

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

September 21, 2001

**Committee  
Report No.**

01-171

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

Chair and Members:

Your Committee of the Whole, having met on September 4, 2001, makes reference to the following:

1. County Communication No. 01-110, from the Director of Housing and Human Concerns, transmitting the following:
  - a. A proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO MAUI ECONOMIC CONCERNS OF THE COMMUNITY, INC.";  
  
The purpose of the resolution is to authorize a grant of a lease of approximately five acres of County real property, identified as TMK: 4-6-015;portion of 1, to Maui Economic Concerns of the Community, Inc. (MECC) for the purpose of developing the West Side Resource Center Project, a proposed resource center and affordable-housing facility for homeless and low-income families and individuals.
  - b. A copy of a Grant Agreement for a Lease of County real property; and
  - c. A copy of the proposed Lease.
2. Committee Report No. 01-85, from the Human Services and Economic Development Committee (HSED), recommending the following:

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- a. That the proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO MAUI ECONOMIC CONCERNS OF THE COMMUNITY, INC.", be ADOPTED; and
- b. That County Communication No. 01-110 be FILED.

Your Committee notes that the Council previously adopted Resolution No. 00-28, accepting approximately five acres of land, identified as TMK: 4-6-015:portion of 1 from Pioneer Mill Company, Ltd. for the West Maui Resource Center Project, at its meeting of March 2, 2001 (HSED Committee Report No. 01-15, As Amended).

Your Committee further notes that the Council previously adopted Resolution No. 00-29, approving the West Side Resource Center Project pursuant to Section 201G-118, Hawaii Revised Statutes, at its meeting of March 2, 2001 (HSED Committee Report No. 01-15, As Amended).

Your Committee further notes the following:

1. By correspondence dated May 7, 2001, the Chair of HSED requested that the Corporation Counsel determine the appropriateness of the Council's actions at its meeting of March 2, 2001, relating to the acceptance of public testimony and transmit all documents necessary for the ratification of the Council's actions on the West Side Resource Center project.
2. By correspondence dated May 10, 2001, the Department of the Corporation Counsel opined that the Council's actions at its March 2, 2001 meeting were proper, appropriate, consistent with both the requirements of the Sunshine Law and its own rules, and therefore legal.

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Your Committee further notes that by Committee Report No. 01-85, the HSED Committee recommended that a proposed resolution authorizing a grant of a lease of approximately five acres of County real property, identified as TMK: 4-6-015:portion of 1, to MECC for the purpose of developing the West Side Resource Center Project be adopted. At its meeting of May 18, 2001, the Council referred Committee Report No. 01-85 to your Committee.

By correspondence dated June 4, 2001, Councilmember Johnson transmitted a copy of the Warranty Deed for the subject property, identified as TMK: 4-6-015:portion of 1.

By correspondence dated June 6, 2001, Councilmember Tavares requested that your Committee forward three questions to the Department of the Corporation Counsel. Councilmember Tavares questioned whether the donated parcel was acquired or transferred appropriately, the options available to the County if the site was offered in lieu of providing affordable housing or if the agreement was not properly executed, and whether the Administration would commit to purchasing the subject property if irregularities cloud this parcel.

By correspondence dated June 25, 2001, your Committee Chair asked for the submittal of requests for resource personnel along with possible questions that may be posed during discussion of this item.

By correspondence dated August 3, 2001, the Director of Housing and Human Concerns provided a copy of the "Amended and Restated Agreement in Satisfaction of Affordable Housing Conditions".

By correspondence dated August 9, 2001, the Director of Housing and Human Concerns requested that this item be taken up at your next Committee meeting.

By correspondence dated August 28, 2001, your Committee Chair requested that the Corporation Counsel provide information on whether the Administration is able to override Special Management Area (SMA) conditions imposed by the Maui Planning Commission, the appropriateness of the Corporation Counsel assisting the Administration in drawing up agreements to satisfy affordable housing requirements, and the need to hire special counsel. A

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copy of Councilmember Tavares's June 6, 2001 correspondence was attached to this request.

By correspondence dated August 29, 2001, your Committee Chair requested that the Director of Public Works and Waste Management provide the history of the subdivision of the subject property, along with an explanation regarding the subdivision of property when the community plan designation and zoning are not consistent.

By correspondence dated August 30, 2001, Charles Ridings, MECC Executive Director, transmitted copies of the Ka Hale A Ke Ola Homeless Resource Center House Policies for Adults and the Hale Makana o Waiale House Rules and Regulations.

By correspondence dated August 31, 2001, in response to Councilmember Tavares's questions, the Department of the Corporation Counsel opined that if the County acted inappropriately in accepting the subject property or if there was a clear mistake of fact unknown to the parties, a cause of action may exist to rescind the recorded conveyance of the subject property. The Department indicated that the remedy for an improperly executed agreement or one with errors is the execution of an amended agreement filed with the Bureau of Conveyances. Furthermore, the Mayor would need to respond to whether the Administration would commit to purchasing the subject property.

In the same correspondence, the Department of the Corporation Counsel opined that the Administration is not able to override SMA conditions imposed by the Maui Planning Commission, that it is appropriate for the Department of the Corporation Counsel to assist the Administration in drawing up agreements, and that no special counsel is necessary.

At its meeting, your Committee met with the Director of Housing and Human Concerns, the Director of Finance, the Planning Director, the Deputy Director of Public Works and Waste Management, a Deputy Corporation Counsel, and Charles Ridings, Executive Director of MECC.

Your Committee heard oral testimony from two people supporting the proposed resource center.

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Your Committee discussed MECC's current repayment agreement for the Hale Makana o Waiale project. The Director of Finance indicated that MECC is current on its payments of the project, due to a clause in the repayment agreement that allows MECC to repay the lower of the total debt service or 90 percent of MECC's available cash balance. Any of the debt service that is not paid when it is currently due becomes due between the years 2013 and 2035.

Your Committee discussed whether it is appropriate to approve a lease before the viability of a project can be established. The Director of Housing and Human Concerns explained that MECC must have control of the site in order to obtain bids on the project and financing. Mr. Ridings suggested that a clause be added to the proposed resolution that would require MECC to complete all financing and construction within five years of the date of execution of the lease. By adding such language, the County would be able to free the property for other public uses in five years if MECC was unable to complete their proposed project.

Your Committee discussed the history of the subdivision of the subject property with the Deputy Director of Public Works and Waste Management. Your Committee learned that although the community plan designation for the subject property is not consistent with the zoning, the property was allowed to be subdivided due to a provision in the Maui County Code that allows for such a land use change to serve a public purpose.

Your Committee voted to recommend authorization to grant the lease of County real property to MECC with a provision requiring MECC to complete all financing and construction of the proposed project no later than five years from the date of execution of the lease.

Your Committee is in receipt of a revised proposed resolution, incorporating your Committee's proposed revision.

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Your Committee of the Whole RECOMMENDS the following:

1.     That Resolution No. \_\_\_\_\_, as revised herein and attached hereto, entitled "AUTHORIZING A GRANT OF A LEASE OF COUNTY REAL PROPERTY TO MAUI ECONOMIC CONCERNS OF THE COMMUNITY, INC." be ADOPTED;
2.     That Human Services and Economic Development Committee Report No. 01-85 be FILED; and
3.     That County Communication No. 01-110 be FILED.

Adoption of this report is respectfully requested.

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**PATRICK S. KAWANO** Member

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**MICHAEL J. MOLINA** Member

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**ALAN M. ARAKAWA** Member

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**WAYNE K. NISHIKI** Member

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**ROBERT CARROLL** Member

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**CHARMAINE TAVARES** Member

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**JO ANNE JOHNSON** Member