

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

December 9, 2003

Committee

Report No.

03-154

As Amended

NOTE: The committee report was amended by the Council at its meeting on December 9, 2003 as follows: 1) by making corrections to pages 7 through 13 and on page 15; and 2) by deleting the bracketed material and underscoring the new material in the recommendation. 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 Housing and Human Services Committee, having met on November 3, 2003, (site inspection and meeting), November 17, 2003, and November 18, 2003, 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.

Your Committee notes that pursuant to Section 201G-118, Hawaii Revised Statutes (HRS), the Council shall approve or disapprove affordable housing projects by resolution within 45 days after the preliminary plans and specifications for the project have been submitted to the Council, or the project shall be deemed approved.

Your Committee further notes that the affordable housing project referenced in this Committee Report is the Pu`unoa Affordable Housing Project, which is being proposed jointly by Kaua`ula Associates (the applicant) and the State Housing and Community Development Corporation of Hawaii (HCDCH). The 254-unit housing project will provide 127 affordable-housing units on 54 acres of land mauka of the Puamana condominium community in West Maui. The deadline for Council approval or disapproval of the proposed project is December 11, 2003.

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Your Committee further notes that 201G housing applications are normally supported by the County Administration. In this instance, however, the applicant is partnering with the HCDCH, a State agency.

By correspondence dated October 21, 2003, your Committee requested information from the Corporation Counsel, regarding 201G applications that are submitted to the Council by entities other than the County Administration.

By correspondence dated October 24, 2003, Robert J. Hall, Acting Executive Director, HCDCH, stated that the HCDCH's Board of Directors approved the Pu`unoa Project at its meeting of October 17, 2003, and requested the Council's support of the application. The HCDCH Board of Director's "For Action" report was also transmitted.

By correspondence dated October 27, 2003, the applicant transmitted 15 copies of the 201G-118 Application for Pu`unoa and Supplemental Information on Pu`unoa.

By correspondence dated October 27, 2003, Councilmember Jo Anne Johnson transmitted a *Maui Time Weekly* article entitled, "Minimal Government Oversight".

By correspondence dated October 27, 2003, Councilmember Johnson transmitted a *Lahaina News* article entitled, "Council to take up Pu`unoa Village".

By correspondence dated October 28, 2003, your Committee transmitted draft resolutions entitled, "APPROVING THE PU`UNOA AFFORDABLE HOUSING PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES" and "DISAPPROVING THE PU`UNOA AFFORDABLE HOUSING PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES." The purpose of the first draft resolution is to approve the subject project with various exemptions, including exemptions from the West Maui Community Plan, the Agricultural Zoning District, the Off-Street Parking Requirement, and the Subdivision Ordinance. The purpose of the second draft resolution is to disapprove the subject project.

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By correspondence dated October 29, 2003, your Committee requested that the Corporation Counsel review and approve the draft resolutions as to form and legality.

By correspondence dated October 29, 2003, your Committee requested that the Corporation Counsel provide guidance on whether or not there are constitutional or other legal concerns regarding the applicant's proposal to sell the units based on a prioritization system. Your Committee notes that persons with West Maui residency and/or West Maui employment are at the top of the prioritization list.

By correspondence dated October 30, 2003, a Deputy Corporation Counsel responded to your Committee's October 21, 2003 request for information regarding 201G applications that are submitted to the Council by entities other than the County Administration. In summary, the Deputy Corporation Counsel stated that (1) there is no distinction in State law as to whether the proposed resolutions for Council consideration is submitted by the HCDCH or the County Administration as the "corporation"; (2) were it not for Chapter 201G, HRS, and the authority it vests in the Council to exempt a project from existing and applicable planning ordinances, the project would be required to process a community plan amendment to the West Maui Community Plan in accordance with Section 2.80A.060, Maui County Code, which would then trigger the requirement of an environmental assessment under Chapter 343, HRS; (3) projects that receive an initial disapproval may be revised and resubmitted for consideration by the Council; (4) the Department of the Corporation Counsel has consistently taken the position that once the preliminary plans and specifications have been received by the Council, they cannot be revised and/or amended; therefore, the Council must approve or disapprove the project as submitted; and (5) the entire project as described in the preliminary plans and specifications must be approved or disapproved in the form approved by the HCDCH.

By correspondence dated October 31, 2003, the Department of the Corporation Counsel transmitted proposed resolutions entitled, "APPROVING THE PU'UNOA AFFORDABLE HOUSING PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES" and "DISAPPROVING THE PU'UNOA AFFORDABLE HOUSING PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES", approved as to form and legality.

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By correspondence dated October 31, 2003, the Planning Director transmitted the Department of Planning's staff report entitled, "MAUI PLANNING DEPARTMENT'S REPORT TO THE HOUSING AND HUMAN SERVICES COMMITTEE MAUI COUNTY COUNCIL NOVEMBER 3, 2003".

By correspondence dated October 31, 2003, the Planning Director transmitted a corrected copy of Exhibit 5 of the Department of Planning's staff report.

Your Committee is in receipt of 27 testimonies in support of the proposed project. Your Committee is also in receipt of 3 testimonies and a petition containing 214 signatures in opposition to or stating concerns regarding the proposed project.

At its site inspection of November 3, 2003, your Committee met with the Fire Chief; the Deputy Fire Chief; the Planning Director; the Director of Public Works and Environmental Management; the Deputy Director of Water Supply; a Police Captain; a Deputy Corporation Counsel; Kent Smith, Chief Executive Officer, Smith Development; Michele McLean, Land Use Planner, Smith Development; David Goode, Vice-President of Development Operations, Smith Development; Mark Walker, Finance Officer, Smith Development; and Jim Riley, President, West Maui Land Company.

Mr. Smith provided a brief overview of the project and pointed out the project's boundaries.

Your Committee received oral testimony from four people in support of the proposed project, stating that there is a great need for affordable housing in the area and that a number of young families are unable to secure financing for homes at the current rates.

Your Committee received oral testimony from eight people in opposition to the proposed project, stating concerns about (1) the lack of clear title to the property; (2) the appropriateness of the HCDCH Board's actions; (3) traffic congestion in the area; (4) the proposed project's deviations from the West Maui Community Plan; (5) various water issues; (6) flooding issues; and (7) the project's inappropriate location relative to the historic and cultural significance of the area.

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Your Committee deferred action on this matter pending further discussion.

At its meeting of November 3, 2003, your Committee met with the Fire Chief; the Deputy Fire Chief; the Planning Director; the Director of Public Works and Environmental Concerns; the Deputy Director of Water Supply; a Police Captain; a Deputy Corporation Counsel; Kent Smith, Chief Executive Officer, Smith Development; Michele McLean, Land Use Planner, Smith Development; David Goode, Vice-President of Development Operations, Smith Development; Mark Walker, Finance Officer, Smith Development; and Jim Riley, President, West Maui Land Company.

Your Committee received oral testimony from 21 people in support of the proposed project, and oral testimony from 27 people in opposition to the proposed project. Three people expressed mixed comments about the project.

Your Committee also received six written testimony. Two persons supported the proposed project, two opposed the proposed project, and two expressed mixed comments.

Those in support of the project noted the following: (1) that there is a lack of affordable housing in West Maui; (2) that there is a lack of homes for purchase in West Maui; (3) that the traffic on Honoapiilani Highway has been congested for many years; (4) that the residents of the proposed project will likely be West Maui residents, thus minimizing impacts to infrastructure such as roads and schools; (5) that the comments about the project's lack of affordability are unfounded; (6) that the County has continuously stated that it is working to provide affordable housing for the community, but has yet to do so; (7) that even working, middle-class families are unable to buy homes in West Maui because they are not affordable; and (8) that it is unfortunate that many local families have relocated to the Mainland due to the lack of affordable homes.

Those in opposition to the project noted the following: (1) the lack of affordability; (2) the ongoing water dispute in the area; (3) the HCDCH Board should have held its hearings on this matter on Maui instead of on Kauai; (4) the proposed project is contrary to the West Maui Community Plan; (5) the applicant should consider making the project 100 percent affordable; (6) more needs to be done for people in lower-affordability brackets; (7) the project is inappropriately

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located due to the historic and cultural importance of the area; (8) traffic impacts; (9) lack of community input; (10) various water concerns; (11) the “fast-track” process doesn’t allow adequate review by County agencies, the Council or the public; and (12) flooding concerns.

Mr. Smith, Ms. McLean and Mr. Walker presented an oral and written overview of the Pu`unoa Affordable Housing Project. The project consists of 254 units on approximately 54 acres of land located mauka of the Puamana condominium community in West Maui. The project will provide 127 affordable housing units without any public money, government subsidies, concessions, waivers or fees. It will also feature private water, wastewater, drainage, and roadway systems. Maintenance fees per unit will be approximately \$90 per month.

Ms. McLean stated that the project is ideally located near beaches and Lahaina Town, and is makai of the proposed Lahaina Bypass roadway. She also noted that the West Maui Community Plan states that development should occur makai of the bypass, and that urban lands are not available for this type of development.

Ms. McLean noted that potential buyers must demonstrate that their income levels fall within certain income ranges in order to qualify for the project. Qualified buyers will be prioritized as follows: West Maui residents who work in West Maui, Maui residents who work in West Maui, long-term West Maui residents, other Maui residents, former Maui residents who wish to return, Hawaii residents who wish to relocate to Maui, and other interested parties.

Resales of the affordable homes will have a three- to five-year restriction, according to the applicant’s presenters. Further, if an owner should choose to sell his or her home within that period, the net profits will be divided as follows: 25 percent to the County of Maui Department of Housing and Human Concerns, 25 percent to the HCDCH, 20 percent to the Pu`unoa homeowners’ association, and 30 percent to the seller.

In accordance with Section 201G, HRS, the developer is requesting exemptions from the West Maui Community Plan, the Agricultural Zoning District, Off-Street Parking Requirements and the Subdivision Ordinance.

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The Planning Director provided an overview of the Department of Planning's staff report transmitted on October 31, 2003, and provided additional comments. The Planning Director recommended disapproval of the project for the following reasons: (1) the project is inappropriately located, pursuant to State and County land use designations; (2) the project is not affordable; (3) the 201G process provides for limited public review; (4) there are various project design problems; (5) there is a need for an environmental review of the project; (6) the impacts on traffic in the area and the impacts on schools in the area must be assessed; (7) there is a need for an adequate buffer between the proposed project and Kauaula Stream; and (8) the Fire Plans Examiner, Department of Fire and Public Safety, raised several concerns in a letter dated October 31, 2003 to the Fire Chief, relating to issues about the lack of information on the source of water for fire control, insufficient spacing of fire hydrants, inadequate road widths for fire vehicles, and inappropriate surfacing materials for the roadways.

Finally, the Planning Director also noted that the Administration recognizes that there is a great need for affordable housing, and that the Administration is currently working on a number of affordable housing opportunities in West Maui.

The Director of Public Works and Environmental Management stated the project's proposed infrastructure does not meet County standards; therefore, there will not be any recommendation to dedicate the roads to the County unless those standards are met. He noted that he hoped the drainage system would be consistent with the proposed Lahaina Watershed Flood Control Project.

The Police Captain stated that he had a number of external traffic concerns, including the following: (1) that the 254-unit subdivision would have only one entry/exit; (2) that the traffic-related trip generation estimates appear to be conservative; (3) that the intersection of Honoapiilani Highway and Hokiokio Road should have a traffic light, especially due to the highway's "Level of Service F" rating; (4) that cars traveling in that area usually average 45-50 miles an hour; (5) that traffic could worsen along Honoapiilani Highway and Lahainaluna Road prior to and immediately after the school day; (6) that it would be ideal if the project could be connected to the proposed Lahaina Bypass Road, which would utilize an alternate route to reach the schools located on Lahainaluna Road; and (7) that the area between Shaw Street and Launiupoko averages six automobile accidents per month.

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He also noted that he had a number of concerns relating to enforcement within the project. Namely, if the roads remain private, the Department of Police will be unable to enforce speeding violations or assist with other infractions such as citing and towing vehicles for blocking driveways. Further, he also noted that although the project encourages walking via greenways, the project rests on a slope. Cars traveling downhill will normally speed downhill, creating another safety hazard.

Your Committee deferred action on this item pending further discussion.

By correspondence dated November 5, 2003, your Committee thanked the Acting Executive Director of the HCDCH for sending two representatives to your Committee's meeting of November 3, 2003. Your Committee also requested that a representative who is able to field questions from your Committee be sent to your Committee's next meeting.

By correspondence dated November 7, 2003, the Police Chief transmitted a summary of the views expressed by the Police Captain at your Committee's meeting of November 3, 2003.

By correspondence dated November 12, 2003, your Committee Chair transmitted correspondence dated November 12, 2003, from the Council Chair, requesting that the Corporation Counsel clarify his position on the Council's ability to modify exemptions or conditions for 201G applications submitted to Council. By similar correspondence on the same date, the Council Chair requested that the Acting Executive Director of the HCDCH address the issue of the Council's ability to modify exemptions, and recommended seeking an interpretation of the State statute by the Attorney General.

By correspondence dated November 13, 2003, the Chair of your Committee transmitted a copy of a letter dated November 3, 2003, from Richard McCarty, Esq., representing Kuleana Ku'ikahi, LLC, a Hawaii Limited Liability Company, to the Acting Executive Director of the HCDCH. According to Mr. McCarty, although the project is subject to the requirements and process set forth in the National Historic Preservation Act (NHPA), it does not appear that any steps to comply with Section 106 of the Act have been addressed. Furthermore, he stated that Kuleana Ku'ikahi is requesting to participate in the

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Section 106 process as a “consulting party” under the provisions of §888.2(c)(2) of the NHPA.

By correspondence dated November 13, 2003, Ms. McLean provided follow-up information regarding a number of the concerns that were raised at your Committee’s meeting of November 3, 2003. Specifically, she noted that (1) the 201G process allows specific zoning and development exemptions for selected affordable housing projects; (2) the private infrastructure will have minimal impacts on public facilities and infrastructure; (3) the roadway design will be modified to provide for emergency vehicle access; (4) an in-depth response has been prepared by Austin, Tsutsumi and Associates to address numerous traffic-related concerns; (5) the applicant will pay all Department of Education impact fees, as if it were a non-201G applicant; (6) the 20-foot buffer along Kauaula Stream has been deemed acceptable by the State Historic Preservation Division and there are no archaeological sites located within the project; and (7) the proposed affordable-market mix cannot be adjusted to increase affordability and remain viable.

By correspondence dated November 14, 2003, the Planning Director transmitted a second staff report on the proposed project. The report lists the following findings in opposition to the proposed project: (1) that the proposed project site is in an inappropriate location due to the high-density of the project, and its agricultural designation by the State’s Land Use Commission and the West Maui Community Plan; (2) that the project would significantly impact traffic along Honoapiilani Highway; (3) that the affordability criteria does not conform to the County’s Housing Policy; (4) that the homeowners’ maintenance fees will be sizeable, adding to the lack of affordability; (5) that the private streets are inadequate for fire protection and that the police will not have enforcement authority; (6) that there should be a buffer and public trail along the Kauaula Stream; and (7) that there was inadequate time for identification and analysis of potential environmental impacts by the Maui Planning Commission and the public.

By correspondence dated November 17, 2003, a Deputy Corporation Counsel transmitted a letter dated November 16, 2003 from Richard McCarty, Esq., stating that his client, Kuleana Ku`ikahi, is requesting that the Corporation Counsel advise your Committee and the Maui County Council that the Pu`unoa

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project is part of the land involved in a State Land Use Commission proceeding and pending civil litigation.

At its meeting of November 17, 2003, your Committee met with the Planning Director; the Director of Housing and Human Concerns; the Fire Chief; the Director of Public Works and Environmental Management; two Deputy Corporation Counsel; the Acting Executive Director of the HCDCH; Kent Smith, Chief Executive Officer, Smith Development; Michele McLean, Land Use Planner, Smith Development; David Goode, Vice-President of Development Operations, Smith Development; Mark Walker, Finance Officer, Smith Development; Jim Riley, President, West Maui Land Company; Glenn Tremble, West Maui Land Co.; Neal Kasamoto, a traffic engineer, Austin, Tsutsumi & Associates, Inc.; and Chris Silkwood, a wastewater engineer, Oceanic Companies.

Your Committee received oral testimony from 24 persons in support of the proposed project, and from 18 persons in opposition to the proposed project.

Those that spoke in support of the proposed project stated: (1) that there was an immediate need for affordable housing in West Maui; (2) that even the higher-priced homes will be more affordable than what many residents are currently paying to rent housing; and (3) that the County needs to work with the applicant and the State to resolve any outstanding issues.

Those in opposition to the proposed project stated the following: (1) that the HCDCH acted improperly in approving this project; (2) that there are a number of outstanding issues that need to be resolved regarding the land and the water in the area; (3) that the property lacked clear title; and (4) that other upcoming affordable housing projects referenced in previous meetings would only be condominiums, not homes.

Your Committee also received 8 written testimonies in support of the project, 3 written testimonies in opposition to the project, and a petition signed by 314 individuals in opposition to the project.

Robert Hall, Acting Executive Director, HCDCH, provided an overview of HCDCH's involvement in the proposed project, and the HCDCH Board's subsequent approval of the proposed project. He noted that the 201G process,

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which allows for exemptions of various ordinances, was created by the Legislature to stimulate the development of affordable housing. He further noted that HCDCH's support revolves around the following project features: (1) the project requires no government funding; (2) the project will address the affordable housing need in the community; and (3) the project will provide private infrastructure.

Your Committee expressed the following concerns: (1) that it appeared the HCDCH Board made its decision without having all of the pieces of information needed; (2) that the HCDCH Board should have held its hearings on Maui, as it is the affected community; and (3) that the HCDCH Board should have required 100 percent affordable units.

Your Committee requested the following from Mr. Hall: (1) clarification of the HCDCH's review by the Federal government; (2) the status of any other affordable housing development by the State in West Maui; (3) clarification on who will bear the cost if the project, wholly or partially, fails; (3) clarification on whether or not the Council has the authority to modify exemptions; (4) clarification on whether the HCDCH will modify the project once Council approval is obtained; (5) whether modifying the affordable-market mix will substantially change the project; (6) clarification on why a State agency would deliberately remove a County's authority in land use issues; and (7) clarification on how the HCDCH will ensure that restrictions on resale will be met.

Mr. Hall responded by noting the following: (1) the Board felt confident about making its decision, having received any missing pieces of information about the project before the decision was made; (2) the HCDCH Board did not intentionally set its decision-making meeting on the Pu`unoa Project on Kauai because the Board's meeting locations are preset at the beginning of each year; (3) if the affordable-market mix of the proposed project were changed, it would substantially affect the viability of the project; (4) the HCDCH is under corrective action by the Department of Housing and Urban Development for its Section 8 programs, which is unrelated to the use of provisions in Section 201G, Hawaii Revised Statutes, for the development of affordable housing; (5) the State has no plans to develop affordable housing in West Maui in the near future; (6) the State will bear the costs if the proposed project fails; (7) each County has a different interpretation of the State statute regarding modifications, and the HCDCH will not dictate what the counties should do; (8) the HCDCH is not likely to modify the

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project once Council approval is secured; (9) the change in the affordable-market mix would qualify as a substantial modification in the project; (10) the HCDCH did not set out to take away County authority, but instead pursued its mission in providing additional affordable housing for the people of the State; and (11) the HCDCH will ensure that resale restrictions, and other points of concern will be included in the housing agreement between the HCDCH and the applicant.

Mr. Tremble of West Maui Land Co., which owns the water company that will provide the water to the proposed project, stated that the water company is regulated by the Public Utilities Commission (PUC) and operates in compliance with a variety of related rules and regulations. He noted that PUC oversight would continue with the development of the proposed project.

Mr. Kasamoto provided your Committee with an overview of the traffic study. He noted that the project will have access off Honoapiilani Highway. To minimize traffic impacts on the highway, there will be a number of additional lanes to and from the project to accommodate the increase in traffic. Further, he noted that the trip generation estimates were derived from a national database that is the most comprehensive on trip generation numbers, a nationally accepted publication for transportation engineers. The commercial sites located within the project will likely be small home businesses, or shops that service the immediate community, and will not likely increase traffic to the project. In fact, he noted that trips out of the project will likely be reduced by approximately 5 percent, as a result of those small commercial businesses.

Mr. Kasamoto also addressed the concerns about Honoapiilani Highway being rated with "Level of Service F". He noted at the intersection of Hokiokio Place and Honoapiilani Highway, the left turn into the project is rated as "Level of Service B and C". The "Level of Service F" only refers to left turns out of the proposed project.

Finally, the study did not take into account the possibility that only West Maui residents or employees would be residents of the project. Therefore, the trip-generations estimate assumes that all trips would be new trips in any direction.

Mr. Silkwood, a wastewater engineer of Oceanic Companies, provided an overview of the wastewater system of the proposed project. Most notably, he

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described the newest revision to the proposed project, which would relocate the wastewater station to a point within the project that is closer to the Honoapiilani Highway.

A Deputy Corporation Counsel provided a brief overview of the Land Use Commission proceeding and the pending litigation regarding a large portion of land, which may include the land that is being proposed for development of the Pu`unoa project by the applicant. She also requested the opportunity to discuss the matter in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with two Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session.

Your Committee deferred action pending further deliberation.

At its meeting of November 18, 2003, your Committee met with the Director of Housing and Human Concerns; the Fire Chief; the Planning Director; the Director of the Department of Public Works and Environmental Management; a Deputy Corporation Counsel Kent Smith, Chief Executive Officer, Smith Development; Michele McLean, Land Use Planner, Smith Development; David Goode, Vice-President of Development Operations, Smith Development; Mark Walker, Finance Officer, Smith Development; Jim Riley, President, West Maui Land Company; Paul Flinn, Architect, Chris Hart & Partners; Glenn Kunihiwa, ACM Consultants; and Warren Unemori, Warren Unemori Engineering.

The Planning Director provided an overview of his correspondence dated November 14, 2003.

Mr. Smith and Ms. McLean provided an overview of their correspondence dated November 13, 2003.

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Mr. Flinn provided an overview of the design of the project. He noted that the project was designed to minimize vehicles and encourage walking and a sense of community. He also noted that the plantation style design is consistent with Hawaii architecture.

Mr. Kunihisa provided an overview of the marketing study conducted for the project. He noted that there is a tremendous need for affordable housing in West Maui, as there are currently only two homes on the market that are listed for less than \$500,000. He noted that a growing population, a high demand for housing, and low interest rates have pushed the prices to beyond the reach of the average home buyer. He also noted that he has appraised Smith Developments (a partner in Kauaula Associates) over the years, and has found that the developments feature: (1) quality building materials; (2) quality workmanship; (3) creative design; and (4) high levels of homeowner satisfaction. Further, he noted that if the market-priced homes are removed, the creativity is gone as well as the overall quality of the project. Finally, he noted that people who sell their Smith Development home are able to do so at top dollar, further confirming that the homes are good investments.

Mr. Unemori provided an overview of the engineering for the project.

The applicant's representatives provided additional comments about concerns raised. They stated that (1) the water designated for this project is well water, and not surface water; (2) the utilization of County wastewater is not possible because the County has no further allocation space; (3) the applicant plans to pay the Department of Education \$1 million to cover any possible impacts on local schools; (4) the park assessment included in the project is more than three times what would normally be required for a subdivision of the same size; (5) the various County and State Departments would still need to review and approve all final plans; and (6) the project does meet the 2.86 Maui County Code definition of affordable housing being a 50-50 mix of affordable and market-priced homes.

Your Committee voiced a number of additional concerns, including (1) questions about the prioritization of potential buyers; (2) whether or not the maintenance fees would remain the same for both the market and affordable units; (3) the sewage plant relocation; (4) clarification on whether or not HCDCH is required to disclose all the partners involved in financial partnerships; (5) the

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proposed cost of the market homes; and (6) whether or not the lot sizes can be enlarged.

The applicant's representatives responded that: (1) they are confident the prioritization plan for potential buyers will best serve the West Maui community; (2) the maintenance fees will remain the same for both types of housing within the project; (3) the sewage system meets all County requirements; (4) the HCDCH is not required to disclose principals because it is not in a financial relationship with the applicant, it is merely walking the applicant through the 201G process; (5) the cost of the market homes will not be known until they are built; and (6) the unit sizes are dependent upon the lot sizes and required setbacks, making it difficult to amend them.

A Deputy Corporation Counsel provided clarification on your Committee's October 29, 2003 request for clarification regarding any potential constitutional concerns regarding the applicant's plan to prioritize potential buyers according to factors such as current residency area, and current employment area. He noted that this provision might be unconstitutional because the 14th Amendment provides for a citizen's right to travel, unless there is a compelling State interest. He stated that he did not believe that the provision of affordable housing is a compelling State interest. Further, Section 201G, HRS, does not address a prioritization scheme. Finally, he noted that because the prioritization is not an exemption, but is part of the application, the Council should consider either approving or disapproving the application and exemptions without the prioritization section. He also noted that a written opinion would be transmitted to your Committee shortly.

The Director of Public Works and Environmental Management stated that the project will be processed under normal, rather than expedited time frames. He also confirmed that the sewage treatment plant relocation will not affect the proposed Lahaina Flood Control Project. He stated that he would need to confirm whether or not the proposed setbacks from the Kauaula Stream are approved.

The Fire Chief noted that his department and the applicant discussed the width of the roads, fire truck access, and the road surface. With these modifications, the project would meet the minimum fire protection requirements.

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One Committee member noted that he would like to see the project mix changed to 60 percent affordable and 40 percent market, with lower prices. A member of the Council noted that although there is a tremendous need for affordable housing, there are other factors that need to be weighed heavily as well. Two other members of the Council noted that the same standards need to be applied to all projects throughout the County. They also stated that due to the population growth and housing demand, the next set of community plans need to decide which agriculture lands need to be changed to allow for housing development.

Your Committee could not make a recommendation to adopt either resolution. Therefore, it recommended that both proposed resolutions be forwarded to the full Council for consideration.

Your Housing and Human Services Committee RECOMMENDS [the following:

1. That Resolution No. _____, attached hereto, entitled "APPROVING THE PU'UNOA AFFORDABLE HOUSING PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES", be FORWARDED to the Council for consideration; and
2. That] that Resolution No. _____, attached hereto, entitled "DISAPPROVING THE PU'UNOA AFFORDABLE HOUSING PROJECT PURSUANT TO SECTION 201G-118, HAWAII REVISED STATUTES", be [FORWARDED to the Council for consideration] ADOPTED.

Adoption of this report is respectfully requested.

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

December 9, 2003
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Committee
Report No. 03-154
As Amended

JOSEPH PONTANILLA Chair

JO ANNE JOHNSON Member

MICHAEL J. MOLINA Vice-Chair

DANNY A. MATEO Member

ROBERT CARROLL Member