

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

January 20, 2006

**Committee**  
**Report No.**

\_\_\_\_\_ 06-9

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 January 5, 2006, makes reference to County Communication No. 05-312, from the Director of Housing and Human Concerns, transmitting a copy of a proposed affordable housing agreement entitled "Agreement Regarding Affordable Housing: Maui Lu Redevelopment" between the County of Maui and 575 South Kihei Road, LLC (SKRLLC).

Your Committee notes that SKRLLC submitted a Special Management Area application to the Maui Planning Commission to redevelop the Maui Lu Resort from the existing 174 units, to 400 time share units and 388 lock-off units, for a total of 788 units. The 788 units were used to calculate the number of affordable units required. (A lock-off unit has a separate entrance that allows one unit to be locked off to create separate units). The resort is on property zoned, and designated in the Kihei-Makena Community Plan, for hotel use. Pursuant to Maui County Code, Chapter 2.94, Affordable Housing Policies for Hotel-Related Developments, SKRLLC is required to provide one affordable housing unit for every four hotel units, or 154 affordable units. The affordable housing agreement memorializes and implements the understanding regarding the satisfaction of affordable housing requirements.

By correspondence dated December 28, 2005, the Director of Housing and Human Concerns transmitted a summary of two co-development agreements, entitled "Summary of Co-Development Agreements". The first co-development agreement is between SKRLLC and Hale Mahaolu Ehiku, Inc. Under the co-development agreement, SKRLLC will co-develop with Hale Mahaolu Ehiku, Inc., 104 affordable rental units in its "Ehiku Elderly Project". The second co-development agreement is between SKRLLC and Maui Economic Concerns of the Community, Inc. (MECC). Under the co-development agreement, SKRLLC will develop, with MECC, 50 rental units in its South Maui Resource Center. These projects will satisfy SKRLLC's affordable housing requirements.

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At its meeting, your Committee met with the Director of Housing and Human Concerns; a Deputy Corporation Counsel; B. Martin Luna, Esq., Carlsmith Ball, LLP; and Christopher L. Hart, Landscape Architect - Planner, Chris Hart & Partners, Inc.

Your Committee received public testimony from one person suggesting that “affordable housing” and “units” be better defined in the affordable housing agreement. He also stated that the affordable housing agreement was not specific about unit size. Your Committee also received public testimony from one person in support of the affordable housing agreement.

Mr. Hart gave a brief summary of the project. He stated that the Maui Lu Resort is situated on 27 acres, with 1 acre located on the ocean side of South Kihei Road. He explained that the hotel currently consists of 48 units located on the ocean side of the road with the remaining 126 units located on the mountain side of the road. The renovated project will consist of timeshares, with 12 units located on the ocean side of South Kihei Road, and 388 located units on the mountainside of the road. He also stated that the 388 units will be lock-off units that are included in the affordable housing requirement.

Mr. Luna stated that the affordable housing agreement is very similar to the Wailea MF-9 agreement, but contains more conditions. The Maui Planning Commission’s approval of the project has been delayed because someone was denied the ability to intervene in the Commission’s acceptance of the final environmental report. The dispute is now in court.

Your Committee requested that the Director of Housing and Human Concerns and Mr. Luna consider the following modifications on page two of the “Agreement” section of the affordable housing agreement:

1. The second item in the “Agreement” section reads:

“This Agreement fully satisfies the affordable housing requirements for the 575 SKRLLC Project. The County shall not impose the Affordable Housing Policies or any other or further affordable housing obligations as a condition to or in connection with the Project. It is the specific intent of this paragraph that no future covenant or condition requiring the construction, development, inclusion, allowance for or contribution to or in lieu

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of affordable housing or employee housing shall be imposed on the Project unless the number of units in the Project is decreased or increased by 575 SKRLLC”.

Your Committee expressed concern that this project would not be subject to future affordable housing requirements. The Director of Housing and Human Concerns stated that the Department could consider changing this provision; however, the project would be completed before any future affordable housing policy was established, particularly if the proposed affordable housing policy, currently pending before your Committee, would need to be referred to the planning commissions for review.

2. The fifth item in the “Agreement” section reads:

“575 SKRLLC may terminate this Agreement at its option in the event that it decides in its own discretion that it is unable to proceed with its Project. In this event, 575 SKRLLC shall give written notice to County of its decision to terminate the Agreement. Upon termination of this Agreement, the parties shall be released from any obligations herein except that 575 SKRLLC and the Property shall be credited with affordable housing units provided by 575 SKRLLC pursuant to this Agreement that 575 SKRLLC is unable to apply against the market priced units of the Project. Accordingly, 575 SKRLLC may be allowed by County to apply said affordable housing credits for another project that it develops or to sell affordable housing credits to another developer which is required to construct affordable housing units. Upon said termination, County and 575 SKRLLC shall execute a memorandum of understanding to document said vested affordable housing credits.”

Your Committee expressed concern about giving the developer affordable housing credits if all of the affordable housing units are not constructed. Mr. Luna stated that he would be happy to work with the Department on the credits allowed for affordable housing units.

Your Committee expressed concern with using the South Maui Resource Center as one of the proposed affordable housing sites because the property for the center has not yet been donated. MECC expects to obtain a firm commitment within the next

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several months for the five acres of land that it needs for the center. Your Committee also expressed a concern that Maui Lu's open park-like atmosphere would be lost with the expansion of the resort.

Mr. Luna stated that an alternate property is being considered if the acquisition of the land for the South Maui Resource Center is unsuccessful. Mr. Hart stated that considerable effort will be given to maintaining the park-like character of the Maui Lu Resort with the redevelopment.

Your Committee notes that pursuant to Maui County Code, Section 2.94.030(D), the Council's role is to review and comment on the unexecuted affordable housing agreement. The Council shall then transmit its comments and the agreement to the Administration for further negotiation and modification, if appropriate, and for proper execution.

Your Committee voted to recommend filing of the communication.

Your Housing and Human Services Committee **RECOMMENDS** the following:

1. That copies of this committee report and the agreement entitled "Agreement Regarding Affordable Housing: Maui Lu Redevelopment" be TRANSMITTED to the Mayor; and
2. That County Communication No. 05-312 be FILED.

Adoption of this report is respectfully requested.

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**DANNY A. MATEO** Chair

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