

Name: Cal Chipcase

Agenda Item: C. New Policy Language; D.4 and D.5 Final Review Policies (Goal 2.4 and 2.5)

Date Received: 9/12/23 via email

ca-des · schutte

A LIMITED LIABILITY LAW PARTNERSHIP

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

September 12, 2023

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: Testimony for September 13, 2023 CPAC Meeting

Dear Committee members:

I am an attorney for Honua'ula Partners, LLC (“**HP**”) and its project, Honua'ula, which was previously referred to as Wailea 670. Thank you for the opportunity to provide written testimony on agenda items titled “New Policy Language Requested by CPAC”, Section 2.4 and Section 2.5.

1. “New Policy Language Requested by CPAC”

In the document titled ““New Policy Language Requested by CPAC” on the SMCP website, the following language is proposed: “During the subdivision or development process, Open Space designations may be realigned to better protect cultural resources but may not be removed.” This language should be to revised to read: “During the subdivision or development process, Open Space designations may be modified to reflect the buffers for cultural resources but may not be removed.” The proposed revision takes into account the mitigation and preservation requirements for areas and historic properties set forth in state and federal law. The proposed revision is also consistent with the project’s history, which includes a settlement agreement with specific requirements for preservation of the historic sites and features.

2. Section 2.4

Policy 2.4.5.b provides:

For new developments and subdivisions, gulches and drainageways, as identified in the map in Figure 3.17 (pg. 106) of this Plan, must remain in open space, and no new permanent structures may be developed in or within 100 feet of the top of the bank of identified gulches and drainageways (with the exception of public bridge crossings and public utilities), including but not limited to Mā‘alaea, Kanaio, Pōhākea, Waikapū, Waiakoa, Kūlanihāko‘i, Waipu‘ilani, Waimāha‘iha‘i, Lilioholo, Keawakapu, Wailea, Kama‘ole, and Kapunakea gulches.”

The Draft SMCP does not include a definition for “drainageways.” Instead, the Draft SMCP uses the term “drainageway” as part of the broad definition of “gulches.” “Gulches” are defined in the Draft SMCP as an “Area of Stability” and assigned an Open Space community plan designation with the stated purpose of “prohibiting development and impervious surfaces in these areas” Draft SMCP at 105. The specific boundaries of those designations cannot be ascertained by Figure 3.17, which gives rise to issues of vagueness and ambiguity. *Id.* at 106 (Figure 3.17). From what can be determined, it appears that those designations are often inconsistent with the Urban and Rural growth designations in the Island Plan’s Directed Growth Maps.

While the goal of limiting the introduction of soil, debris and contaminants into the water that runs through the gulches is sound, the designation of all gulches as “Areas of Stability” with Open Space uses and the blanket imposition of 100-foot buffers for development is overbroad and illegal. Moreover, the designation fails to consider the surrounding area, including the extent of current development or planned development, site-specific conditions, the directives in the Island Plan and the impact of those designations on existing property rights.

3. Section 2.5

Section 2.5 uses the term “Wahi Kupuna.” This phrase is not found in Hawaiian dictionaries, and no citation for the background associated with the phrase is provided. Consequently, the community is left to guess at how the term will be applied. There must continue to be an objective process governing the identification and preservation of cultural resources and historic properties that balances the rights of landowners with the need to protect significant historic sites. Injecting an overly broad term into planning documents that blanketly restricts development does not achieve that balance, and is not consistent with existing state, federal and County

September 12, 2023

Page 3

law. The term “wahi kūpuna” should be deleted from this section because the term is overly broad and vague.

More specifically, Policy 2.5.10 provides:

When wahi kūpuna or other historic properties are located within a project area, require restoration or preservation of the site(s) and require mitigation of potential adverse impacts on cultural resources during construction, in consultation with the State Historic Preservation Division, Maui County Archeologist, Cultural practitioners, and Native Hawaiian Organization, including site avoidance, adequate buffer areas and interpretation. Particular attention should be directed toward the southern areas and shoreline of the planning region.

The intent of this policy is unclear. To the extent it seeks to impose mitigation or preservation requirements for areas or historic properties not found under HRS chapter 6E or federal law, the provision is illegal. Existing law regulates when and how mitigation, such as site avoidance, is required. The County has no authority to impose conflicting regulations through a community plan. Policy 2.5.10 should be removed.

Thank you for this opportunity to submit testimony and for your hard work in developing the Draft South Maui Community Plan.

Very truly yours,



Calvert G. Chipchase, IV

for

CADES SCHUTTE

A Limited Liability Law Partnership