for this purpose?

Discussion.

No. The Maui County Code ("MCC") specifically authorizes the Council to initiate a project district development by written application to the Planning Director.¹ Funds appropriated to OCS may be used to prepare such application, including but not limited to, the hiring of a consultant.

In reaching this conclusion, we have assumed that the purpose and intent of the proposed \$100,000 OCS budget appropriation is to research, prepare, and draft appropriate legislation and related documents pertaining to the rezoning of the

¹ §19.45.040(B), MCC ("The council or the planning commission may initiate a project district development by written application to the planning director.").

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property. Pursuant to Section 46-4, Hawaii Revised Statutes,² and Articles 3 and 4 of the Revised Charter of the County of Maui (1983), as amended ("Charter"),³ the adoption of a zoning ordinance is a legislative function that is exercised by ordinance.⁴ Pursuant to Section 8-8.6(2) of the Charter, zoning ordinances and other land use ordinances may be proposed by the council.⁵

A planner with the Department of Planning has informed us

² §46-4(a), Haw. Rev. Stat., provides, in part:

The zoning power granted herein shall be exercised by ordinance which may relate to:

...
(2) The areas in which residential uses may be regulated or prohibited;...

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section [46-4] and any ordinance enacted in accordance with this section....

³ Articles 3 and 4 of the Charter relate to the County Council and to ordinances and resolutions, respectively.

⁴ See also McQuillin Mun. Corp. §§25.54, 25.55 (3rd ed.) ("It is fundamental that the enactment of a zoning ordinance constitutes the exercise of a legislative and governmental function. The reason upon which this principle is based is that zoning is essentially a political, rather than a judicial matter, over which the legislative authorities have, generally speaking, complete discretion....It is an exercise of legislative power residing in the state and delegated to a municipal corporation....The determination of whether or not to enact a zoning ordinance and the determination of its provisions and terms are entirely within the discretion of the municipal legislative body or other zoning legislative authority, subject to such requirements as may exist relative to study and recommendation by zoning commissions, notices, [and] hearings....")

⁵ Charter §8-8.6(2) states, in part: "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."

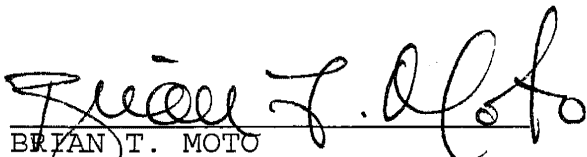
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that, to her knowledge, the County has never been a project district applicant and the Council has never initiated a project district development pursuant to Section 19.45.040(B), MCC. This means that precise details of the project district process with Council as the applicant are uncertain.

Also, the same planner drafted a memorandum on January 3, 2006 to the Deputy Planning Director regarding the subject property. A copy of the memorandum is attached hereto as Exhibit "A". The memorandum provides basic land use information concerning the subject property and summarizes land use requirements relating to the development of the property for housing purposes.

We recommend that the Department of Planning be consulted as to the proposed project, required land use entitlements, and zoning and other procedures to be followed.

Approved for Transmittal:


BRYAN T. MOTO
Corporation Counsel

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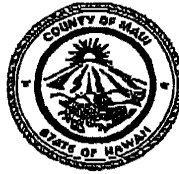
Enclosure (Exhibit "A")

cc: Jesse Souki, Deputy Corporation Counsel
James A. Giroux, Deputy Corporation Counsel
Michael Foley, Planning Director
Wayne Boteilho, Deputy Planning Director
Michele White, Legal Assistant

Mayor

MICHAEL W. FOLEY
Director

WAYNE A. BOTEILHO
Deputy Director



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COUNTY OF MAUI
DEPARTMENT OF PLANNING

January 3, 2006

MEMORANDUM

TO: Wayne Boteilho, Deputy Planning Director
FROM: Colleen Suyama, Staff Planner *CS*
VIA: Clayton Yoshida, AICP, Planning Program Administrator *copy*
SUBJECT: Lanai Housing Project, TMK 4-9-002:058

The basic land use information on the subject property is as follows:

Acreege - 65 acres (housing); 50 acres (school expansion)
State Land Use District - Agriculture
Lanai Community Plan - Single Family (proposed housing project)
Zoning - Interim
Special Management Area - outside of SMA

Based on the existing land use designations, the property will require the following:

1. State District Boundary Amendment from Agricultural District to Urban District. The property is greater than 15 acres which will require processing through the State Land Use Commission pursuant to Hawaii Administrative Rules, Title 15, Subtitle 3, Chapter 15 Land Use Commission Rules.
2. A change in zoning from the Interim District to an appropriate Residential District. To maximize the number of houselots R-1 Residential District zoning is recommended, since the minimum lot area is 6,000 sq.ft. Based on a 65 acre parcel, the following single family density is projected:

43560 sq.ft./acre x 65 acres = 2,831,400 sq.ft.
Subtract 25% of area for roads, etc. = 707,850 sq.ft.
Developable area = 2,123,550 sq.ft.

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Developable area / 6000 sq.ft./lot = potential lots
2,123,550 sq.ft. / 6,000 sq.ft. = 354 lots

If more lots are desired, then the R-0 zoning district can be sought or the R-0 overlay district requirements used to reduce lot area and allow attached dwellings on common lot lines.

3. The residential district allows the following housing, which could be multi-family:
 - a. Housing for the aged, operated by governmental or nonprofit organizations; provided the normal population density is not increased more than 10% (389 lots/units total).
 - b. Housing for low and moderate income families, operated by governmental or nonprofit organizations provided the normal population density is not increased more than 10% (389 lots/units total).

4. To construct higher density multi-family housing would require a Community Plan Amendment from single family residential to multi-family use. Such an amendment will require at the minimum an Environmental Assessment (EA) pursuant to Chapter 343, HRS. An EA is also required since the land is County owned and presumably county monies will be used for the housing.

In addition to the Community Plan Amendment, the project will still require a State District Boundary Amendment and Change in Zoning (A-1 Apartment District).

5. The 201G process can also be utilized to eliminate the Community Plan Amendment and Change in Zoning process.

6. It is recommended that a housing needs assessment be conducted to determine the type of housing needed for Lanai Island whether it should be single family lots, house and lot packages, or multi family units and the income groups and special needs groups that should be provided housing. The study should also determine whether it is rental housing or fee simple housing desired.

Memorandum to:

Wayne Boteilho, Deputy Planning Director

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7. The EA process should address housing needs; economic and social impacts; impacts on infrastructure such as water resources and transmission, sewers, and roadways; educational facilities; parks and recreational facilities; utilities; public services such as medical, police and fire; cultural and archaeological impacts; sensitive environmental impacts such as wetlands, flood zones, sensitive habitats, etc.; and impacts on agricultural resources. The EA should include a market study addressing housing needs and economic impact, an engineering report addressing infrastructure needs, traffic report, and archaeological and cultural survey.

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