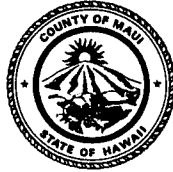


CHARMAINE TAVARES
Mayor



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January 11, 2010

MEMO TO: Gladys C. Baisa, Chair
Lani Use Committee

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

SUBJECT: PROHIBITING USE OF KAINANI STREET FOR INGRESS TO AND
EGRESS FROM DEVELOPMENT WITHIN THE MAUI LANI PROJECT
DISTRICT (WAILUKU-KAHULUI PROJECT 1) (LU-14)

I. Introduction.

This memorandum is in response to your memorandum dated November 12, 2009. Your memorandum stated as follows:

The Committee has also received the attached proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 19.78.070, MAUI COUNTY CODE, PERTAINING TO GENERAL STANDARDS OF DEVELOPMENT, TO PROHIBIT TRAFFIC INGRESS AND EGRESS ON KAINANI STREET TO AND FROM THE DEVELOPMENT WITHIN THE MAUI LANI PROJECT DISTRICT". The proposed bill adds the following requirement to Section 19.78.070, Maui County Code (MCC): "The development shall not connect to or utilize Kainani Street, Wailuku, Maui, Hawaii as an ingress or egress into any part of the development."

Before I schedule a meeting on this matter, may I please request a written opinion as to whether the proposed bill relates to a "traffic safety measure" which, pursuant to Section 2.36.020, MCC, shall first be referred to the traffic safety council for its recommendation". Stated another way, is the referral of the proposed bill **required** by Section 2.36.020, MCC, before the Council takes action on it?

II. Summary of Facts.

On March 12, 2008 and August 6, 2008, the Public Works and Facilities Committee met to discuss County Communication No. 08-64, from the Council Chair, relating to the matter of the Maui Lani Project District and Kainani Street. Among other matters, the Director of Public Works informed the Committee that Kainani Street is a State roadway and that the State has jurisdiction over Kainani Street.¹

The Committee asked whether the State Legislature had passed legislation giving the County any authority over State roadways.² The Deputy Corporation Counsel present said that, although the County does not have jurisdiction over Kainani Street, it does have jurisdiction to amend the Maui Lani Project District ordinance.³

On August 22, 2008, the County Council adopted Resolution No. 08-73 REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL AMENDING SECTION 19.78.070, MAUI COUNTY CODE, TO PROHIBIT TRAFFIC INGRESS AND EGRESS ON KAINANI STREET TO AND FROM THE DEVELOPMENT WITHIN THE MAUI LANI PROJECT DISTRICT. There was no recommendation by the Public Works Director, Corporation Counsel, or the Public Works and Facilities Committee to send the draft bill to the Traffic Safety Council.

On November 25, 2008, the Maui Planning Commission conducted a public hearing on the draft bill, reviewed an updated site plan for the Maui Lani Shopping Center, and considered agency comments. During the hearing, the Department of Planning recommended disapproval of the draft bill and suggested that, if an amendment of the Maui Lani Project District ordinance were to be adopted, the amendment prohibit ingress from Kainani Street to the proposed Maui Lani Shopping Center site, but not egress from the site to Kainani Street.

The Maui Planning Commission did not agree with the Department of Planning and recommended approval of the draft bill to restrict use of Kainani Street for ingress to, and egress from, the proposed Maui Lani Shopping Center. The Department of Planning transmitted the recommendation of the Maui Planning Commission to the Council along with the Department of Planning's Report and Recommendation to the Maui Planning Commission, dated November 25,

¹ Committee Report No. 08-104, at 2 (Aug. 22, 2008).

² Committee Report No. 08-104, at 4 (Aug. 22, 2008).

³ *Id.*

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2008, copies of agency and public comments, and minutes of the November 25, 2008 Maui Planning Commission meeting.

III. As discussed in a previous Corporation Counsel opinion, the County ordinance pertaining to the Traffic Safety Council does not clearly and unambiguously identify what matters should or should not be referred to the Council.

Section 2.36.020, Maui County Code states:

All matters referred to the County council on traffic safety measures shall first be referred to the traffic safety council for its recommendation.

As discussed in a memorandum, dated January 10, 2008, to G. Riki Hokama, Council Chair, from David A. Galazin, Deputy Corporation Counsel, regarding the Traffic Safety Council, Chapter 2.36, Maui County Code, does not define the term "traffic safety measures".⁴ Section 286-6, Hawaii Revised Statutes, which establishes county traffic or highway safety councils, also does not define "traffic safety" or "highway safety".

IV. The draft bill amends an existing project district ordinance, and, therefore, is in the nature of a zoning measure intended to address or mitigate the use of land within the project district.

The draft bill attached to Resolution No. 08-73 would, if approved, amend Section 19.78.070, Maui County Code, pertaining to "General standards of development" and "Infrastructure" requirements for the Maui Lani project district. Section 19.78.070 is but one section of a chapter relating to the zoning of the project district. Therefore, the draft bill is more appropriately understood as a zoning measure relating to the use of land within the district than a measure focused solely on "traffic safety."⁵

⁴ Memorandum to G. Riki Hokama, Council Chair, from David A. Galazin, Deputy Corporation Counsel (Jan. 10, 2008), at 2.

⁵ See Rathkopf's Law of Zoning and Planning, § 1:3 (2005) ("Zoning is the regulation by the municipality of the use of land within the community, and of the buildings and structures which may be located thereon, in accordance with a general plan and for the purposes set forth in the enabling statute.").

Many, if not most, County ordinances zoning real property for specified land uses (including project district zoning ordinances) provide for, or are subject to, various development standards or conditions of zoning.⁶ It is not uncommon for such standards or conditions to address matters relating to highways, highway improvements, and highway access to and from the property being zoned.

To our knowledge, the Council, the Department of Planning, and the Department of Public Works⁷ have not interpreted or applied Chapter 2.36, Maui County Code, so as to treat zoning ordinances, including ordinances relating to zoning development standards and conditions of zoning, as "traffic safety measures" requiring review by the Traffic Safety Council. Title 19, Maui County Code, pertaining to zoning, has no provision requiring Traffic Safety Council review of bills relating to project districts or project district development standards.⁸

Therefore, we conclude that referral of the draft bill to the Traffic Safety Council is not required under the Maui County Code. However, if the Council believes that matters relating to traffic safety are nevertheless posed by the draft bill and that the advice of the Traffic Safety Council is desirable, it may submit the draft bill to the Traffic Safety Council for review.

⁶ See, e.g., Articles II and III of Title 19, Maui County Code.

⁷ As observed in the Memorandum to G. Riki Hokama, Council Chair, from David A. Galazin, Deputy Corporation Counsel (Jan. 10, 2008), at 2, the Department of Public Works generally foregoes Traffic Safety Council review when the impetus for a proposed bill is something other than traffic safety and when traffic safety issues are peripheral to the substantive purpose of the bill.

⁸ See, e.g., Chapters 19.45 ("Project District Processing Regulations"), 19.58 ("Project District Development"), 19.78 ("Wailuku-Kahului Project District 1 (Maui Lani)"), 19.510 ("Application and Procedures"), Maui County Code.

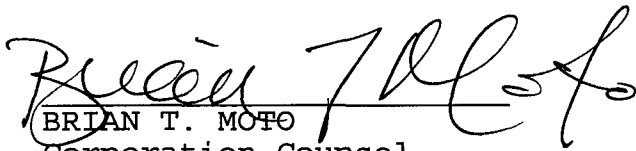
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- V. As a State roadway, Kainani Street is under the jurisdiction of the State Department of Transportation, not County Department of Public Works, and any construction within the State right-of-way to allow ingress to, or egress from, the proposed Maui Lani Shopping Center will require a permit from the State Department of Transportation.

The State Department of Transportation has jurisdiction over State highways such as Kainani Street.⁹ Therefore, to the extent that development of the Maui Lani Shopping Center requires any construction within the Kainani Street right-of-way to allow ingress to, or egress from, the Center, such construction will likely require a permit from the State Department of Transportation.¹⁰

xc: Michael J. Hopper, Deputy Corporation Counsel
Jeffrey Hunt, Planning Director
Ann Cua, Planner, Department of Planning
Milton Arakawa, Director of Public Works
Webpage

APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel

S:\ALL\Advisory\JAG\Kainani Street Egress.wpd

⁹ § 264-1(a)(1), Hawaii Revised Statutes.

¹⁰ See § 264-6, Hawaii Revised Statutes.