

COUNCIL OF THE COUNTY OF MAUI
AFFORDABLE HOUSING COMMITTEE

April 6, 2021

Committee
Report No. 21-24

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

Chair and Members:

Your Affordable Housing Committee, having met on March 15, 2021, makes reference to County Communication 21-109, from the Director of Housing and Human Concerns, 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 KAIĀULU O HALELEA APARTMENTS AFFORDABLE HOUSING PROJECT."

The purpose of the proposed resolution is to allow the Kaiāulu O Halele'a Apartments Affordable Housing Project ("Project") to use certain financing structure components for its Affordable Housing Fund ("AHF") grant award.

Your Committee noted the Project grantee, nonprofit housing developer Ikaika Ohana, received an AHF grant of \$1,508,558 for land acquisition, planning and design, onsite improvements, new construction, and other related construction costs for the development of 63 rental units for households between 30 and 60 percent of the area median income ("AMI") and one unit for an on-site property manager.

Your Committee further noted an additional 57 apartments are planned in phase two of the Project, for a total of 120 affordable housing units in Kihei, Maui, Hawaii.

The Deputy Director of Housing and Human Concerns stated Chapter 3.35, Maui County Code, was amended in October 2020 to provide flexibility in AHF grant or loan terms, upon Council approval by resolution. The Deputy also stated the reason for the flexibility is to allow projects to leverage additional financing from non-County sources.

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A representative of Ikaika Ohana stated the Project has received non-County funding from the State's Hawaii Housing Finance & Development Corporation, private lenders, equity, the HOME Investment Partnerships Program, and State and Federal tax credits.

Your Committee notes certain financing structure components would allow the Project to better leverage non-County funding:

- The AHF award to Ikaika Ohana would be in the form of a loan instead of a grant;
- Ikaika Ohana would loan the AHF grant funds to a subsidiary, A0716 Kihei, L.P. ("Limited Partnership"); and
- The Limited Partnership would be the Project owner and developer, and would receive other non-County loans that may subject the Project to foreclosure or forfeiture.

Your Committee further notes the proposed financing structure would involve grant or loan terms that differ from those provided in Section 3.35.070, Maui County Code, including requirements that the AHF grantee be the Project owner, hold the Project in perpetuity, not convey the Project to a third party, and not redistribute the AHF funds to a third party.

Your Committee noted the Limited Partnership would be subject to the terms of a Residential Workforce Housing Agreement, including a deed-restricted affordability period of 65 years.

Your Committee expressed concerns about traffic impacts and the financial risks of non-completion of the Project.

The Ikaika Ohana representative stated traffic mitigation measures, including street widening, are being considered. The representative also stated the reporting requirements under Chapter 3.35 and other regulations provide financial accountability and transparency.

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Your Committee notes that under the Department of Housing and Human Concerns' Affordable Rent Guidelines, rent and utilities for a two-bedroom apartment would range from \$658 per month for households at 30 percent AMI to \$1,316 per month for households at 60 percent AMI.

Your Committee concluded the Project would provide much-needed affordable housing for Maui County residents, and expressed support for allowing the Project to maximize its funding potential.

Your Committee amended the proposed resolution to include diacritical marks to the Project name and other nonsubstantive revisions.

Your Committee voted 8-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Johnson, Vice-Chair Molina, and members King, Lee, Paltin, Rawlins-Fernandez, Sinenci, and Sugimura voted "aye." Councilmember Kama 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 "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," incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Affordable Housing Committee RECOMMENDS the following:

1. That Resolution 21-62 (2021), as revised herein and attached hereto, entitled "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," be ADOPTED; and

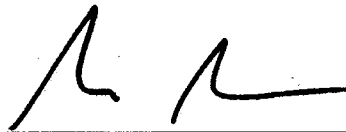
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2. That County Communication 21-109 be FILED.

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



GABE JOHNSON, Chair

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Resolution

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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

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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.

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- (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

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