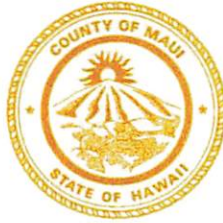


MICHAEL P. VICTORINO
Mayor

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

July 26, 2021

RECEIVED

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OFFICE OF THE
COUNTY CLERK

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

APPROVED FOR TRANSMITTAL

Michael P. Victorino 7/28/21
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: 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

I am transmitting a proposed resolution entitled "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".

COUNTY COMMUNICATION NO. 21-378

Honorable Alice L. Lee, Chair
and Members of the Maui County Council
July 26, 2021
Page 2

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

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,



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

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 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) ("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 percent of the area median income, 12 units were to be rented at or below 30 percent of the area median income and 1 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").

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

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, MCC Section 3.35.070.A.1 requires that unless otherwise approved by the council by resolution, the Project shall be held in perpetuity by grantee or borrower unless conveyed to the County, or to a qualified nonprofit or community land trust.

WHEREAS, the Partnership will record and be subject to a Residential Workforce Housing Agreement (as defined in MCC Section 2.96.080) 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.

Resolution No. _____

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").

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").

WHEREAS, MCC Section 3.35.070A.3 requires that, unless otherwise approved by the council by resolution, 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.

WHEREAS, MCC Section 3.35.070A.4 requires that, unless otherwise approved by the council by resolution, conveyance of the Project to the County in the event of a dissolution or bankruptcy adjudication of the grantee/borrower.

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.

WHEREAS, MCC Section 3.35.070(B)(4) requires that, unless otherwise approved by council by resolution, all loans from the Affordable Housing Fund ("AHF") carry interest at a rate of 3% per annum.

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

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

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.

Resolution No. _____

WHEREAS, MCC Section 2.96.070(B)(2)(a) 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.

WHEREAS, MCC Section 2.96.070(B)(3) 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 offer to sell the Project to the County at a price determined by the owner.

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.

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

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

BE IT RESOLVED by the Council:

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 shall 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/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;
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;
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.

Resolution No. _____

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 65 years;

(ii) the Project shall remain subject to the requirements of MCC Section 2.96.070(B)(2)(b);

(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; and

(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; 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:

/s/ Mimi Desjardins
MIMI DESJARDINS
Deputy Corporation Counsel
County of Maui
LF2019-1598