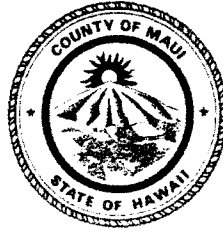


MICHAEL P. VICTORINO
Mayor

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

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OFFICE OF THE
COUNTY CLERK

February 8, 2021

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

APPROVED FOR TRANSMITTAL

Michael P. Victorino 2/9/21
Mayor Date

For Transmittal to:

Honorable Alice L. Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Members:

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

I am transmitting a proposed resolution entitled "APPROVING CERTAIN FINANCING STRUCTURE COMPONENTS RELATING TO THE USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE, THE KAIAULU O HALELEA APARTMENTS AFFORDABLE HOUSING PROJECT".

The purpose of the proposed resolution is to obtain Council's approval to allow the Kaiaulu O Halelea project to utilize certain financing structure components for the use of the Affordable Housing Fund grant award. As stated in Chapter 3.35, Maui County Code, these financing structure components require advance approval by Council.

COUNTY COMMUNICATION NO. 21-109

Honorable Alice L. Lee, Chair
and Members of the Maui County Council
February 8, 2021
Page 2

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Tsuhako", written in a cursive style.

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

Attachment
xc: Housing Division

Resolution

No. _____

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

WHEREAS, on June 5, 2020 the County Council ("Council") approved a grant award of One Million Five Hundred Eight Thousand Five Hundred Fifty-Eight Dollars and no cents (\$1,508,558.00) ("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 63 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 Halelea Apartments ("Project").

WHEREAS, pursuant to Section 3.35.040 of the 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.

WHEREAS, MCC Section 3.35.070.A.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, without the prior approval of the Council by resolution.

WHEREAS, the Project will be developed and owned by A0716 Kihei, L.P., a single purpose Hawaii limited partnership ("Limited Partnership"), a 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 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 which the Project will be subject to long term affordability restrictions.

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 Funds from the Hawaii Housing Finance and Development Corporation (HHFDC) ("Non-County Funds").

Resolution No. _____

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 to loan the Grant funds to the Limited Partnership.

WHEREAS, MCC Section 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 and MCC Section 3.35.070A.4 requires conveyance of the Project to the County in the event of a dissolution or bankruptcy adjudication of the grantee/borrower, all except as otherwise permitted with the prior approval of the Council by resolution.

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

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

1. That, notwithstanding the requirement in MCC Section 3.35.070.A.1 that the Project be held in perpetuity by grantee/borrower, 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; and

(i) the Project shall be subject to affordability restrictions for 65 years.

(ii) the County shall 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.

(iii) the County shall 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

Resolution No. _____

3.35 shall no longer apply to the Project, except to any portion of the Project not so transferred; and

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 shall 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; and

4. That the Grantee will be allowed to redistribute the Grant to the Limited Partnership as a loan; and

5. 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 Ikaika Ohana.

APPROVED AS TO FORM
AND LEGALITY:

/s/Mimi Desjardins

MIMI DESJARDINS

Deputy Corporation Counsel

LF2020-2027