

# REQUEST FOR LEGAL SERVICES

**D a t e:** June 6, 2024

**F r o m:** Tashs Kama, Presiding Officer Pro Tempore

TRANSMITTAL

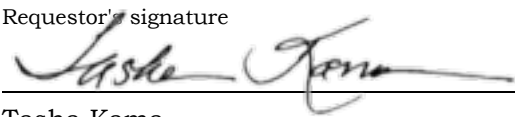
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Kristina Toshikiyo, Esq.

**Subject:** Resolution 24-94, CD1, FD1 (PAF 24-141)

**Background Data:** Please see the attached proposed FD1 version of Resolution 24-94. Please submit your response to county.council@mauicounty.us and carla.m.nakata@mauicounty.us, referencing the PAF number.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Tasha Kama	Contact Person <u>Carla Nakata</u> (Telephone Extension: <u>5519</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): June 6, 2024, 5:00 p.m.

REASON: For distribution, along with Amendment Summary Form, at June 7, 2024, Council meeting.

## 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)

paf:cmn:24-141c

Attachment

# Resolution

**No. 24-94, CD1, FD1**

FURTHER AMENDING RESOLUTION 18-150 TO APPROVE REVISIONS TO THE AFFORDABLE WORKFORCE HOUSING PROJECT BY WAIKAPU DEVELOPMENT VENTURE LLC AND TO EXTEND THE DEADLINE FOR COMPLETION OF THE CONSTRUCTION OF 80 RESIDENTIAL WORKFORCE HOUSING UNITS

WHEREAS, on September 7, 2018, the Maui County Council (“Council”) adopted Resolution 18-150, approving with modifications the Affordable Workforce Housing Project (“Project”) by Waikapu Development Venture LLC in accordance with Section 201H-38, Hawaii Revised Statutes, on 12.5 acres of the 25.263-acre parcel identified for real property tax purposes as tax map key (2) 3-5-002:011 (“Property”); and

WHEREAS, on July 24, 2020, the Council adopted Resolution 20-107, amending Resolution 18-150 to extend the deadlines for the commencement of construction and completion of the Project; and

WHEREAS, Project construction commenced on or about August 2022 with the installation of the offsite waterline and fire hydrants; and

WHEREAS, due to increased material and construction costs, the Project was planned to be abandoned by Waikapu Development Venture LLC; and

WHEREAS, in the interest of moving the Project forward because it provides much-needed residential workforce housing, the Council appropriated funds in the Fiscal Year 2024 Budget contingent upon approval of a further amendment to Resolution 18-150 to grant an extension to complete construction beyond the September 7, 2024, deadline; and

WHEREAS, on May 20, 2024, the Director of Housing and Human Concerns transmitted a resolution proposing revisions to the Project along with modifications and exemptions to reduce costs; and

## **Resolution No. 24-94, CD1, FD1**

WHEREAS, the revised Project will consist of 80 single-family residential workforce housing units on 80 lots that will be offered for sale to income-qualified buyers earning between 70 percent and 140 percent of the County's area median income; and

WHEREAS, in consideration of the prior appropriation of funds, the Council desires to further modify the Project; and

WHEREAS, revisions to the Project include adding a modification requiring owner-occupancy deed restrictions for 30 years, removing exemptions applicable to duplexes, and requesting additional exemptions to reduce costs; and

WHEREAS, Waikapu Development Venture LLC is also requesting an additional five years to complete the Project by September 7, 2029; and

WHEREAS, as noted in Resolution 18-150, as amended, any substantial deviation from the preliminary plans and specifications must be submitted to the Council for prior approval; and

WHEREAS, under 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. Based on the May 20, 2024, transmittal by the Director of Housing and Human Concerns and the representations of Waikapu Development Venture LLC, the Council approves the Project as modified, which will consist of a total of 80 single-family units (instead of 68 single-family units and 12 duplex units), if Waikapu Development Venture LLC complies 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, except for the exemptions specified in Exhibit "B-1";
2. Exhibit "A" to Resolution 18-150, as amended by Resolution 20-107, is deleted and replaced with the attached Exhibit A-1, and any references to Exhibit "A" within the Resolution now refer to Exhibit A-1;

**Resolution No. 24-94, CD1, FD1**

3. Exhibit “B” to Resolution 18-150, including Exhibits “1” through “4” to Exhibit “B,” is deleted and replaced with the attached Exhibit B-1, including Exhibits B-1-a through B-1-c, and any references to Exhibit “B” within the Resolution now refer to Exhibit B-1;
4. The Project plans and specifications submitted to the Council on July 25, 2018, are amended to reflect the revisions to the Project Site Plan described in Exhibit B-1 and shown on Exhibits B-1-a through B-1-c, as attached;
5. The revised plans and specifications are the zoning, building, construction, and subdivision standards for the Project; and
6. That certified copies of this Resolution be transmitted to the Director of Public Works, Planning Director, Director of Housing and Human Concerns, and Waikapu Development Venture LLC.

APPROVED AS TO FORM AND LEGALITY:

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Deputy Corporation Counsel  
County of Maui

paf:cmn:24-141a

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

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ALICE L. LEE

Upon the request of the Mayor.

## **EXHIBIT A-1**

### **MODIFICATIONS**

1. Construction of the Waikapu Development Venture LLC Affordable Workforce Housing Project (“Project”) must commence within three months of the issuance of a grading permit for the Project. Commencement of construction means the visible start of grading, in accordance with a valid grading permit as needed for the development of the 12.5 acres upon which the 80 residential workforce housing units are to be constructed. Waikapu Development Venture LLC must act in good faith and with its reasonable best efforts to complete construction of the 80 residential workforce housing units, with all related roads and infrastructure, no later than September 7, 2029.
2. Project approval will lapse and become void if the State Land Use Commission fails to approve the sale of the Property by Emmanuel Lutheran Church of Maui to Waikapu Development Venture LLC within six months after the effective date of the resolution.
3. Upon execution of the grant agreement for the \$10,650,000 Fiscal Year 2024 appropriation from the Affordable Housing Fund, Waikapu Development Venture LLC must ensure that each residential workforce housing unit is subject to a deed restriction recorded on the individual lot requiring that the unit be owner-occupied for at least 30 years, except if:
  - a. The unit is offered for sale more than 10 years after the initial purchase but within the 30-year deed restricted period; and
  - b. The owner is unable to find a buyer willing to accept the owner-occupancy requirement in an arm’s length transaction, then the County must be offered the right of first refusal to purchase the unit for a period of 90 days from receipt of written notice from the owner. The Director of Finance may negotiate the purchase for purposes in the public interest based on an appraisal obtained from a disinterested appraiser under Section 3.44.015, Maui County Code, subject to Council approval of the acquisition by resolution. If the County does not exercise its right of first refusal, the owner may sell the property without the owner-occupancy deed restriction.
4. Each residential workforce housing unit is subject to the requirements of Chapter 201H, Hawaii Revised Statutes, for 10 years from the date of the initial purchase.
5. Short-term rental homes, transient vacation rentals, and other rentals for period of less than 180 consecutive days are prohibited in perpetuity.

## **EXHIBIT B-1**

### **EXEMPTIONS**

#### **A. EXEMPTIONS FROM TITLE 2, MCC, ADMINISTRATION AND PERSONNEL**

1. An exemption from Chapter 2.80B, MCC, General Plan and Community Plans, is granted to permit the Project to proceed without obtaining a Community Plan Amendment.
2. An exemption from Subsection 2.96.090.A, MCC, is granted to the extent necessary for Waikapu Development Venture LLC and the Department of Housing and Human Concerns, or the successor entity charged with overseeing Chapter 2.96, MCC, to develop an applicant selection process.
3. An exemption from Subsections 2.96.090.B.4 and 5, MCC, is granted to the extent necessary to allow individuals displaced by the August 8, 2023, Maui wildfires to be eligible for a residential workforce housing unit.
4. An exemption from Subsection 2.96.090.D.3.c, MCC, is granted to require that any residential workforce housing units that remain unsold after being offered to the “above-moderate” income group must be offered for sale to the County at the original sales price for a period of 30 days, with the County required to close the sale within 30 days of electing to purchase. If the County does not elect to purchase the residential workforce housing unit or fails to close in a timely manner, Waikapu Development Venture LLC may sell the unit on the open market without deed restrictions.

#### **B. EXEMPTIONS FROM TITLE 8, MCC, HEALTH AND SAFETY**

1. An exemption from Section 8.04.040, MCC, Disposal permits-Application and suspension, must be granted to exempt the Project from the requirement of acquiring a *Disposal Permit*.
2. An exemption from Section 8.04.050, MCC, Disposal charges, must be granted to exempt the Project from *Disposal Charges*.

#### **C. EXEMPTIONS FROM TITLE 12, MCC, STREETS, SIDEWALKS AND PUBLIC PLACES**

1. An exemption from Subsection 12.08.100.A, MCC, Standards and specifications, must be granted to allow driveways within the 15-foot reserve area adjacent to an intersection.

2. An exemption from Section 12.24A.040, MCC, Landscape planting plan, must be granted to exempt the Project from compliance with the *Landscape Planting Plan* to allow a tree to be planted anywhere on the lot after subdivision approval but before conveyance of the lot to the homeowner.

#### **D. EXEMPTIONS FROM TITLE 14, MCC, PUBLIC SERVICES**

1. An exemption from Section 14.05.090, MCC, Fire protection, must be granted to exempt the Project from providing *Fire Protection* for the portions of the Property along Honoapiilani Highway.
2. An exemption from Chapter 14.76, MCC, Impact Fees for Traffic and Roadway Improvements in Wailuku-Kahului, Maui, Hawaii; must be granted to exempt the Project from having to pay *Traffic Impact Fees* should such fees be adopted prior to issuance of building permits for the Project.
3. An exemption from Title 14, MCC, Public Services, must be granted to the extent necessary to allow for the issuance of building permits in accordance with Section 18.28.030, MCC, Subdivisions with major improvements, provided that the requirements of Section 18.20.190, MCC, Final approval prior to completion of construction, have been met, so that the construction of the homes may be done concurrently with the construction and acceptance of the subdivision improvements.

#### **E. EXEMPTIONS FROM TITLE 16, MCC, BUILDINGS AND CONSTRUCTION**

1. Exemptions from MCC Chapters 16.04D, Fire Code, 16.18B, Electrical Code, 16.20C, Plumbing Code, and 16.25, Building Code Administrative and Supplemental Provisions, must be granted to exempt the Project from *Fire, Electrical, Plumbing, and Building* permit fees, as well as inspection fees.
2. An exemption from Section 16.04D.150, MCC, Fire Code, as it pertains to permit fees in Subsection 1.12.8, must be granted to exempt the Project from permit fees required by the Fire Code.
3. An exemption from Section 16.04D.410, MCC, Fire Code, as it pertains to Subsection 18.4.6, must be granted to exempt the Project from providing fire protection for the portions of the Property along Honoapiilani Highway.
4. An exemption from Section 16.25.201, MCC, relating to the applicability and scope of improvements to public streets, as it relates to *Urban Standards for Curbs and Gutters*, must be granted for the portion of the Project adjacent to *Waiale Road* (Please refer to Exhibit B-1-a - Typical Section of Waiale Road).



## **F. EXEMPTIONS FROM TITLE 18, MCC, SUBDIVISIONS**

1. Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, must be granted to exempt the Project from requirements of obtaining a *Change in Zoning and Community Plan Amendment*.
2. An exemption from Section 18.16.220, MCC, Lots-Size and shape, must be granted to allow *Lot Sizes, Widths, Shapes, and Orientation, and Minimum Building Setback Lines*, within the Project that are not consistent with, and not in conformance with the provisions of Chapter 19.31, MCC, Public/Quasi-Public Districts.
3. An exemption from Section 18.16.230, MCC. Lots - Minimum sizes, must be granted to allow lot sizes within the Project that are *not consistent with, and not in conformance with* the provisions of Chapter 19.31, MCC, Public/Quasi-Public Districts.
4. An exemption from Sections 18.20.040 and 18.20.080, MCC, as they relate to the *Urban Standards for Curbs and Gutters*, must be granted for the portions of the Project adjacent to Waiale Road (Please refer to a Typical Section of Waiale Road, attached as Exhibit B-1-a).
5. An exemption from Section 18.20.070, MCC, Sidewalks, must be granted so that five-foot wide concrete sidewalks may only be required on one side of the subdivision internal streets (Please refer to Exhibit B-1-b - Typical Sections of proposed Internal Roadways; and the Project Site Plan, attached as Exhibit B-1-c).
6. An exemption from Chapter 18.40, MCC, Guidelines for Acceptance, must be granted to allow the County to accept the subdivision roadways and utilities located within the subdivision roadways based on the exemptions granted, including exemption C.1 relating to the standards and specifications of driveways.

## **G. EXEMPTIONS FROM TITLE 19, MCC, ZONING**

An exemption from Chapter 19.31, MCC, Public/Quasi-Public Districts, must be granted to permit the development and use of the Property for residential purposes. Permitted uses must be based on Chapter 19.08, MCC, Residential Districts. The Project must be exempt from all Development Design Standards set forth in Chapter 19.31, MCC. Further, this exemption allows the subdivision of the Property in the plat configuration as generally shown in the Project Site Plan, attached as Exhibit B-1-c. The following Zoning Standards apply to the Project:

PERMITTED USES: *Single-Family Dwellings*, as well as accessory dwellings in accordance with Chapter 19.35, MCC, and accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land; provided that Bed and Breakfast Homes, Short-Term Rental Homes, and other rentals for a period of less than 180 days are not be permitted.

MINIMUM LOT SIZE: 3,000 Square Feet

MAXIMUM HEIGHT: No building is allowed to exceed 30 feet in height.

MINIMUM LOT WIDTH: 40 feet

YARDS (BUILDING SETBACKS):

- Front: 10 feet minimum
- Side: Single-story – six feet minimum  
Two-story – 10 feet minimum
- Rear: 15 feet minimum

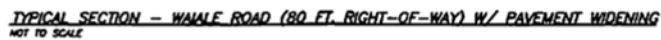
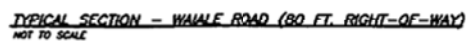
TOTAL NUMBER OF RESIDENTIAL LOTS AND SINGLE-FAMILY DWELLINGS IN THE PROJECT IS EIGHTY (80).

#### **H. EXEMPTIONS UNDER MAUI COUNTY CODE REGARDING PROJECTS COMPRISED OF 100 PERCENT RESIDENTIAL WORKFORCE HOUSING UNITS**

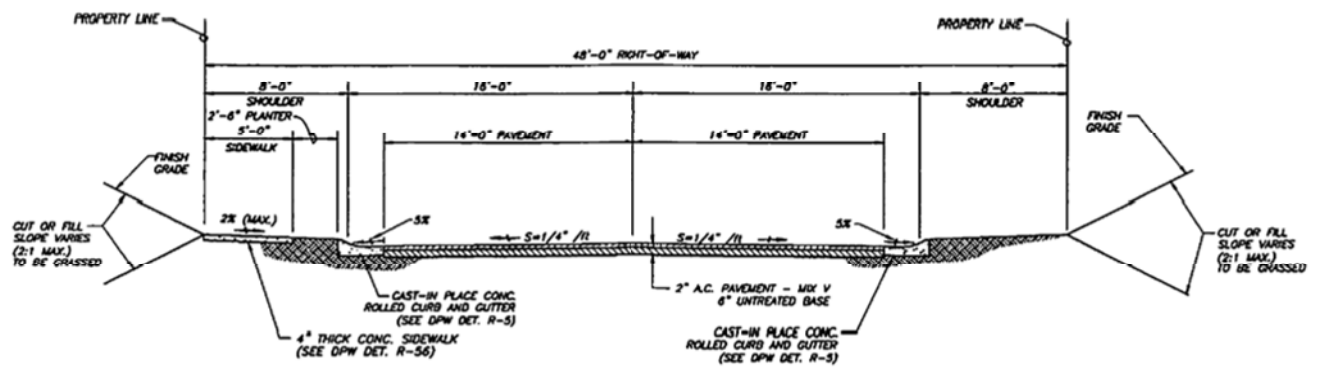
1. Subsection 12.08.050.D, MCC, as it pertains to *Driveway Permit Fees*.
2. Section 14.12.030, MCC, as it pertains to Water Availability.
3. Section 14.35.080, MCC, as it pertains to wastewater assessment fees for facility expansion for the Wailuku/Kahului Wastewater Treatment System.
4. Section 16.18B.107, MCC, as it pertains to the *Electrical Permit Fee* in Section 107.1(c).
5. Section 16.20C.101, MCC, as it pertains to the *Plumbing Permit Fee* in Section 104.5.2(2).
6. Section 16.25.109, MCC, as it pertains to the *Building Permit Fee* in Section 109.2.
7. Subsection 18.16.320.I.5, MCC, as it pertains to the *Parks and playgrounds*.
8. Subsection 20.08.090.D, MCC, as it pertains to *Grubbing and grading permit fees*.

## **I. EXEMPTION FROM ORDINANCE 3686 (2009)**

1. An exemption from the Conditions of Zoning set forth in Exhibit “B” and Exhibit “2” to Exhibit “C” of Ordinance 3686 (2009) is granted to exempt the Project from the conditions imposed.



TYPICAL SECTION  
EXHIBIT B-1-a



TYPICAL SECTION - SUBDIVISION INTERIOR ROADS (KAKAHAKA LOOP, MANULELE STREET, PU'ULIO STREET) (48 FT. RIGHT-OF-WAY)  
NOT TO SCALE

TYPICAL SECTION  
EXHIBIT B-1-b

