

**COUNCIL OF THE COUNTY OF MAUI**

# **AFFORDABLE HOUSING COMMITTEE**

November 19, 2021

**Committee**  
**Report No.** \_\_\_\_\_

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

Chair and Members:

Your Affordable Housing Committee, having met on November 1, 2021, makes reference to County Communication 21-18, from Council Chair Alice L. Lee, relating to affordable housing projects under Chapter 2.97, Maui County Code.

By correspondence dated October 21, 2021, the Director of Housing and Human Concerns transmitted a proposed resolution entitled “AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS TO ENTER INTO A MARKETING PLAN AS PART OF THE RESIDENTIAL WORKFORCE HOUSING AGREEMENT BETWEEN THE COUNTY OF MAUI AND HALE KAIOLA JOINT VENTURE.”

The purpose of the proposed resolution is to allow the Director of Housing and Human Concerns (“Director”) to incorporate a marketing plan approved by the Council into the Residential Workforce Housing Agreement (“Housing Agreement”) between the County and Hale Kaiola Joint Venture. The marketing plan addresses how units in the Hale Kaiola Project (“Hale Kaiola”) will be sold if they do not sell within the designated affordable sales prices and deed restrictions.

Your Committee noted Hale Kaiola was approved by the Council with modifications under Chapter 2.97, Maui County Code, on September 11, 2020 (Resolution 20-122). The Project will be located in Kihei, Maui, Hawai‘i, and consists of 40 duplex units for sale to qualified buyers earning between 80 and 140 percent area median income (“AMI”) with a 20-year deed-restricted affordability period.

Your Committee received public testimony and comments from the Deputy Director of Housing and Human Concerns and from

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representatives of the developer (“Developer”), now operating under the trade name Alaula Builders.

The Deputy Director said Hale Kaiola was the first project approved for development under Chapter 2.97, Maui County Code. She noted that Chapter 2.97 does not have a provision for a marketing plan and does not authorize the Director to enter into a marketing plan. She also noted the marketing plan could have been presented to the Committee for discussion in 2020, at the time of Project application and approval.

Your Committee notes that while Chapter 2.96 provides steps and criteria for project marketing plans in Section 2.96.090(D), Maui County Code, there is no corresponding marketing plan provision for projects developed under Chapter 2.97. Your Committee also notes that Council approval of the marketing plan is required for the Hale Kaiola Housing Agreement to be fully executed.

Your Committee discussed the proposed marketing plan for Hale Kaiola, attached as Exhibit “2” to the proposed resolution which authorizes the Director to enter into the marketing plan. The proposed plan follows the model of Section 2.96.090(D), Maui County Code, except that: (a) the marketing periods would be set at 180 days instead of 90 days, and (b) any units that remain unsold at the end of the final marketing period would be offered at an affordable sales price without income restrictions or deed restrictions.

Your Committee expressed concern about units being sold at affordable sales prices without any income or deed restrictions, noting that this would promote speculation and run counter to the intent of the Residential Workforce Housing Policy.

The Developer said there were over 1,000 applicants on the wait list, and all 40 units are expected to be sold in their original AMI-designated categories.

Your Committee discussed the Developer’s proposed marketing plan and proposed amendments, which the Developer was amenable to,

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including that the plan should: (a) apply income restrictions throughout the entire marketing period; (b) decrease the deed restriction period from 20 to 10 years before removing restrictions entirely; and (c) offer those units referenced in (b) only to residents.

Your Committee expressed support for a proposed marketing plan, as amended, consisting of the following phases:

1. Units will be offered at their original AMI-designated sales price until the final phase of the marketing period, starting with residents in the applicable income group.
2. Every 180 days, any unsold units will be offered to residents in the next higher income group until all units are sold or there are no more workforce housing income groups.
3. Any unsold units will then be offered to nonresidents on the wait list who are income-qualified for workforce housing.
4. After the marketing period to nonresidents, any units that remain unsold will then be offered to the County for purchase at their original AMI-designated sales price.
5. For the next 90-day period, units not purchased by the County will be offered at their original AMI-designated sales price, with a decreased 10-year deed restriction, to residents who are income-qualified for workforce housing.
6. For the final marketing phase, any unsold units will be offered, without any deed restrictions, to residents who are income-qualified for workforce housing. The sales price will not exceed affordable sales price guidelines for the 140 percent AMI income group, but may exceed the original AMI-designated sales price, in which case the Developer will deposit 50 percent of the difference in price into the Affordable Housing Fund.

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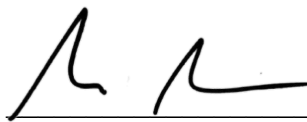
Your Committee confirmed that units offered to the County for purchase after the nonresident marketing period could then be offered to community land trusts, such as Na Hale O Maui or Department of Hawaiian Home Lands, and available as workforce housing in perpetuity. Your Committee also confirmed that the Director must notify the Council if the County declines to purchase an available unit.

Your Committee voted 8-0 to recommend adoption of the revised proposed resolution. Committee Chair Johnson, Vice-Chair Molina, and members Kama, Lee, Paltin, Rawlins-Fernandez, Sinenci, and Sugimura voted “aye.” Committee member King was excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, entitled “AUTHORIZING THE DIRECTOR OF HOUSING AND HUMAN CONCERNS TO ENTER INTO A MARKETING PLAN AS PART OF THE RESIDENTIAL WORKFORCE HOUSING AGREEMENT BETWEEN THE COUNTY OF MAUI AND HALE KAIOLA JOINT VENTURE,” incorporating your Committee’s recommended revisions and nonsubstantive revisions, including amending the resolution’s title.

Your Affordable Housing Committee RECOMMENDS that Resolution \_\_\_\_\_, attached hereto, entitled “AUTHORIZING THE DIRECTOR OF HOUSING AND HUMAN CONCERNS TO ENTER INTO A MARKETING PLAN AS PART OF THE RESIDENTIAL WORKFORCE HOUSING AGREEMENT BETWEEN THE COUNTY OF MAUI AND HALE KAIOLA JOINT VENTURE,” be ADOPTED.

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



\_\_\_\_\_  
GABE JOHNSON, Chair

# Resolution

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

AUTHORIZING THE DIRECTOR OF HOUSING AND HUMAN CONCERNS  
TO ENTER INTO A MARKETING PLAN AS PART OF THE RESIDENTIAL  
WORKFORCE HOUSING AGREEMENT BETWEEN THE  
COUNTY OF MAUI AND HALE KAIOLA JOINT VENTURE

WHEREAS, on September 11, 2020, the County Council (“Council”) passed Resolution 20-122, attached as Exhibit “1,” approving with modifications the independent development of the 100 percent affordable Hale Kaiola Residential Workforce Housing Project (“Project”), under Chapter 2.97, Maui County Code (“MCC”); and

WHEREAS, Chapter 2.97, MCC, does not provide authority to the Director of Housing and Human Concerns (“Director”) to enter into a marketing plan with a developer to address how workforce housing units will be sold in the event they do not sell at the designated affordable sales prices with the designated deed restrictions; and

WHEREAS, Section 2.96.090(D)(4) provides the terms and conditions for marketing plans for projects developed under Chapter 2.96, MCC, but there is no corresponding provision for projects developed under Chapter 2.97, MCC; and

WHEREAS, in the absence of an applicable provision under Chapter 2.97, MCC, Council approval is required to authorize the Director to incorporate the proposed marketing plan into the Residential Workforce Housing Agreement between the County and Hale Kaiola Joint Venture (“Developer”); and

WHEREAS, the Director is requesting the proposed marketing plan, attached as Exhibit “2,” be approved by the Council; now, therefore,

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

1. That the marketing plan as specified in Exhibit “2” is approved;
2. That the Director is authorized to incorporate the marketing plan into the Residential Workforce Housing Agreement between the County and the Developer; and
3. That certified copies of this Resolution be transmitted to the Director of Housing and Human Concerns, the Planning Director, the Director of Public Works, and the Mayor.

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

APPROVED AS TO FORM AND LEGALITY:

/s/ Mimi Desjardins

Deputy Corporation Counsel  
County of Maui

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# Resolution

No. 20-122

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,

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

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## 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.
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

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 20-122 was adopted by the Council of the County of Maui, State of Hawaii, on the 11th day of September, 2020, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

## EXHIBIT “2”

### MARKETING PLAN

#### HALE KAIOLA

#### RESIDENTIAL WORKFORCE HOUSING PROJECT

In the event that units are not sold within the first 180 days after they are offered for sale, and the developer has made a good faith effort, as determined by the Director of Housing and Human Concerns, to contact and qualify applicants on the wait list, the sale of remaining units will be conducted as follows:

- i. For the next 180-day period, units will be offered at the original AMI-designated sales price to the next higher income preference group. For example, units targeted for households earning up to 80 percent of area median income (“AMI”) may be sold to households earning up to 100 percent of AMI. All other eligibility criteria will apply.
- ii. Units will be offered at the original AMI-designated sales price to the next higher income preference group every 180 days until the units are sold, or there are no more workforce housing income groups available.
- iii. Units will then be offered at the original AMI-designated sales price to nonresidents on the wait list in the order in which their names were drawn in the lottery, for the next 180-day period, except that the applicant’s income must be within the workforce housing income groups.
- iv. Any unit that remains unsold will be offered to the County for purchase at its original AMI-designated sales price. If the County declines to purchase a unit, the Director of Housing and Human Concerns will notify the County Council, which may authorize the purchase by resolution.
- v. For the next 90-day period, units will be offered to residents at the original AMI-designated sales price, with a reduced deed-restriction period of 10 years, except that the applicant’s income must be within the workforce housing income groups. In this event, the developer will be deemed to have satisfied the requirement for producing a workforce housing unit.
- vi. Units may then be offered to residents at a sales price not exceeding the affordable sales price guidelines for households earning 140 percent of

AMI, and without deed restrictions. Upon the sale of a unit, the County will receive 50 percent of the difference between the original AMI-designated sales price of the unit and the actual sales price, for deposit into the Affordable Housing Fund. In this event, the developer will be deemed to have satisfied the requirement for producing a workforce housing unit.

- vii. The developer acknowledges that it is not entitled to receive a workforce housing credit for any unit sold without deed restrictions.

ah:misc:002(2)areso01\_Exhibit 2