

REQUEST FOR LEGAL SERVICES

D a t e: August 23, 2021

F r o m: Keani N.W. Rawlins-Fernandez, Chair
Budget, Finance, and Economic Development Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Kristina Toshikiyo, Esq.

Subject: LILOA HALE SENIOR RENTAL HOUSING PROJECT (BFED-58)

Background Data: Please see attached resolution. Please send response to
bfed.committee@mauicounty.us.

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

☐ [] OTHER:

Requestor's signature  Keani N.W. Rawlins-Fernandez	Contact Person <u>Lesley Milner</u> (Telephone Extension: <u>7886</u>)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS)

☐ [] RUSH (WITHIN 5 WORKING DAYS)

☐ [] PRIORITY (WITHIN 10 WORKING DAYS)

☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 25, 2021

REASON: For posting on the September 3, 2021 Council agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ [] 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 _____

By _____

(Rev. 7/03)

bfed:ltr:058acc01:ljcm

Attachment

Resolution

No. _____

AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS TO MODIFY THE REQUIREMENTS OF CHAPTER 2.96, MAUI COUNTY CODE, IN RELATION TO THE COUNTY'S PURCHASE OPTIONS, AND APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE, FOR THE LILOA HALE SENIOR RENTAL HOUSING PROJECT

WHEREAS, the Council passed Ordinance 5099 (2020), which approved a grant award of \$4,300,000 (the "Grant") to Liloa Senior Housing, LP (the "Partnership") for land acquisition, planning and design, on-site improvements, new construction, and other related development costs to produce 117 rental units, of which 104 units were to be rented at or below sixty percent of the area median income, twelve units were to be rented at or below thirty percent of the area median income, and one unit was to be for an on-site property manager without affordability restrictions, to be known as Liloa Hale Senior Rental Housing Project (the "Project"); and

WHEREAS, on September 11, 2020, the Council passed Resolution 20-123, which approved the Project with modifications; and

WHEREAS, in accordance with Section 3.35.040, Maui County Code ("MCC"), a permitted use of the Affordable Housing Fund is to leverage funds provided by federal, state, nonprofit, or for-profit organizations and other non-County entities to further expand affordable housing opportunities; and

WHEREAS, Section 3.35.070(A)(1), MCC, requires that unless otherwise approved by the Council by Resolution, the Project must be held in perpetuity by the grantee or borrower unless conveyed to the County, or to a qualified nonprofit or community land trust; and

WHEREAS, the Partnership will record and be subject to a Residential Workforce Housing Agreement (as defined in Section 2.96.080, MCC) that will be recorded against the Project property concurrently with the recordation of the construction loan mortgage for the Project, under which the Project will be subject to long-term affordability restrictions; and

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WHEREAS, the Limited Partnership intends to apply for one or more of the following (collectively, “Non-County Funds”): an allocation of Federal Low Income Housing Tax Credits, an allocation of State of Hawaii Low Income Housing Tax Credits, a reservation of tax-exempt multifamily rental housing bonds, and a reservation of Rental Housing Revolving Funds from the Hawaii Housing Finance and Development Corporation (“HHFDC”); and

WHEREAS, in order to realize the benefits to the Project from the Non-County Funds, the Partnership requires that the Grant instead be funded as a loan from the County to the Partnership (the “Loan”) on such terms as are to be later agreed upon by the Partnership and approved by the Director of Housing and Human Concerns (“Director”); and

WHEREAS, Section 3.35.070(A)(3), MCC, requires that, unless otherwise approved by the Council by resolution, the Project must not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes established in Chapter 3.35, MCC; and

WHEREAS, Section 3.35.070(A)(4), MCC, requires that, unless otherwise approved by the Council by resolution, the Project must be conveyed to the County or a qualified land trust, in the event of a dissolution or bankruptcy adjudication of the grantee or borrower; and

WHEREAS, the Project’s potential lenders will require that the Project be subject to possible foreclosure or forfeiture in certain events of default under the Project’s loan documents; and

WHEREAS, Section 3.35.070(B)(4), MCC, requires that, unless otherwise approved by Council by resolution, all loans from the Affordable Housing Fund (“AHF”) carry interest at a rate of three percent per annum; and

WHEREAS, in order to obtain adequate funding for the Project, the Partnership requires that the Loan carry a different interest rate; and

WHEREAS, Section 3.35.070(B)(1), MCC, requires that, unless otherwise approved by the Council by resolution, loans from the AHF must be secured by a mortgage in favor of the County that is not lower than second priority; and

WHEREAS, in order to finance the Project, the Partnership will require financing comprised of the following (collectively, the “Senior Loans”): (i) a tax-exempt bond-financed construction loan; (ii) a permanent loan (which may convert from, or serve as “take-out” financing for, the construction loan); (iii) one or more refinancings of the permanent loan; and (iv) a Rental Housing Revolving Fund loan from HHFDC, and each of the Senior Loans will be required to be secured by a mortgage that is senior in priority to the mortgage securing the Loan; and

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WHEREAS, Section 2.96.070(B)(2)(a), MCC, requires that, unless otherwise approved by the Council by resolution, a project owner grant the County a first right to purchase the development from owner in the event the owner decides to sell during the deed restricted period; and

WHEREAS, Section 2.96.070(B)(3), MCC, requires that, unless otherwise approved by the Council by resolution, within ninety days of the expiration of the thirty year deed restricted period, the project owner must offer to sell the Project to the County at a price determined by the owner; and

WHEREAS, the Partnership is unable to comply with the above-described requirements allowing the County the first rights to purchase as they will be in conflict with various agreements that will be necessary to finance the Project; and

WHEREAS, the Partnership is willing to comply with Section 2.96.070(B)(2)(b), MCC, requiring that any new owner during the deed restricted period is required to comply with the applicable deed restrictions; and

WHEREAS, in accordance with Section 2.96.030(D), MCC, the Director is requesting that the requirements of Sections 2.96.070(B)(2)(a) and (B)(3), MCC, be waived; now, therefore,

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

1. That in the event title to the Project is transferred by reason of foreclosure or forfeiture under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process, then Chapter 3.35, MCC, will no longer apply to the Project, except to any portion of the Project not so transferred;
2. That the requirement that the Project be conveyed to the County in the event of a dissolution or bankruptcy adjudication of the grantee or borrower will be subordinated to the rights of any Project lender under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process;
3. The Council acknowledges that one unit in the Project will be utilized by a resident, on-site manager, which unit will not be subject to affordability restrictions;
4. The Council authorizes the County to make the Loan to the Partnership instead of the Grant;

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5. The Council authorizes each of the Senior Loans to be secured by a mortgage that is senior in priority to the mortgage that will secure the Loan;
6. The Council authorizes an interest rate on the Loan to be requested by the Partnership not to exceed the “long-term applicable Federal rate” (as defined in Section 1274 of the Internal Revenue Code);
7. The Council authorizes the Director to waive the requirements of MCC Sections 2.96.070(B)(2)(a) and (B)(3), provided that:
 - (i) the Project is subject to affordability restrictions for sixty years;
 - (ii) the Project remains subject to the requirements of Section 2.96.070(B)(2)(b), MCC;
 - (iii) the County must have the option to purchase the Project on the same terms as under any bona fide third party purchase offer, unless such third party assumes the Project owner’s obligations under the Residential Workforce Housing Agreement;
 - (iv) the County must have the right to purchase the Project within ninety days of the expiration of the term of the Residential Workforce Housing Agreement, unless an additional thirty-year deed restriction is recorded against the Project with substantially similar affordability restrictions as under the Residential Workforce Housing Agreement; and
8. That certified copies of this Resolution be transmitted to the Director of Public Works, the Planning Director, and the Director of Housing and Human Concerns.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

bfed:misc:058areso01:ljcm

Resolution

No. _____

AUTHORIZING THE DIRECTOR OF THE DEPARTMENT OF HOUSING AND HUMAN CONCERNS TO MODIFY THE REQUIREMENTS OF CHAPTER 2.96, MAUI COUNTY CODE, IN RELATION TO THE COUNTY'S PURCHASE OPTIONS, AND APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE, FOR THE LILOA HALE SENIOR RENTAL HOUSING PROJECT

WHEREAS, the ~~County~~ Council (~~"Council"~~) passed Ordinance ~~Number 5099, Bill 64~~ (2020), which approved a grant award of ~~Four Million Three Hundred Thousand Dollars (\$4,300,000)~~ (~~the~~ "Grant") to Liloa Senior Housing, LP (the "Partnership") for land acquisition, planning and design, on-site improvements, new construction, and other related development costs to produce 117 rental units, of which 104 units were to be rented at or below ~~60-sixty~~ percent of the area median income, ~~12-twelve~~ units were to be rented at or below ~~30-thirty~~ percent of the area median income, and ~~1-one~~ unit was to be for an on-site property manager without affordability restrictions, to be known as Liloa Hale Senior Rental Housing Project (the "Project") ~~;~~ and

WHEREAS, on September 11, 2020, the Council passed Resolution 20-123, which approved the Project with modifications ~~;~~ and

WHEREAS, ~~pursuant to in accordance with MCC~~ Section 3.35.040, Maui County Code ("MCC"), a permitted use of the Affordable Housing Fund is to leverage funds provided by federal, state, non-profit, or for-profit organizations and other non-County entities to further expand affordable housing opportunities ~~;~~ and

WHEREAS, ~~MCC~~ Section 3.35.070-(A-)(1), MCC, requires that unless otherwise approved by the ~~e~~Council by ~~Resolution~~, the Project ~~shall will must~~ be held in perpetuity by the grantee or borrower unless conveyed to the County, or to a qualified nonprofit or community land trust ~~;~~ and

WHEREAS, the Partnership will record and be subject to a Residential Workforce Housing Agreement (as defined in ~~MCC~~ Section 2.96.080, MCC) that will be recorded against the Project property concurrently with the recordation of the construction loan mortgage for the Project, ~~pursuant to under~~ which the

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Project will be subject to long-term affordability restrictions; ~~and~~

WHEREAS, the Limited Partnership intends to apply for one or more of the following (collectively, “Non-County Funds”): ~~an allocation of Federal Low Income Housing Tax Credits; an allocation of State of Hawaii Low Income Housing Tax Credits; a reservation of tax-exempt multifamily rental housing bonds; and a reservation of Rental Housing Revolving Funds from the Hawaii Housing Finance and Development Corporation (“HHFDC”); and~~

WHEREAS, in order to realize the benefits to the Project from the Non-County Funds, the Partnership requires that the Grant instead be funded as a loan from the County to the Partnership (the “Loan”) on such terms as are to be later agreed upon by the Partnership and approved by the Director of ~~the Department of~~ Housing and Human Concerns (“Director”); ~~and~~

WHEREAS, ~~MCC~~ Section 3.35.070(A)(3), ~~MCC~~, requires that, unless otherwise approved by the ~~C~~eouncil by resolution, the Project ~~must~~ not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes ~~set forth established~~ in ~~MCC~~ Chapter 3.35, ~~MCC~~; ~~and~~

WHEREAS, ~~MCC~~ Section 3.35.070(A)(4), ~~MCC~~, requires that, unless otherwise approved by the ~~C~~eouncil by resolution, ~~the Project must be conveyed to the County or a qualified land trust, conveyance of the Project to the County~~ in the event of a dissolution or bankruptcy adjudication of the grantee ~~/ or~~ borrower; ~~and~~

WHEREAS, the Project’s potential lenders will require that the Project be subject to possible foreclosure or forfeiture in certain events of default under the Project’s loan documents; ~~and~~

WHEREAS, ~~MCC~~ Section 3.35.070(B)(4), ~~MCC~~, requires that, unless otherwise approved by ~~C~~eouncil by resolution, all loans from the Affordable Housing Fund (“AHF”) carry interest at a rate of ~~3%~~ three percent per annum; ~~and~~

~~WHEREAS~~WHEREAS, in order to obtain adequate funding for the Project, the Partnership requires that the Loan carry a different interest rate; ~~and~~

WHEREAS, ~~MCC~~ Section 3.35.070(B)(1), ~~MCC~~, requires that, unless otherwise approved by the ~~C~~eouncil by resolution, loans from the AHF ~~shall~~ must be secured by a mortgage in favor of the County that is not lower than second priority; ~~and~~

WHEREAS, in order to finance the Project, the Partnership will require financing comprised of the following (collectively, the “Senior Loans”): (i) a tax-exempt bond-financed construction loan; (ii) a permanent loan (which may

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convert from, or serve as “take-out” financing for, the construction loan); (iii) one or more refinancings of the permanent loan; and (iv) a Rental Housing Revolving Fund loan from HHFDC, and each of the Senior Loans will be required to be secured by a mortgage that is senior in priority to the mortgage securing the Loan-; and

WHEREAS, ~~MCC~~ Section 2.96.070(B)(2)(a), MCC, requires that, unless otherwise approved by the Council by resolution, a project owner grant the County a first right to purchase the development from owner in the event the owner decides to sell during the deed restricted period-; and

WHEREAS, ~~MCC~~ Section 2.96.070(B)(3), MCC, requires that, unless otherwise approved by the Council by resolution, within ninety ~~(90)~~ days of the expiration of the thirty ~~(30)~~ year deed restricted period, the project owner ~~shall~~ must offer to sell the Project to the County at a price determined by the owner-; and

WHEREAS, the Partnership is unable to comply with the above-described requirements allowing the County the first rights to purchase as they will be in conflict with various agreements that will be necessary to finance the Project-; and

WHEREAS, the Partnership is willing to comply with ~~MCC~~ Section 2.96.070(B)(2)(b), MCC, requiring that any new owner during the deed restricted period is required to comply with the applicable deed restrictions-; and

WHEREAS, in accordance with ~~MCC~~ Section 2.96.030(D), MCC, the Director is requesting that the requirements of ~~MCC~~ Sections 2.96.070(B)(2)(a) and (B)(3), MCC, be waived-; now, therefore,

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

1. That in the event title to the Project is transferred by reason of foreclosure or forfeiture under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process, then ~~MCC~~ Chapter 3.35, MCC, ~~shall will~~ no longer apply to the Project, except to any portion of the Project not so transferred-; ;
2. That the requirement that the Project be conveyed to the County in the event of a dissolution or bankruptcy adjudication of the grantee-or borrower ~~shall will~~ be subordinated to the rights of any Project lender under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process-; ;
3. The Council acknowledges that one unit in the Project will be utilized by a resident, on-site manager, which unit will not be subject to

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affordability restrictions~~;~~;

4. The Council authorizes the County to make the Loan to the Partnership instead of the Grant~~;~~;
5. The Council authorizes each of the Senior Loans to be secured by a mortgage that is senior in priority to the mortgage that will secure the Loan~~;~~;
6. The Council authorizes an interest rate on the Loan to be requested by the Partnership not to exceed the “long-term applicable Federal rate” (as defined in Section 1274 of the Internal Revenue Code)~~;~~;
7. The Council authorizes the Director to waive the requirements of MCC Sections 2.96.070(B)(2)(a) and (B)(3), provided that:
 - (i) the Project ~~shall be~~ subject to affordability restrictions for ~~650~~sixty years;
 - (ii) the Project ~~shall~~ remains subject to the requirements of ~~MCC~~ Section 2.96.070(B)(2)(b), ~~MCC~~;
 - (iii) the County ~~shall~~ must have the option to purchase the Project on the same terms as under any bona fide third party purchase offer, unless such third party assumes the Project owner’s obligations under the Residential Workforce Housing Agreement; ~~and~~
 - (~~iv~~ii) ~~—~~the County ~~shall~~ must have the right to purchase the Project within ~~90~~ninety days of the expiration of the term of the Residential Workforce Housing Agreement, unless an additional ~~30~~thirty-year deed restriction is recorded against the Project with substantially similar affordability restrictions as under the Residential Workforce Housing Agreement~~;~~ ~~and~~; ~~and~~
8. That certified copies of this ~~r~~Resolution be transmitted to the Director of Public Works, the Planning Director~~,~~ and the Director of Housing and Human Concerns.

~~APPROVED AS TO FORM
AND LEGALITY:~~

Resolution No. _____

~~MIMI DESJARDINS~~

~~Deputy Corporation Counsel~~

~~County of Maui~~

~~LF2019-1598~~

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel

County of Maui

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