

COUNCIL OF THE COUNTY OF MAUI
CLIMATE ACTION, RESILIENCE, AND
ENVIRONMENT COMMITTEE

August 5, 2022

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Climate Action, Resilience, and Environment Committee, having met on July 13, 2022, makes reference to Resolution 22-159 entitled “AUTHORIZING A COUNCIL COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF PLANNING AND THE DEPARTMENT OF PUBLIC WORKS RELATED TO THE COUNTY’S ISSUANCE OF DEVELOPMENT APPROVALS FOR REAL PROPERTY LOCATED AT 5385 LOWER HONOAPI‘ILANI ROAD, NAPILI, MAUI, HAWAII.”

Resolution 22-159’s purpose is to authorize your Planning and Sustainable Land Use (“PSLU”) Committee to conduct a formal investigation of the Department of Planning and the Department of Public Works on permitting processes and operating procedures concerning the County’s issuance of development approvals for real property located at 5385 Lower Honoapi‘ilani Road, Napili, Maui, Hawai‘i (“Greg Brown Development”).

Your Committee notes that your Government Relations, Ethics, and Transparency (“GREAT”) Committee met on June 29, 2021, November 16, 2021, November 24, 2021 (reconvene), March 15, 2022, March 22, 2022 (reconvene), March 24, 2022 (reconvene), and May 24, 2022, to discuss community concerns over ongoing construction for the Greg Brown Development. As discussed by your GREAT Committee, the Department of Planning granted the Greg Brown Development an exemption from the requirement for a Special Management Area (“SMA”) use permit as a “single-family residence.” The Department of Public Works later issued, and then rescinded, a stop-work order for the project.

COUNCIL OF THE COUNTY OF MAUI

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 2

**Committee
Report No. _____**

After concerns were raised by the community last year, the Council enacted Ordinance 5233 to prohibit new hotel use and limit building heights to 35 feet in the Napili Bay Civic Improvement District, which is where the Greg Brown Development is located.

Your Committee noted Resolution 22-159's adoption would trigger limited powers to subpoena County officers and employees, but the subpoena power does not extend to former County employees or members of the public.

Your Committee notes Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to "conduct investigations of" . . . "the operation of any department or function of the county."

Your Committee further notes the Council or a designated Council committee is authorized by Section 78-9, Hawaii Revised Statutes, to compel persons elected, appointed, or employed by the County "to testify or answer any question regarding" . . . "the government, property, or affairs" of the County under oath or affirmation when conducting a formal investigation.

In addition, your Committee notes the purpose of a legislative investigation is to gather and analyze facts to help the legislative body make well-informed policy decisions on potential future legislation. For the Council, the potential future legislation includes annual budget ordinances, amendments to the County Code, and proposed Charter amendments. Legislative bodies, such as the Council and its standing committees, are not enforcement agencies or courts of law and have no authority to adjudicate penalties. By definition, a legislative investigation is not punitive. A formal investigation allows a Council committee to use, if necessary, the full range of powers afforded to a legislative body.

COUNCIL OF THE COUNTY OF MAUI

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 3

**Committee
Report No. _____**

Your Committee further notes your GREAT Committee has spent extensive resources discussing and receiving oral and written testimony on the Greg Brown Development this term; however, the testimony was not received under oath or affirmation.

Your Committee notes members of the public have expressed lingering concerns with the Greg Brown Development, including the following:

- That the Department of Planning may be issuing SMA permits on behalf of the Maui Planning Commission without confirming the accuracy of applicants' development valuations, as required by the Commission's SMA rules.
- That the Planning Director may not have followed the established process for SMA enforcement after alleged SMA permit violations were brought to the Department of Planning's attention.
- That the Department of Planning may be failing to adequately review private developers' civil engineering drawings to confirm that construction complies with SMA rules and the Coastal Zone Management Act.

Your Committee agreed to amend Resolution 22-159 for clarity and accuracy, including as follows:

- Delete references to swimming pool setbacks.
- Delete a reference to the West Maui Community Plan land use designation relating to building permit plans and application standards.

COUNCIL OF THE COUNTY OF MAUI

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 4

**Committee
Report No. _____**

- State the outcome of the May 12, 2022, Board of Variance and Appeals' meeting involving an appeal of the Planning Director's decision to treat a building permit for the Greg Brown Development as valid.
- Extend the date for your PSLU Committee to submit its findings and recommendations to the Council to December 31, 2022.

Your Committee expressed concern with suggestions to limit or outline the scope of an investigation, hire special counsel, or take other related action, and instead recommended your PSLU Committee be entrusted with the investigation. Under Resolution 21-4, Draft 1, your PSLU Committee is charged with conducting oversight of the Department of Planning and implementing the General Plan objective to promote sustainable land use and growth management.

Your Committee voted 6-0 to recommend adoption of Resolution 22-159, CD1. Committee Chair King, Vice-Chair Sinenci, and members Johnson, Molina, Paltin, and Sugimura voted "aye." Committee member Lee was excused.

Your Committee is in receipt of Resolution 22-159, CD1, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Climate Action, Resilience, and Environment Committee **RECOMMENDS** that Resolution 22-159, CD1, as revised herein and attached hereto, entitled "AUTHORIZING A COUNCIL COMMITTEE TO CONDUCT A FORMAL INVESTIGATION OF THE DEPARTMENT OF PLANNING AND THE DEPARTMENT OF PUBLIC WORKS RELATED TO THE COUNTY'S ISSUANCE OF DEVELOPMENT APPROVALS FOR REAL

COUNCIL OF THE COUNTY OF MAUI

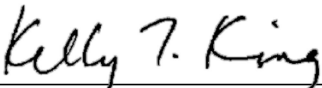
CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 5

**Committee
Report No.** _____

PROPERTY LOCATED AT 5385 LOWER HONOAPI'ILANI ROAD, NAPILI,
MAUI, HAWAII," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of
the Council.



KELLY TAKAYA KING, Chair

care:cr:22090aa:wal

Resolution

No. 22-159, CD1

AUTHORIZING A COUNCIL COMMITTEE TO CONDUCT A
FORMAL INVESTIGATION OF THE DEPARTMENT OF
PLANNING AND THE DEPARTMENT OF PUBLIC WORKS
RELATED TO THE COUNTY'S ISSUANCE OF
DEVELOPMENT APPROVALS FOR REAL PROPERTY
LOCATED AT 5385 LOWER HONOAPI'ILANI ROAD,
NAPILI, MAUI, HAWAI'I

WHEREAS, Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to "conduct investigations of" . . . "the operation of any department or function of the county"; and

WHEREAS, as a part of a formal investigation, the Council is authorized by Section 78-9, Hawai'i Revised Statutes, to compel persons elected, appointed, or employed by the County "to testify or answer any question regarding" . . . "the government, property, or affairs" of the County; and

WHEREAS, questions have been raised by concerned members of the public about possible violations of the Maui Planning Commission's Special Management Area, or SMA, rules or the Comprehensive Zoning Ordinance in the County's issuance of development approvals for the approximately half-acre property located at 5385 Lower Honoapi'ilani Road, Napili, Maui, Hawai'i, known as the Greg Brown Development; and

WHEREAS, the Council's Government Relations, Ethics, and Transparency Committee, or GREAT Committee, has met to evaluate some of the questions about the Greg Brown Development on the following dates: June 29, 2021; November 16, 2021; November 24, 2021; March 15, 2022; March 22, 2022; March 24, 2022; and May 24, 2022; and

WHEREAS, the GREAT Committee's work has been illuminating and effective, but it has not included public testimony or statements under oath or affirmation, which may be part of a formal investigation authorized by resolution; and

WHEREAS, on March 22, 2022, Planning Director Michele Chouteau McLean told the GREAT Committee that "the

Resolution No. 22-159, CD1

complaints from the community were that the building was in violation of SMA rules and zoning, and the community was ultimately proven to be correct”; and

WHEREAS, the Council is hearing from citizens who are concerned that the Department of Planning may be issuing SMA permits on behalf of the Maui Planning Commission without confirming the accuracy of applicants’ development valuations, as required by Section 12-202-12(d)(1) of the Commission’s SMA rules; and

WHEREAS, by correspondence dated May 10, 2022, the County Auditor transmitted to the Council copies of Spire Hawaii LLP’s “Assessment of the Department of Planning’s Zoning and Administrative Enforcement Division”; and

WHEREAS, on pages 35 and 36 of its Assessment, Spire Hawaii LLP stated that the Department of Planning’s policy “memoranda were not codified or converted to administrative rules” or included in standard operating procedures and that “policies in these memoranda can also be superseded by instructions sent verbally or by email”; and

WHEREAS, the Greg Brown Development building permit plans and application applied hotel development standards to a single-family residence permit exemption in apparent contravention of Section 12-202-12(d)(1)(B), Maui Planning Commission’s SMA rules; and Section 19.60.030, Maui County Code, “Napili Bay Civic Improvement District” for the Greg Brown Development; and

WHEREAS, the Council is hearing from citizens who are concerned that the Planning Director may not have followed the established process for SMA enforcement after alleged SMA permit violations were brought to the Department of Planning’s attention; and

WHEREAS, on May 12, 2022, the Board of Variances and Appeals’ meeting agenda included an appeal of the Planning Director’s decision to treat a building permit for the Greg Brown Development as valid, an appeal which the board voted to deny because of the insufficiency of evidence; and

WHEREAS, the Council is hearing from citizens who are concerned that the Department of Planning may be, failing to review private developers’ civil engineering drawings to confirm that construction related

Resolution No. 22-159, CD1

to SMA-permit mitigation and infrastructure are incorporated into the plans; and

WHEREAS, the Council is further concerned about statements by the public that the Department of Planning, may be failing to keep records and perform field inspections of citizens' complaints on SMA permits and issue appropriate Notice of Warnings and Notices of Violation; and

WHEREAS, the Council is also concerned about statements by the public that the Department of Planning, may be making false representations on the compliance of developers' SMA permits; and

WHEREAS, the Council finds that to be fully informed of the relevant facts and circumstances pertaining to this matter, a formal investigation including public testimony or statements under oath or affirmation is required; now, therefore,

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

1. That it authorizes the Council's Planning and Sustainable Land Use Committee to conduct a formal investigation of the Department of Planning and Department of Public Works related to the County's issuance of development approvals for real property located at 5385 Lower Honoapi'ilani Road, Napili, Maui, Hawai'i;
2. That a formal investigation of the Department of Planning and Department of Public Works is required to determine whether County departments acted outside their authority and whether any corrective legislation or other remedies are warranted;
3. That during the formal investigation of the departments, the Planning and Sustainable Land Use Committee may summon the following County officers and employees to appear or testify before the Committee:
 - a. Department of Planning:
 - (1) Planning Director.
 - (2) Deputy Planning Director.
 - (3) Zoning Administration and Enforcement Division Administrator;

Resolution No. 22-159, CD1

- b. Department of Public Works:
 - (1) Director of Public Works.
 - (2) Deputy Director of Public Works.
 - (3) Development Services Administrator.
 - (4) Assistant Development Services Administrator.
 - (5) Building Plans Examiners;
- 4. That on lawful notice of process, the Planning and Sustainable Land Use Committee may summon any person who is necessary to complete the formal investigation, whether they are elected, appointed, or employed in the County;
- 5. That the Planning and Sustainable Land Use Committee may request in writing other persons, including former County employees, to voluntarily appear and give testimony or statements under oath or affirmation during the formal investigation;
- 6. That the formal investigation may be conducted on the Greg Brown Development located at 5385 Lower Honoapi'ilani Road, Napili, Maui, Hawai'i, inclusive of all permits issued on the project;
- 7. That the Planning and Sustainable Land Use Committee must prepare and submit its findings and recommendations to the Council by December 31, 2022; and
- 8. That certified copies of this Resolution be transmitted to the Planning Director, the Director of Public Works, the Corporation Counsel, and the Mayor.

INTRODUCED BY:

Kelly T. King

KELLY TAKAYA KING