

COUNCIL OF THE COUNTY OF MAUI
HUMAN SERVICES AND
ECONOMIC DEVELOPMENT COMMITTEE

May 18, 2001

Committee
Report No.

01-84

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

Chair and Members:

Your Human Services and Economic Development Committee, having met on May 3, 2001, makes reference to County Communication No. 00-316, from the Director of Housing and Human Concerns, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF LAND PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE" (TMK: 2-4-6-015;por. 001, approx. five acres (Lahaina Wainee Subdivision) Lot 2; TMK: 2-4-6-026:057, approx. 1.864 acres (Pioneer Mill Office Site, Lahaina).

The purpose of the proposed resolution is to accept two parcels comprising nearly seven acres of property in West Maui from Pioneer Mill Company, Limited ("Pioneer Mill"), a subsidiary of Amfac/JMB Hawaii, Inc.

At its meeting of December 11, 2000, the Human Services and Parks Committee referred County Communication No. 00-316 to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

At its meeting of January 12, 2001, the Council referred County Communication No. 00-316 to your Human Services and Economic Development Committee (County Communication No. 01-12).

Your Committee notes that it previously reported on this matter through Committee Report No. 01-15 (As Amended), which was adopted at the Council meeting of March 2, 2001. Your Committee further notes that, at the Council meeting, the Council voted to replace the proposed resolution with two proposed resolutions of the same name, in order to consider each parcel separately.

Your Committee further notes that Committee Report No. 01-15 (As Amended) recommended that: (1) the proposed resolution entitled "ACCEPTING DEDICATION OF LAND PURSUANT TO SECTION 3.44.015, MAUI COUNTY

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CODE" (1.864-acre parcel) ("the subject proposed resolution") be RECOMMITTED; (2) the proposed resolution entitled "ACCEPTING DEDICATION OF LAND PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE" (approximately five-acre parcel) be ADOPTED (Resolution No. 01-28); and (3) that proposed resolution entitled "APPROVING THE WEST SIDE RESOURCE CENTER PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES be ADOPTED (Resolution No. 01-29).

In addition, your Committee notes that, at the Council meeting and at your Committee meeting of February 1, 2001, questions were raised regarding the title to a 4,200-square-foot sliver of property within the 1.864-acre parcel referenced in the subject proposed resolution. Your Committee further notes that the legal description for the sliver of property with unclear title is "portion of Royal Patent Number 1685, Land Commission Award Number 1815, Apana 2 to Keaweaheulu."

By memorandum dated March 7, 2001, the Chair of your Committee transmitted a copy of a document entitled "AGREEMENT IN SATISFACTION OF AFFORDABLE HOUSING CONDITIONS AND EMPLOYEE HOUSING PLAN", executed by the County; Pioneer Mill; Amfac/JMB Hawaii, LLC; and Amfac Property Investment Corp. on November 5, 1999. Your Committee notes that this agreement is referenced in the subject proposed resolution and is intended to satisfy a preexisting requirement for Amfac/JMB Hawaii, LLC ("Amfac") to provide affordable housing, including affordable housing, as a condition of land-use approvals obtained in 1991.

At its meeting of May 3, 2001, your Committee met with the Director of Housing and Human Concerns, and a Deputy Corporation Counsel.

Six testifiers spoke in support of the proposed land dedication, noting that the property could be used by the County for the development of a much-needed West Maui senior center. They also noted their support for maintaining the sliver of the property with unclear title as open space or as a garden. A seventh testifier spoke in favor of a proposed West Maui senior center, but questioned whether Pioneer Mill held clear title to the subject property.

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Your Committee received written testimony from one individual, who stated that the Council's actions relating to the West Side Resource Center Project, at the Council meeting of March 2, 2001, were improper because he was allegedly denied the opportunity to present oral testimony. He further stated that he believes that the deed and proposed warranty deed for the subject property are invalid. For these reasons, he requested that your Committee defer action on the proposed resolution.

Your Committee Chair distributed a list of options that would address concerns about the sliver of the parcel with unclear title. The options included: (1) accepting the 1.864-acre parcel, except for the sliver, and entering into a long-term lease for the sliver while beginning condemnation proceedings to clear title; (2) accepting the entire parcel as is and developing around the sliver, but not on the sliver; and (3) accepting all of the land with the condition that Pioneer Mill would clear the title to the sliver at its own expense.

The Director provided a description of the proposed West Maui senior center that would be built on the subject parcel, if accepted by the Council. The plans for the senior center do not include development of the sliver with unclear title. The main structure, nearby smaller structures, and roadways into and out of the parcel would be situated away from the sliver.

The Director also provided an overview of the fulfillment of Amfac's affordable-housing requirement. In 1991, the State Land Use Commission required Amfac to develop 324 units as a condition to the approval of Amfac's South Beach Mauka project. She stated that Amfac initially tried to satisfy the requirement under those terms, but was stymied by financial difficulties. The company's financial troubles began when a separate project faced opposition by the community, and Amfac subsequently agreed to build a road to alleviate traffic concerns. The cost of building the road added to losses resulting from a downturn in Amfac's sugar productions. Subsequent sugar-mill closures make it even more unlikely that the company can afford to meet the affordable-housing requirement under the original terms, according to the Director.

In 1996, Amfac asked the State Land Use Commission to consider amending the original affordable-housing requirement. It agreed to do so, but mandated that Amfac work with the County to develop a suitable alternative to

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the original affordable-housing requirement. Hence, the Administration and Amfac agreed that Amfac would provide nearly seven acres of land to the County. Together, the parcels have been valued at approximately \$2 million. The Director further noted that the five-acre parcel accepted by the Council earlier would include 114 affordable-housing units as part of the West Side Resource Center.

Some members of your Committee stated that, while they did not question the need for a West Maui senior center, they had concerns about accepting a sliver of land with unclear title. They also felt that the Council should consider establishing a policy stating that property without clear title will not be accepted. Members of your Committee also stated that they had difficulty accepting the manner in which the Administration amended Amfac's affordable-housing agreement requirement, especially because the costs associated with developing the West Side Resource Center and the West Maui senior center are to be borne by the County.

Other Committee members stated that they understood the uncertainty associated with acceptance of a land dedication that included a sliver with unclear title, but they felt that the County would be fair to other parties with potential title claims if the Council proceeded with acceptance. Additionally, they stated that they felt that the Administration negotiated and amended Amfac's affordable-housing requirement in good faith, and that the land dedication was an appropriate alternative means of satisfying the requirement. They further agreed with the Director's assessment that Pioneer Mill could not afford to do more at this time.

The Deputy Corporation Counsel stated that the Department of the Corporation Counsel is convinced that title to the sliver of property with unclear title can be reasonably resolved.

Your Committee expressed its preference for the first option proposed by the Chair of your Committee. Your Committee voted to recommend that the Council accept the proposed dedication of the 1.864-acre parcel, except for the sliver of property with unclear title; that the Administration enter into a long-term lease for the sliver; and that the County commence proceedings in eminent domain to clear title to the sliver.

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Your Committee is in receipt of revised attachments to the proposed resolution, incorporating technical amendments consistent with legal requirements and your Committee's recommendations.

Your Human Services and Economic Development Committee **RECOMMENDS** the following:

1. That Resolution No. _____, as revised herein and attached hereto, entitled "ACCEPTING DEDICATION OF LAND PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", be **ADOPTED**; and
2. That the Administration be **REQUESTED** to execute a long-term lease for the County to occupy as lessee the 4,200-square-foot portion of TMK: 2-4-6-026:057 identified as portion of Royal Patent Number 1685, Land Commission Award Number 1815, Apana 2 to Keaweaheulu; and
3. That the Department of the Corporation Counsel be **REQUESTED** to draft and transmit to the Council a proposed resolution to authorize proceedings in eminent domain for the 4,200-square-foot portion of TMK: 2-4-6-026:057 identified as portion of Royal Patent Number 1685, Land Commission Award Number 1815, Apana 2 to Keaweaheulu;
4. That copies of this committee report be **TRANSMITTED** to the Director of Housing and Human Concerns, the Corporation Counsel, and the Mayor; and
5. That County Communication No. 00-316 be **FILED**.

Adoption of this report is respectfully requested.

