

COUNCIL OF THE COUNTY OF MAUI
HOUSING AND
HUMAN SERVICES COMMITTEE

November 17, 2006

Committee
Report No.

06-147

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

Chair and Members:

Your Housing and Human Services Committee, having met on March 13, 2006, July 20, 2006 and November 2, 2006, makes reference to County Communication No. 05-311, from the Director of Housing and Human Concerns, transmitting a proposed resolution entitled "AUTHORIZING A GRANT OF A LICENSE OF COUNTY REAL PROPERTY TO TRI-ISLE RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC."

The purpose of the proposed resolution is to grant a license to Tri-Isle Resource Conservation and Development Council, Inc. to occupy the Pioneer Mill Office building consisting of approximately 15,809 square feet of land located in Lahaina (TMK: (2) 4-6-26:057), with a fair market rental value of \$44,735 per year, for a nominal rental of \$1 per year for a period of 25 years.

By correspondence dated October 26, 2005, and December 27, 2005, the Chair of your Committee requested that the Director of Housing and Human Concerns transmit copies of the proposed grant agreement, proposed license agreement, inspection reports regarding the property, and communications relating to the funding source for the needed repairs and renovation of the Pioneer Mill Office building.

By correspondence dated January 9, 2006, the Director of Housing and Human Concerns transmitted the following:

1. A document entitled "GRANT AGREEMENT FOR A LICENSE OF COUNTY REAL PROPERTY".

The purpose of the grant agreement is to grant a license to Tri-Isle Research Conservation and Development, Incorporated (Tri-Isle) to occupy the Pioneer Mill Office building solely as a resource center for residents of West Maui, consisting of office and meeting space, and to establish a repository for genealogical and historical documents.

COUNCIL OF THE COUNTY OF MAUI
HOUSING AND
HUMAN SERVICES COMMITTEE

November 17, 2006
Page 2

Committee
Report No. 06-147

2. A document entitled "LICENSE".

The purpose of the license is to allow Tri-Isle to occupy the Pioneer Mill Office building for 25 years for a fee of \$1.00 per year. Attached to the license are inspection reports for the subject property identified as Exhibit "D".

By correspondence dated February 24, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel opine on whether a license or lease was more appropriate for this property, and whether the County would be legally liable in a lawsuit if it leases a building with known structural deficiencies.

At its meeting of March 13, 2006, your Committee met with the Director of Housing and Human Concerns; an Executive Assistant to the Mayor; a Deputy Corporation Counsel; and Stuart Funke-d'Egnuff, Program Manager, Tri-Isle.

There was no public testimony.

An Executive Assistant to the Mayor stated that the Pioneer Mill Office building is currently nominated for the National Register of Historic Places and the Administration would like to preserve that nomination. He further stated that Tri-Isle is seeking to use the building for a resource center, and believes that it can raise the money to repair the building, provided it can obtain a long-term license to secure any financing.

Mr. Funke-d'Egnuff stated that Tri-Isle's mission is to assist the community with projects, and it often works as the project manager for groups that do not have an official nonprofit status. He explained that the community organization Na Kapuna O Maui (the Elders of Maui) would like to use the building as a resource center, but they are not an official nonprofit agency. The license and all required funding agreements for the Pioneer Mill Office building would be with Tri-Isle as the project manager.

Your Committee expressed a concern that the building will be expensive to repair and asked whether Tri-Isle will be able to raise the required funds. Mr. Funke-d'Egnuff stated that Tri-Isle is confident that it will be able to obtain many donated services and grant funding. He also stated that while the group does not have an exact estimate on the cost of repairing the building, it feels that the necessary funds will be available for the needed repairs.

COUNCIL OF THE COUNTY OF MAUI
HOUSING AND
HUMAN SERVICES COMMITTEE

November 17, 2006
Page 3

Committee
Report No. 06-147

Your Committee discussed whether a license or lease was most appropriate for this property, and whether the County would be exposed to liability if the license or lease was granted for a building with existing structural deficiencies.

The Deputy Corporation Counsel stated that a license was the appropriate conveyance document for the Pioneer Mill Office building because the facility is situated on a portion of a larger site. A lease would require the property to be subdivided. He also stated that this type of license is not unusual, and that the license agreement provides that the licensee agrees to accept the premises in its existing "as is" condition. He also noted that Exhibit "C" of the license requires the licensee to procure and maintain liability insurance.

Your Committee also expressed concern that the site was inspected more than six years ago, and recommended that the Administration conduct another inspection to include the structural elements of the building. Your Committee also requested the status of the building's nomination on the National Register of Historic Places, and any restrictions that such status would impose on the County.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated May 15, 2006 and June 22, 2006, the Chair of your Committee requested that the Director of Housing and Human Concerns provide an updated inspection report, an update on the status of the building's nomination to the National Register of Historic Places, and what the County would be required, or prohibited, to do if the nomination is approved.

At its meeting of July 20, 2006, your Committee met with the Director of Housing and Human Concerns; an Executive Assistant to the Mayor; a Deputy Corporation Counsel; and Stuart Funke-d'Egnuff, Program Manager, Tri-Isle.

There was no public testimony.

The Executive Assistant to the Mayor stated that it would be prudent to conduct another inspection of the property. He also stated that the Pioneer Mill Office building is not on the National Register of Historic Places and that the Administration is not currently intending to nominate the building to the National Register of Historic Places.

COUNCIL OF THE COUNTY OF MAUI
HOUSING AND
HUMAN SERVICES COMMITTEE

November 17, 2006
Page 4

Committee
Report No. 06-147

Mr. Funke-d'Egnuff stated that Tri-Isle submitted an application for an updated inspection of the site to the Administrator of the Development Services Administration, Department of Public Works and Environmental Management. He explained that a \$180 fee was required before an inspection could be performed, and there was a question as to who would be responsible for paying the fee.

The Executive Assistant to the Mayor clarified that the fee is required because the County is not funding the repairs to the building, and the Office of the Mayor would be able to pay the fee.

Your Committee discussed adopting the resolution with a condition that another inspection be conducted before the license is executed. Your Committee expressed concern that Tri-Isle would be signing a long-term license without knowing the true condition of the building.

The Deputy Corporation Counsel recommended that the license be revised instead of the resolution to include an updated inspection date. He stated that the Department of the Corporation Counsel could hold the license until a current inspection is conducted and a new inspection date is inserted into the license. He also recommended that your Committee receive the updated inspection report for information.

The Director stated that the Administration supported granting the license to Tri-Isle but had similar concerns about the building as your Committee.

Your Committee requested that reference to an updated inspection report be included in the license before the license is executed by the County. Your Committee also requested a copy of the updated inspection report.

Your Committee voted to recommend adoption of the proposed resolution and filing of the communication.

By correspondence dated August 23, 2006, the Department of the Corporation Counsel transmitted a revised proposed resolution incorporating nonsubstantive revisions to the labeling of the exhibit.

By correspondence dated August 28, 2006, the Chair of your Committee transmitted the updated inspection reports.

COUNCIL OF THE COUNTY OF MAUI
HOUSING AND
HUMAN SERVICES COMMITTEE

November 17, 2006
Page 5

Committee
Report No. 06-147

Your Committee notes that this item was scheduled for another Committee meeting after the inspection reports were received to discuss the reports and the serious nature of the structural deficiencies.

At its meeting of November 2, 2006, your Committee met with the Deputy Planning Director, a Deputy Corporation Counsel, and Stuart Funke-d'Egnuff, Program Manager, Tri-Isle.

There was no public testimony.

Mr. Funke-d'Egnuff representing Tri-Isle, stated that Tri-Isle acknowledges the condition of the building and is still in support of the resolution. He said that Tri-Isle has not pursued any grant funding to restore the building because it is not officially under their control and they do not have cost estimates for repairs. Mr. Funke-d'Egnuff stated that he believes that funding is available and he would not need to ask the County for grant funds to repair the building.

Your Committee discussed the new inspection reports on the Pioneer Mill Office building. The Deputy Planning Director stated that the building will require a new roof, a complete electrical rewiring, and new plumbing fixtures to replace lead pipes. This will be costly, but would save the building from needing to be demolished. He clarified that the building has not been nominated for the National Register of Historic Places, and more grant funds would be available to refurbish the building if the County chose to pursue a nomination.

Your Committee expressed concern that the County would be liable if it leases a building with known problems. The Deputy Corporation Counsel confirmed that the license and grant agreement require the licensee to accept the building in an "as-is" condition and maintain insurance coverage. He further stated that while the County always has some liability exposure, it is limited in this instance.

Your Committee voted to reconsider its previous vote on the resolution.

Your Committee voted to recommend adoption of the revised proposed resolution incorporating nonsubstantive revisions, and filing of the communication.

COUNCIL OF THE COUNTY OF MAUI
**HOUSING AND
HUMAN SERVICES COMMITTEE**

November 17, 2006
Page 6

Committee
Report No. 06-147

Your Housing and Human Services Committee RECOMMENDS the following:

1. That Resolution No. _____, as revised herein and attached hereto, entitled "AUTHORIZING A GRANT OF A LICENSE OF COUNTY REAL PROPERTY TO TRI-ISLE RESOURCE CONSERVATION AND DEVELOPMENT COUNCIL, INC.", be ADOPTED; and

2. That County Communication No. 05-311 be FILED.

Adoption of this report is respectfully requested.

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COUNCIL OF THE COUNTY OF MAUI
**HOUSING AND
HUMAN SERVICES COMMITTEE**

November 17, 2006
Page 7

Committee
Report No. 06-147

DANNY A. MATEO Chair

JO ANNE JOHNSON Member

JOSEPH PONTANILLA Vice-Chair

CHARMAINE TAVARES Member

G. RIKI HOKAMA Member