

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

December 14, 2004

Committee
Report No. 04-220

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 December 1, 2004, makes reference to County Communication No. 04-267, from the Director of Public Works and Environmental Management, relating to a proposed exchange of land located on North Market Street in Wailuku, between the County of Maui and Nane Webster Aluli and Emma Aluli, formerly known as Emma Aluli Meyer, Successor Trustees of the Noa W. Aluli Trust dated October 30, 1933, recorded in Liber 1395 at Page 45 (the Aluli Trust Estate).

By correspondence dated November 10, 2004, the Director of Public Works and Environmental Management, transmitted a proposed resolution entitled "AUTHORIZING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED AT 70 NORTH MARKET STREET, WAILUKU, MAUI, HAWAII, PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE".

The purpose of the proposed resolution is to authorize the exchange of a portion of County-owned properties comprised of approximately 255 square feet located on North Market Street in Wailuku (TMK: (2) 3-4-012:022 and (2) 3-4-012:114) with a portion of property owned by the Aluli Trust Estate comprised of approximately 270 square feet located on North Market Street in Wailuku (TMK: (2) 3-4-012:018), referred to as Parcels 022, 114, and 018, respectively.

Your Committee notes that the proposed resolution refers to the street address of the County-owned properties as 70 North Market Street. However, Parcel 022 previously contained both Lots 1-A and Lot 2, and Lot 2 subsequently became separately identified as TMK: (2) 3-4-012:114. In addition, while 70 North Market Street applies to Parcel 022, it appears that the current street address of Parcel 114 may be 62 North Market Street.

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By correspondence dated November 16, 2004, the Director of Public Works and Environmental Management transmitted a preliminary title report, a Summary Appraisal Report as of November 4, 2004 prepared for the County by ACM Consultants, Inc. (Appraisal), and a public notice of the proposed exchange relating to the subject properties (Public Notice).

Your Committee notes that the Appraisal reflects a market value of \$8,800 for the 270 square foot portion of Parcel 018 owned by the Aluli Trust Estate, and a market value of \$8,700 for the 255 square foot portions of Parcel 022 owned by the County (\$7,300 for the 226 square foot portion of Lot 1-A, and \$1,400 for the 29 square foot portion of Lot 2, respectively).

Your Committee further notes that Maui County Code Section 3.44.070(D) provides, in pertinent part, that "Real property disposed of by exchange shall be exchanged for property of not less than equal value."

By correspondence dated November 23, 2004, the Economic Development Coordinator transmitted the following:

1. A proposed resolution entitled "AUTHORIZING AN AMENDMENT TO THE GRANT OF A LEASE OF REAL PROPERTY TO LOKAHI PACIFIC FOR THE WAILUKU SMALL BUSINESS MARKET CENTER".

The purpose of the proposed resolution is to authorize an amendment to the Lokahi Pacific lease to incorporate the additional 270 square feet of land to be acquired by the County through the land exchange.

2. A proposed "FIRST AMENDMENT TO AMENDED LEASE" for TMK: (2) 3-4-012:022 and 018 (portion).

The purpose of the proposed lease amendment is to amend the description of the subject property.

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3. A proposed "GRANT AGREEMENT FOR AN AMENDMENT TO AMENDED LEASE OF COUNTY REAL PROPERTY" (Grant Agreement).

The purpose of the proposed grant agreement is to amend the description of the subject property.

By correspondence dated November 23, 2004, Craig G. Nakamura, Esq., the attorney for the Aluli Trust Estate, submitted written testimony in support of the proposed land exchange and transmitted a diagram depicting the portions of properties subject to the exchange.

By correspondence dated November 29, 2004, the Chair of your Committee transmitted a replacement Page 1 of the Appraisal, revised by ACM Consultants, Inc. to correct the size of the County-owned portions of properties to be exchanged, from 266 to 255 square feet, in line 4.

At its meeting, your Committee met with the Director of Public Works and Environmental Management; the Deputy Director of Public Works and Environmental Management; the Economic Development Coordinator; the Deputy Director of Finance; two Deputy Corporation Counsel; Alexa Basinger, a representative of Lokahi Pacific; and Craig Nakamura, Esq., the attorney for the Aluli Trust Estate.

Your Committee received public testimony from one individual, the attorney for the Aluli Trust Estate, who supported the proposed land exchange.

A Deputy Corporation Counsel provided an overview of the proposed land exchange, informing your Committee that it would serve dual purposes. First, the exchange would square off the site of the proposed Wailuku Small Business Market Center that is the subject of a 30-year lease dated June 19, 2002 with Lokahi Pacific (Lease). Second, the exchange would resolve Aluli Trust Estate's existing encroachments on County property. She explained that the proposed lease amendment would incorporate the land that the County would acquire from the Aluli Trust Estate into the lease to Lokahi Pacific. She further advised your Committee that a review of the preliminary title report dated October 25, 2004 shows no defect in title other than the encroachments the proposed land exchange would cure.

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The Director of Public Works and Environmental Management, the Economic Development Coordinator, and a Deputy Corporation Counsel stated that they have no objections to the proposed land exchange.

Your Committee discussed the benefits to be gained by the land exchange.

Your Committee also discussed the valuations of the exchange parcels reflected in the Appraisal. The Director of Public Works and Environmental Management noted that a key distinction between the Aluli Trust Estate parcel and the County parcel is their zoning. The Aluli Trust Estate parcel is zoned B-2 Community Business District. The County parcel is zoned B-3 Central Business District. The difference in zoning affects the allowable densities, which in turn affect the valuations of each parcel.

Your Committee voted to revise the proposed resolution to incorporate nonsubstantive revisions.

Your Committee voted to recommend adoption of the revised proposed resolution to authorize the land exchange.

Your Committee considered the request by the Office of Economic Development to authorize an amendment to the Amended Lease of County real property between the County and Lokahi Pacific dated October 9, 2002 (Amended Lease).

A Deputy Corporation Counsel informed your Committee that, although the County does not yet own the Aluli Trust Estate property referred to as a portion of Parcel 018, the resolution has been drafted in such a way as to allow the Mayor to execute the proposed amendments to the lease and grant agreement once the land exchange has been finalized. Your Committee notes that Council approval of the land exchange would first be required, followed by subdivision and reconsolidation of the properties, and execution and recordation of the deed.

Your Committee discussed the scope of the proposed amendments to the description of property covered by the Amended Lease, the street addresses of the properties to be exchanged, and various nonsubstantive revisions. A Deputy Corporation Counsel informed your Committee that the street address for a

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County-owned parcel is unclear, and that possible confusion could be avoided by deleting the street address reflected on the first page of the proposed resolution and referring instead to the parcels solely by TMK number.

A Deputy Corporation Counsel further informed your Committee that the 4 square foot portion and the 25 square foot portion of Parcel 114 to be transferred from the County to the Aluli Trust Estate are included in the property covered by the Amended Lease. Accordingly, since the County will no longer own those portions of property, the proposed resolution authorizing the lease amendment should reflect that they are being deleted from the Amended Lease. Similar revisions should also be made to the accompanying proposed First Amendment to Amended Lease and proposed Grant Agreement.

The Deputy Director of Public Works and Environmental Management summarized the steps that would be involved in the limited subdivision process prior to execution of the proposed lease amendment.

Your Committee voted to revise the proposed resolution authorizing the lease amendment as follows:

1. To delete reference to the street address in paragraph 1;
2. To clarify the intent of the proposed lease amendment in former paragraphs 5 and 6 of the proposed resolution;
3. To reflect that the lease, as amended, no longer includes the 4 square foot portion and the 25 square foot portion of Parcel 114 disposed of by the land exchange, and incorporate any exhibits necessary to more particularly describe the property to be included within the proposed First Amendment to Amended Lease and the proposed Grant Agreement; and
4. To incorporate various nonsubstantive revisions.

Your Committee directed a Deputy Corporation Counsel to incorporate similar revisions into the proposed First Amendment to Amended Lease and the proposed Grant Agreement.

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

Your Committee is in receipt of a revised proposed resolution entitled "AUTHORIZING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED AT WAILUKU, MAUI, HAWAII, AND IDENTIFIED AS TAX MAP KEY NUMBERS (2) 3-4-012:022 AND (2) 3-4-012:114 PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE". Your Committee notes that the proposed resolution has been revised to delete references to street addresses and to identify the subject parcels strictly by TMK numbers.

Your Committee is also in receipt of a revised proposed resolution, entitled "AUTHORIZING AN AMENDMENT TO THE GRANT OF A LEASE OF REAL PROPERTY TO LOKAHI PACIFIC FOR THE WAILUKU SMALL BUSINESS MARKET CENTER", incorporating your Committee's revisions.

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EXCHANGE OF A PORTION OF REAL PROPERTY LOCATED AT WAILUKU, MAUI, HAWAII, AND IDENTIFIED AS TAX MAP KEY NUMBERS (2) 3-4-012:022 AND (2) 3-4-012:114 PURSUANT TO SECTION 3.44.060, MAUI COUNTY CODE" be ADOPTED;
2. That Resolution No. _____, attached hereto, entitled "AUTHORIZING AN AMENDMENT TO THE GRANT OF A LEASE OF REAL PROPERTY TO LOKAHI PACIFIC FOR THE WAILUKU SMALL BUSINESS MARKET CENTER" be ADOPTED; and
3. That County Communication No. 04-267 be FILED.

Adoption of this report is respectfully requested.

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ROBERT CARROLL **Chair**

MICHAEL J. MOLINA **Member**

DAIN P. KANE **Vice-Chair**

WAYNE K. NISHIKI **Member**

G. RIKI HOKAMA **Member**

JOSEPH PONTANILLA **Member**

JO ANNE JOHNSON **Member**

CHARMAINE TAVARES **Member**

DANNY A. MATEO **Member**