

REQUEST FOR LEGAL SERVICES

Date: September 23, 2019
From: Tasha Kama, Chair
Affordable Housing Committee

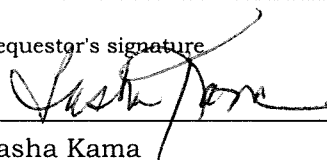
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Mimi DesJardins

Subject: APPROVING WITH MODIFICATIONS THE INDEPENDENT DEVELOPMENT OF THE MAKILA FARMS WORKFORCE AGRICULTURAL COMMUNITY BY MAKILA KAI LLC PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES (AH-1(3))

Background Data: Please review the proposed resolution with revisions and modifications, and if appropriate, approve as to form and legality. A hard copy of the revised proposed resolution with modifications is requested with your response.

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

Requestor's signature  Tasha Kama	Contact Person Alison Stewart (Telephone Extension: 7661)
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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): September 25, 2019 by 4:00pm.
REASON: To submit for posting on the October 4 Council meeting agenda.

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)

ah:ltr:001(3)acc01:ans

Attachments

EXHIBIT "B"

**MAKILA FARMS
MODIFICATIONS**

1. The Makila Farms Project ("Project") approved by this resolution and the exemptions set forth in Exhibit "A" shall all lapse and become void if construction of the residential workforce housing units has not started within five years of the effective date 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 residential workforce housing units.
2. The Developer shall act in good faith and with reasonable best efforts to complete construction of all residential workforce housing units, with related roads and infrastructure, not later than 10 years from the effective date of this resolution.
3. The Developer shall develop all residential workforce housing units before or concurrently with the sale of the market-rate lots.
4. The distribution of the 19 residential workforce housing units across area median income ("AMI") categories shall be as follows:
 - a. Six homes priced for households earning between 50 percent and 65 percent AMI (\$41,900 - \$54,470).
 - b. Seven homes priced for households earning between 66 percent and 85 percent AMI (\$55,308 - \$71,230).
 - c. Six homes priced for households earning between 86 percent and 100 percent AMI (\$72,069 - \$83,800).
5. The Developer shall develop a well for non-potable water for irrigation with a sufficient yield to meet the non-potable water demand of all units within the Project. The market-rate lots shall absorb the costs of the non-potable water initial distribution system. The County of Maui shall not grant final subdivision approval if, and as long as, the Developer is in breach of this modification.
6. The Developer must receive a "will serve" letter from Launiupoko Water Company, and confirmation from the Department of Water Supply of a long-term reliable water supply for the Project.

7. The source of potable and non-potable water for the Project shall not be the Kaua'ula Stream.
8. Potable water shall not be used in irrigation systems for any lot or portion of the Project.
9. The Project will utilize aerobic treatment units ("ATU") in its individual wastewater systems. On each lot, the Developer shall provide, at minimum, one ATU which can accommodate up to five bedrooms. All ATUs shall be maintained by the Project's Homeowners Association, and in accordance with Title 11, Chapter 62, Hawaii Administrative Rules.
10. 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; however, if no loans are approved due to the 30-year deed restriction, the Developer may request of the Council, via resolution, an adjustment of the deed restriction. The Developer shall not sell the workforce housing units at market rate.
 - b. An owner of a workforce unit that is being resold:
 - (1) must sell the unit to an income-qualified household in the same AMI category as the original homebuyer at the time of initial purchase.
 - (2) may retain a maximum three percent appreciation per year.
 - c. The use or operation of any dwelling in the Project for transient or short-term rentals, including any rental for a term of less than 180 days, is prohibited.
 - d. Condominium conversion or further subdivision of any of the lots in the Project is prohibited.
11. Residential workforce housing units shall at all times remain over 50 percent of the total number of housing units in the Project. As permitted by Section 19.30A.050, MCC, there can be two "farm dwellings" on each lot within the Project; however, the number of dwellings on the market-rate lots must not at any time exceed the number of existing dwellings on the workforce lots. Any second dwelling on a workforce lot must be owner occupied or provided as a long-term affordable rental at or below the affordable rent guidelines established by the Department of Housing and Human Concerns.

12. All dwellings in the Project shall be limited to one story.
13. The Developer shall provide a walking path traversable by people of all abilities and consistent with an agricultural area, on the makai side of lots 1-12, in lieu of the asphalt sidewalk proposed in the Project application.
14. There shall be no on-street parking within the Project.
15. The Developer shall provide each residential unit on each lot a map of the Project area and its environs, including all exits and emergency access routes.
16. The Agricultural District permitted uses listed under Section 19.30A.050(6) and (8), relating to minor utility and solar energy facilities, shall require special use permits, as set forth in 19.30A.060.
17. As represented by the Developer, a halau resource cultivation area and an animal pasture, or substantially similar agricultural uses, shall be created and maintained on lots 1-19.
18. The legal instrument establishing the Project's Homeowners Association ("HOA") shall require at least 50 percent of the board membership to be owners of workforce units. It shall also provide that five percent of HOA dues be donated to Mauna Kahalawai Watershed Partnership, as long as it may exist, and then to an organization that provides substantially similar services.
19. The Department of Housing and Human Concerns shall oversee the wait-list and distribution of all residential workforce housing units via lottery. No residential workforce housing units shall be promised or pledged to any applicant prior to such lottery.
20. There shall be no restrictions placed on workforce unit homebuyers in their choice of lenders, including in the pre-qualification process.
21. To the extent legally permissible, the residential workforce housing units shall be restricted to residents of Maui County, with preference given to residents currently employed or residing in the greater Lahaina area.
22. The Developer shall provide a homebuyer financial education program that includes an individual development account (IDA) component, for residential workforce housing unit applicants.
23. The Project shall comply will all applicable requirements of Chapter 2.96, MCC, and Chapter 201H, HRS.
24. The Project shall be developed in substantial compliance with the representations made to the Council in obtaining approval of this

Resolution. The County of Maui has the right to deny the issuance of building permits for any unit on any lot in the Project if, and as long as, the Developer is in breach of any of these modifications.

ah:ltr:001(3)acc01_ExhibitB:ans