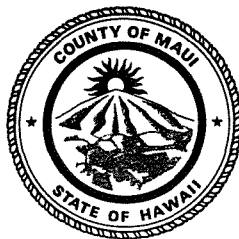


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September 11, 2013

T O: Robert Carroll, Chair
Land Use Committee

F R O M: Jeffrey Ueoka, Deputy Corporation Counsel *JU*

SUBJECT: AFFORDABLE HOUSING PROJECTS (CHAPTER 201H, HAWAII
REVISED STATUTES) (WAIKAPU GARDENS, PHASE II) (LU-3(1))

This memorandum is in response to your memorandum dated September 6, 2013 requesting a response to the following questions:

1. Please transmit a written response to question 3 of the attached September 3, 2013 correspondence.

Response: Section 201H-38 authorizes the Council to approve the project with modifications.

a. If you conclude that Council may consider modifying the Application to add a substantive exemption, such an exemption from a State Land Use District classification amendment, please advise whether the modification should be handled in the list of modifications attached as Exhibit "1" to the relevant resolution, or whether the exemptions list attached as Exhibit "2" should be changed.

Response: Council may modify the exemption list to add exemptions, provided that the exemption is not in conflict with any laws. As the law is not specific as to the specific form of the modifications, it is our position that Council may modify the proposed Resolution as it sees fit.

b. If you conclude the Director of Housing and Human Concerns, rather than the Council, should request the referenced additions to the exemptions, or that the Application should be re-submitted instead, please advise of the appropriate manner in which this should occur, and whether such action would restart the 45-day time period within which the Council must decide on the application. (In the attached March 2, 2011 opinion, your Department advised, under the circumstances considered, "As long as the amendment is not substantive the amendment should not trigger a restart of the 45-day time period.")

Response: In the event that the Council determines that the Director of the Department of Housing and Human Concerns ("Director") should re-submit, we are unable to determine whether the modifications are substantive without reviewing the list of modifications.

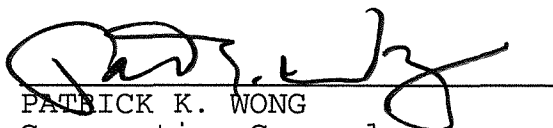
2. Should the Application submitted on August 26, 2013, be amended by the Director of Housing and Human Concerns to (1) clarify that these additional exemptions are now being requested; and (2) correct inconsistencies in the Application (such as inconsistent references to project access and compliance with State Department of Education fee requirements)? Alternatively, would these additional requests and clarifications be sufficiently corrected via a resolution incorporating the changes?

Response: The Council may require the Director to resubmit the Application submitted on August 26, 2013. The clarifications and corrections being requested may be addressed via the Resolution.

3. Subject to your response to Questions 1 and 2 above, I would like to request the appropriate revised proposed resolution be transmitted for Committee consideration.

Response: Please submit the proposed modifications and we can draft and submit a revised resolution.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel