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August 1, 2019

Ms. Michele Chouteau McLean  
Director  
Department of Planning, County of Maui  
2200 main Street, Suite 315  
Wailuku, Maui, Hawaii 96793

RE: Special Permit Application Process

Dear Ms. McLean;

Thank you for your letter of July 3, 2019. There are a number of issues raised by your inquiry and I will attempt to provide a response with this reply.

The primary issue you raised is whether or not the County may process Chapter 205 (Hawaii Revised Statutes) Special Permits without LUC review for uses which are limited to less than 15 acres but the parcel on which the use is proposed is greater than 15 acres, where the use may not be limited to the footprint presented in the petition.

The summary answer to your question is that the LUC takes issue with the counties not forwarding SUP applications of this type for its approval under Section 205-6 (d) HRS where the use will impact the entire parcel, where the use will obviously later expand into the rest of the parcel or where the use renders utilization of the remainder of the parcel for agricultural purposes unlikely. SUPs of less than 15 acres which evidence such expanded activity or impact should be approved by the LUC under Section 205-6.

As the initial determination of how an application is to be processed resides with the county, we urge a thorough evaluation of the uses' actual footprint and the impact of the use on the parcel/property. The following are a summary of the LUCs concerns and its position in direct response to the situations contained in your letter.

In the situation referenced by your by your letter wherein the applicant proposed 2 residential units for short term rental on two five acre portions of a 24 acre lot, we would question whether or not the resulting use would render the remaining acreage unusable for agriculture. Using the

applicant's own calculations, if each "residence" uses 5 acres, approximately 42% of the lot would be dedicated to non-agricultural uses. It is unlikely that agricultural activity would or could continue given the need to ensure the safety and enjoyment of the tenants. As such, it would appear that the application proposes a significant change in the use of the 24 acres and that more than 15 acres of the parcel would be impacted by the SUP. LUC review would therefore be required under Section 205-6(d) HRS.

Your second example of a 25 acre parcel, a portion of which is to be used for church purposes, is more blatant in its abuse of the 15 acre limitation. Clearly the remainder of the parcel, if not the whole parcel, is not going to be used for agricultural activity. In addition, the combined non-agricultural uses described clearly exceed 15 acres if the access road is included (which it should be as it is essential for the use delineated in the SP application). In addition, the likelihood that churchgoers will use remaining portions of the parcel for activities related to the SUP is extremely high.

Some other examples of inappropriate utilization of a sub-15 acre exemption include such things as rock quarries or waste dumps which are permitted based on a 14.9 acre or less representation when it is clear that the storage of equipment, access roads and/or percentage of the lot actually being utilized when administrative structures and parking are included, well exceeds the 15 acre limitation. This is especially true in a situation where the parcel is not much larger than 15 acres and the remaining acreage is rendered unusable by the SP. In such cases they county should request a complete operational plan before determining how the permit should be processed and require the SP be submitted to the LUC where appropriate.

The county should also be concerned about uses that initially appear to be limited in acreage but clearly will be subject to compounding SPs for expansion of the use. The county should request long-term expansion plans from applicants and, if an SP is an extension of an existing use, add the acreage of the current use together with that off the proposed additional use to determine the actual size of the impacted acreage, rather than allow a second (or third or fourth) 15 acre SUP on the same property or adjacent property as an existing use.

We concur with your concern, and position, that if a use allowed by an SP will clearly migrate to larger portions of a parcel rather than be confined to an arbitrary sub-15 acre portion, there is a legitimate reason to require the SP adhere to the mandates of section 205-6(d) HRS and the petition should be subject to LUC review.

As the county is the initial decision maker on an SP, including the process required for processing, it is imperative that the county make inquiry into the nature and extent of the proposed use and whether or not it is reasonable to believe that the use can be contained to a small portion of the parcel. If it can be reasonably concluded that the use will spread to, or will require the use of the entire parcel, change the nature of uses on a larger portion of the parcel or render more than 15 acres of the parcel unusable for agriculture, the SP should be processed as a proposed use larger than 15 acres.

Finally, your understanding of how SPs for parcels greater than 15 acres are processed is accurate. If the county denies the permit the LUC does not play any role in the process and cannot be "appealed" to. If the county grants the permit the decision and the record is transmitted to the LUC for processing. The LUC can either approve, deny or approve with conditions. The LUC does not hold a contested case hearing with regard to the SUP and must make a decision on the record transmitted from the county.

If the LUC feels there is something missing from the county proceedings in the way of issues or evidence, or if a party attempts to introduce new evidence in front of the LUC, the LUC must remand the matter to the county for further clarification and taking of evidence (re-hearing). After re-hearing the county can re-transmit its findings to the LUC for final decision.

Thank you for your inquiry. I hope this provides sufficient clarification. Feel free to contact me directly if you have any further questions.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal line extending to the right.

Daniel E. Orodener  
Executive Officer