

July 10, 2023

Calvert G. Chipcase
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813-4212
Direct Line: (808) 521-9220
Direct Fax: (808) 540-5021
Email: cchipcase@ca-des.com

VIA EMAIL

Attention: South Maui Community Plan Advisory Committee
Department of Planning
2200 Main Street, Suite 315
Wailuku, Hawaii 96793
Email: wearesouthmaui@mauicounty.gov

Re: Draft South Maui Community Plan (“Draft SMCP”) Provisions Related to Subarea 4: Wailea, TMK (2) 2-1-008:145 and 2-1-008:130

Dear Chair Weltman and Committee Members:

Thank you for the opportunity to comment on the Draft SMCP. I write in response to suggestions made by some testifiers that the Committee designate (1) a 23-acre parcel assigned TMK (2) 2-1-008:145 immediately to the south of Kilohana Park and west of Kapili Street (“**Parcel 145**”) as park instead of its current residential use designation and (2) a 20-acre portion of the 46-acre parcel assigned TMK (2) 2-1-008:130 (“**Parcel 130**”) located along Okolani Drive and Pi'ilani Highway as open space. These suggestions are based on several inaccurate factual assumptions and ignore the substantial cost to Maui County if the County proceeds with the designations of the parcels.

Parcel 145

First, there is not a gulch located on Parcel 145. There is a gulch in neighboring Kilohana Park.

Second, substantial areas within Wailea are currently designated for park purposes and are owned by the County yet have not been developed into parks. These areas include 3 acres next to the Wailea Fire Station and approximately 10 acres within Kilohana Park. The existing improved 3-acre portion of Kilohana Park is maintained by the Wailea Community Association (“**WCA**”) at no cost to the County. The area is underutilized. The County does not need another 23 acres of unused space. To the extent additional park space will be needed as the community grows, the Honua'ula project, which received Phase II approval from the Maui Planning Commission, will include several parks and significant conservation areas and open space, including a 12-acre buffer adjacent to Maui Meadows.

July 10, 2023

Page 2

The WCA agrees. As the WCA explained to the Maui County Council in opposition to the proposed County acquisition of Parcel 145, the County has not developed 10 acres of the 13-acre Kilohana Park parcel. There is no reason to add 23-acres of park to Wailea when the County has not activated the areas that it currently has available for park space. WCA also rebutted the false assertion that residents walk through Parcel 145 and confirmed that “people do not walk on [Parcel 145,] as we patrol the area 24/7.” A copy WCA’s testimony is enclosed.

Third, Parcel 145 is in the process of being developed for residential purposes in accordance with its zoning. To that end, an Environmental Impact Statement (“EIS”) will identify all cultural properties and practices through a Cultural Impact Assessment and will evaluate stormwater requirements. The developer has already completed an Archaeological Inventory Survey (“AIS”) that was accepted by State Historic Preservation Division, Department of Land and Natural Resources (“SHPD”).

In anticipation that the Committee may have questions related to historical or cultural properties, the developer will make available by phone as resources its consultants Tanya Lee-Grieg with Aina Archaeology and Kehaulani Watson with Honua Consulting. Enclosed is a copy of Ms. Watson’s testimony to the Council in opposition to the proposed County acquisition of Parcel 145.

Finally, as Parcel 145 is developed, workforce housing units will be provided at a location and method to be determined in the future in accordance with County Code chapter 2.96. Thus, designating Parcel 145 for park purposes would mean less workforce housing in the area.

Parcel 130

First, Parcel 130 is following in the same EIS process as Parcel 145. Any historical or cultural property will be identified.

Second, Parcel 130 is zoned for multifamily use and includes approximately 5 acres of open space. Abandoning 15 acres of long planned multifamily use is not supported by any recognized planning principle or established need.

Taking of Property

Private property may not “be taken for public use without just compensation.” U.S. Const. Amend. V, cl. 4. Takings are not limited to condemnation actions or physical appropriations. A taking through the regulation of property “results when a governmental regulation places such a burdensome restriction on a landowner’s use of his property that the government has for all intents and purposes ‘taken’ the

July 10, 2023

Page 3

landowner's property." *DW Aina Le'a Dev., LLC v. State Land Use Comm'n*, 148 Haw. 396, 397 (2020). A total regulatory taking occurs when a land-use regulation deprives the owner of "all economically beneficial use" leaving the land "economically idle." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019, 1026–27 (1992).

Changing the designation of Parcel 145 from its current designation (in place since 1998) of "Single Family" to "Park" and Parcel 130 from its current designation (also in place since 1998) of "Single Family" and "Multifamily" to "Open Space" would effect a total regulatory taking because the parcels would have no economically beneficial use. As one court explained when residential property was rezoned to "public use," including use as a public park, "the purpose and practical effect [is] appropriating private property for public uses without giving the landowners the constitutionally required compensation." *Rippley v. City of Lincoln*, 330 N.W.2d 505, 508-09 (N.D.1983).

The same is true here. The designation of Parcels 145 and 130 from residential uses to park and open uses space would result in a taking of property and require compensation. Considering the size and location of the parcels, the County would be liable for tens of millions of dollars.

Conclusion

The Committee should not redesignate Parcel 145 from "Residential" to "Park" or Parcel 130 from "Single Family" and "Multifamily" to "Open Space."

Thank you for the opportunity to provide written testimony and for your time consideration. I am available to serve as a resource to the Committee.

Very truly yours,



Calvert G. Chipchase

for

CADES SCHUTTE

A Limited Liability Law Partnership

cc: Michael Hopper, Deputy Corporation Counsel
Kehaulani Watson, Ph.D.

Encl: WCA Testimony
Honua Consulting Testimony

Guest User

Location:

Submitted At: 10:57am 07-05-23

Aloha Chair and Committee members,

I am writing to clarify some misinformation recently stated during the meeting regarding Resolution 23-146 and specifically Parcel SF-S (TMK-2-1-008:145). Let me start by saying that I have been the General Manager of the Wailea Community Association for over 22 years and am very familiar with the developed and undeveloped properties in the Planned Urban Development of Wailea.

The SFS property is 23 acres of raw land unsuitable for hiking much less walking a dog. People walk their dogs on the sidewalk that runs along Kapili Street above SFS, with many of those going to the dog park. I can attest to the fact that people do not walk about on the SF-S Parcel as we patrol the area 24/7. Other than the developer, all we have observed there is someone feeding chickens along the sidewalk, occasional invasive deer, and once discovered a 'chop shop' hidden in the property with vehicles in various stages of disassembly.

The dog park came about roughly 18 years ago when WCA and County Parks agreed to utilize the park assessments from two parcels under development to develop the 13 acres of existing park land north of SFS. WCA hired a planner to plan for parking, pavilion, trails, etc. The County agreed to earmark the approximate \$600,000 from the developers for the park. The plan stopped at the mayor's desk when he told me they were not doing 'pocket parks' anymore and the funds would go to central Maui. WCA went ahead with funds from developers and repaired the irrigation in the soccer field, replaced the fence, added picnic tables, barbeques, and Maui's first dog park. Like other County property in Wailea, this park is maintained by WCA. This park area needs to be revisited and developed for the Maui community. I received letters and emails from residents in Maui Meadows thanking us for the dog park. Imagine how they would appreciate that parcel being a family park.

So the SF-S Parcel should be removed from the list of lands being considered for acquisition and the County should work on getting Kilohana Park improved as was attempted years ago. We would once again assist in making that happen.

Please contact me should you have further questions.

Frank "Bud" Pikrone
General Manager

Wailea Community Association
Wailea Resort Association
34 Wailea Gateway Place, A-207
Wailea, HI 96753
808-874-6866
gm@wcamau.com

From: Trisha Kehaulani Watson <watson@honuaconsulting.com>
Sent: Wednesday, July 5, 2023 9:32 PM
To: adept.committee@mauicounty.us
Subject: Re: ADEPT - 12

CAUTION: This email was sent from outside of Ledcor's network. Please be careful while clicking links, opening attachments, or replying to this email.

RE: ADEPT - 12, TMK 2-1-008:145

To the Honorable Committee,

Mahalo for hearing this important resolution. Such discussions are critical in Hawaii today and it is equally critical that these discussions are informed by accurate science and information.

As a Native Hawaiian who has worked in the field of cultural and natural resources for over 20 years in Hawai'i, I'm happy to attend virtually and make myself available as a resource should that be necessary to facilitate your discussion. I am also the only Native Hawaiian with both a PhD, which meets the Secretary of Interior Professional Standards for Historic Preservation, and also has a law degree and background in environmental law.

I have worked on projects on a number of the parcels up for consideration, including the subject parcel identified above, and am happy to help provide details as needed to have an informed discussion.

I apologize I am not available to attend in person, but I am available via the Bluejeans link as a committee resource if so desired.

Mahalo for your consideration.

Trisha Kehaulani Watson, JD, PhD
Honua Consulting, LLC
4348 Wai'ala'e Ave.
Honolulu, HI 96816
+1 (808) 392-1617
www.honuaconsulting.com

CONFIDENTIALITY NOTICE: The contents of this **email** message and any attachments are intended solely for the addressee(s) and may contain **confidential** and/or privileged information and may be legally protected from disclosure.