

LU Committee

From: Thomas Welch <twelch@mrwlaw.com>
Sent: Thursday, June 01, 2017 4:02 PM
To: LU Committee
Cc: Jeffrey Ueoka; Carol Reimann (Carol.Reimann@co.maui.hi.us); Buddy Almeida (Buddy.Almeida@co.maui.hi.us); Gary Saldana; Carla Nakata; Tom Schnell; Greg Brown (gregbrown@bdmaui.com)
Subject: Makila Kai Exhibit A (Modifications)
Attachments: Exhibit A (Modifications) TDW redraft 6-1-17.docx; Exhibit A (Modificatioons) red-line 6-1-17.docx; Letter to Chair Robert Carroll.docx

Dear Chair Carroll: I am enclosing my letter with enclosures that may be helpful for tomorrow's reconvened meeting of the Land Use Committee.

Regards,
Tom Welch
Attorney for Makila Kai

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June 1, 2017

Via email: lu.committee@mauicounty.us

Chair Robert Carroll
Maui County Council
Land Use Committee

Re: Makila Kai: 201H Resolution

Dear Chair Carroll:

In response to yesterday's public testimony on issues relating to Kauaula Stream flows and septic systems, the developer would willingly accept additional conditions in Exhibit "A" (Modifications) to the proposed 201H Resolution that would address those concerns.

If the Land Use Committee wishes to consider that, I am enclosing some additional suggested language that may be helpful to the Committee. I am enclosing a revised Exhibit A, in word, clean and red-lined highlighting possible language changes.

Again, the developer very much appreciates the Committee's and staff's hard work in addressing our proposal within the pressing time frame.

Very truly yours,



THOMAS D. WELCH, JR.
Attorney for Makila Kai LLC

TDW:jt
Encls.

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Carol Reimann (via email: carol.reimann@co.maui.hi.us)
Buddy Almeida (via email: buddy.almeida@co.maui.hi.us)
Gary Saldana (via email: g.saldana@mauicounty.us)
Carla Nakata (via email: carla.nakata@mauicounty.us)
Tom Schnell (via email: tschnell@pbrhawaii.com)
Greg Brown (via email: gregbrown@bdmaui.com)

EXHIBIT "A"

Modifications

1. This Resolution, the Project approved by this Resolution and the exemptions set forth in Exhibit "B" shall all lapse and become void if (a) by the end of one hundred eighty (180) days from the effective date of this Resolution, Makila Kai LLC shall have failed to receive Maui County Council's approval, by duly adopted Ordinance, of a conditional State Land Use District Boundary Amendment from the agricultural district to the rural district, for the approximately 14.594 acres of land to contain the 25 residential workforce housing units; or (b) construction of the Project shall not have started by the second anniversary 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 said 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 of the 25 residential workforce housing units on the said 14.594 acres, with all related roads and infrastructure, not later than the fifth (5th) anniversary of 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 single story.

4. The Developer shall develop all workforce housing units before or concurrently with the development of homes on the 24 market rate lots. 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 condition.

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. Said yield shall serve the project either directly or by dedication to Launiupoko Irrigation Co. in order to minimize any project impact in Kauaula Stream flows.

6. The Developer shall record in the Bureau of Conveyances of the State of Hawaii restrictions permanently providing for the following:

(a) Condominium conversion or further subdivision of any of the 49 lots in the Project is prohibited.

(b) 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.

(c) Each individual wastewater system shall be constructed and operated strictly in accordance with all applicable laws and regulations including HAR 11-62-31 governing individual wastewater systems.

(d) Each such system shall be pumped on a regular basis and properly maintained.

(e) Wastewater system maintenance shall be enforceable by the homeowners' association that shall be established for the project.

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 lot.

8. The Project shall comply with all applicable requirements of Maui County Code Chapter 2.96 and HRS Chapter 201-H.

9. The Project shall be developed in substantial compliance with the representations made to the Maui County Council in obtaining 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.

EXHIBIT "A"

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1. This Resolution, the Project approved by this Resolution and the exemptions set forth in Exhibit "B" shall all lapse and become void if (a) by the end of one hundred eighty (180) days from the effective date of this Resolution, Makila Kai LLC shall have failed to receive Maui County Council's approval, by duly adopted Ordinance, of a conditional State Land Use District Boundary Amendment from the agricultural district to the rural district, for the approximately 14.594 acres of land to contain the 25 residential workforce housing units; or (b) construction of the Project shall not have started by the second anniversary 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 said 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 of the 25 residential workforce housing units on the said 14.594 acres, with all related roads and infrastructure, not later than the fifth (5th) anniversary of 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 single story.

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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. Said yield shall serve the project either directly or by dedication to Launiupoko Irrigation Co. in order to minimize any project impact in Kauaula Stream flows.

6. The Developer shall record in the Bureau of Conveyances of the State of Hawaii restrictions permanently ~~prohibiting~~ providing for the following:

(a) Condominium conversion or further subdivision of any of the 49 lots in the Project is prohibited.

(b) 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.

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