

# REQUEST FOR LEGAL SERVICES

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CORPORATION COUNSEL

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

2019 SEP 25 PM 2: 20

2019 SEP 24 AM 9: 30

TRANSMITTAL  
Memo to:

DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Mimi DesJardins

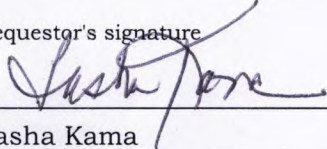
OFFICE OF THE  
COUNTY COUNSEL

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:

RECEIVED  
2019 SEP 25 PM 12: 17  
OFFICE OF THE  
COUNTY COUNSEL

Requestor's signature  Tasha Kama	Contact Person <u>Alison Stewart</u> (Telephone Extension: 7661)
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- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 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

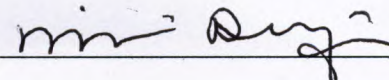
ASSIGNED TO: <u>MDJ</u>	ASSIGNMENT NO. <u>2019-1364</u>	BY: <u>Jcm</u>
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TO REQUESTOR:  APPROVED  DISAPPROVED  OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF THE CORPORATION COUNSEL

Date 9/25/2019

By 

(Rev. 7/03)

ah:ltr:001(3)acc01:ans

Attachments

# Resolution

No. \_\_\_\_\_

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

WHEREAS, Makila Kai LLC, a Hawaii Limited Liability Company, proposes the development of Makila Farms Workforce Agricultural Community (the "Project") for qualified residents on approximately 76 acres located in Launiupoko, West Maui, mauka of Honoapiilani Highway and Lahaina Bypass Highway, on those parcels identified for real property tax purposes as Tax Map Key Nos. Tax Map Key Nos. (2) 4-7-013:003, 004, and 005; and

WHEREAS, the proposed Project will have a total of nineteen (19) affordable single-family residential workforce housing units, and fifteen (15) market priced agricultural residential lots two acres or slightly larger to be built out over a period of years.

WHEREAS, the affordable single-family residential workforce housing units will be developed and sold to qualified individuals earning within fifty percent to one hundred percent of Maui's median income; and

WHEREAS, the Project will provide needed affordable residential workforce housing units to meet the current and growing demand for housing; and

WHEREAS, on August 27, 2019, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying application to the Council of the County of Maui ("Council") recommending approval of the Project pursuant to Chapter 201H, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 201H-38, HRS, the Council may approve certain exemptions for the Project, and the exemption list is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modifications, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on August 27, 2019; and

Resolution No. \_\_\_\_\_

WHEREAS, pursuant to 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,

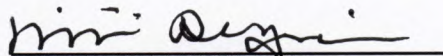
BE IT RESOLVED by the Council of the County of Maui:

1. That based upon the transmittals and the representations of the Department of Housing and Human Concerns and Makila Kai LLC, the Council approves the Project with the modifications specified in Exhibit "B", including the Project's preliminary plans and specifications, as submitted to the Council on August 27, 2019, pursuant to Section 201H-38, HRS; provided that Makila Kai LLC, shall 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 thereon, except for the exemptions specified in Exhibit "A" attached hereto and made a part hereof; and

2. That the final plans and specifications for the Project shall be deemed 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 approved by the Council. Any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval. The final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

3. That certified copies of this resolution be transmitted to the Director of Public Works, Director of Planning, the Director of Housing and Human Concerns, and Makila Kai LLC.

APPROVED AS TO FORM  
AND LEGALITY:



MIMI DESJARDINS  
Deputy Corporation Counsel  
County of Maui

2019-1364

2019-09-24 Makila Farms Approve w/ Modifications

## **EXHIBIT "A"**

### **MAKILA FARMS EXEMPTIONS REQUESTED**

MKL requests the following exemptions from the Maui County Code, pursuant to 201H-38, HRS.

#### **A. Exemptions from Title 16, MCC, Buildings and Construction**

1. An exemption from Section 16.04C.440, MCC, relating to access roads for subdivisions, shall be granted to exempt the 32-foot pavement width requirement on Road "A" and Road "B", provided the following measures are implemented:
  - House lots accessed from Roads "A" and "B" will be greater than 20,000 square feet in area;
  - Subdivision design will prohibit parking on the street pavement at all times using appropriate regulatory signs; and
  - The Homeowners' Association will have the responsibility, means, and authority to enforce this parking restriction.

#### **B. Exemptions from Title 18, MCC, Subdivisions**

1. An exemption from Section 18.16.050, MCC, Minimum Right-Of-Way and Pavement Widths, shall be granted to exempt the Project from widening the Punakea Street pavement.
2. Exemptions from Section 18.16.130, MCC, Cul-de-sacs, shall be granted to allow the Road "B" cul-de-sac to exceed 800 feet in length; provided, that a truck turnaround will be constructed to ensure that emergency access is not compromised by this exemption.
3. An exemption from Section 18.16.220, Lots—Size and Shape, shall be granted to allow lot widths within the Project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
4. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, shall be granted to exempt the Project from park dedication requirements; provided that the Project will include a 500-foot-wide open space "greenbelt" of approximately 18.8 acres, between the Lahaina Bypass Highway and the buildable area of the workforce home lots, as depicted in the Project site plan.

**C. Exemption from Title 19, MCC, Zoning**

1. An exemption from Section 19.30A.030, MCC, shall be granted to allow lots to have a minimum width of less than 200 feet. Lots 1-12 will have a minimum width of 100 feet. Otherwise the project will be in conformance with the Agricultural District standards set forth in Section 19.30A.030, MCC.
2. An exemption from Sections 19.30A.030G and 19.30A.040, MCC, shall be granted to allow the resubdivision of the property into the plat configuration shown in the Project site plan, and to amend the existing allocation agreements restricting further subdivision of the three lots contained in the property.



**Summary**

Workforce homes (2+ ac lots, 1 to 19)	19
Market lots (2+ ac lots, A to O)	15
<b>Total:</b>	<b>34</b>

**Land Allocation Summary**

Lot front, rear, and side yards (setbacks)	
Open space	
500' Greenbelt buffer (18.8 ac.)	
Total building area (maximum 10% of lot area)	+/- 7.4 ac.
Total open space	+/- 66.3 ac.
Roadways	+/- 2.4 ac.
<b>Total area</b>	<b>+/- 76.1 ac</b>
Percentage of open space :	87%

**Conceptual Plan  
Makila Farms**

North

Linear Scale (in feet)  
0 150 300

Island of Maui  
PBR HAWAII & ASSOCIATES, INC.

DATE: 08/01/2019

**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, using the 2019 Affordable Sales Price Guidelines prepared by the County of Maui Department of Housing and Human Concerns:
  - 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.
    - (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, occupied by a family member of the owner, 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 mauka 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 contribute to 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.

p:ah:misc:notes:001(3)exhibitb