

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

July 18, 2003

**Committee
Report No.**

03-63

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 July 7, 2003, (site inspection and meeting) makes reference to County Communication No. 03-139, from Councilmember Wayne K. Nishiki, relating to Council approval of proposed affordable-housing projects pursuant to Chapter 201G, Hawaii Revised Statutes.

By correspondence dated June 13, 2003, the Council Chair transmitted correspondence dated June 12, 2003 (received on June 13, 2003), from the Director of Housing and Human Concerns, transmitting the following:

1. Nineteen copies of a document, dated June 2003, from Castle and Cooke, LLC, entitled "Request for Amendments, Lanai City Redevelopment Project Pursuant to Section 201G-118, Hawaii Revised Statutes"; and
2. A proposed resolution entitled, "APPROVING AMENDMENTS TO THE LANAI CITY REDEVELOPMENT PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES".

The purpose of the resolution is to approve amendments to the Lanai City Redevelopment Project, approved by the Council in 1996 by Resolution No. 96-31.

Your Committee notes that the proposed amendments provide the following: (1) the "as is" sale of existing houses and lots; (2) seven additional affordable housing rental units; (3) the consolidation of two or more small lots measuring less than 3,000 square feet; (4) buyers and renters with greater flexibility and selection through the provision of additional home and rental unit designs and optional carports; (5) the use of alternate building materials for housing construction; (6) flexibility for the placement and construction of improvements on a lot, including lots that have been consolidated by providing

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

July 18, 2003
Page 2

Committee
Report No. 03-63

for the removal of existing trees; and (7) the deletion of the self-help housing component.

By correspondence dated June 17, 2003, your Committee requested that the Corporation Counsel clarify Section 201G-118, Hawaii Revised Statutes (HRS), relating to housing development and exemptions from statutes, ordinances, charter provisions, and rules. Specifically, your Committee requested clarification on whether the 45-day deadline for Council approval or disapproval under subsection (a)(3)(A) is triggered for amendments to projects previously approved under former Section 201E-210, HRS.

By correspondence dated June 20, 2003, your Committee requested that the Director of Housing and Human Concerns provide a resolution that would disapprove amendments to the Lanai City Redevelopment Project pursuant to Section 201G-118, Hawaii Revised Statutes. The resolution is necessary if the Council decides to disapprove the project.

By correspondence dated June 20, 2003, the Director of Housing and Human Concerns transmitted a proposed resolution entitled, "DISAPPROVING AMENDMENTS TO THE LANAI CITY REDEVELOPMENT PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES". The purpose of the proposed resolution is to disapprove amendments to the Lanai City Redevelopment Project.

At its site inspection, your Committee met with the Deputy Director of Housing and Human Concerns; the Housing Administrator from the Department of Housing and Human Concerns; the Deputy Director of Public Works and Environmental Management; a Planner from the Department of Planning; the Corporation Counsel; and representatives of Castle & Cooke Resorts, LLC, (the applicant), including Ralph Masuda, Vice President; Steve Bumar, Executive Vice President of Planning and Development; Michael Munekiyo, the applicant's land use consultant; and Martin Luna, the applicant's attorney.

Two people provided oral testimony. The first testifier stated that the self-help housing portion of the original project should remain intact. He noted that there are a number of entities that would be available to assist the residents with self-help housing.

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

July 18, 2003
Page 3

Committee
Report No. 03-63

The second testifier stated that he supported additional affordable housing, particularly because it would benefit the school's staff. Previously, the school had cottages that were available for the staff, but those were later converted into portable classrooms or eliminated, causing a shortage of affordable housing for teachers. He also noted several concerns, including the impact of 201G housing properties on neighboring property values and the amount each family would have to invest to participate in the project.

The Housing Administrator noted that the Department of Housing and Human Concerns supports the project amendments.

Your Committee inspected a sampling of the types of housing options included in the redevelopment project; a renovated home located at 1220 Lanai Avenue a new plantation home located at 268 Mahana Street; and the rental units located at 165 Fraser Avenue (also known as Kanepuu Hale).

Mr. Masuda noted that the renovated home and lot were purchased for \$42,000; the new plantation two-bedroom home and lot were purchased for \$140,000; and the affordable rental units are rented at \$300-\$550 per month, based on income levels.

Mr. Masuda further noted that additional rental units would be built after receiving approval of the proposed amendments. Transient employees such as construction workers, seasonal hotel workers and teachers primarily use these units.

At its meeting on Lanai, your Committee met with the Deputy Director of Housing and Human Concerns; the Housing Administrator from the Department of Housing and Human Concerns; the Deputy Director of Public Works and Environmental Management; the Deputy Director of Parks and Recreation; a Planner from the Department of Planning; the Corporation Counsel; and representatives of Castle & Cooke Resorts, LLC (the applicant), including Ralph Masuda, Vice President; Steve Bumbar, Executive Vice President of Planning and Development; Michael Munekiyo, the applicant's land use consultant; and Martin Luna, the applicant's attorney.

Your Committee received oral testimony from eight individuals and written testimony from the Branch Manager of First Hawaiian Bank, who stated his

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

July 18, 2003
Page 4

Committee
Report No. 03-63

support of the proposed amendments. He noted that the bank has financed over 20 mortgage loans and is working on additional applications. He also indicated that there is great community interest in purchasing plantation homes from Castle & Cooke Resorts, LLC.

The first person to provide oral testimony was a realtor who stated that she supported the amendments to the original project. She noted that the Council previously approved the sale of 25 homes, and all 25 have been sold. She also provided your Committee with a petition signed by 91 people who also support the amendments to the redevelopment plan. She also noted that the people on the petition would like the opportunity to purchase the homes they are in, but are unable to do so until the amendments are approved by the Council.

Three people testified that they were able to purchase their home at an affordable rate, and were hopeful that the same opportunity would be available to other Lanai residents.

Another testifier stated that he would like to see the self-help component of the redevelopment plan maintained, instead of deleted, due to the need in the community. He also noted that Castle & Cooke Resorts, LLC had donated 115 acres; 50 acres will be used by the school and the remaining 65 acres are still laying fallow. He further inquired about the possibility of allowing neighboring properties, adjacent to those properties earmarked for the 201G housing, to enjoy the same exemptions as those allowed for the 201G housing projects.

Three other testifiers noted that they long to be able to purchase the Castle & Cooke-owned homes they are currently renting. One testifier further added that she would like to cut down some of the pine trees on her property, but was told they belong to the County.

Upon questioning by your Committee, the Housing Administrator provided an overview of the County's role in processing 201G applications. He stated that the Department of Housing and Human Concerns assumes a facilitator role in the process by asking for various State and County agencies to review the application and to provide comments. Upon receiving those comments, the Department asks the developer to address any concerns raised. Upon completion of this phase, the Department drafts the proposed resolutions

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

July 18, 2003
Page 5

Committee
Report No. 03-63

approving or disapproving the project, and submits the documents to the Council for its review and action.

A Council member expressed a number of concerns including: (1) whether the County is able to ensure the developer's compliance with Council-approved plans for 201G affordable housing projects; (2) that he had learned that a member of the Castle & Cooke Resorts, LLC management team had purchased a lot designated for affordable housing by low-income groups; (3) that the developer would earn credit for providing affordable housing when the buyer in question is not a member of the targeted low-income group; (4) that the developer is selling affordable housing units to individuals who have lived in the home for less than five years, when the original plan specified that buyers must live in the home for at least five years; (5) that the County needs to find ways to ensure compliance; (6) that information is needed on levying penalties on developers who fail to follow the plans that are approved by the Council; and (7) that he hoped the properties earmarked for affordable housing were being protected from speculators.

The Housing Administrator stated that when deviations from the previously approved project are discovered, the developer is asked to submit its plans to the Council for approval. Further, he noted that with properties for sale, the Department requires that the developer provide documents from third parties, such as escrow companies, to verify that they are providing affordable housing for the target groups they agreed to serve. Without such documentation, the developer will not receive affordable housing credit. He also noted that he is not aware of any provision for levying penalties against a developer. Further, the Housing Administrator noted that a staff member visits the project to review the tenant files to ensure that rentals are meeting the target groups.

Mr. Masuda noted that in the scenario described by the Council member, in which a lot was sold to a member of the management team, Castle & Cooke Resorts, LLC is taking corrective measures as follows: (1) the company is not seeking affordable housing credit for the sale of the property in question; (2) the company is forming a committee, comprised of its President, Finance Director and a representative of the ILWU, to review the sale of future properties and to ensure that the buyers qualify for affordable housing; and (3) various requirements relating to income and residency will be met. He further noted that the five-year residency requirement has been deleted.

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

July 18, 2003
Page 6

Committee
Report No. 03-63

Mr. Luna explained that the County has the first option to buy back any property for the original sales price plus any improvements. This will allow the affordable housing program to continue.

A Council member asked about the inclusion of a self-help housing component in the 201E process, and also asked for clarification about why this component was being deleted in the 201G process.

Mr. Munekiyo stated that under the 201E process, 40 lots were set aside for self-help housing. Castle & Cooke Resorts, LLC decided to delete this program under the 201G process due to lack of community interest.

Mr. Masuda added that the program requires management by a nonprofit organization in good standing with at least two years of experience in constructing self-help housing in the State of Hawaii. Representatives of Castle & Cooke Resorts, LLC visited with nonprofit organizations on Kauai and on Oahu. The information was then relayed to the community, but interest in pursuing this type of housing was very low, with no more than two families indicating an interest in pursuing it.

Mr. Masuda explained that representatives from the Kauai and Oahu self-help housing organizations stated that in order for the program to be successful, at least ten homes needed to be built. The families would share the cost of hiring a construction supervisor who is familiar with building homes in accordance with specifications approved by the Department of Housing and Human Concerns and the Council. Further, the cost to build on Lanai can be quite high. For these reasons, as well as low community interest, the company decided to eliminate the self-help housing component.

In response to a statement made by a testifier, Mr. Masuda explained that the company gave the County 115 acres; of that acreage, 50 acres were dedicated for school use and 65 acres were earmarked by the County for affordable housing. These acres are separate from the properties earmarked for the affordable housing plans currently undergoing the 201G process.

The Staff Planner stated that in general, the Department supports the proposed amendments, as they would provide opportunities for affordable

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

July 18, 2003
Page 7

Committee
Report No. 03-63

housing on Lanai. She noted that the 201G process implements a blanket variance on a number of standards that would normally be a requirement of other development projects. She noted that some of the standards are under the authority of the County, and other standards are under the State's authority. She further noted that as far as the location of affordable housing, the Department feels that it is appropriate for affordable housing opportunities to be located within Lanai City.

The Staff Planner further clarified a statement made by a testifier regarding the extension of 201G benefits to neighboring properties. She noted that such an extension is not possible, under either State or County laws. A property owner without the 201G designation seeking to renovate or build a home would need to apply for a variance for their particular property.

The Deputy Director of Public Works and Environmental Management noted that when the project was approved pursuant to Section 201E, abbreviated variance proceedings for exemptions from standards under Titles 16, 18, and 19 of the Maui County Code were permitted. At the time, the Department of Public Works and Waste Management handled such proceedings. Since then, the responsibility for variances from Title 19 has shifted to the Department of Planning. Therefore, he recommended that the change in departments should be reflected in the current documents under the 201G process.

A Committee member noted that as the Lanai Drainage Master Plan is not completed, he was concerned about any potential liability arising if the Council were to approve exemptions to drainage standards.

The Corporation Counsel stated that Section 201G-118, Subsection (A)(3)(B) states, "no action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications" as they relate to 201G projects. He also noted that he is not aware of any litigation history on this topic.

The Deputy Director of Parks and Recreation was asked to comment on a testifier's statement regarding the removal of old, decaying pine trees that are in the County rights-of-way.

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

July 18, 2003
Page 8

Committee
Report No. 03-63

The Deputy Director of Parks and Recreation stated that the Department is assigned with the responsibility of maintaining trees in County rights-of-way. He noted that it is costly to maintain the trees that were given to the County as a result of easement dedications. The Department's Arborist identifies high-risk trees that have the potential of inflicting damage. However, lack of funding makes it difficult to remove the high-risk trees.

Mr. Masuda stated that the company has a contract with Ernest Rezens, to survey high-risk trees, after two trees fell on two houses. Upon completion of his survey, Mr. Rezens found 12 trees in County rights-of-way that needed to be cut down. According to Mr. Masuda, the Staff Arborist from the Department of Parks and Recreation Department was provided a copy of Mr. Rezens' report. Additionally, two trees will be replanted elsewhere for each tree that is cut down.

A Council member asked for the Corporation Counsel's response to your Committee Chair's correspondence dated June 17, 2003, requesting clarification on the 45-day deadline for 201G applications.

The Corporation Counsel stated that the language in Section 201G, HRS is not clear; in fact, it only specifically refers to projects that are initially submitted to Council for approval, not for amendments to prior approvals. Nevertheless, he stated that he would encourage a conservative approach, which would mean that the Council should approve or disapprove within the 45-day timeframe. Further, he noted that the Council must either approve or disapprove of the project as presented; application amendments by the Council are not appropriate.

Your Committee notes that the 45-day time limit would expire on July 27, 2003.

Your Committee noted that although it originally intended to request that it be discharged from further consideration of this matter at the Council meeting of July 8, 2003 on Lanai, it would instead prefer to have its recommendation documented by committee report for consideration at the July 18, 2003 Council meeting.

Your Committee voted to recommend adoption of proposed resolution entitled, "APPROVING AMENDMENTS TO THE LANAI CITY

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

July 18, 2003
Page 9

Committee
Report No. 03-63

REDEVELOPMENT PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES”.

Your Housing and Human Services Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled “APPROVING AMENDMENTS TO THE LANAI CITY REDEVELOPMENT PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES”, be ADOPTED; and
2. That a copy of this committee report be TRANSMITTED to the Director of Housing and Human Concerns.

Adoption of this report is respectfully requested.

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

July 18, 2003
Page 10

Committee
Report No. 03-63

JOSEPH PONTANILLA Chair

JO ANNE JOHNSON Member

MICHAEL J. MOLINA Vice-Chair

DANNY A. MATEO Member

ROBERT CARROLL Member