

COUNCIL OF THE COUNTY OF MAUI

PLANNING AND LAND USE COMMITTEE

May 7, 2004

Committee

Report No.

04-77

As Amended

NOTE: The committee report was amended by the Council at its meeting on May 18, 2004, by adding the underscored material on pages 5 through 6. This committee report was then adopted as amended.

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

Chair and Members:

Your Planning and Land Use Committee, having met on March 2, 2004, makes reference to County Communication No. 03-307, from the Planning Director, transmitting the following:

1. A document entitled "BILATERAL AGREEMENT FOR DEVELOPMENT AND COORDINATION OF A JOB TRAINING PROGRAM";
2. A document entitled "BILATERAL AGREEMENT FOR DEVELOPMENT AND COORDINATION OF AN AFFORDABLE HOUSING PROGRAM"; and
3. A document entitled "UNILATERAL AGREEMENT (Park Dedication Pursuant to MCC Section 19.73.100)".

The purpose of the agreements is to allow Maui Land & Pineapple Company, Inc. (ML&P) to comply with Maui County Code (MCC) Subsection 19.73.100(A), relating to Lahaina Project District 1 (Kapalua).

Your Committee notes that Lahaina Project District 1 is also known as the Kapalua Resort Project District, and that enactment of MCC Chapter 19.73 permitted "a mixture of visitor oriented facilities, including hotel accommodations, single and multifamily residences and supporting commercial services within an open space setting organized around a central village core," as stated in MCC Subsection 19.73.010(A).

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Your Committee further notes that MCC Subsection 19.73.100(A) requires ML&P to execute: (1) a bilateral agreement to establish a job training program; (2) a bilateral agreement to establish an affordable housing program; (3) a unilateral agreement specifying the projects to be developed from 1989 through 1994; and (4) a unilateral agreement providing for the dedication of park land to the County.

In addition, your Committee notes that MCC Subsection 19.45.050(A)(2) states:

The council may approve unilateral agreements with or without modifications and, after proper execution, shall record the agreements with the bureau of conveyances or the land court. The council shall review bilateral agreements and may transmit its comments and the bilateral agreements to the mayor or his designated representative for further negotiation and modification, if appropriate, and for proper execution.

Under the bilateral agreement to establish a job training program, ML&P will be deemed to have satisfied its obligation under Subsection 19.73.100(A)(1) through the program provided by the operator of the Ritz-Carlton Hotel, as described in the agreement. With respect to any future hotel development within the Project District containing more than 20 rooms, ML&P would “develop and coordinate a training program with the hotel operator” for all phases of hotel operations.

Under the bilateral agreement to establish an affordable housing program, ML&P will be deemed to have satisfied its obligation under Subsection 19.73.100(A)(2) to provide for an affordable housing program for the Ritz-Carlton Hotel through the employee housing provided by ML&P under the November 27, 1984 agreement (Hale Noho) and the 38-lot Honokeana residential subdivision. With respect to any future hotel development within the Project District, ML&P would “provide affordable housing with respect to Lahaina Project District 1 (Kapalua) in accordance with the affordable housing policy and requirements set forth in Chapter 2.94, Maui County Code.” MCC Chapter 2.94 currently provides that a hotel developer “shall be required to construct affordable housing at a minimum of one affordable housing unit for every four apartment-hotel, hotel, or motel rooms or fraction thereof.”

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Under the unilateral agreement providing for the dedication of park land to the County, ML&P would surrender 34 of the 65 park dedication credits remaining under an agreement with the County executed on December 14, 1992.

By correspondence dated January 23, 2004, the Chair of your Committee transmitted a draft resolution entitled "APPROVING A UNILATERAL AGREEMENT EXECUTED BY MAUI LAND & PINEAPPLE COMPANY, INC. RELATING TO PARK DEDICATION PURSUANT TO MAUI COUNTY CODE SUBSECTION 19.73.100(A)(4)." The purpose of the draft resolution is to approve the unilateral agreement providing for the dedication of park land to the County.

By correspondence dated February 25, 2004, Mich Hirano, AICP, Munekiyo & Hiraga, Inc., ML&P's land-use consultant, transmitted the following:

1. A revised approval block page for the bilateral agreement to establish an affordable housing program to require the signature of the Director of Housing and Human Concerns;
2. A copy of correspondence dated October 15, 2003, from the Director of Housing and Human Concerns, expressing approval of the bilateral agreement to establish an affordable housing program;
3. A copy of correspondence dated October 17, 2003, from the Economic Development Coordinator, expressing approval of the bilateral agreement to establish a job training program; and
4. A copy of a document entitled "UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL USE", executed on August 24, 1989, specifying the projects to be developed from 1989 through 1994, consistent with MCC Subsection 19.73.100(A)(3).

At its meeting, your Committee met with the Managing Director; the Economic Development Coordinator; the Director of Housing and Human Concerns; the Director of Parks and Recreation; the Deputy Director of Parks and Recreation; the Chief of Planning and Development, Department of Parks and Recreation; the Planning Director; a Staff Planner, Department of Planning;

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the Deputy Director of Public Works and Environmental Management; and two Deputy Corporation Counsel.

The Staff Planner provided your Committee with an overview of the agreements, noting ML&P's compliance with the underlying requirements for park land and affordable housing and training programs set forth in MCC Subsection 19.73.100(A). The Planner informed your Committee that what was missing was documentation of ML&P's compliance through the subject agreements, presenting the bilateral agreements to the Council for comment, and presenting the unilateral agreement to the Council for approval.

There was no public testimony. Ryan Churchill of Kapalua Land Company, on behalf of ML&P, answered your Committee's questions regarding past and future development within the Kapalua Resort Project District. Mr. Churchill explained the status of park dedications relating to development in the area, including the Project District.

Various Administration representatives also answered questions about ML&P's compliance with various land-use conditions, including those imposed by Subsection 19.73.100(A). The Administration representatives expressed support for the draft resolution.

The Director of Parks and Recreation informed your Committee that the unilateral agreement acknowledges the dedication of lands comprising Pohaku Park, also known as S-Turns, in satisfaction of the requirement of Subsection 19.73.100(A)(4) for dedication of park lands outside of the project district.

Mr. Churchill confirmed that, since the Project District ordinance was adopted in 1989, new laws governing affordable housing for hotel development and park dedication requirements for subdivisions have been enacted. Future development in the Project District will adhere to those requirements.

He advised your Committee that a project containing affordable rental units (Pulelehua) is being planned near the West Maui Airport and will likely be submitted for Council consideration within the year. Current development plans for the Project District include approximately 30 acres for multi-family development and 5 acres for a retail town center; there are currently no plans for future single-family development.

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Your Committee expressed concern about the 15-year duration between the enactment of MCC Chapter 19.73 and the presentation of the bilateral agreement to establish a job training program, the bilateral agreement to establish an affordable housing program, and the unilateral agreement providing for the dedication of park land to the County. The Staff Planner advised that ML&P had discovered the need for the agreements about a year ago, while reviewing Chapter 19.73. Because ML&P had already taken action consistent with the agreements, formal approval of the agreements could be regarded as “a housekeeping measure,” according to the Staff Planner.

Your Committee commented on the bilateral agreement to establish a job training program by urging the Administration to consider the community’s needs for career development and economic sustainability before approving ML&P’s proposal.

Your Committee commented on the bilateral agreement to establish an affordable housing program by urging the Administration to consider Maui County’s critical affordable housing shortage and the anticipated impacts of future development on employee housing needs.

Your Committee voted to recommend adoption of the draft resolution, to transmit the bilateral agreements with comments set forth in a committee report to the Mayor, and to file the communication.

Your Committee is in receipt of a revised bilateral agreement to establish an affordable housing program, incorporating technical revisions.

Your Committee is also in receipt of a proposed resolution, approved as to form and legality by the Department of the Corporation Counsel.

After your Committee met on the matter, it was discovered that Exhibits “A” and “B” to Exhibit “A” (“November 27, 1984 Agreement”) of the document entitled “BILATERAL AGREEMENT FOR DEVELOPMENT AND COORDINATION OF AN AFFORDABLE HOUSING PROGRAM” were not submitted with County Communication No. 03-307.

On May 4, 2004, the Department of Housing and Human Concerns provided your Committee with a copy of the November 27, 1984 Agreement with Exhibit “A” only attached. On May 5, 2004, Maui Land and Pineapple Company,

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Inc. provided your Committee with a copy of an oversized map labeled Exhibit "B". These documents have been incorporated as exhibits to the agreement.

Consistent with its obligation to review and comment on the "BILATERAL AGREEMENT FOR DEVELOPMENT AND COORDINATION OF AN AFFORDABLE HOUSING PROGRAM" under MCC Subsection 19.45.050(A)(2), your Committee notes that the Administration should make a reasonable effort to confirm the authenticity of the exhibits prior to execution of the agreement.

Your Planning and Land Use Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "APPROVING A UNILATERAL AGREEMENT EXECUTED BY MAUI LAND & PINEAPPLE COMPANY, INC. RELATING TO PARK DEDICATION PURSUANT TO MAUI COUNTY CODE SUBSECTION 19.73.100(A)(4)" be ADOPTED;
2. That the County Clerk RECORD the unilateral agreement;
3. That the bilateral agreement, attached hereto, entitled "BILATERAL AGREEMENT FOR DEVELOPMENT AND COORDINATION OF A JOB TRAINING PROGRAM", be TRANSMITTED to the Mayor;
4. That the bilateral agreement, as revised herein and attached hereto, entitled "BILATERAL AGREEMENT FOR DEVELOPMENT AND COORDINATION OF AN AFFORDABLE HOUSING PROGRAM", be TRANSMITTED to the Mayor;
5. That a copy of this Committee Report be TRANSMITTED to the Mayor; and
6. That County Communication No. 03-307 be FILED.

Adoption of this report is respectfully requested.

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WAYNE K. NISHIKI Chair

DANNY A. MATEO Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

ROBERT CARROLL Member

JOSEPH PONTANILLA Member

JO ANNE JOHNSON Member

CHARMAINE TAVARES Member

DAIN P. KANE Member