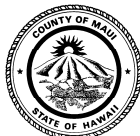


Council Chair
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Presiding Officer Pro Tempore
Tasha Kama

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Nohelani U'u-Hodgins



Director of Council Services
Traci N. T. Fujita, Esq.

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

June 8, 2023

Ms. Kathleen Aoki, Planning Director
Department of Planning
County of Maui
Wailuku, Hawaii 96793

Dear Ms. Aoki:

SUBJECT: BILL 28 (2023), AMENDING ORDINANCE 4998 (2019), RELATING TO CHANGE IN ZONING (CONDITIONAL ZONING) TO WAIKAPU COUNTRY TOWN (WCT) DISTRICT FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII (HLU-8)

Thank you for discussing Bill 28 at the Housing and Land Use Committee meeting of May 30, 2023. I intend to schedule the item again on June 27, 2023, at 9 a.m.

May I please request the Department be prepared to discuss the following:

1. Whether the Department supports Bill 28 and the attached Public Private Partnership Agreement, dated April 28, 2023.
2. Whether the Department has proposed amendments to Bill 28.
3. The estimated cost of the amended Change in Zoning conditions in Sections II, III, IV, and VI of Bill 28.

May I further request a response by **June 22, 2023**. To ensure efficient processing, please transmit your response to hlu.committee@mauicounty.us and include the relevant Committee number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Ana Lillis at ext. 7659, or Stacey Vinoray at ext. 7147).

Ms. Kathleen Aoki
June 8, 2023
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Tasha Kama', with a long horizontal flourish extending to the right.

TASHA KAMA, Chair
Housing and Land Use Committee

hlu:ltr:008apl01:alkl

cc: Mayor Richard T. Bissen, Jr.

Attachment

LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail () Pickup () To:

TMK: (2) 3-6-004:003 & 006 Total No. of Pages: 13
(2) 3-6-005:007
(2) 3-6-006:036
(2) 3-6-002:003

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

County of Maui – Waikapu Country Town

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT (the “Agreement”) made this 28th day of April, 2022, by and between WAIKAPU PROPERTIES, LLC, a Hawaii limited liability company; MTP LAND PARTNERS, LLC, a Hawaii limited liability company; WAIKAPU 905 PARTNERS, LLC, a Hawaii limited liability company; and WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated April 3, 2020, all of whose address is 1670 Honoapiilani Highway, Wailuku, Hawaii 96793 (collectively “WCT”), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“County”).

WHEREAS, WCT intends to develop Waikapu Country Town (the “Development”), a mixed use residential community consisting of 1,433 dwelling units, with the potential for 146 ‘ohana units, commercial uses, an agricultural/conservation easement area, a park, and a school site, on approximately 1400 acres of land;

WHEREAS, the Development is subject to the requirements of the Findings of Fact, Conclusions of Law, and Decision and Order, entered on February 26, 2018, in Docket No. A15-798, which reclassified portions of Development from the State Land Use Agricultural District to the State Land Use Rural and Urban Districts (the "DBA");

WHEREAS, the Development is also subject to the requirements of the conditions of zoning set forth in Ordinance 4998 (2019), the ordinance which changed the zoning for portions of WCT (the "CIZ");

WHEREAS, the Development is currently configured with a 12-acre school site, however the State of Hawaii Department of Education (the "DOE") desires to expand the area of school site;

WHEREAS, in accordance with Chapter 2.96, Maui County Code ("MCC"), upon full buildout the Development shall include a minimum of 287 residential workforce housing units ("RWHUs") as part of the 1,433 permitted dwelling units, resulting in a breakdown of 287 RWHUs and 1146 market units;

WHEREAS, the State of Hawaii and the County desire additional RWHUs in the Development;

WHEREAS, pursuant to Chapter 2.96, MCC, the sales price for RWHUs are established by the County's Affordable Housing Price Guidelines;

WHEREAS, the Development is limited in the total number of units that may be developed;

WHEREAS, by committing to provide the additional RWHUs, WCT is foregoing the opportunity to sell those same units at market prices, and one potential opportunity cost is shown on Exhibit "A", attached hereto;

WHEREAS, WCT anticipates that the Development will produce, on average, 650,000 gallons per day of wastewater;

WHEREAS, WCT originally intended to construct a private wastewater treatment facility for the Development;

WHEREAS, the State of Hawaii has committed matching funds for the construction of a Central Maui Regional Wastewater Treatment Facility ("Central WWTF");

WHEREAS, County and WCT now desire the Development to connect to the Wailuku/Kahului Wastewater Treatment Facility ("Kahului WWTF") in the interim while the Central WWTF is being constructed;

WHEREAS, WCT is required to provide the Development's pro rata share for the total anticipated costs for design and construction of the Waiale Road Extension ("WRE") and other traffic improvements;

WHEREAS, the County and State of Hawaii are working together to secure a funding source for the construction of the WRE;

WHEREAS, the County and WCT desire to establish an agreement where WCT will provide additional RWHUs along with additional acreage for the school site in the Development in-lieu of monetary contributions for infrastructure improvements;

WHEREAS, WCT requires a commitment from the County in regards to its ability to deliver the Development's wastewater to a County treatment facility prior to the commencement of subdivision improvements for the Development;

WHEREAS, before the terms of this agreement may take effect, WCT will be required to amend certain conditions of the DBA and CIZ to make them consistent with this agreement; and

NOW THEREFORE, County and WCT, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby agree as follows:

I. AMENDMENTS TO THE CIZ AND THE DBA

The covenants herein shall not become effective until the conditions of the CIZ and DBA are amended to reflect the terms of this Agreement, including the use of RWHUs to satisfy infrastructure requirements. Nothing herein shall be deemed a commitment on the part of County to amend the terms of the CIZ or support an amendment of the DBA.

II. WRE and TEMPORARY CONNECTION TO THE KAHULUI WWTF

If allowed by the DBA and CIZ conditions, in consideration of WCT providing an additional 63 RWHUs (the "Initial RWHUs") in the Development, resulting in 350 RWHUs and 1,083 market units at full buildout, the County agrees as follows:

- A. The opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's obligations under this Section II.
- B. Pursuant to condition 8(b) of the DBA, County and WCT shall enter into a Traffic Memorandum of Agreement, discussed further in Section III, below, where WCT's traffic impact mitigation obligations and the associated costs will be agreed upon by the County and WCT, including a determination in regards to the Project's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ. The Traffic Memorandum of Agreement shall allow WCT to

provide RWHUs in lieu of cash contributions to satisfy the requirements of said Agreement, including WCT's obligations to:

1. Contribute the Development's pro rata share of the total anticipated costs for design and construction of the WRE, in accordance with Condition 3(b) of the CIZ;
 2. Mitigate all traffic impacts generated by the Development as recommended or required by the County per Condition 8(b) of the DBA;
 3. Fully fund the intersection at Honoapiilani Highway and the WRE, per Condition 1(b) of the CIZ; and
 4. Provide a pedestrian crossing at the intersection of Honoapiilani Highway and the WRE, per Condition 1(d) of the CIZ.
- C. Upon execution of this Agreement, provided the DBA and CIZ conditions are amended to allow the Initial RWHUs to satisfy WCT's obligations to fund adequate wastewater facilities, WCT shall be able to temporarily connect and transmit a maximum amount of 100,000 gallons per day of wastewater to the Kahului WWTF for the Development (the "Temporary Connection"), granting WCT the ability to connect at least 300 dwelling units to the Kahului WWTF. Upon completion of the Central WWTF, the Temporary Connection shall expire and the wastewater shall be diverted to the Central WWTF. If allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development.

III. TRAFFIC MEMORANDUM OF AGREEMENT

As required by conditions 8(b) of the DBA, County and WCT shall enter into a memorandum of agreement ("MOA") concerning WCT's satisfaction of the conditions of the CIZ and the DBA relating to traffic impact mitigation, including, but not limited to those listed in Subsection II.B, above, through the contribution of the Initial RWHUs.

The amount of WCT's pro rata share for the total anticipated cost for the design and construction of the WRE shall be based on the County's anticipated cost, as agreed to by the parties, shall be included in the MOA, less any State or Federal funds received for such purposes.

County and WCT shall reach an agreement regarding the cost of the various traffic impact mitigation obligations set forth in Subsection II.B, above. In the event that the agreed upon cost exceeds the opportunity cost of the Initial RWHUs, as shown on Exhibit A, by more than fifteen percent (15%), then WCT shall have the ability to 1) elect to re-assume specific traffic impact mitigation obligation(s); 2) adjust the number of Initial RWHUs to satisfy the deficit; or 3) come to an agreement with the County in the MOA to satisfy the deficit.

Upon execution of the MOA, WCT shall be deemed to have satisfied the requirement of Condition 8(b) of the DBA and Condition 1(a) of the CIZ for the purpose of allowing subdivision of the property, provided such conditions are amended to allow WCT to provide RWHUs in lieu of cash contributions to satisfy the requirements of the conditions, as each relates

to the execution of a MOA with the County. WCT will still be required to perform its obligations under such agreement even after subdivision approval, and failure to perform the terms of the agreement may constitute a violation of the conditions.

WCT and the State of Hawaii shall enter into a separate MOA in regards to the requirements of the State of Hawaii.

Nothing in this Agreement shall limit the ability of the County to negotiate the terms of the MOA, provided however, the conditions of the CIZ and DBA, and any amendments thereto, as well as the opportunity cost of the Initial RWHUs, as shown on Exhibit A, shall not be subject to further negotiation, as long as the opportunity cost is consistent with the DBA and CIZ conditions as amended.

IV. PRIVATE WASTEWATER TREATMENT FACILITY

The County and WCT recognize that it is the County's intent to construct the Central WWTF and that the construction of the Central WWTF eliminates the need for WCT to construct a private wastewater treatment facility to service the Development. Upon completion of the Central WWTF, the County acknowledges that the Development is within the service area of the Central WWTF and the remainder of the Development shall be able to connect to the Central WWTF (the "Central Connection"). In the event that WCT elects to utilize the Central Connection, an additional 150 RWHUs (the "Private WWTF RWHUs") shall be provided in the Development, resulting in 500 RWHUs and 933 market units at full buildout. If allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development, along with those matters discussed in Sections V and VIII, below. In the event that WCT does not utilize the Central Connection, the Private WWTF RWHUs will not be provided in the Development.

Upon request by WCT, County shall provide updates to WCT on the capacity of the Kahului WWTF and the status of construction of the Central WWTF. In the event that WCT utilizes the entire Temporary Connection prior to the completion of the Central WWTF, the Director is authorized to permit the Development to connect to the Kahului WWTF upon application for building permit, provided capacity is available at the Kahului WWTF.

V. WASTEWATER ASSESSMENT FEES

In addition to the matters discussed in Section II above, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Initial RWHUs, shall be considered an in-lieu contribution for all wastewater assessment fees, including any connection fees, assessed to those units utilizing the initial 100,000 gallons per day of wastewater transmission.

In addition to the matters discussed in Sections IV and VIII, and if allowed by the DBA and CIZ conditions, the opportunity cost of the Private WWTF RWHUs, shall be considered an

in-lieu contribution for all wastewater assessment fees, including connection fees, assessed to the remainder of the Development and no wastewater assessment fees, including connection fees, shall be assessed to the remainder of the Development.

This Agreement shall not exempt the Development from the County's monthly rates and fees for wastewater service.

VI. ADDITIONAL RESIDENTIAL WORKFORCE HOUSING UNITS

The Initial RWHUs and the potential Private WWTF RWHUs (hereinafter collectively the "Additional RWHUs") shall be subject to the terms and conditions of the Residential Workforce Housing Agreement, and any amendments thereto, that is required by Section 2.96.080, MCC. The Additional RWHUs shall not be considered a requirement of the Development per Condition 3 of the DBA or Condition 5 of the CIZ. The Additional RWHUs shall be "for-sale" units and shall be marketed and sold in accordance with the Residential Workforce Housing Agreement. 2.96.060, MCC requires that RWHUs be made available for occupancy either before or concurrently with market rate units at the same ratio required of the development, and that certificates of occupancy shall not be issued and/or final inspections shall not be passed for the market rate units unless certificates of occupancy are issued and/or final inspections are passed for the RWHUs concurrently or sooner. The income group distribution for the Initial RWHUs and the Private WWTF RWHUs are set forth in Exhibit B, attached hereto and made a part hereof.

VII. SATISFACTION OF REQUIREMENT FOR WASTEWATER SERVICE

County and WCT agree that if allowed by the DBA and CIZ conditions, the opportunity cost for the Additional RWHUs shall be considered an in-lieu contribution for WCT's participation in the funding and/or construction of adequate public wastewater source, storage, and transmission facilities to accommodate the proposed uses of the Development in satisfaction of the DBA and CIZ conditions. The Temporary Connection and any determination made in Section IV, above, if applicable, shall satisfy the requirement of Condition 6 of the CIZ relating to the availability of County wastewater facilities prior to the issuance of building permits, for the first 300 units or the remainder of the Development, as applicable.

VIII. RECLAIMED WATER FROM THE CENTRAL WWTF

The Development shall be required to construct a reclaimed water storage/distribution system and shall utilize reclaimed water in an amount approximately equal to the amount of wastewater delivered to the Central WWTF for irrigation purposes. In consideration of the Private WWTF RWHUs, and if allowed by the DBA and CIZ conditions, connection fees for reclaimed water service shall not be assessed to the Development in addition to the matters discussed in Sections IV and VI, above.

IX. DEVELOPMENT OF PRIVATE WASTEWATER TREATMENT FACILITY

Nothing in this Agreement shall preclude WCT from constructing a private wastewater treatment facility for the Development.

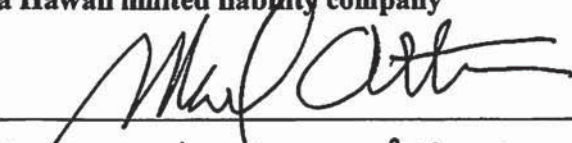
X. MISCELLANEOUS

- A. Binding Effect. All the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns and shall run with the land. This Agreement shall be for the benefit of parties herein.
- B. Severability. If any provision of this Agreement, or any section, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Agreement and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected.
- C. Applicable Law: Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Hawaii. Any legal action under this Agreement shall be filed in the Hawaii judicial system only, and the parties hereby unconditionally submit themselves to the jurisdiction of the courts of the State of Hawaii and the United States District Court for the District of Hawaii, and waive the right to assert that such courts are in an inconvenient forum.
- D. Entire Agreement; Amendments; Interpretation. This Agreement constitutes the entire agreement between the parties regarding subject matter. Any modifications of this Agreement must be in writing and signed by the parties hereto. The headings of sections in this Agreement are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provision of this Agreement. As used herein, the singular shall include the plural and the masculine shall include the feminine and neuter.
- E. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. Duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

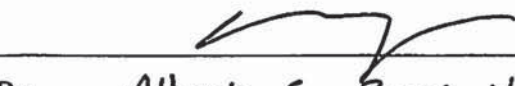
(Signatures on the following page)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

WAIKAPU PROPERTIES, LLC,
a Hawaii limited liability company

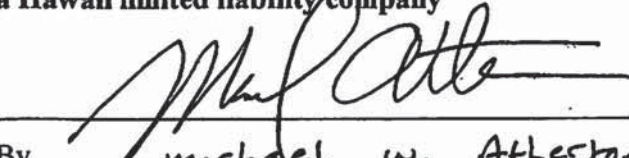

By Michael W. Atherton

Its manager

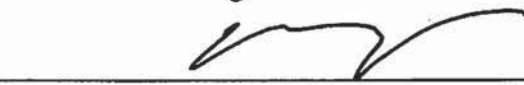

By Albert G. Boyce V

Its manager

MTP LAND PARTNERS, LLC,
a Hawaii limited liability company

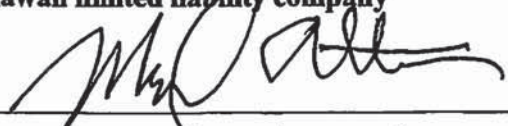

By Michael W. Atherton

Its manager

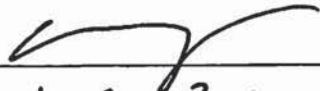

By Albert G. Boyce V

Its manager

WAI'ALE 905 PARTNERS, LLC,
a Hawaii limited liability company

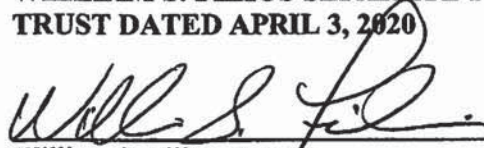

By Michael W. Atherton

Its Manager


By Albert G. Boyre ✓

Its Manager

WILLIAM S. FILIOS SEPARATE PROPERTY
TRUST DATED APRIL 3, 2020


William S. Filios, Trustee

COUNTY OF MAUI

By Michael P. Victorino
MICHAEL P. VICTORINO
Its Mayor

APPROVAL RECOMMENDED:

Lori Tsuhako
LORI TSUHAKE
Director of Housing and Human Concerns

Jordan Molina
JORDAN MOLINA
Director of Public Works

Michele Chouteau McLean
MICHELE CHOUTEAU MCLEAN
Director of Planning

Scott Teruya
SCOTT TERUYA
Director of Finance

Eric Nakagawa
ERIC NAKAGAWA
Director of Environmental Management

APPROVED AS TO FORM
AND LEGALITY:

[Signature]
Deputy Corporation Counsel

EXHIBIT A

OPPORTUNITY COST OF ADDITIONAL RWHUS

Assumption that "market" price is the sales price for a 3-bedroom unit using a 4% interest rate, which is priced for the 180% area median income group, estimated to be \$951,500 (based on 2021 Maui County Affordable Sales Price Guidelines).

Initial RHWUs (63) – \$22,368,100

	Below-Moderate 81-100	Moderate 101-120	Above-Moderate 121-140
Number of RHWUs	19	32	12
Average Sales Price	\$502,200	\$607,900	\$713,650
Opportunity Cost of Each RWHU	\$449,300	\$343,600	\$237,850
Total Value of Add'l RHWUs	\$8,491,770	\$10,823,400	\$2,996,910

Private WWTF RHWUs (150) – \$53,124,000

	Below-Moderate 81-100	Moderate 101-120	Above-Moderate 121-140
Number of RHWUs	45	75	30
Average Sales Price	\$502,200	\$607,900	\$713,650
Opportunity Cost of Each RWHU	\$449,300	\$343,600	\$237,850
Total Value of Add'l RHWUs	\$20,218,500	\$25,770,000	\$7,135,500

The total opportunity cost for the Additional RHWUs is **\$75,510,100**.

EXHIBIT B
INCOME GROUP DISTRIBUTIONS

The income group distribution for Initial RWHUs shall be as follows:

- i. 19 units shall be marketed to “below-moderate income” residents;
- ii. 32 units shall be marketed to “moderate income” residents; and
- iii. 12 units shall be marketed to “above-moderate income” residents.

The income group distribution for Private WWTF RWHUs shall be as follows:

- i. 45 units shall be marketed to “below-moderate income” residents;
- ii. 75 units shall be marketed to “moderate income” residents; and
- iii. 30 units shall be marketed to “above-moderate income” residents.