

# REQUEST FOR LEGAL SERVICES

**Date:** September 3, 2020  
**From:** Tasha Kama, Chair  
Affordable Housing Committee

**RECEIVED**

By Dept of the Corporation Counsel at 4:29 pm, Sep 03, 2020

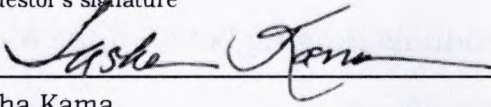
TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Mimi DesJardins

**Subject:** APPROVING WITH MODIFICATIONS THE INDEPENDENT DEVELOPMENT OF THE 100 PERCENT AFFORDABLE HALE KAIOLA RESIDENTIAL WORKFORCE HOUSING PROJECT PURSUANT TO CHAPTER 2.97, MAUI COUNTY CODE (AH-3(1))

**Background Data:** Please review the revised proposed resolution, and if appropriate, approve as to form and legality. A hard copy of the revised proposed resolution with modifications (no changes) is requested with your response.

**Work Requested:** ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY  
☐ [ ] OTHER:

|   |  |
|---|--|
| Requestor's signature<br><br>Tasha Kama | Contact Person<br><u>Alison Stewart</u><br>(Telephone Extension: <u>7661</u> ) |
|---|--|

☐ [ ] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [ ] RUSH (WITHIN 5 WORKING DAYS)  
☐ [ ] PRIORITY (WITHIN 10 WORKING DAYS) ☒ [X] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): September 3, 2020.

REASON: To submit for posting on September 4 for the September 11 Council meeting agenda.

## FOR CORPORATION COUNSEL'S RESPONSE

|              |                |     |
|--------------|----------------|-----|
| ASSIGNED TO: | ASSIGNMENT NO. | BY: |
|--------------|----------------|-----|

TO REQUESTOR: ☒ [X] 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 3, 2020

By /s/ Mimi Desjardins

(Rev. 7/03)

ah:ltr:003(1)acc02:ans

Attachments



# Resolution

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

APPROVING WITH MODIFICATIONS THE INDEPENDENT DEVELOPMENT OF THE 100 PERCENT AFFORDABLE HALE KAIOLA RESIDENTIAL WORKFORCE HOUSING PROJECT IN ACCORDANCE WITH CHAPTER 2.97, MAUI COUNTY CODE

WHEREAS, Hale Kaiola Joint Venture—consisting of Hale Kaiola, LLC and Waihe'e Valley Regensis LLC—proposes the development of the residential workforce housing project known as Hale Kaiola (the "Project") for qualified residents, on approximately three acres located at the corner of Ohukai Street and Kaiola Place, Kihei, Maui, Hawaii, identified for real property tax purposes as Tax Map Key (2) 3-9-029:049; and

WHEREAS, the proposed Project will consist of a 40-unit duplex complex; and

WHEREAS, all 40 units will be sold to individuals ranging between the 80 and 139 percent Area Median Income; and

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

WHEREAS, on July 29, 2020, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying application to the Council, recommending approval of the Project in accordance with Chapter 2.97, Maui County Code ("MCC"); and

WHEREAS, the Project is being independently developed in accordance with Chapter 2.97, MCC; and

WHEREAS, under Chapter 2.97, MCC, the 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 modifications, or disapprove the Project by resolution within 60 days after the Department of Housing and Human Concerns submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on July 29, 2020; 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,



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

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 Hale Kaiola Joint Venture, 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 July 29, 2020, in accordance with Chapter 2.97, MCC, on the condition that Hale Kaiola Joint Ventures 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, except for the exemptions specified in Exhibit "A";

2. That the final plans and specifications for the Project will 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 submitted to the Council; any substantial deviation from the preliminary plans and specifications must be submitted to the Council for prior approval; the final plans and specifications will constitute the zoning, building, construction, and subdivision standards for the Project;

3. In the event of any conflict between the plans and specifications of the Project and this Resolution, terms of the Resolution will control; and

4. 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 Hale Kaiola Joint Ventures.

APPROVED AS TO FORM  
AND LEGALITY:

/s/ Mimi Desjardins

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MIMI DESJARDINS  
Deputy Corporation Counsel  
County of Maui

ah:misc:003(1)ares01:ans



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

Exhibit "A"

**Hale Kaiola Exemption List Per Maui County Code 2.97  
TMK 3-9-029:049**

**A. Exemptions from Title 2, Maui County Code (MCC), Administration and Personnel**

1. An exemption from MCC 2.96.050, Residential Workforce Housing Credits, is requested to allow 100% of the units to qualify for workforce housing credits.
2. Clarification is requested for MCC 2.97.160 to state that the form of bonding to ensure that construction is completed will be in the form of a material house bond.
3. A modification of MCC 2.97.160, Timing of completion, to allow the initiation and completion of construction to be timed with the approval of the SMA Use Permit approval by the Maui Planning Commission rather than the date of the resolution by the Maui County Council. Initiation and completion would still follow the required times, two and five years respectively.

**B. Exemptions from Title 8.04, MCC Health and Safety**

1. An exemption from MCC 8.04.040, and 050, Refuse Collection and Landfills is requested to exempt the project from obtaining a construction waste disposal permit and paying disposal fees during construction. This exemption will not continue once the residential units are occupied.

**C. Exemptions from Title 12, Streets, Sidewalks, and Public Places**

1. Per county code, 2.97.150, an exemption from MCC 12.08.050, Permit Fee, is requested that no fees will be required for the approval and construction of the driveways.
2. If necessary, to provide flexibility, an exemption from MCC 12.24B, Landscape Planting and Beautification, is requested to exempt the project from standard landscaping requirements. Landscaping will be in accordance with the Conceptual Landscape Plan provided by Hawaii Land Design dated August 1, 2019 (see Appendix 5).

**D. Exemptions from Title 14, Public Services**

1. An exemption from MCC Chapter 14.07.030, Water System Development Fees, is requested to exempt the project from water system development fees.
2. Per County Code, 2.97.150, an exemption from MCC 14.34.080, Collection/transmission system project assessment fee, is requested to exempt the project from collection/ transmission system upgrade fees for the Kihei Regional Wastewater Treatment System.



3. Per County Code, 2.97.150, an exemption from MCC 14.68, Impact Fees for Traffic and Roadway Improvements in Kihei and Makena Maui, Hawai'i, is requested to exempt the project from traffic impact fees.

**E. Exemptions from Title 16 Building and Construction.**

1. Per County Code, 2.97.150, exemptions from MCC 16.04C, Fire Code; 16.18B, Electrical Code; 16.20B, Plumbing Code; and 16.26B, Building Code, is requested to exempt the project from Fire, Electrical, Plumbing, and Building Permit fees, as well as plan review and inspection fees.
2. An exemption from MCC 16.26B.3600, Improvements to Public Streets, is requested that the project will not be required to make improvements pertaining to the undergrounding of overhead utility lines, road widening, or other improvements along Kaiola Place. The improvements proposed by the applicant are to construct curbs, gutters, a sidewalk and underground utilities on the project side of Kaiola Place only (not to include the larger transmission lines).

**F. Exemptions from Title 18, Subdivision**

1. Should a subdivision be deemed necessary for any reason, an exemption from MCC 18.04 General Provisions and 18.16.020 Compliance, is requested as related land use consistency and conformity requirements of Title 18, and any requirement to obtain a change in zoning and/or community plan amendment to enable subdivision approval, should subdivision for any purpose be deemed necessary.
2. Per County Code, 2.97.150, an exemption to MCC 18.16.320 Parks and Playgrounds, is requested to exempt the project from parks assessment fees.
3. An exemption from MCC 18.16.050, minimum right-of-way and pavement widths, and 18.16.060 widening of existing rights-of-way is requested. The project would be rendered infeasible if road widening is required as it would reduce the area available for residences on an already "tight" property.

It is notable that there will be no project access from Ohukai, only from Kaiola Place and in a one-way in, one-way out configuration. All parking will be on site; there will be no parking along Kaiola or Ohukai, and "no parking" signs will be posted. Widening Kaiola would also trigger moving existing power transmission lines which would be cost prohibitive.

4. Should a subdivision be deemed necessary for any reason, an exemption from MCC 18.20.070 is requested to allow the applicant to construct sidewalk along project frontage on Kaiola Place only rather than both sides of the street.

**G. Exemptions from Title 19, Zoning**

1. An exemption from MCC 19.04.050 and MCC 19.510.010.B is requested to exempt the project from any building permit resubmittal fees.



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2. An exemption from MCC 19.08.020, Permitted Uses, is requested to allow the construction of one- and two-story duplex dwellings.
3. An exemption from MCC 19.08.060, is requested to allow structures within the setbacks limited to at-grade sidewalks and lanais.
4. If necessary to provide flexibility, an exemption from MCC 19.36B.080, Landscaping, is requested to exempt the project from standard landscaping requirements. Landscaping will be in accordance with the Conceptual Landscape Plan provided by Hawaii Land Design dated August 1, 2019 (Please see Appendix 5 of application dated April 24, 2020).
5. An exemption from MCC 19.36B is requested to allow for 15 compact parking stalls.

Note: The project will be subject to the height regulations found in MCC 19.080.050 at 30 feet, and the yard specifications from MCC 19.08.060, with minimum front yard of fifteen feet, side yards of six feet, and rear yard of six feet.

**H. Exemptions from Title 20**

1. Per County Code, 2.97.150, an exemption from MCC 20.08.090, MCC, Grubbing, and Grading Permit Fees, is requested to exempt the project from grubbing, grading and excavation permit fees, as well as inspection fees.



## **EXHIBIT "B"**

### **HALE KAIOLA RESIDENTIAL WORKFORCE HOUSING PROJECT**

#### **MODIFICATIONS**

1. **Deed-Restricted Period:**

The developer must record in the Bureau of Conveyances of the State of Hawaii deed restrictions providing for the units to remain residential workforce housing units for a period of 20 years.

2. **Revised Exemption E.2:**

Exemption E.2. listed in Exhibit "A" is revised, as recommended by the Department of Public Works, to be as follows:

E. Exemption from Title 16 Building Code and Construction.

2. The project is exempt from Section 16.26B.3600, Maui County Code, except that the following improvements must be installed:

- a. Construct curb and gutters in the existing right-of-way along the property frontage on Kaiola Place in alignment with the existing curb and gutter at the north end of Kaiola Place. Curb and gutters may also be constructed on Ohukai Road where needed to connect to the new curb and gutter to be constructed by the County.
- b. Construct sidewalks in the existing right-of-way along the property frontage on Kaiola Place. Sidewalks may also be constructed on Ohukai Road where needed to connect to the new sidewalks to be constructed by the County. The project must provide additional right-of-way where needed to ensure the sidewalks are located outside of private property.
- c. Overhead utility lines serving the project must be installed underground, except no undergrounding of the existing high-tension power transmission lines is required.

2. **Revised Exemption G.3:**

Exemption G.3. listed in Exhibit "A" is revised, as recommended by the Department of Public Works, to be as follows:

G. Exemption from Title 19 Zoning.

3. An exemption from Section 19.08.060, Maui County Code, is granted to allow structures within the setbacks, limited to at-grade sidewalks, lanais, and locations where an encroachment into the setback area is the direct result of additional right-of-way, as described in Exemption E.2, being provided to accommodate the placement of new sidewalks outside of private property.

ah:misc:003(1)a\_Exhibit B:ans