

AH Committee

From: Kyle Ginoza <kyle@hopebuildershawaii.com>
Sent: Monday, September 28, 2020 5:51 PM
To: Alison N. Stewart; Evan P. Dust; Tasha A. Kama
Cc: AH Committee; Linda Munsell; Mimi Desjardins; Heidi Bigelow; peter@westmauiland.com
Subject: Responses to Council Member Paltin's Questions and Proposed Conditions
Attachments: 9-28-20 Response to the AH Committee Paltin.pdf

Aloha Chair Kama,

Please find attached the responses requested by Council Member Paltin after last week's meeting. I would appreciate the opportunity to go over our attached responses at the beginning of the meeting tomorrow.

The following resource personnel will be present at the meeting tomorrow.

Peter Martin – majority owner of Lihau`ula LLC
Dylan Payne, Ali Linder, and Kamuela Guth – real estate representatives for Lihau`ula LLC
Heidi Bigelow – project manager for Lihau`ula LLC
Glenn Tremble and Dave Minami – Olowalu Water Company, Inc. representatives
Kyle Ginoza – project manager for Lihau`ula LLC

Please let me know if you have any questions. Thank you.

Kyle

Kyle Ginoza
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Faith - Family - Community - Work

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DATE: September 28, 2020
TO: Chair Kama and Members of the Affordable Housing Committee
FROM: Kyle Ginoza on behalf of Lihau`ula LLC

Please find below responses to the proposed conditions and questions provided by Council Member Paltin.

1. The Lihau`ula 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 two 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.

This condition is not acceptable as originally written; however, this condition is acceptable as revised.

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 five years from the effective date of this resolution.

This condition is acceptable.

3. The Developer shall develop all residential workforce housing units before or concurrently with the sale of the market-rate lots.

This condition is acceptable.

4. The distribution of the 40 residential workforce housing units across area median income ("AMI") categories shall be as follows, using the 2020 Affordable Sales Price Guidelines prepared by the County of Maui Department of Housing and Human Concerns or the Affordable Sales Price Guidelines prepared by the County of Maui in effect ~~the year that when~~ the project is ~~marketed in accordance with MCC Chapter 2.96 completed, whichever is lower, and the categories shall not expire:~~

~~a. Six homes priced for households earning between 80 percent and 90 percent AMI—(1) 3BR/2BA, (5) 4BR/2BA.~~

b. ~~Six~~ **Twelve** homes priced for households earning between ~~91~~ **80** percent and 100 percent AMI - ~~(1 2)~~ 3BR/2BA, ~~(5 10)~~ 4BR/2BA.

~~c. Ten homes priced for households earning between 101 percent and 110 percent AMI—(1) 3BR/2BA, (9) 4BR/2BA.~~

d. ~~Ten~~ **Twenty** homes priced for households earning between ~~111~~ **101** percent and 120 percent AMI - ~~(1 2)~~ 3BR/2BA, ~~(9 18)~~ 4BR/2BA.

e. ~~Four homes priced for households earning between 121 percent and 130 percent AMI - (1) 3BR/2BA, (3) 4BR/2BA.~~

f. ~~Four~~ **Eight** homes priced for households earning between ~~131~~ **121** percent and 140 percent AMI - ~~(1 2)~~ 3BR/2BA, ~~(3 6)~~ 4BR/2BA.

This condition is not acceptable as originally written for the following reasons:

- *It is unrealistic to commence a development whereby the housing prices may be capped at a significantly lower price at the end of the development. Such a condition would prevent the developer from securing financing for the project.*
- *The project will not make financial sense with the income brackets proposed. Moreover, increasing the number of income brackets will substantially hinder the lottery and approval process and will ultimately result in giving prospective homeowners lower chances and fewer choices.*

This condition is acceptable as revised.

5. The Developer shall extend the existing private water system, in accordance with the **Olowalu Water Company, Inc. and** State of Hawaii, Department of Health, ~~and CWRM- Olowalu stream IIFS~~ standards to provide necessary domestic **potable** and fire flow demands for the project ~~as well as continue to service the surrounding area. The County of Maui shall not grant final subdivision approval if, and as long as, the Developer is in breach of this condition.~~

This condition is not acceptable as originally written. The developer will pay for the extension of the existing private water system to provide necessary domestic and fire flow demands for the project as required by the County of Maui, however, the developer does not own the water system and therefore cannot agree to continue its service to the surrounding area. The project is not using non-potable water, so the IIFS is not impacted by this project.

This condition is acceptable as revised.

6. The Developer must receive a "will serve" letter from Olowalu Water Company, and confirmation from the Department of Water Supply of a long-term reliable water supply for the Project.

This condition is acceptable.

7. The source of potable and non-potable water for the Project shall not be the Olowalu Stream.

The developer will not be supplying non-potable water to the project; therefore, this condition is acceptable.

8. Potable water shall not be used in irrigation systems for any lot or portion of the Project.

Since a dual water system is not being proposed, this condition is not acceptable. Potable water will be the sole source of irrigation water for the project.

9. On each **workforce** lot, the Developer shall provide, ~~at minimum, one an~~ individual wastewater system, which can accommodate **the number of bedrooms in the workforce homes up to five bedrooms**. ~~All Each~~ IWS shall be maintained by the **Project's Homeowners Association** homeowner, and in accordance with Title 11, Chapter 62, Hawaii Administrative Rules.

This condition is not acceptable as originally written. The developer will provide one individual wastewater system (IWS) for each of the 40 affordable homes sized accordingly; however, the developer will not provide IWSs for the market lots. That way, the future property owner will have the freedom to place his/her IWS in an appropriate location. It is not practical to have the homeowner's association be responsible for managing an individual homeowner's IWS.

This condition is acceptable as revised.

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~~ 10 years **in accordance with 201H; 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.

This condition is not acceptable as originally written. The 10-year deed restriction is reasonable, and fair for the future homeowners, and exceeds the County's 2.96 rules for the two higher income categories. A 30-year deed restriction is a disincentive for owners to maintain their property, and do not allow workforce to gain the financial benefits of homeownership. As it is, the 201H only allows for 1% appreciation/year in the 10 years – that does not cover property taxes, insurance, and interest, so they would be selling at a loss in the 10 years. If this project were utilizing government funds or tax credits, the conversation might be different. Finally, 10 years is a long time, with a lot of unknowns to these young families and 30 years is an eternity.

This condition is acceptable as revised.

- 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.

This condition appears to be in conflict with the HRS 201H requirement which restricts appreciation to 1% for the 10 years. This condition would be implemented by the County of Maui, Department of Housing and Human Concerns, so they would be a more appropriate respondent for this proposed condition.

- 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. Only long term residential use is allowed.

This condition is acceptable.

- d.) Condominium conversion or further subdivision of any of the lots in the Project is prohibited.

This condition is acceptable.

11. The developer must ensure a homeowners' association is established in accordance with Chapter 421J, Hawaii Revised Statutes.

This condition is acceptable.

12. There shall be no accessory dwelling units (ADU) or additional farm dwellings

This condition is acceptable and could warrant further discussion prior to implementation. We, and the Planning Department for this matter, have taken a position that accessory dwelling units or additional farm dwellings should be contemplated due to the lack of affordable housing. This condition would restrict such use.

13. All dwellings in the Project shall be limited to two stories.

This condition is acceptable.

14. There shall be no on-street parking within the Project.

This condition is acceptable.

15. 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.

This condition is acceptable.

16. 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.~~

This first part of this condition is acceptable. To increase the workforce homeowners' HOA dues by 5% for a mandatory donation seems extreme. The developer would prefer not to force additional burden on the workforce homeowners.

This condition is acceptable as revised.

17. The Department of Housing and Human Concerns shall oversee the waitlist 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.

This condition is acceptable.

18. There shall be no restrictions placed on workforce unit homebuyers in their choice of lenders, including in the pre-qualification process.

This condition is acceptable.

19. 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 West Maui Community Plan area.

This condition is acceptable.

20. The Developer shall host at least one homebuyer financial education program workshop, for residential workforce housing unit applicants.

This condition is acceptable.

21. The Project shall comply with all applicable requirements of Chapter 2.96, MCC, and Chapter 201H, HRS.

This condition is acceptable.

22. The developer must construct a rough-in for a future photovoltaic system **in the workforce homes** prior to final building permit inspection approval by the Department of Public Works for each unit of the project.

This condition is acceptable as modified.

23. There shall be no fee waivers.

This condition is not acceptable as it adds considerable cost to the project.

24. There shall be no exemption from 19.68.020 and 19.68.030, MCC.

This condition is not acceptable as it will add significant cost and time to the project. The purpose of exempting the project from these sections is to allow the Maui County Council to

be able to deliberate on the proposed housing project in an expedient manner. The Maui County Council remains the ultimate decision-making body if these sections are exempted.

25. There shall be no exemption from Section 8-8.4, Maui County Charter.

This condition is not acceptable as it will add significant cost and time to the project. The purpose of exempting the project from this section is to allow the Maui County Council to be able to deliberate on the proposed housing project in an expedient manner. The Maui County Council remains the ultimate decision-making body if this section is exempted.

26. 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.

This condition is acceptable.

27. The developer shall provide annual status reports to the Director of Housing and Human Concerns and the Council for all affordable dwelling units, commencing with one year of the effective date of this ordinance. The status report should include: (1) The number of affordable dwelling units and market-priced units sold. (2) The income bracket for each purchaser and purchase price. (3) Status of compliance with all the conditions above.

This condition is acceptable.

28. Please provide further details as to your plans to expand the existing private water system. In your response, please include planned changes to the existing well near Olowalu Stream, possible effects to the stream and aquifer, and final DOH approved engineering report as requested by DWS (pg. 102 of application).

The developer has been in contact with the existing private water system owner about the line extension to serve the project. Upon 201H approval, the entities will engage in more specific discussions on the line extension required to serve the project. The private water system owner derives its potable water source from the Olowalu aquifer, which has a sustainable yield of at least 2.0 million gallons per day. As the current consumption for the system is only a little over 100,000 gallons per day, there is sufficient capacity to accommodate this project. As a result, impacts to the stream and aquifer are not anticipated. As part of the subdivision process, the final DOH approved engineering report will be required by the County DWS and the developer will comply with that request.

28. Please provide DOH's response to Mr. Bagoyo's inquiry sent on July 1, 2019, regarding the project's use of IWS.

In order to establish the applicability of installing IWSs for the project, the developer reached out to the State of Hawaii Wastewater Branch Chief on June 11, 2020. On June 12, 2020, the

developer received written confirmation via email that IWSs for the project would be allowed. Please see the attached email.

29. Please provide the zoning of the planned .69 acre park.

Based on community and County of Maui input, there was a desire for providing mauka/makai access through the property as well as additional vehicular access points for the property. As a result of accommodating those requests, the proposed 0.69-acre park was eliminated.

30. Will the developer install the IWSs for each unit? If so, which type of IWS will they install? Septic or ATU? Is the IWS included in the price of the home? Or, will the homeowners have to pay for that separately? The installed IWSs will be able to accommodate how many bedrooms?

The developer will install an IWS for each of the 40 affordable homes. In discussions with the County and the State, based on the elevation to ground water, installation of conventional septic systems is permitted. Consequently, the developer intends to install septic systems for the 40 affordable homes and the price of the home will be inclusive of the cost of the septic system installation. The installed IWSs will be able to accommodate the number of bedrooms proposed, three or four bedrooms, for each lot.

31. Will there be an HOA that provides maintenance?

Yes, there will be a homeowners' association that provides maintenance of the common areas, including the interior roadways, trail, and drainage basin.

32. Does the developer intend to dedicate roads to the County, or will the roads remain private?

The interior roadways in the project will remain private and there is no intention of dedicating the roads to the County of Maui.

33. Please respond to DLNR's comment that only planning to capture increased run-off in a 50-year event is inadequate and would result in "almost direct transport of polluted run-off into the ocean."

The County of Maui's current standards require the 50-year, 1-hour storm event to be the design conditions.

34. Please respond to DLNR's comment, "without...evaluation of potential environmental impacts, it is unlikely that the appropriate mitigations will be put in place."

The developer is committed to installing the appropriate mitigation measures mandated by the County of Maui. There are controls in place through the permitting process to ensure that the developer executes on its promises.

35. Please respond to the Land Use Commission's concerns regarding the parcelization of the project site and the exclusion of the neighborhood park in the proposed boundary amendment. In your response, please explain why you did not include plans for the areas adjacent to the project site, as requested by the LUC.

The developer has no intention of "parcelization" whereby subsequent 201H projects in the area would be contemplated. The comment regarding the neighborhood park no longer applies since the 0.69-acre neighborhood park was eliminated in favor of mauka/makai access through the property and additional vehicular access points.

36. As requested by the LUC, please clarify as to whether the exemptions for grubbing, grading, and excavating extend to the permits themselves. If so, please provide your response to their request for an assessment.

The requested exemptions for grading and grubbing only apply to the payment of fees; the developer will apply for grading and grubbing permits for project implementation.

37. Page 133 of Appendix C includes the following description: "The wells get dry if pumped continuously for 24 hours, and we have to slow down the pump at night to allow the wells to fill up to a certain extent." Is that description reflective of the current state of the area's water resources? If not, why were those pages included?

The reference to the well on Page 133 of Appendix C appears to refer to a plantation era irrigation well that was utilized in the absence of stream water. This will not be the potable (drinking water) source for the project. As previously mentioned, the sustainable yield for the Olowalu Aquifer is substantially higher than is currently being drawn. This page was included as part of the Archaeological Inventory Survey.

Kyle Ginoza

From: Pruder, Sina L <sina.pruder@doh.hawaii.gov>
Sent: Friday, June 12, 2020 1:02 PM
To: Kyle Ginoza
Cc: Tomomitsu, Mark S; Tejano, Roland C.
Subject: RE: Lihau`ula Workforce Housing Project

Hi Kyle,

I'm doing well. Hope you are doing well too. I'm confirming that the project complies with sections 11-62-31.1(a)(1)(A) &(B) of Chapter 11-62, Hawaii Administrative Rules. Individual wastewater systems would be allowed for this project. Let me know if you should have any questions.

Thanks,
Sina

From: Kyle Ginoza <kyle@hopebuildershawaii.com>
Sent: Thursday, June 11, 2020 11:47 AM
To: Pruder, Sina L <sina.pruder@doh.hawaii.gov>
Subject: [EXTERNAL] Lihau`ula Workforce Housing Project

Hi Sina,

Hope you are doing well. I would like to request confirmation that our project could satisfy the State DOH requirements regarding wastewater treatment. We are scheduled to go in front of our Maui County Council on a 201H project that we are proposing, the Lihau`ula Workforce Housing Project, in Olowalu, Maui. This is the project that I originally asked Eric Nakagawa about a few months ago and he said he consulted with you. I attached a site plan for our project and we have 14.7 acres of the project comprised of 49 single-family residential homes/lots, each more than 10,000 square feet in area, and 13.10 acres of the project comprised of 10 agricultural lots, each greater than one-acre in area.

We designed the project to be compliant under HAR 11-62, specifically in accordance with the requirements of 11-62-31.1. Could you provide confirmation that the project as designed would satisfy 11-62-31.1? Our Maui County Council will likely ask the question about possible compliance during the 201H application review, so I just want to make sure in advance that there are no issues.

I confirm that this project is not part of another development and should this 201H project be approved, similar future projects with 10,000 square foot lots in the area will not qualify for compliance with 11-62 and would have to construct a wastewater treatment facility. There are currently no plans by neighboring landowners to pursue developments of 10,000 square foot lots that we are aware of.

Please let me know if you need more information. Thank you.
Kyle

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