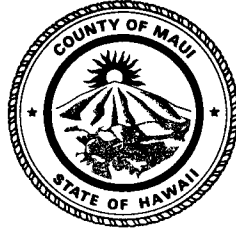


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MEMO TO: Kelly T. King, Chair  
Planning Committee

FROM: ~~Michael J. Hopper~~, Deputy  
Corporation Counsel

DATE: July 19, 2017

SUBJECT: **COMMUNITY PLAN UPDATE PROCESS** (PC-1)

By letter dated June 23, 2017, you request advice on the Council's authority to approve community plan goals, policies and actions for Kahoolawe.

By the passage of ordinance 2413 (1995) the Council adopted the most recent Kahoolawe Community Plan, replacing the earlier plan adopted in 1982. The plan includes goals, policies and actions, and contains a single land use designation of "cultural use" for the entire island.

Pursuant to Hawaii Revised Statutes ("HRS") chapter 6K, Kahoolawe is held by the State of Hawaii as part of the public lands trust and regulated and administered by the Kahoolawe Island Reserve Commission ("KIRC"), a seven member commission. Based on HRS section 6K-6, the commission:

- "(1) **Shall establish criteria, policies, and controls for permissible uses within the island reserve;**
- (2) Shall approve all contracts for services and rules pertaining to the island reserve;
- (3) Shall provide advice to the governor, the department, and other departments and agencies on any matter relating to the island reserve;

- (4) Shall provide advice to the office of planning and the department of the attorney general on any matter relating to the federal conveyance of Kaho‘olawe;
- (5) May enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section 6K-3;
- (6) **Shall carry out those powers and duties otherwise conferred upon the board of land and natural resources and the land use commission with regard to dispositions and approvals pertaining to the island reserve. All powers and duties of the board of land and natural resources and the land use commission concerning dispositions and approvals pertaining to the island reserve are transferred to the commission;**
- (7) **Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the county of Maui by chapter 205A. The powers and duties of the county of Maui and its agencies concerning coastal zone dispositions and approvals pertaining to the island reserve are transferred to the commission;**
- (8) Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the island burial councils and the department with regard to proper treatment of burial sites and human skeletal remains found in the island reserve;
- (9) Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and actions;
- (10) May delegate to the executive director or employees of the commission, by formal commission action, such power and authority vested in the commission by this chapter as the commission deems reasonable and proper for the effective administration of this chapter; and
- (11) May solicit and accept grants, donations, and contributions for deposit into the Kaho‘olawe rehabilitation trust fund to support the purposes of this chapter.”

(emphasis added).

Additionally, HRS section 6K-3 states:

“(a) The Kaho‘olawe island reserve shall be used solely and exclusively for the following purposes:

- (1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
  - (2) Preservation and protection of its archaeological, historical, and environmental resources;
  - (3) Rehabilitation, revegetation, habitat restoration, and preservation; and
  - (4) Education.
- (b) **The island shall be reserved in perpetuity for the uses enumerated in subsection (a). Commercial uses shall be strictly prohibited.**

(emphasis added).

HRS section 6k-4 states:

“The [DLNR] and other departments and agencies of the State shall be subject to the oversight of the commission with regard to the control and management of the island reserve. Subject to section 6K-6, the [DLNR] shall:

- (1) Implement controls and permitted uses for the island reserve;
- (2) Enforce this chapter;
- (3) Provide administrative support to the commission; and
- (4) Authorize those of its employees as it deems reasonable and necessary to serve and execute warrants and arrest offenders or issue citations in all matters relating to enforcement of the laws and rules applicable to the island reserve.”

The State of Hawaii, through the DLNR and KIRC is responsible for determining permissible land uses on Kahoolawe, acting as the Special Management Area authority, controlling access to the area, and granting such dispositions and approvals that the BLNR or Land Use Commission would normally grant. Accordingly, the County of Maui has limited authority with respect to the area, as the KIRC and DLNR perform the functions that the County would normally provide by law.

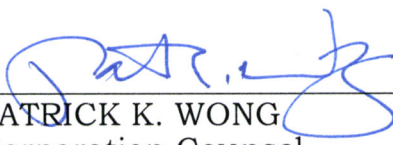
HRS sections 226-58 and 46-4 authorize counties to establish general plans and discuss the contents of those plans. Both the Maui County Charter section 8-8.5 and Maui County Code (“MCC”) chapter 2.80B establish general and community plans in the County of Maui, and further outline the required contents of the plans. MCC section 2.80B.090 outlines the process for decennial amendments to existing community plans.

Kelly T. King, Chair  
July 19, 2017  
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With respect to Kahoolawe, the Council may adopt amendments to the existing community plan, but the provisions of HRS chapter 6K will still govern the administration of Kahoolawe and in the case of any conflict, chapter 6K will apply. The plan could set forth County goals, policies and actions with respect to Kahoolawe, but County jurisdiction with respect to the area is limited.

Please do not hesitate to contact me with any further questions.

APPROVED FOR TRANSMITTAL:



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PATRICK K. WONG  
Corporation Counsel

2017-0096

PC-1 2017-07-19 Memo to Chair