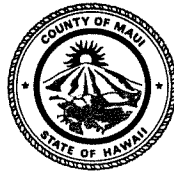


ALAN M. ARAKAWA
Mayor



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September 20, 2012

MEMO TO: Robert Carroll, Chair
Land Use Committee

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

SUBJECT: DISTRICT BOUNDARY AMENDMENT FOR SOULSPACE RANCH, LLC
(MAKAWAO) (LU-32)

I. Introduction

This is in response to your memorandum dated August 29, 2012, which asks the following:

Whether the property owner will be legally required to maintain a State SUP (i.e., continue to seek and receive extensions of the SUP), if the District Boundary Amendment is granted, in order to continue the proposed public/quasi-public uses?

II. Background

The Land Use Committee received County Communication 12-132 from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT 1813 BALDWIN AVENUE, TAX MAP KEY NO. (2) 2-5-004:007, MAKAWAO, MAUI, HAWAII".

The purpose of the bill is to grant a request from Xorin Balbes of Soulspace Ranch, LLC, for a District Boundary Amendment from Agricultural to Rural for approximately 5.66 acres located at 1813 Baldwin Avenue, Makawao, Hawaii ("property"). The District Boundary Amendment would allow for the continued use of existing dormitory facilities known as the Fred Baldwin Memorial Home, and the development of a proposed classroom facility, pool facility, and parking area to be used for programs in education, exercise,

yoga, metaphysics, water sports training, and Hawaiian cultural practices.

The property is currently in the State Agricultural District and was granted a State Special Use Permit by the Maui Planning Commission for the proposed uses.

In the "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION", on page 14, the Department notes that "the Paia-Haiku Community Plan requires Special Use Permits for public/quasi-public uses in the State Rural District."

III. The Paia-Haiku Community Plan alone will not require Soulspace Ranch, LLC, to maintain a State Special Use Permit

The Paia-Haiku Community Plan Land Use section states in relevant part:

B. Goals, Objectives, Policies and Implementing Actions

Policy recommendations for the Paia-Haiku Community Plan region have been developed to guide decision making in a number of subject areas having community-wide impact. Simply interpreted, the goals are those broad statements which identify a preferred future condition. The objectives and policies specify steps and measures to be taken to achieve the stated goal. Finally, the implementing actions identify specific programs, project requirements, and activities necessary to successfully accomplish the desired goal.

LAND USE

Goal

A well-planned community that preserves the region's small town ambience and rural character, coastal scenic vistas, and extensive agricultural land use, and accommodates the future needs of residents at a sustainable rate of growth and in harmony with the region's natural environment, marine resources, and traditional uses of the shoreline and mauka lands.

Objectives and Policies¹

...

¹There are 17 "Objectives and Policies in the Land Use section.

16. Require Special Use Permits for public/quasi-public uses in the State Rural District.

...

Implementing Actions²

...

2. Adopt rules requiring Special Use Permits for public and quasi-public uses in the State Rural District.

...

To date the County has not passed rules or legislation to require Special Use Permits for public and quasi-public uses in the State Rural Districts.

As long as the County defines the proposed use as "quasi-public" it would be a permitted use in the rural districts.³ A special use permit would only be required if the use was not a permitted use. HRS § 205-6 allows the county planning commission to permit certain unusual and reasonable uses within rural districts for uses other than those for which the district is classified. In this case even if told to get a special use permit pursuant to the community plan, there would be no criteria to review the permit as it is already a permitted use.

IV. Conclusion

The community plan cannot mandate a change in state law absent a change in legislation. The applicant is not required to get a special use permit for a use that is permitted in the district. Upon the granting of a District Boundary Amendment from Agricultural to Rural the State Special Use Permit would be

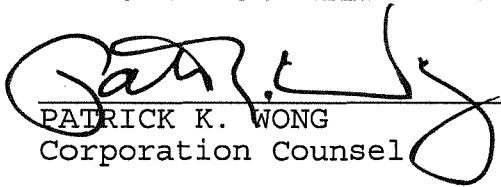
²There are 7 "Implementing Actions" in the Land Use Section

³HRS § 205-5(c) states in relevant part: Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts: (3) Public, quasi-public, and public utility facilities.

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terminated as it is only necessary while the property is in the
State Agricultural District.

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel

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cc: William Spence, Director of Planning
Michael J. Hopper, Deputy Corporation Counsel
Webpage