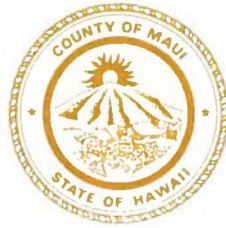


RICHARD T. BISSEN, JR.
Mayor

GARRETT E. SMITH
Acting Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793



January 19, 2024

Mr. Daniel E Orodener
Executive Officer, Land Use Commission
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

**Re: Comments on the 2023 Proposed Amendments to the LUC
Administrative Rules**

Dear Mr. Orodener,

Thank you for hosting the January 3, 2024 meeting, which was an opportunity to participate in a discussion with you and your staff along with representatives from other counties regarding the proposed 2023 Amendments to the Land Use Commission Administrative Rules. The Maui County Planning Department's Administrative Planning Officer, Gregory Pfof, attended this meeting and updated me accordingly. The Planning Department (Department) supports the comments expressed by Mr. Pfof during the meeting in addition to other comments provided by other county agencies. To ensure that you are clear on the Department's position, please let this letter serve to re-state the Department's comment on the proposed amendments.

As expressed during the meeting, the Department is particularly concerned regarding Section 15-15-77 - Decision-making criteria for boundary amendments. Specifically, sub-section (7) indicates "*In considering boundary amendments for lands designated important agricultural lands pursuant to part III, chapter 205, HRS, the commission shall specifically consider the standards and criteria set forth in section 205-50, HRS,*" and "*(e) The land use commission may dismiss a petition if it determines that the parties have failed to provide sufficient evidence to render a decision on the petition.*"

The Department's concern with this section is that it appears to grant the LUC significant authority in determining whether a petition is "complete," wherein much of that responsibility should be placed on the administrative process handled by LUC staff. Specifically, it appears that rather than making decisions on petitions that may be difficult, the LUC could take the option of simply dismissing a petition by claiming that sufficient evidence to make a decision has not been provided by the petitioner. Such a decision by the LUC could result in a potential restart of the

Mr. Daniel E. Orodenker
January 19, 2024
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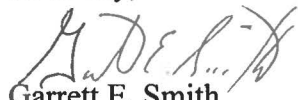
petition with significant additional time and expense to the petitioner. For example, often, many studies are prepared as part of or in support of a petition. Those studies may have functional “expiration” dates before becoming “stale” or ineffective in assessing impacts for the implementation of appropriate mitigation measures or conditions of approval. If a petition is dismissed these studies will necessitate revisions at significant expense to the petitioner.

Petitioners will be specifically vulnerable to this dismissal option when a cumulative impacts analysis is required, if the extent of analysis (distinct from the quality of the petitioner’s analysis) will remain subject to debate before the Commission after the petitioner’s realistic time to complete technical analysis in the process has passed.

As an alternative, you may wish to consider including an option for a commission and petitioner agreed upon timeframe of deferral that would procedurally extend any applicable fixed timelines to allow for supplemental technical study for submittal into the record with specific documentation from the Commission identifying the inadequate content of the petitioner’s filings similar to the administrative process described in §15-15-50.5. This would ensure a process where petitioners acting in good faith are afforded the opportunity to address any inadequacies in analysis without the loss of all prior forward progress.

Thank you again for including the County of Maui in the process of the LUC’s rule amendment process. I would appreciate it if you could continue to keep Mr. Pfof aware of any future actions related to this process. He may be reached at (808) 270-7965 or via email at Gregory.J.Pfof@co.maui.hi.us.

Sincerely,



Garrett E. Smith
Acting Planning Director

Copy to: Jordan Hart, Program Planning Manager
Gregory Pfof, Administrative Planning Officer

GES:JEH;lt

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