

REQUEST FOR LEGAL SERVICES

Date: July 5, 2022
From: Gabe Johnson, Chair
 Affordable Housing Committee

TRANSMITTAL

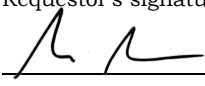
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
 Attention: Mimi DesJardins, Esq.

Subject: HALE WAIPU'ILANI WORKFORCE HOUSING PROJECT (KĪHEI) (AH-17)

Background Data: Please see attached resolution approving with modifications the Hale Waipu'ilani Housing Project. Please sign if the resolution is legally defensible. If the resolution is not legally defensible, please provide a public memo explaining your reasons. Confidential legal advice is not sought. Please submit the response to ah.committee@mauicounty.us with reference to AH-17.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Gabe Johnson	Contact Person <u>Paige Greco or Alison Stewart or Richard Mitchell</u> (Telephone Extension: <u>7660</u> or or <u>7661</u> or <u>7662</u> , respectively)
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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): July 6, 2022
 REASON: For posting on the July 15, 2022 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>MDJ</u>	ASSIGNMENT NO. <u>2021-0011</u>	BY: <u>GMR</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 _____

By _____

(Rev. 7/03)

Resolution

No. _____

APPROVING WITH MODIFICATIONS THE INDEPENDENT DEVELOPMENT OF THE HALE WAIPU‘ILANI WORKFORCE HOUSING PROJECT UNDER CHAPTER 2.97, MAUI COUNTY CODE

WHEREAS, Van Bruce Investments, LLC, proposes the development of the workforce housing project known as the Hale Waipu‘ilani Workforce Housing Project (“Project”) on approximately 1.53 acres of land, located at 16 East Waipu‘ilani Road, Kihei, Maui, Hawai‘i, and identified for real property tax purposes as Tax Map Key (2) 3-9-046:011;

WHEREAS, the proposed Project is a 100 percent workforce housing project, consisting of 28 for-sale multi-family units; and

WHEREAS, all units will be sold to qualified households earning between 80 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 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 (“MCC”); and

WHEREAS, under Chapter 2.97, MCC, 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, MCC, the Council must approve, approve with modification, or disapprove the Project by resolution within 60 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 May 18, 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 upon the transmittals and the representations of the Department of Housing and Human Concerns and Van Bruce Investments, LLC, the Council approves the Project with the modifications specified in Exhibit “B”

Resolution No. _____

including the Project's preliminary plans and specifications, as submitted to the Council on May 18, 2022, under Chapter 2.97, MCC; except that Van Bruce Investments, 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 final plans and specifications for the Project 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 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 Van Bruce Investments, LLC.

APPROVED AS TO FORM AND LEGALITY:



MIMI DESJARDINS
Deputy Corporation Counsel
County of Maui

ah:misc:017areso01a:ans

Resolution No. 22-131

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written over a horizontal line.

Upon the request of the Mayor.

Exhibit A
HALE WAIPU‘ILANI HOUSING PROJECT
EXEMPTIONS

The following exemptions from Maui County Code provisions are approved for the Hale Waipu‘ilani Housing Project (“Project”):

- 1. Section 2.96.050(3) – Residential Workforce Housing Credits**
An exemption is granted from Section 2.96.050(3), Maui County Code, to allow 100 percent of the Project units to qualify for residential workforce housing credits.
- 2. Sections 8.04.040 and 8.04.050 – Disposal Permit and Charges**
An exemption is granted from Sections 8.04.040 and 8.04.050, Maui County Code, to exempt the Project from the requirements of a refuse disposal permit and charges during construction of the Project.
- 3. Section 12.08.050 – Driveway Permit Fee**
An exemption is granted from Section 12.08.050, Maui County Code, to exempt the Project from driveway permit fees.
- 4. Chapter 12.24A – Landscape Planting and Beautification and Section 19.36B.080 – Landscaping**
An exemption is granted from Maui County Code Chapter 12.24A – Landscape Planting and Beautification and Section 19.36B.080 – Landscaping, to allow the Project to follow the Conceptual Landscape Plan proposed in the Project application and plan specifications.
- 5. Section 14.07.030 – Water System Development Fees**
An exemption is granted from Section 14.07.030, Maui County Code, to exempt the Project from water system development fees.
- 6. Section 14.10.040 – Temporary Meter Charges**
An exemption is granted from Section 14.10.040, Maui County Code, to exempt the Project from temporary meter service charges and restrictions on water use of temporary meter during construction of the Project.

7. Chapter 14.34 – Wastewater Assessment Fees

An exemption is granted from Chapter 14.34, Maui County Code, to exempt the Project from wastewater assessment fees for facility expansion of the Kihei Regional Wastewater Treatment System, as provided under Section 14.34.080(B) for developments comprised of 100 percent residential workforce housing units.

8. Chapter 14.68 – Impact Fees for Traffic and Roadway Improvements

An exemption from impact fees for traffic and roadway improvements in Kihei and Makena, Maui is provided under Section 14.68.120(6), Maui County Code, for developments comprised of 100 percent residential workforce housing units.

9. Chapters 16.04C, 16.18B, 16.20B, and 16.26B – Fire Code, Electrical Code, Plumbing Code, and Building Code

An exemption is granted from Chapters 16.04C, 16.18B, 16.20B, and 16.26B, Maui County Code, to exempt the project from fire, electrical, plumbing, and building permit fees, including plan review and inspection fees.

10. Sections 19.04.050 and 19.510.010B – Fees

An exemption is granted from Sections 19.04.050 and 19.510.010B, Maui County Code, to exempt the Project from building permit and permit resubmittal fees.

11. Section 16.26B.3600 – Improvements to Public Streets

An exemption is granted from Section 16.26B.3600, Maui County Code, to allow the Project to proceed without underground placement of existing overhead utility lines.

12. Chapter 18.04, and Section 18.16.020 – General Plan and Community Plan Consistency and Design Standards Compliance

In the event a subdivision is deemed necessary, an exemption is granted from Chapter 18.04 – Subdivisions General Provisions, and Section 18.16.020 – Subdivisions Design Standards Compliance, to exempt the Project from the requirement of a Change in Zoning or Community Plan Amendment.

13. Section 18.16.320 – Parks and Playgrounds

An exemption is granted from Section 18.16.320, Maui County Code, to exempt the Project from park requirements and fees, as provided under

Section 18.16.320(I)(5) for developments comprised of 100 percent residential workforce housing units.

14. Section 18.20.070 – Sidewalks

In the event a subdivision is deemed necessary, an exemption is granted from Section 18.20.070 – Sidewalks, to exempt the Project from the requirement to construct a sidewalk along the North side of East Waipu‘ilani Street. The Project must construct a sidewalk along the Project frontage on the South side of East Waipu‘ilani Street.

15. Section 19.08.020 – Residential Districts

An exemption is granted from Section 19.08.020, Maui County Code, to allow multifamily permitted uses in the Single-Family District. The Project will be subject to a maximum height of 30 feet as defined in 19.04.040 and in accordance with 19.08.050. The Project will also be subject to minimum yard specifications of 15 feet for front yards, and 6 feet for side and rear yards in accordance with Section 19.08.060, Maui County Code. The Project may also use grass-block parking.

16. Section 19.08.060 – Yards

An exemption is granted from Section 19.08.060, Maui County Code, to allow the Project to construct at-grade sidewalks and lanais within the yard setback.

17. Section 20.08.090 – Grubbing and grading permit fees

An exemption is granted from Section 20.08.090, Maui County Code, to exempt the Project from grubbing and grading permit fees, excavation permit fees, and inspection fees.

18. Section 2.96.090(D)(3) – Selection priority

An exemption is granted from Section 2.96.090(D)(3), Maui County Code, to allow the Project to sell any unsold units at no more than 140 percent AMI with deed restrictions consistent with 2.97.090.

Exhibit B

HALE WAIPU‘ILANI HOUSING PROJECT

MODIFICATIONS

1. The Developer is exempt from the requirements of Section 16.26B.3600, Maui County Code, relating to improvements to public streets, so long as it makes improvements consistent with its representations to Council, and provided that the Director of Public Works may require additional improvements for the purpose of ensuring consistency with existing improvements and to provide pedestrian connectivity.
2. The Developer is exempt from the conditions set forth in Section 18.16.050, Maui County Code, relating to minimum right-of-way and pavement widths, and Section 18.16.060, Maui County Code, relating to widening of existing rights-of-way, so long as it provides road widening consistent with its representations to Council, and provided that the Director of Public Works may require additional road widening for the purpose of ensuring consistency with the existing right of way.
3. All units must be owner occupied in perpetuity.
4. Lineal and cultural descendant Vernon Kalanikau or his designee must be allowed to monitor the construction of the foundation of the Project.