

Council Chair
Alice L. Lee

Vice-Chair
Yuki Lei K. Sugimura

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Tom Cook
Gabe Johnson
Tamara Paltin
Keani N.W. Rawlins-Fernandez
Shane M. Sinenci
Nohelani U'u-Hodgins



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

April 16, 2023

Director of Council Services
Traci N. T. Fujita, Esq.

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

Ms. Kathleen Aoki, Director
Department of Planning
County of Maui
Wailuku, Hawaii 96793

Dear Ms. Aoki:

SUBJECT: FISCAL YEAR ("FY") 2024 BUDGET (BFED-1) (PL-3)

Thank you for participating in the Committee's discussions on April 14, 2023.

May I please request your written response to the following:

1. What type of permits require the Department's review and approval only and how many of these permits are approved annually? (NUH)
2. Please provide a copy of the settlement agreement relating to business transactions in the public right-of-way. (TP)
3. In what ways can the Council assist the Department with supporting and retaining Bargaining Unit 3 employees, specifically Zoning Inspectors? (YLS)

May I further request that, after approval by the Office of the Mayor, you transmit a written response to bfed.committee@mauicounty.us by **April 24, 2023**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Thank you for your attention to this request. Should you have any questions, please contact me or the Committee staff (Lesley Milner at ext. 7886, Kasie Apo Takayama at ext. 7665, or Yvette Bouthillier at ext. 7758).

Sincerely,

Yuki Lei K. Sugimura
YUKI LEI K. SUGIMURA, Chair
Budget, Finance, and Economic
Development Committee

bfed:2024bgt:230414apl03:alkl
cc: Mayor Richard T. Bissen, Jr.
Budget Director

BFED Committee

From: BFED Committee
Sent: Sunday, April 16, 2023 1:25 PM
To: kathleen.aoki@co.maui.hi.us
Cc: BFED Committee; garrett.e.smith@co.maui.hi.us; joy.paredes@co.maui.hi.us; Michelle Santos; Zeke Kalua; Maria Zielinski; Desiree Echalas; Janina Agapay
Subject: PLEASE READ attached letter re: FISCAL YEAR ("FY") 2024 BUDGET (BFED 1) (PL-3). . .
Attachments: (PL-3) Correspondence to Planning 04-16-2023.pdf

Ms. Aoki: Please refer to the attached letter from the Budget, Finance, and Economic Development (BFED) Committee Chair, dated 04/16/2023.

Mayor's Office (attention: Michelle Santos and Zeke Kalua): Please forward the attached letter to Mayor Bissen for his information.

Ms. Zielinski: FYI

Thank you,
Yvette Bouthillier, Secretary
BFED Committee

RICHARD T. BISSEN JR.
Mayor

KATHLEEN ROSS AOKI
Planning Director

GARRETT E. SMITH
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

April 19, 2023

Maria Zielinski
Budget Director
200 South High Street
Wailuku, Hawaii 96793

A handwritten signature in blue ink, appearing to read "my", written over a horizontal line.

Honorable Richard T. Bissen Jr.
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

A handwritten signature in blue ink, appearing to read "Richard T. Bissen Jr.", written over a horizontal line.
Mayor Date 4-20-23

For Transmittal to:

Honorable Yuki Lei Sugimura, Chair
Budget, Finance, and Economic Development Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Sugimura:

SUBJECT: FISCAL YEAR ("FY") 2024 BUDGET (BFED-1) (PL-3)

Thank for your April 16, 2023 letter. We offer the following responses to your questions.

1. *What type of permits require the Department's review and approval only and how many of these permits are approved annually? (NUH)*

Please see attached section of the Planning Department's (Department) annual report for FY 2022. This list provides the number of approvals/reviews granted for each fiscal year, beginning FY2019 and ending FY2022, by the Current and Zoning Enforcement and Administration Divisions. All those listed, excluding "Building Permits", are the sole responsibility of the Department.

Honorable Richard T. Bissen Jr
For Transmittal to:
Honorable Yuki Lei Sugimura
April 19, 2023
Page 2

2. *Please provide a copy of the settlement agreement relating to business transactions in the public right-of-way. (TP)*

Please see attached agreement.

3. *In what ways can the Council assist the Department with supporting and retaining Bargaining Unit 3 employees, specifically Zoning Inspectors?*

The Council can support retaining BU03 employees by working with the administration and the Hawaii Government Employees Association (HGEA) union on a Memorandum of Understanding or a Supplemental Contract Agreement to address wages, incentives or benefits. It is our understanding that the Department of Personnel Services (DPS) can only initiate a repricing effort (by a Repricing Review) every 5 years, whereas a supplement to an existing contract and salary schedule can be done at will. There was a previous effort in this regard and the Department of Personnel Services would be the appropriate department to provide assistance.

BU03 and BU04 as a whole are vastly underpaid. In general, the Council could commission a study on the current SR positions in *all* bargaining units throughout the county given the lower wage scale they have in comparison to similar or equivalent positions on the mainland.

Thank you for your attention and consideration. Should you have any questions or need additional information, please feel free to contact me.

Sincerely,



KATHLEEN ROSS AOKI
Planning Director

Attachments

xc: Garrett Smith, Deputy Director (pdf)
Ann Cua, Planning Program Administrator (pdf)
Jordan Hart, Planning Program Administrator (pdf)
Jacky Takakura, Planning Program Administrator (pdf)
Connie Gouveia, Administrative Officer (pdf)
Charmaine Rodrigues, Purchasing Specialist (pdf)

KRA:jlj

S:\ADMIN\BUDGET\FY2024 Budget\Second Round of questions\BFED_PL_3_Response.docx

List of Applications

Current Division

Application or Review Type	Number of Applications			
	FY 2019	FY 2020	FY 2021	FY 2022
State District Boundary Amendments (>15 acres)	3	0	2	1
State District Boundary Amendments (<15 acres)	2	1	0	1
State LUC Special Use Permits	26	15	5	12
State LUC Declaratory Rulings	0	0	1	0
Project District Reviews	9	8	7	3
Changes In Zoning	6	2	1	5
Community Plan Amendments	1	2	1	3
Conditional Permits	2	3	1	1
County Special Use Permits	6	4	7	3
Use Determinations	2	1	0	1
Planned Developments	8	2	2	1
Historic District Permits	30	18	20	19
Historic District Signs	16	15	8	7
Bed and Breakfast Permits	24	5	24	13
B&B Permit Time Extensions	11	3	18	16
Short-Term Rental Home Permits	36	2	16	4
STRH Permit Time Extensions	26	10	21	66
Environmental Assessments	0	4	7	4
Environmental Impact Statements	1	0	0	1
EA Comments	11	8	14	19
EA Exemptions	74	72	63	56
Historic District Approvals	15	4	4	5
MRA Approvals	3	5	6	4
Country Town Business Reviews	9	5	12	10
Cluster Housing Developments	0	0	1	0
R-0 Overlays	0	0	0	0
Requests for Files	186	150	136	23
Requests for Comments	148	178	198	156
Major Permits (SM1)	11	13	10	5
Modifications	11	10	12	37

Current Division, cont.

Application or Review Type	Number of Applications			
	FY2019	FY2020	FY2021	FY2022
Monitoring/Compliance Reports	10	6	7	17
Minor Permits				
Maui (SM2)	102	129	88	107
Molokai (SM6)	2	0	3	1
Lanai (SM7)	1	0	2	0
Exemptions (SM5)*	144	153	134	248
Administrative Appeals	2	1	8	0
Emergency Permits (SM3)	6	8	14	2
Shoreline Setback Variances	0	2	1	1
Shoreline Setback Approvals	60	68	66	42
Shoreline Setback Determinations	5	6	4	2
TOTAL	1,009	913	924	896

Zoning Administration and Enforcement Division

Application or Review Type	Number of Applications			
	FY2019	FY2020	FY2021	FY2022
Building Permits	1,845	1,764	1,491	2,105
Certificates of Occupancy	106	118	131	208
Comprehensive Signage Plans	16	8	5	3
Farm Plans**	20	0	0	0
Ag Declarations**	172	210	179	158
Flood Development Permit	80	139	103	95
Notices of Violation	149	114	83	69
Parking Waivers/ Off-site Approvals	2	16	12	8
Sign Permits	Sign-101 Banner-265	Sign-62 Banner-173	Sign-66 Banner-107	Sign-46 Banner-116
SMA Exemptions (SM5)*	271	130	159	112
Subdivisions	394	468	431	495
Variances and Appeals	29	18	27	24
Zoning Investigations	591	701	776	553
Zoning Verification Forms	4,933	2,894	3,197	2,494

* SMA Exemptions (SM5) are reviewed by both Current and ZAED, and are recorded separately.

** Farm Plans have been replaced by Ag Declarations

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

Keyoni Enterprises LLC and Maui Kai Enterprises LLC dba Tresor-Rare and GRATiAE ("Plaintiffs") and the County of Maui ("County") (collectively, the "parties") have reached this Mutual Settlement Agreement and Release (the "Agreement"), effective April 9, 2015. In consideration of the mutual promises made below, all parties agree as follows:

1. Settlement Provisions.

- A. The parties agree that Maui County Code § 19.52.090, entitled "Selling in Public Places" (the "Ordinance"), shall not apply to conduct by Plaintiffs or their agents as long as Plaintiffs or their agents remain on private property, regardless of the location of the potential customer. Plaintiffs or their agents, as long as they remain on private premises may thus communicate and/or offer samples to passersby located on public premises. Plaintiffs or their agents may not reach out from private premises to grab or touch passersby located on public property, but may offer them samples, which would include extending an arm out from where the agent is standing to hand a sample to a passerby.
- B. The County agrees that "private property" includes all of Plaintiffs' leased premises.
- C. Plaintiffs agree that sales transactions will occur on private premises, that is, the customer will not be on the public sidewalk when a sale is made.
- D. The County agrees not to seek any fines beyond the initial \$1,000 fines (total fines of \$2,000) levied in the Notices of Violation ("NOVs") issued on February 6, 2015 to the landlords of Plaintiffs' premises.
- F. The parties shall stipulate to the dismissal with prejudice of the litigation action captioned *Keyoni Enterprises LLC, et al. v. County of Maui*, Civil No. CV 15-00086 DKW-RLP, filed in the United States District Court for the District of Hawai'i (hereinafter "the litigation"). The Stipulation is attached hereto as Exhibit "A."
- G. Plaintiffs will withdraw their Applications for Appeal of the NOVs currently pending before the County's Board of Variances and Appeals, received by the Department of Planning on March 6, 2015, File Nos. BVAA-T2015/0003 and BVAA-T2015/0004.
- H. The parties agree to the releases and other terms set forth herein.

2. Mutual Releases. Except for the obligations expressly set forth in this Agreement, Plaintiffs, on the one side, and the County, on the other side, for themselves and their respective current and former predecessors, successors, insurers, agents and assigns (collectively the "Releasing Parties"), hereby forever release, waive and discharge the other side (as well as its or their current and former predecessors, successors, insurers, agents and assigns) from all claims,

causes of action, complaints, debts, obligations, demands, lawsuits, expenses, attorneys' fees, costs, damages, liabilities and losses of any nature, type or description, known or unknown, arising out of or related to the litigation, the NOV's or to the Ordinance as they have existed on and before the date hereof (collectively "Claims"). Notwithstanding anything to the contrary, the Parties may enforce this Agreement herein.

The Releasing Parties specifically and expressly contemplate that this Release covers known and unknown Claims for unknown as well as known damages, Claims for anticipated and unanticipated damages, attorney's fees and costs, and Claims for expected and unexpected consequences of any such damages. The Releasing Parties further understand that this Release is a full, final, and complete settlement and release of all Claims they may have against the Released Parties.

3. Non-Admission of Liability. By making this Agreement, the Released Parties do not admit that they have done anything wrong.

4. Severability. If any word, phrase, term, or other part of this Agreement is found to be unenforceable, that unenforceable part will be severed from the Agreement, and the remainder of the Agreement will remain in full force and effect.

5. Binding Effect and Modifications. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives. This Agreement cannot be modified or amended except by a written instrument signed by the parties.

6. Governing Law. This Agreement and the rights of the parties shall be governed by and construed and enforced in accordance with the laws of Hawai'i, and any claims to enforce the terms of this Agreement may be brought in any court of competent jurisdiction in the State of Hawai'i. Each party consents to jurisdiction in Hawai'i for the enforcement of this Agreement.

7. No Assignment. The Releasing Parties expressly represent and warrant that they have not assigned to any third party any claims being released pursuant to this Agreement.

8. Joint Participation in Preparation of Agreement. The parties hereto participated jointly in the negotiation and preparation of this Agreement, and each party has had the opportunity to obtain the advice of legal counsel and to review and comment upon this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. This Agreement shall be construed as if the parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

11. Authority. Each person signing this Agreement hereby represents and warrants that he or she is duly authorized and empowered, and has the requisite authority to bind the respective parties hereto on whose behalf they are signing.

12. Signature. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Copies, including facsimile or e-mail copies, of this Agreement signed by all parties will be deemed originals for all purposes.

13. Attorney's Fees. The parties covenant and agree that each party will bear its own costs and attorneys' fees incurred in connection with the litigation and the settlement of the matters set forth in this Agreement, and that no party will seek reimbursement from another party of any such costs or fees; provided, however, that in the event that there is a breach of this Agreement and/or it is necessary for either party to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, costs and expenses associated therewith.

14. Entire Agreement. This Agreement constitutes the only agreement between the parties.

VICTOR MAZLIAH, Owner
KEYONI ENTERPRISES LLC and
MAUI KAI ENTERPRISES LLC

Date

APPROVED AS TO FORM AND CONTENT:

THOMAS E. BUSH
Attorney for Plaintiffs
KEYONI ENTERPRISES LLC and
MAUI KAI ENTERPRISES LLC

Date

WILLIAM SPENCE,
Director Of Planning Department
COUNTY OF MAUI

Date

APPROVED AS TO FORM AND CONTENT:

RICHARD ROST
Attorney for County
COUNTY OF MAUI

Date

13. Attorney's Fees. The parties covenant and agree that each party will bear its own costs and attorneys' fees incurred in connection with the litigation and the settlement of the matters set forth in this Agreement, and that no party will seek reimbursement from another party of any such costs or fees; provided, however, that in the event that there is a breach of this Agreement and/or it is necessary for either party to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, costs and expenses associated therewith.

14. Entire Agreement. This Agreement constitutes the only agreement between the parties.


VICTOR MAZLIAH, Owner
KEYONI ENTERPRISES LLC and
MAUI KAI ENTERPRISES LLC

Date

APPROVED AS TO FORM AND CONTENT:


THOMAS E. BUSH
Attorney for Plaintiffs
KEYONI ENTERPRISES LLC and
MAUI KAI ENTERPRISES LLC

Date


WILLIAM SPENCE,
Director Of Planning Department
COUNTY OF MAUI

4/10/15
Date


APPROVED AS TO FORM AND CONTENT:


RICHARD ROST
Attorney for County
COUNTY OF MAUI

4/10/15
Date

13. Attorney's Fees. The parties covenant and agree that each party will bear its own costs and attorneys' fees incurred in connection with the litigation and the settlement of the matters set forth in this Agreement, and that no party will seek reimbursement from another party of any such costs or fees; provided, however, that in the event that there is a breach of this Agreement and/or it is necessary for either party to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees, costs and expenses associated therewith.

14. Entire Agreement. This Agreement constitutes the only agreement between the parties.

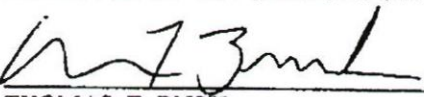


VICTOR MAZLIAH, Owner
KEYONI ENTERPRISES LLC and
MAUI KAI ENTERPRISES LLC

4/9/15

Date

APPROVED AS TO FORM AND CONTENT:



THOMAS E. BUSH
Attorney for Plaintiffs
KEYONI ENTERPRISES LLC and
MAUI KAI ENTERPRISES LLC

4/9/15

Date

WILLIAM SPENCE,
Director Of Planning Department
COUNTY OF MAUI

Date

APPROVED AS TO FORM AND CONTENT:

RICHARD ROST
Attorney for County
COUNTY OF MAUI

Date

BFED Committee

From: Desiree Echalas <Desiree.B.Echalas@co.maui.hi.us>
Sent: Thursday, April 20, 2023 10:15 AM
To: BFED Committee
Subject: FY 2024 (BFED-1)(PL-3)
Attachments: FY24 (BFED-1)(PL-3) Response.pdf

Attached is response PL-3 from Department of Planning.

Mahalo,

Desiree Echalas
Budget Specialist
County of Maui
Office of the Mayor
Desiree.B.Echalas@co.maui.hi.us
Phone: (808) 270-8239