

REQUEST FOR LEGAL SERVICES

Date: June 6, 2017
From: Robert Carroll, Chair
Land Use Committee

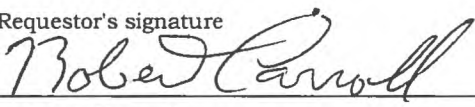
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jeff Ueoka, Esq.

Subject: AFFORDABLE HOUSING PROJECTS (CHAPTER 201H, HAWAII REVISED STATUTES) (INDEPENDENT DEVELOPMENT OF MAKILA KAI; LAHAINA) LU-2(1)

Background Data: Please review and, if appropriate, approve the attached revised proposed approval resolutions. Please transmit a hard copy of each revised resolution.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY
☐ OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Gary Saldana</u> (Telephone Extension: <u>7137</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☒ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): Wednesday, June 7, 2017
REASON: For posting on Council meeting agenda of June 16, 2017

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____
(Rev. 7/03)

lu:ltr:002(1)acc03:grs

Attachments

Resolution

No. _____

APPROVING THE INDEPENDENT DEVELOPMENT OF MAKILA KAI, PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

WHEREAS, Makila Kai LLC, a Hawaii Limited Liability Company, proposes the development of Makila Kai (the "Project") for qualified residents on approximately 79.5 acres located mauka of Honoapiilani Highway, Lahaina, Maui, Hawaii, on those parcels identified for real property tax purposes as tax map keys (2) 4-7-013:003, 004, and 005; and

WHEREAS, the Project will have a total of 25 residential workforce housing units and 24 market-rate agricultural lots; and

WHEREAS, the Project will provide needed residential workforce housing units to meet the current and growing demand for housing; and

WHEREAS, the Project will provide needed affordable housing to meet the current and growing demand for affordable housing; and

WHEREAS, on May 8, 2017, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying application to the Council of the County of Maui ("Council"), recommending approval of the Project pursuant to Chapter 201H, Hawaii Revised Statutes ("HRS"); and

WHEREAS, the Project is being independently developed pursuant to Section 201H-41, HRS; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council may approve certain exemptions for the Project, and the exemption list is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on May 8, 2017; and

WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That based upon the transmittals and the representations of the Department of Housing and Human Concerns and Makila Kai LLC, the Council

Resolution No. _____

approves the Project, including the Project's preliminary plans and specifications, as submitted to the Council on May 8, 2017, pursuant to Section 201H-38, HRS; provided that Makila Kai LLC, shall comply with all statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, except for the exemptions specified in Exhibit "A," attached hereto and made a part hereof;

2. That the final plans and specifications for the Project shall be deemed approved by the Council if the final plans and specifications do not substantially deviate, as determined by the Director of Housing and Human Concerns, from the preliminary plans and specifications submitted to the Council;

3. That any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval;

4. That the final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

5. That certified copies of this resolution be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and Makila Kai LLC.

APPROVED AS TO FORM
AND LEGALITY:

JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

lu:misc:002(1)areso01:grs

MAKILA KAI AFFORDABLE HOUSING PROJECT – EXEMPTIONS
PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

A. Exemption from Title 2, Maui County Code (“MCC”), Administration and Personnel

1. An exemption from Chapter 2.80B, MCC, General Plan and Community Plans, shall be granted to permit the Makila Kai Affordable Housing Project (“Project”) to proceed without obtaining an amendment to the West Maui Community Plan and Land Use Map.

B. Exemption from Title 12, MCC, Streets, Sidewalks, and Public Places

1. An exemption from Chapter 12.08, MCC, Driveways, shall be granted to exempt the Project from driveway permit and inspection fees applicable to the 25 residential workforce housing units.

C. Exemption from Chapter 14.62, MCC, Impact Fees for Traffic and Roadway Improvements in West Maui, Hawaii

1. An exemption from Chapter 14.62, MCC, Traffic and Roadway Improvements in West Maui, Hawaii, shall be granted to exempt the Project’s 25 residential workforce housing units from traffic impact fees, should such fees be adopted prior to the issuance of building permits for the Project.

D. Exemptions from Title 16, MCC, Buildings and Construction

1. Exemptions from MCC Chapters 16.04C, Fire Code; 16.18B, Electrical Code; 16.20B, Plumbing Code; and 16.26B, Building Code, as they relate to permit fees and inspection fees only, shall be granted to exempt the 25 residential workforce housing units from fire, electrical, plumbing, and building permit fees and inspection fees.
2. An exemption from Section 16.04C.440, MCC, relating to access roads for subdivisions, shall be granted to exempt the 32-foot pavement-width requirement on Road “A” and Road “B,” provided the following measures are implemented:
 - House lots accessed from Roads “A” and “B” will be greater than 20,000 square feet in area;
 - Subdivision design will prohibit parking on the street pavement at all times using appropriate regulatory signs; and
 - The Homeowners’ Association will have the responsibility, means, and authority to enforce this parking restriction.

EXHIBIT “A”

E. Exemptions from Title 18, MCC, Subdivisions

1. Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, shall be granted to exempt the Project from obtaining a change in zoning and community plan amendment.
2. An exemption from Section 18.16.050, MCC, Minimum Right-Of-Way and Pavement Widths, shall be granted to exempt the Project from widening the Punakea Loop pavement.
3. Exemptions from Section 18.16.130, MCC, Cul-de-sacs, shall be granted to allow the Road “B” cul-de-sac to exceed 550 feet in length and serve more than 20 lots; provided, that a truck turnaround and fire lane will be constructed to ensure that emergency access is not compromised by these exemptions.
4. An exemption from Section 18.16.220, Lots—Size and Shape, shall be granted to allow lot sizes, widths, shapes, and orientation, and minimum building setback lines within the Project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
5. An exemption from Section 18.16.230, Lots—Minimum Sizes, shall be granted to allow lot sizes within the Project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
6. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, shall be granted to exempt the Project from park dedication requirements; provided, that the Project will include a neighborhood park of approximately 1.3 acres and a 500-foot-wide open space “greenbelt” of approximately 20 acres, between the Lahaina Bypass Highway and the closest rural residential property line, as depicted in Exhibit “A-1,” attached hereto and incorporated herein by reference.

F. Exemptions from Title 19, MCC, Zoning; and Section 8-8.4, Revised Charter of the County of Maui (1983), as amended

1. An exemption from Chapter 19.30A, MCC, Agricultural District, shall be granted to permit the development and use of the subject parcels for single-family residential purposes.
2. The Project shall be exempt from all development design standards set forth in Chapter 19.30A, MCC.
3. An exemption from Chapter 19.30A, MCC, shall be granted to allow the subdivision of the property in the plat configuration shown in the Project site plan. The Project will be in conformance with the Rural District standards set forth under Section 19.29.020, MCC.
4. An exemption from Section 19.68.020, MCC, Applications, and Section 19.68.030, MCC, Procedures; and Section 8-8.4, Revised Charter of the County of Maui (1983), as amended, shall be granted to exempt the Project from: 1) the need to file an application for a reclassification of State Land Use District boundaries for the approximately 14.6 acres of the Property containing the half-acre residential workforce housing lots; and 2) the

EXHIBIT “A”

procedures associated with such application, including the requirement for the Maui Planning Commission to conduct a public hearing on the requested reclassification.

G. Exemption from Title 20, MCC, Environmental Protection

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees, shall be granted to exempt the development of the 14.594-acre portion of the Project containing the 25 residential workforce housing units from grubbing and grading permit fees.

Resolution

No. _____

APPROVING WITH MODIFICATIONS THE INDEPENDENT DEVELOPMENT OF MAKILA KAI, PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

WHEREAS, Makila Kai LLC, a Hawaii Limited Liability Company, proposes the development of Makila Kai (the "Project") for qualified residents on approximately 79.5 acres located mauka of Honoapiilani Highway, Lahaina, Maui, Hawaii, on those parcels identified for real property tax purposes as tax map keys (2) 4-7-013:003, 004, and 005; and

WHEREAS, the Project will have a total of 25 residential workforce housing units and 24 market-rate agricultural lots; and

WHEREAS, the Project will provide needed residential workforce housing units to meet the current and growing demand for housing; and

WHEREAS, the Project will provide needed affordable housing to meet the current and growing demand for affordable housing; and

WHEREAS, on May 8, 2017, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying application to the Council of the County of Maui ("Council"), recommending approval of the Project pursuant to Chapter 201H, Hawaii Revised Statutes ("HRS"); and

WHEREAS, the Project is being independently developed pursuant to Section 201H-41, HRS; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council may approve certain exemptions for the Project, and the exemption list is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on May 8, 2017; and

WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

Resolution No. _____

1. That based upon the transmittals and the representations of the Department of Housing and Human Concerns and Makila Kai LLC, the Council approves the Project with the modifications specified in Exhibit "B," attached hereto and made a part hereof, including the Project's preliminary plans and specifications, as submitted to the Council on May 8, 2017, pursuant to Section 201H-38, HRS; provided that Makila Kai LLC, shall comply with all statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, except for the exemptions specified in Exhibit "A," attached hereto and made a part hereof;

2. That the final plans and specifications for the Project shall be deemed approved by the Council if the final plans and specifications do not substantially deviate, as determined by the Director of Housing and Human Concerns, from the preliminary plans and specifications approved by the Council;

3. That any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval;

4. That the final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

5. That certified copies of this resolution be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and Makila Kai LLC.

APPROVED AS TO FORM
AND LEGALITY:

JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

MAKILA KAI AFFORDABLE HOUSING PROJECT – EXEMPTIONS
PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

A. Exemption from Title 2, Maui County Code (“MCC”), Administration and Personnel

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1. An exemption from Chapter 12.08, MCC, Driveways, shall be granted to exempt the Project from driveway permit and inspection fees applicable to the 25 residential workforce housing units.

C. Exemption from Chapter 14.62, MCC, Impact Fees for Traffic and Roadway Improvements in West Maui, Hawaii

1. An exemption from Chapter 14.62, MCC, Traffic and Roadway Improvements in West Maui, Hawaii, shall be granted to exempt the Project’s 25 residential workforce housing units from traffic impact fees, should such fees be adopted prior to the issuance of building permits for the Project.

D. Exemptions from Title 16, MCC, Buildings and Construction

1. Exemptions from MCC Chapters 16.04C, Fire Code; 16.18B, Electrical Code; 16.20B, Plumbing Code; and 16.26B, Building Code, as they relate to permit fees and inspection fees only, shall be granted to exempt the 25 residential workforce housing units from fire, electrical, plumbing, and building permit fees and inspection fees.
2. An exemption from Section 16.04C.440, MCC, relating to access roads for subdivisions, shall be granted to exempt the 32-foot pavement-width requirement on Road “A” and Road “B,” provided the following measures are implemented:
 - House lots accessed from Roads “A” and “B” will be greater than 20,000 square feet in area;
 - Subdivision design will prohibit parking on the street pavement at all times using appropriate regulatory signs; and
 - The Homeowners’ Association will have the responsibility, means, and authority to enforce this parking restriction.

EXHIBIT “A”

E. Exemptions from Title 18, MCC, Subdivisions

1. Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, shall be granted to exempt the Project from obtaining a change in zoning and community plan amendment.
2. An exemption from Section 18.16.050, MCC, Minimum Right-Of-Way and Pavement Widths, shall be granted to exempt the Project from widening the Punakea Loop pavement.
3. Exemptions from Section 18.16.130, MCC, Cul-de-sacs, shall be granted to allow the Road "B" cul-de-sac to exceed 550 feet in length and serve more than 20 lots; provided, that a truck turnaround and fire lane will be constructed to ensure that emergency access is not compromised by these exemptions.
4. An exemption from Section 18.16.220, Lots—Size and Shape, shall be granted to allow lot sizes, widths, shapes, and orientation, and minimum building setback lines within the Project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
5. An exemption from Section 18.16.230, Lots—Minimum Sizes, shall be granted to allow lot sizes within the Project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
6. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, shall be granted to exempt the Project from park dedication requirements; provided, that the Project will include a neighborhood park of approximately 1.3 acres and a 500-foot-wide open space "greenbelt" of approximately 20 acres, between the Lahaina Bypass Highway and the closest rural residential property line, as depicted in Exhibit "A-1," attached hereto and incorporated herein by reference.

F. Exemptions from Title 19, MCC, Zoning; and Section 8-8.4, Revised Charter of the County of Maui (1983), as amended

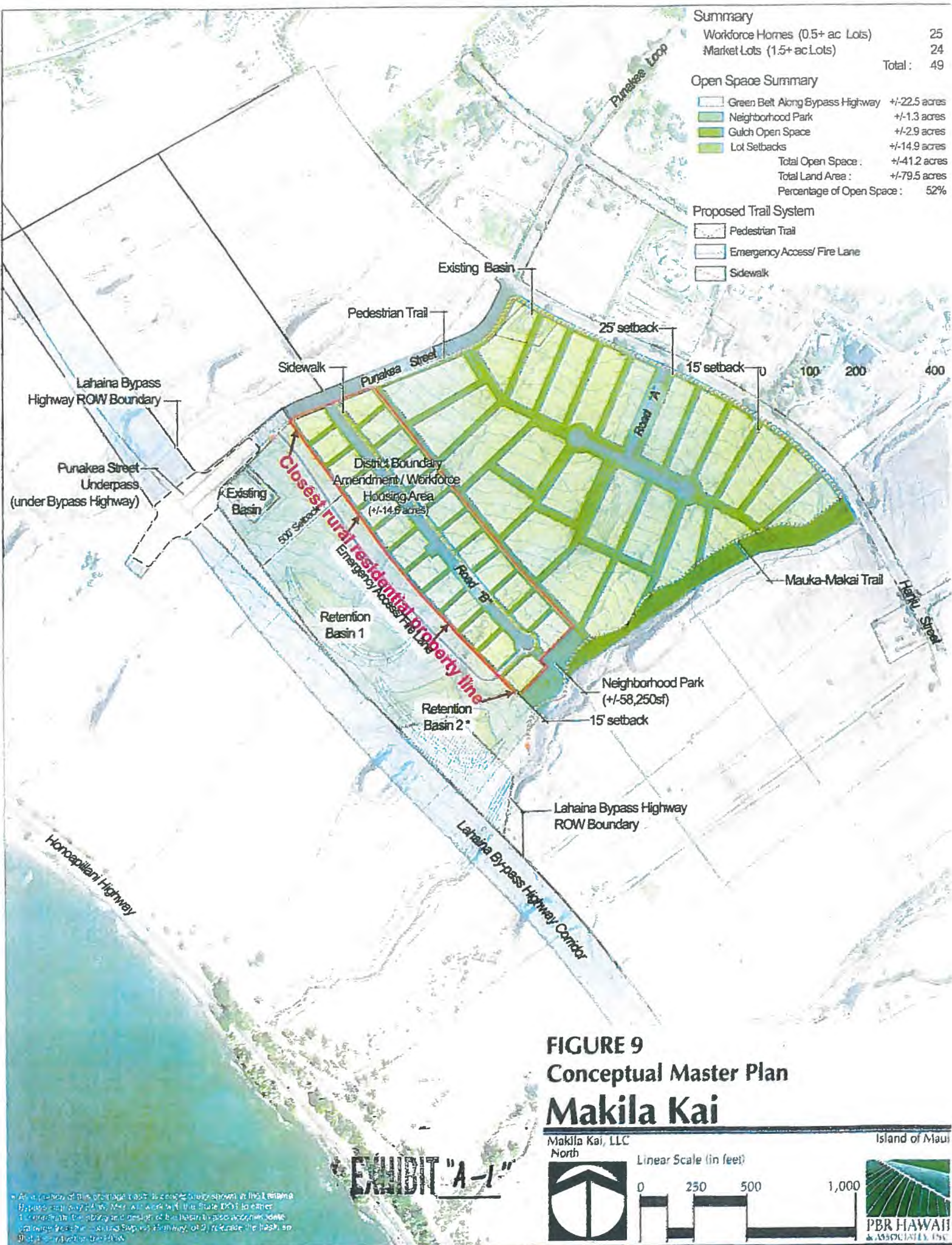
1. An exemption from Chapter 19.30A, MCC, Agricultural District, shall be granted to permit the development and use of the subject parcels for single-family residential purposes.
2. The Project shall be exempt from all development design standards set forth in Chapter 19.30A, MCC.
3. An exemption from Chapter 19.30A, MCC, shall be granted to allow the subdivision of the property in the plat configuration shown in the Project site plan. The Project will be in conformance with the Rural District standards set forth under Section 19.29.020, MCC.
4. An exemption from Section 19.68.020, MCC, Applications, and Section 19.68.030, MCC, Procedures; and Section 8-8.4, Revised Charter of the County of Maui (1983), as amended, shall be granted to exempt the Project from: 1) the need to file an application for a reclassification of State Land Use District boundaries for the approximately 14.6 acres of the Property containing the half-acre residential workforce housing lots; and 2) the

EXHIBIT "A"

procedures associated with such application, including the requirement for the Maui Planning Commission to conduct a public hearing on the requested reclassification.

G. Exemption from Title 20, MCC, Environmental Protection

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees, shall be granted to exempt the development of the 14.594-acre portion of the Project containing the 25 residential workforce housing units from grubbing and grading permit fees.



Summary		
Workforce Homes (0.5+ ac Lots)		25
Market Lots (1.5+ ac Lots)		24
	Total :	49
Open Space Summary		
Green Belt Along Bypass Highway	+/-22.5 acres	
Neighborhood Park	+/-1.3 acres	
Gulch Open Space	+/-2.9 acres	
Lot Setbacks	+/-14.9 acres	
Total Open Space :	+/-41.2 acres	
Total Land Area :	+/-79.5 acres	
Percentage of Open Space :	52%	

Proposed Trail System	
Pedestrian Trail	
Emergency Access/ Fire Lane	
Sidewalk	

FIGURE 9
Conceptual Master Plan
Makila Kai

Makila Kai, LLC
 North

Linear Scale (in feet)



Island of Maui



* As a portion of this project, a 50' wide easement is shown in this Retention Basin 1. This easement is shown in this State DOT to either 1) provide the existing design of the basin to provide adequate drainage for the existing Super Elevation of 2) reduce the basin so that it is a 50' wide easement.

EXHIBIT "A-1"

EXHIBIT "B"

Modifications

1. The Makila Kai Affordable Housing Project ("Project") approved by this resolution and the exemptions set forth in Exhibit "A" shall all lapse and become void if:
 - a. By the end of 180 days from the effective date of this resolution, Makila Kai LLC has failed to receive the Maui County Council's approval of a State Land Use District Boundary Amendment from Agricultural District to Rural District, for the approximately 14.594 acres of land for the 25 residential workforce housing units, as depicted in the Application; or
 - b. Construction of the Project has not started within two years of the adoption of this resolution. Start of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of the 14.594 acres containing the 25 residential workforce housing units.
2. The Developer shall act in good faith and with its reasonable best efforts to complete construction of all 25 residential workforce housing units on the 14.594 acres, with all related roads and infrastructure, not later than five years from the effective date of this resolution.
3. The height of all buildings, including but not limited to the 25 residential workforce housing units and all homes to be constructed on lots sold at market prices, shall be limited to one story.
4. The Developer shall develop all workforce housing units before or concurrently with the development of homes on the 24 market-rate lots.
5. The Developer shall develop a well for non-potable water for irrigation with a yield sufficient to meet the non-potable water demand of all 49 lots. Market-rate lots shall absorb the costs of the non-potable water system. Said yield shall serve the project either directly or by dedication to Launiupoko Irrigation Co. in order to alleviate any project impact in Kauaula Stream flows. The County of Maui shall have the right to deny the issuance of building permits for homes on the market-rate lots if and as long as the Developer is in breach of this modification.
6. The Developer shall record in the Bureau of Conveyances of the State of Hawaii restrictions permanently providing for the following:

- a. The residential workforce housing units shall by deed restriction be owner occupied for a period of 30 years. The Developer shall not sell the units at market rate.
 - b. Condominium conversion or further subdivision of any of the 49 lots in the Project is prohibited.
 - c. Use or operation of any dwelling on the 49 lots for transient or short-term rentals, including any rental for a term of less than 180 days, is prohibited.
 - d. Each individual wastewater system shall be constructed and operated strictly in accordance with all applicable laws and regulations, including Section 11-62-31.1 of the Hawaii Administrative Rules, governing general requirements for individual wastewater systems.
 - e. Each individual wastewater system shall be pumped every three to five years and properly maintained.
 - f. The maintenance schedule for each individual wastewater system shall be managed and enforceable by the homeowners' association established for the 49 lots. Fines shall be collected by the homeowners' association if the maintenance schedule for individual wastewater systems is not followed by homeowners of residential workforce housing or market-rate units.
 - g. For an initial marketing period of 120 days, market-rate lots shall be offered to first-time home buyers only, as defined by the criteria set forth in Section 2.96.090(B)(5), MCC, which provides that, for a period of three years before the submittal of the ownership application, an applicant shall not have had an interest of fifty percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.
7. The construction of accessory dwellings shall not be prohibited by any restrictive covenant. Accessory dwellings shall comply with all applicable laws. However, only one wastewater disposal system shall be permitted on each of the 49 lots.
8. The Project shall comply with all applicable requirements of Chapter 2.96, MCC, and Chapter 201H, HRS.

9. The Project shall be developed in strict compliance with the representations made to the Maui County Council in obtaining approval of this Resolution, including the following:
 - a. The Project will be developed in conformance with the Rural District standards (RU-0.5) set forth under Section 19.29.020 MCC.
 - b. Internal Project roadways will be constructed to the Rural street standards as specified under Section 18.16.050, MCC.
 - c. The Developer shall implement and install traffic-calming measures on Road "B," as identified in Figure 9, Makila Kai Final Application for Workforce Housing Community.
 - d. The 49 lots shall be limited to residential and agricultural uses.