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By Corporation Counsel at 10:35 am, Sep 21, 2022

REQUEST FOR LEGAL

D a t e: September 20, 2022
F r o m: Gabe Johnson, Chair
Affordable Housing Committee

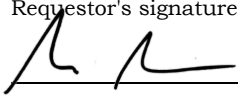
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Mimi DesJardins, Esq.

Subject: KUIKAHI VILLAGE WORKFORCE HOUSING PROJECT (WAILUKU) (AH-35)

Background Data: Please see attached Resolution 22-193 and exhibits. Please submit the response, along with the approving and disapproving resolutions, to ah.committee@mauicounty.us with reference to AH-35.

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

Requestor's signature  Gabe Johnson	Contact Person <u>Paige Greco or Richard E. Mitchell</u> (Telephone Extension: <u>7660 or 7662, respectively</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): September 28, 2022
REASON: For posting on the October 7, 2022, Council meeting agenda

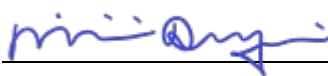
FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MDJ	ASSIGNMENT NO. 2021-0011	BY: dlb
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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 September 29, 2022By 

(Rev. 7/03)

ah:ltr:035acc01:ans

Attachment

Resolution

No. _____

APPROVING WITH MODIFICATIONS THE INDEPENDENT DEVELOPMENT OF THE KUIKAHI VILLAGE WORKFORCE HOUSING PROJECT UNDER CHAPTER 2.97, MAUI COUNTY CODE

WHEREAS, Kuikahi Properties, LLC, proposes the development of the workforce housing project known as the Kuikahi Village Workforce Housing Project (“Project”) on 14.97 acres of land located in Wailuku, Maui, Hawai‘i, identified for real property tax purposes as Tax Map Key (2) 3-5-002:003 (por.); and

WHEREAS, the proposed Project is a 100 percent workforce housing project, consisting of 202 for-sale multi-family, duplex, townhome, live-work, studio, and single-family units; and

WHEREAS, all units will be marketed to households earning between 51 and 140 percent of the area median income, as established by the U.S. Department of Housing and Urban Development; and

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

WHEREAS, the Project is being independently developed under Chapter 2.97, Maui County Code; and

WHEREAS, under Chapter 2.97, the Council of the County of Maui (“Council”) may approve certain exemptions for the Project, and the requested exemption list is attached as Exhibit “A”; and

WHEREAS, under Section 2.97.170, Maui County Code, the Council must approve, approve with modifications, or disapprove the Project by resolution within sixty days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which occurred on August 15, 2022; 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. That based on the transmittals and representations of the Department of Housing and Human Concerns and Kuikahi Properties LLC, the Council approves the Project with the modifications specified in Exhibit “B,” including the Project’s

Resolution No. _____

preliminary plans and specifications as submitted to the Council on August 15, 2022, and supplemented on September 9, 2022, under Chapter 2.97, Maui County Code; except that Kuikahi Properties, LLC, must 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, unless exempted as specified in Exhibit "A";

2. The Project's final plans and specifications will be 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. Any substantial deviation from the preliminary plans and specifications must be submitted to the Council for prior approval;
4. The Project's final plans and specifications constitute the zoning, building, construction, and subdivision standards for the Project;
5. In the event of any conflict between the plans and specifications of the Project and this Resolution, the terms of this Resolution and any exhibits will control; and
6. 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 Kuikahi Properties, LLC.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

ah:misc:035areso01:ans

EXHIBIT “A”

KUIKAHI VILLAGE WORKFORCE HOUSING PROJECT

All title, chapter, section, and subsection references are to the Maui County Code. The following exemptions are approved for the Kuikahi Village Workforce Housing Project:

1. EXEMPTIONS

A. Partial exemption from Section 2.97.160, “Timing of completion”:

A partial exemption from Section 2.97.160 is granted to clarify that bonding to ensure construction completion is in the form of a material bond.

B. Partial exemption from Chapter 2.80B, “General Plan and Community Plans”:

A partial exemption from Chapter 2.80B is granted to permit the Project to proceed without obtaining a community plan amendment.

C. Exemption from Section 8.04.050, “Disposal charges”:

An exemption from Section 8.04.050 is granted to exempt the Project from disposal fees during construction.

D. Exemption from Section 12.04.025(A), “Permit fee”:

An exemption from Section 12.04.025(A) is granted to exempt the Project from fees for the approval of a County highways permit to construct improvements and install off-site utilities on Kuikahi Drive.

E. Partial exemption from Chapter 12.24A, “Landscape Planting and Beautification”:

A partial exemption from Chapter 12.24A is granted to exempt the landscape plan from Arborist Committee review and the preparation and processing of a Landscape Planting Plan application. Landscaping will follow Chapter 12.24A in accordance with the Conceptual Landscape Plan attached as Exhibit “1.”

F. Exemption from Section 12.24A.070(D), “Street trees; Subdivisions”:

An exemption from Section 12.24A.070(D) is granted to allow consistency with Chapter 18.20. Landscaping will follow Chapter 12.24A in accordance with the Conceptual Landscape Plan attached as Exhibit “1.”

G. Exemption from Section 14.07.030, “Water system development fee schedule”:

An exemption from Section 14.07.030 is granted to exempt the Project from water system development fees.

H. Exemption from Section 14.10.040, “Temporary meter charges,” and Section 14.06A.060(B)(3), “Stages of water shortage”:

An exemption from Section 14.10.040 is granted to exempt the Project from fees for a temporary construction water meter. An exemption from Section 14.06A.060(B)(3) is granted to exempt the Project from restrictions on water use of the temporary meter during Project construction.

I. Partial exemption from Chapter 16.04C, “Fire Code”:

A partial exemption from Chapter 16.04C is granted to exempt the Project from Fire Code fees.

J. Partial exemption from Section 18.16.020, “Compliance”:

A partial exemption from Section 18.16.020 is granted to exempt the Project from the need to obtain a change in zoning or community plan amendment to enable subdivision approval; allow for the Project to be developed to the standards outlined in this Exemptions list; and allow for flexible design standards for the proposed roundabout on Kuikahi Drive at the Kehalani Mauka Parkway intersection.

K. Exemptions from Sections 18.16.050, “Minimum right-of-way and pavement widths,” and 18.16.060, “Widening of existing rights-of-way”:

Exemptions from Sections 18.16.050 and 18.16.060 are granted for the Project’s internal roadways. The Project’s internal roadways will have a 20-foot-wide right-of-way.

L. Exemption from Section 18.04.030, “Administration”:

An exemption from Section 18.04.030 is granted to exempt the Project from the need to obtain a change in zoning or community plan amendment

to enable subdivision approval and allow for the Project to be developed to the standards outlined in this Exemptions list.

M. Exemption from Section 18.20.080, “Curbs and gutters”:

An exemption from Section 18.20.080 is granted to allow grass swales within the Project instead of curbs and gutters.

N. Partial exemptions from Titles 14, “Public Services,” 16, “Buildings and Construction,” and 18, “Subdivisions”:

Partial exemptions from Titles 14, 16, and 18 are granted to authorize the Director of Public Works to defer various subdivision requirements or limitations, or both; approve the initial subdivision application for the parcel identified as TMK (2)3-5-002:003, 148.01 acres (“Original Parcel”); and create a 14.97-acre site for the Project.

The Developer represented that no new or additional water service will be required or requested for the purposes of the initial subdivision. Therefore, the initial two-lot subdivision is determined to be exempt from Chapter 14.12.

Additionally, the two-lot subdivision is granted a deferral of subdivision requirements from Chapter 14.05 and Section 16.04C.470 - Subsection 18.4.6 until the parcels are developed, further subdivided, or water service is requested.

When the Project site is developed, further subdivided, or water service is requested, the Developer, or its successor, must construct the subdivision requirements only applicable to the Project site. When the remaining 133.04-acre parcel of the Original Parcel is developed, further subdivided, or water service is requested, the Developer, or its successor, must construct the subdivision requirements only applicable to the 133.04-acre parcel.

O. Partial exemptions from Section 19.04.050, “Fees,” and Section 19.510.010(B), “General application procedures; Fees”:

Partial exemptions from Section 19.04.050 and Section 19.510.010(B) are granted to exempt the Project from building permit resubmittal fees.

P. Exemption from Chapter 19.30A, “Agricultural District”:

An exemption from Chapter 19.30A is granted for the Project site.

The following development standards will be utilized for the Project:

Permitted principal uses: single-family dwellings, multi-family dwellings, parks amenities such as pavilions, gazebos, playgrounds and play courts, and home-based businesses, as defined by Chapter 19.67.

Permitted accessory uses: carports, private garages, small-scale energy systems, fences and walls, and storage sheds.

Minimum lot size:

Dwellings: 4,500 square feet

Parks: 1,250 square feet

Building height as measured from natural or finished grade, whichever is lower:

Dwellings: The maximum building height is limited to three stories and 42 feet.

Park structures: The maximum building height is limited to two stories and 30 feet.

Retaining walls: Retaining walls may not exceed eight feet in height.

Fences and other walls: Fences and other walls may not exceed six feet in height.

Setbacks:

Single-story dwellings up to 15 feet in height: Front: 15 feet; Side and rear: six feet.

Two- and three-story dwellings above 15 feet in height: Front: 15 feet; Side and rear: 10 feet.

Parks structures: 0 feet.

Q. Partial exemption from Section 19.36B.080, “Landscaping”:

A partial exemption from Section 19.36B.080 is granted to allow for flexibility in the location of landscaping and to exempt the Project from submitting a Landscape Planting Plan application. The Project will provide the required number of shade trees and will otherwise comply with Section 19.36B.080 in effect at the time of Project application to the Council. Refer to Exhibit “1.”

R. Exemption from Chapter 19.510, “Applications and Procedures”:

An exemption from Chapter 19.510 is granted to enable the District Boundary Amendment to proceed directly to the Council for referral to the Maui Planning Commission for review as required under Section 8-8.4 of the Revised Charter of the County of Maui (1983), as amended.

2. WAIVERS

Under Section 2.97.150, the project is granted waivers of the following fees:

- A. Driveway permit fee under Section 12.08.050(D).
- B. Wastewater assessment fees for facility expansion for the Wailuku-Kahului regional wastewater treatment system under Section 14.35.080(B).
- C. Impact fees for traffic and roadway improvements in Wailuku-Kahului, Maui, Hawaii under Section 14.76.120(A)(6).
- D. Grubbing and grading permit fees under Section 20.08.090(D).
- E. Plumbing permit fees under Section 16.20B.103.4.1.3.
- F. Electrical permit fees under Section 16.18B.107-1(C).
- G. Building permit fees under Section 16.26B.108.2(2).
- H. Park dedication and assessment fees under Section 18.16.320(I)(5).

3. FEE REIMBURSEMENT

For any fee waivers approved by this Resolution, except those itemized in Section 2 of this Exhibit, the Affordable Housing Fund or another fund will be used to reimburse the following:

- A. Any fund that would have otherwise received revenue from the waived fees; or
- B. The Developer, if the Developer pays the fees in anticipation of being reimbursed.

ah:misc:035areso01a_Exhibit A

EXHIBIT “1”

Conceptual Landscape Plan

EXHIBIT “B”

**KUIKAHI VILLAGE WORKFORCE HOUSING PROJECT
MODIFICATIONS**

1. The Developer must commence construction of the Kuikahi Village Workforce Housing Project within two years of enactment of Bill 127 (2022) and must complete construction within five years of enactment of Bill 127 (2022). Resolution 22-193, inclusive of exhibits, automatically lapses and becomes void if construction has not commenced within two years of enactment of Bill 127 (2022), except that an extension may be granted by Council by resolution.
2. The Developer must develop and manage the Project in substantial compliance with all representations made to the Council and its Affordable Housing Committee, and in its Project application, to obtain approval of this Resolution. The County has the right to deny the issuance of permits if, and as long as, the Developer is in breach of any of these modifications.
3. To the extent permitted by law, the applicants selected by lottery must be ranked by the total length of time each has been a resident of the County. The workforce housing units must then be offered in the order of the rankings.
4. The Developer must record in the State of Hawai'i Bureau of Conveyances a deed restriction for each residential unit within the Project site to remain owner-occupied in perpetuity. This requirement must be listed in the homeowners' association ("HOA") governing documents. Violations of this requirement will be subject to fines paid to the HOA.
5. The HOA must restrict animals allowed within the Project to indoor cats and dogs in enclosed areas. Feeding feral cat colonies and feral chickens is prohibited. The HOA must provide bait stations for rodents and mongooses, including covered trash receptacles.
6. The HOA must provide areas and receptacles for plant composting and recycling.
7. The Developer must construct sidewalks, gutters, and curbs on all frontage streets, and may seek reimbursement from the County for all reasonable associated construction costs. The County intends to reimburse the Developer with funds from the Affordable Housing Fund, or another fund, for all reasonable costs related to frontage street sidewalk, gutter, and curb construction.

8. In addition to Section 2.97.190, Maui County Code, the Developer and the County, in accordance with terms approved by the Department of the Corporation Counsel, must execute a Hold Harmless Agreement that indemnifies the County against any claims of loss or damage caused by any failure of Wailuku Water Company Reservoir #10 (MA-0151) ("Reservoir #10") due to structural defects or negligence related to its operation, maintenance, upkeep, or necessary repair for which the Developer is found liable or responsible as the landowner. In the event the Developer, as the landowner, is found responsible for ensuring compliance with the conditions contained in the Notice of Deficiency ("NOD"), dated September 4, 2021, issued by the State of Hawai'i Department of Land and Natural Resources ("DLNR"), none of the Project's units may be occupied until the DLNR confirms in writing that all remediation actions have been completed.
9. The Developer must disclose to all potential Project homebuyers that Reservoir #10 received a NOD and a High Hazard Potential dam classification by the DLNR on September 4, 2021, and must disclose to the potential Project homebuyers at the time of the sale of each unit of the most current status of compliance with the conditions set forth in the NOD.

ah:misc:035areso01a_Exhibit B