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By Dept of the Corporation Counsel at 1:18 pm, Mar 23, 2021

**REQUEST FOR LEGAL**

**Date:** March 23, 2021  
**From:** Gabe Johnson, Chair  
Affordable Housing Committee

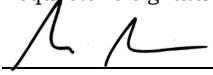
## TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Mimi DesJardins, Esq.

**Subject:** USE OF FUNDS RECEIVED THROUGH CHAPTER 3.35, MAUI COUNTY CODE,  
FOR THE KAIĀULU O HALELE'A PROJECT (AH-20)

**Background Data:** Please see attached revised proposed resolution.

**Work Requested:** ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY  
☒ [X] OTHER: PLEASE RETURN TO ah.committee@mauicounty.us

Requestor's signature  Gabe Johnson	Contact Person <u>Alison Stewart</u> (Telephone Extension: 7661)
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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): March 24, 2021  
REASON: For posting on the April 6, 2021 Council agenda.

**FOR CORPORATION COUNSEL'S RESPONSE**

ASSIGNED TO: MDJ	ASSIGNMENT NO. 2021-0011	BY: jcm
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TO REQUESTOR: ☒ [X] 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 March 23, 2021By /s/ Mimi Desjardins

(Rev. 7/03)

ah:misc:020acc01:ans

Attachment

# Resolution

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

APPROVING CERTAIN FINANCING STRUCTURE  
COMPONENTS RELATING TO THE USE OF  
FUNDS RECEIVED THROUGH CHAPTER 3.35,  
MAUI COUNTY CODE, FOR THE KAIĀULU O  
HALELE'A APARTMENTS AFFORDABLE  
HOUSING PROJECT

WHEREAS, on June 5, 2020, the County Council ("Council") approved an Affordable Housing Fund grant award of One Million Five Hundred Eight Thousand Five Hundred Fifty-Eight Dollars (\$1,508,558) ("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 for households at or below 60 percent of the area median income and one unit for an on-site property manager, to be known as Kaiāulu O Halele'a Apartments ("Project"); and

WHEREAS, under Section 3.35.040(F), Maui County Code ("MCC"), a permitted use of the Affordable Housing Fund is to leverage funds provided by Federal, State, nonprofit, or for-profit agencies and other non-County entities, to further expand affordable housing opportunities; and

WHEREAS, without the prior approval of Council by resolution, Section 3.35.070(A) (1), MCC, requires the Project 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 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; and

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

## **Resolution No. \_\_\_\_\_**

WHEREAS, the Limited Partnership has received 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 (“Non-County Funds”); and

WHEREAS, to realize the benefits to the Project from the Non-County Funds, the Grantee must loan the Grant funds to the Limited Partnership for the development and construction of the Project; and

WHEREAS, without the prior approval of Council by resolution, Section 3.35.070(A)(5), MCC, prevents the grantee or borrower from distributing or redistributing grant funds to other third party organizations; and

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

WHEREAS, without the prior approval of Council by resolution, Section 3.35.070(A)(3), MCC, requires the Project not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes set forth in Chapter 3.35, and Section 3.35.070(A)(4), MCC, requires conveyance of the Project to the County in the event of dissolution or bankruptcy of the grantee or borrower; now, therefore,

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

1. That the Project may be transferred to, and developed and owned by the Limited Partnership, so long as it is subject to the terms of a Residential Workforce Housing Agreement, including:
  - (i) The Project must have a deed-restricted affordability period of 65 years.
  - (ii) The County must have the option to purchase the Project on the same terms as any bona fide third party purchase offer, unless such third party assumes the Project owner’s obligations under the Residential Workforce Housing Agreement.

## 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 requirements 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, Chapter 3.35 will no longer apply to the Project, except to any portion not transferred;
- 3. That in the event of dissolution or bankruptcy of the Grantee, the requirement to convey the Project to the County will be subordinate 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 may 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  
County of Maui

ah:misc:020areso01:ans