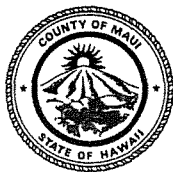


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January 10, 2013

MEMO TO: Robert Carroll, Chair
Land Use Committee

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

SUBJECT: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR 0.375
ACRE IDENTIFIED BY TMK: (2) 2-6-009:017 (PAIA) (LU-24)

I. Introduction

This memorandum is in response to your letter dated July 23, 2012. Your letter requests that our Department respond to the following questions:

1. Is an Environmental Assessment ("EA") required for a Council-Initiated Community Plan Amendment?
2. Is an EA required for a Community Plan Amendment to correct a clear mapping error that occurred during a decennial community plan update?
3. The Planning Director's May 11, 2012, correspondence further states that, per Director Hooser, "an agency, like the Planning Department, can still require that an EA be prepared in either of these situations if there are potential significant environmental impacts that have not been assessed or mitigated." Absent an EA, how would a determination of "potential significant environmental impacts that have not been assessed or mitigated" be made by the Department of Planning, and at what stage of the proposed Community Plan Amendment process? Would such a determination be entirely within the Planning Director's discretion? Who would bear the responsibility of paying for and preparing such an EA?
4. To what extent has the Department's opinion dated March 1, 2004, been superseded?

II. Background

The Land Use Committee is in receipt of County Communication 11-317, from Councilmember Mike White, transmitting a proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION PROPOSED BILLS TO ENACT A COMMUNITY PLAN AMENDMENT AND A CHANGE IN ZONING FOR TAX MAP KEY NUMBER (2) 2-6-009:017, PAIA, MAUI, HAWAII."

On January 6, 2012, the Council adopted Resolution 12-1, referring the proposed Community Plan Amendment and Change in Zoning bills to the Maui Planning Commission. The Land Use Chair anticipates the proposed bills will be returned in the near future with the Maui Planning Commission's recommendations. To the Chair's knowledge, no EA has been conducted in connection with this proposed Community Plan Amendment.

By correspondence dated May 11, 2012, the Planning Director informed his staff of the following: "Director Hooser confirmed that an EA would not be triggered (a) to correct clear mapping errors that occurred during decennial community plan updates and (b) for community plan amendments initiated by the County, whether by the Council or the Administration."

The Council has been operating in accordance with the March 1, 2004 opinion from the Department of the Corporation Counsel. The opinion dealt with a situation in which the County admitted to having made an error. The proposed Community Plan Amendment was initiated by a Council member.

III. The Community Plan Amendment for Tax Map Key Number (2) 2-6-009:017, Paia, Maui, Hawaii does not require an EA pursuant to Chapter 343, Hawaii Revised Statutes ("HRS").

Section 343-5(a)(6), HRS, states that, except as otherwise provided, an environmental assessment shall be required for actions that:

(6) Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, **except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;**¹

¹In Maui County, Community Plans are part of the general plan. Section 8-8.5(6), Revised Charter of the County of Maui (1983), as amended and Maui County Code Section 2.80B.030(B).

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The community plan amendment at issue is an amendment to an existing County general plan initiated by the County and thus Chapter 343, HRS, requirements are not triggered and do not apply. Director Spence, Department of Planning, and Gary Hooser, Director of the State Office of Environmental Quality Control,² have determined that community plan amendments that are initiated by County Council do not trigger the Chapter 343, HRS, process, and this office concurs. To the extent that this opinion contradicts our March 1, 2004, memorandum, this opinion supersedes.³

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel

JAG:ln

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

²Gary Hooser is no longer Director of the State Office of Environmental Quality Control.

³This response does not address the question of whether the Planning Director can unilaterally require an EA when a community plan amendment is Council initiated. There has been no indication that the Director intends to require an EA under the facts presented in this instance.