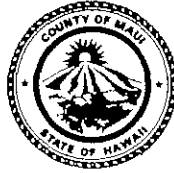


CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7741  
FACSIMILE: (808) 270-7152

July 12, 2010

MEMO TO: Jo Anne Johnson  
Council Member

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

SUBJECT: **RETURNING THE LAND EARLIER IDENTIFIED FOR THE WEST MAUI  
MEDICAL FACILITY TO ITS FORMER AGRICULTURAL DESIGNATIONS  
(PAF 10-067)**

I. Introduction and questions posed.

This memorandum is in response to your memorandum dated March 30, 2010. Your memorandum posed the following questions relating to property consisting of approximately 14.946 acres in Lahaina (Tax Map Key No. (2)4-4-006:070 (portion)) (the "Property"):

1. May the Agricultural Community Plan, District Boundary, and Zoning designations be restored through the enactment of an ordinance or ordinances repealing Ordinance Nos. 3658, 3659, and 3660 (2009)?
2. If the former Agricultural designations may be restored in this manner, would the requirements typically associated with community plan amendments, district boundary amendments, and changes in zoning still apply to the proposed repeal? For instance, would the proposed repeal be required to follow the requirements of Chapters 2.80B, 19.68, and 19.510, respectively; and would the proposed bill(s) be required to undergo planning commission review and recommendation as set forth in Sections 8-8.4 and 8-8.6, Revised Charter of the County of Maui (1983), as amended? I would like to identify whether a proposed repeal, if permissible, would result in any savings in time or cost that are typically associated with such land use changes. Please explain.

II. Short answer.

A repeal of Ordinance Nos. 3658, 3659, and 3660 (2009) (collectively, the "Ordinances") alone, without legislation providing for new land use designations for the Property, would not "automatically" restore the land use designations in effect prior to passage of the Ordinances. All procedures required under the Revised Charter of the County of Maui (1983), as amended ("Charter"), Maui County Code, and Hawaii Revised Statutes would have to be followed to change the land use designations of the Property.

III. Background.

By Ordinance Nos. 3658, 3659, and 3660 (2009), the Council enacted a Community Plan Amendment changing the community plan designation of the Property from Agricultural to Public/Quasi-Public, a District Boundary Amendment changing the land use classification from Agricultural to Urban, and a Conditional Change in Zoning from Agricultural District to P-1 Public/Quasi-Public District, respectively, to facilitate the development of a proposed medical facility and related ancillary medical facilities in West Maui.<sup>1</sup>

The Property is located near the northerly edge of the Lahaina Civic Center and mauka of Honoapiilani Highway. It is part of a larger, 520-acre parcel proposed for the development of the Kaanapali 2020 project. The vacant site was formerly used for sugar-cane cultivation and is owned by Kaanapali Land Management Corp. ("KLMC").

The medical facility was intended to be privately-owned and operated. The State Health Planning and Development Agency (SHPDA) approved and issued a Certificate of Need to Newport Hospital Corporation for the proposed facility. However, Brian Hoyle, President, Newport Hospital Corporation, has informed Council member Johnson that the site has become too difficult to develop, and that a new site has been selected for the medical facility. Council member Johnson understands that Newport Hospital Corporation is in the process of purchasing the new site from KLMC.

Council member Johnson would like to initiate legislation to return the Property to its former Agricultural designations.

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<sup>1</sup> See Memorandum to Gladys C. Baisa, Chair, Land Use Committee, dated May 8, 2009, regarding West Maui Medical Facility and Related Ancillary Medical Facilities (Lahaina) (LU-4), for further background on land use entitlements concerning the Property.

IV. Rezoning and other changes in land use designations must follow procedures prescribed by the Maui County Code, County Charter, and Hawaii Revised Statutes.

Generally, rezoning of use districts or changes of uses and restrictions within a district can be accomplished only through an amendment of the zoning ordinance, and the amendment must be made in the same mode as its original enactment.<sup>2</sup>

Section 1.04.060, Maui County Code, states:

The repeal of any resolution or ordinance shall not be construed to revive any other resolution or ordinance which has been repealed, unless it be so clearly expressed.

Section 1.04.060 sets forth the general principle that the repeal of an ordinance does not "revive" any other ordinance that has been repealed. Although Section 1.04.060 goes on to reference the possibility of such a revival where "clearly expressed", other Maui County Code sections, Charter provisions, and state statutes make clear that the adoption of land use ordinances requires adherence to prescribed procedures and other requirements.

For example, Section 19.510.020(B), Maui County Code, states in relevant part:

B. All amendments to this title, including proposed zoning ordinances, land use ordinances, zoning maps, and regulations and any amendments or modifications thereto, may be proposed by the planning director, the County council or a planing commission and shall be processed as follows:

1. The planning director shall set the proposed amendment for public hearing on the agenda of the planning commission;

2. If a resolution of the County council initiated pursuant to the charter of the County is transmitted to the planning commission, the director shall set a public hearing date not later than sixty calendar days from the date of the receipt of the resolution of the County council and within one hundred twenty calendar days upon receipt of the resolution, the planning commission

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<sup>2</sup> McQuillin, Municipal Corporations § 25.245 (3d ed.).

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shall transmit its findings and recommendations to the County council.

Section 19.510.010(A)(1), Maui County Code, states in relevant part:

General purpose. The general purpose of this chapter is to prescribe the manner by which permits and approvals are processed and approved and to ensure that all developments in the County are in compliance with the provisions of this title. Except as otherwise provided, all permits and development approvals required by this title [19] shall comply with the procedures specified in this chapter.

Charter Section 8-8.6(2) states in relevant 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.

Section 205-3.1(b), Hawaii Revised Statutes, states:

Any department or agency of the State, and department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use decision-making authority of the county in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the rural and urban districts and lands less than fifteen acres in the agricultural district that are not designated as important agricultural lands.

The state land use, community plan, and zoning designations of the Property cannot be amended by merely passing an ordinance repealing Ordinance Nos. 3658, 3659, and 3660. Restoration of the agricultural land use designations of the Property would require

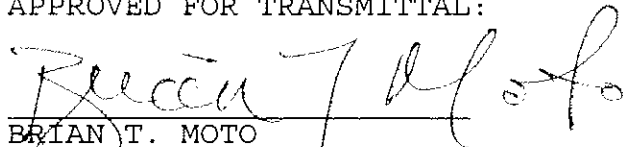
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that appropriate amendments be processed in the same manner as all other land use ordinances.

JAG:ljn

cc: Michael J. Hopper, Deputy Corporation Counsel  
Kathleen Ross Aoki, Planning Director  
Jeffrey Dack, Planner, Department of Planning  
Webpage

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO  
Corporation Counsel

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