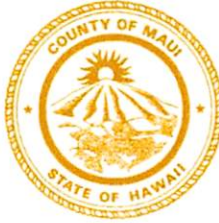


MICHAEL P. VICTORINO
Mayor

LORI TSUHAKE
Director

LINDA R. MUNSELL
Deputy Director



DEPARTMENT OF HOUSING
& HUMAN CONCERNS
COUNTY OF MAUI
2200 MAIN STREET, SUITE 546
WAILUKU, MAUI, HAWAII 96793
PHONE: (808) 270-7805

RECEIVED
2020 SEP 24 PM 1:12
OFFICE OF THE MAYOR

September 24, 2020

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 9/24/20
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee:

**SUBJECT: APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS
RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER
3.35, MAUI COUNTY CODE FOR THE KAIAULU O KUPUOHI
AFFORDABLE HOUSING PROJECT**

The Department of Housing and Human Concerns is transmitting a proposed resolution entitled "APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE FOR THE KAIAULU O KUPUOHI AFFORDABLE HOUSING PROJECT."

The purpose of the proposed resolution is to request authorization for the Kaiaulu O Kupuohi project to request Council approval for their fund structure to conform with Chapter 3.35 Maui County Code, as amended.

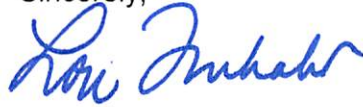
I respectfully request that this matter be referred to the appropriate Council committee for review, discussion, and action.

COUNTY COMMUNICATION NO. 20-497

Honorable Alice Lee, Chair
Maui County Council
September 24, 2020
Page 2 of 2

Thank you for your attention in the matter. Should you have any questions, please feel free to contact me at Ext. 7805.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lori Tsuhako", with a stylized, cursive script.

LORI TSUHAKO, LSW, ACSW
Director of Housing and Human Concerns

xc: Housing Division

Resolution

No. _____

APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE FOR THE KAIAULU O KUPUOHI AFFORDABLE HOUSING PROJECT

WHEREAS, on December 20, 2019 the Maui County Council ("Council") approved by way of Ordinance No. 5019, a grant award of Six Million Three Hundred Eighty Two Thousand Dollars and no cents (\$6,382,000) ("Grant") to Ikaika Ohana, a Hawaii nonprofit corporation ("Grantee") for land acquisition, planning and design, on-site improvements, new construction, and other related development costs to produce 88 rental units to be rented at or below 60 percent of the area median income and one unit for an on-site property manager, to be known as the Kaiaulu O Kupuohi Apartments ("Project");

WHEREAS, the Council is considering amendments to Chapter 3.35 of the Maui County Code ("MCC"), which were approved by the Affordable Housing Committee on September 18, 2020, and which following Council approval and upon the effective date, will render the provisions of this resolution in compliance with MCC Chapter 3.35, as amended;

WHEREAS, pursuant to MCC section 3.35.040, 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;

WHEREAS, the Project will be developed and owned by A0704 Lahaina, L.P., a single purpose Hawaii limited partnership ("Limited Partnership"), the managing general partner of which is NP Holdings LLC, and the sole owner of NP Holdings LLC is the Grantee;

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

WHEREAS, the Limited Partnership has received an allocation of Federal Low Income Housing Tax Credits, State of Hawaii Low Income Housing Tax Credits, and Rental Housing Revolving Fund from the Hawaii Housing Finance and Development Corporation ("HHFDC") ("Non-County Funds");

Resolution No. _____

WHEREAS, presently, MCC subsection 3.35.070A.1 requires that the Project be held in perpetuity by grantee/borrower unless conveyed to the County of Maui, or to a qualified nonprofit or community land trust;

WHEREAS, MCC subsection 3.35.070A.3, requires that the Project not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes set forth in MCC Chapter 3.35 without the prior approval of the council by resolution;

WHEREAS, MCC subsection 3.35.070A.4 requires conveyance of the Project to the County, or a qualified nonprofit or community land trust as approved by council, in the event of a dissolution or bankruptcy adjudication of the grantee/borrower;

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

WHEREAS, MCC subsection 3.35.070A.5 states that the grantee shall not distribute or redistribute grant funds to other third party organizations without prior approval of the Council;

WHEREAS, in order to realize the benefits to the Project from the Non-County Funds, the Grantee must loan the Grant funds to the Limited Partnership;

WHEREAS, the Grant funds are necessary for the development and construction of the Project and the Grantee seeks the County's authorization to loan the Grant funds to the Limited Partnership; and

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

1. That the Project may be transferred to, developed and owned by the Limited Partnership, provided that, in accordance with the terms of the Residential Workforce Housing Agreement:

(i) the Project must be subject to affordability restrictions for 65 years;

(ii) the County must have the option, for a period of 60 days following notice to the County of the receipt of a bona fide purchase offer, 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, subject to County approval; and

Resolution No. _____

(iii) the County must have the right to purchase the Project within 90 days of the expiration of the term of the Residential Workforce Housing Agreement, unless an additional 30 year deed restriction is recorded against the Project with substantially similar affordability restrictions as under the Residential Workforce Housing Agreement.

2. 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 must no longer apply to the Project, except to any portion of the Project not so transferred.

3. That the requirement that the Project be conveyed to the County in the event of a dissolution or bankruptcy adjudication of the Grantee/borrower must 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.

4. That the Grantee must be allowed to redistribute the Grant to the Limited Partnership as a loan.

5. That this resolution must become effective upon the adoption and effective date of certain proposed amendments to Chapter 3.35, MCC, which were approved by the Affordable Housing Committee on September 18, 2020.

6. That certified copies of this resolution be transmitted to the Planning Director, the Director of Housing and Human Concerns, and Ikaika Ohana.

APPROVED AS TO FORM
AND LEGALITY:

/s/ Mimi Desjardins

MIMI DESJARDINS
Deputy Corporation Counsel
County of Maui
2020-1034