

COUNTY OF HAWAII STATE OF HAWAII

RESOLUTION NO. 403 06

RESOLUTION AUTHORIZING THE MAYOR OR HIS DULY AUTHORIZED REPRESENTATIVE TO NEGOTIATE, EXECUTE AND SUBMIT THE NECESSARY DOCUMENTS FOR AN ESTOPPEL AGREEMENT WITH THE NATIONAL ELECTRICAL BENEFIT FUND FOR A PRE-DEVELOPMENT LOAN WITH THE WAIKOLOA WORKFORCE HOUSING, LLC

WHEREAS, the County of Hawai'i is the owner of approximately 276.822 acres of land situated at TMK: 3/6-8-02:26 and 3/6-8-30:179, Waikoloa Village, South Kohala, Hawai'i; and

WHEREAS, on September 15, 2004, the Hawai'i County Council adopted Resolution No. 236-04 which authorized the Mayor to execute an agreement with a master developer and to enter into agreement to develop the Waikoloa Employee Housing Project (WEHP); and

WHEREAS, on January 5, 2006, the Hawai'i County Council adopted Resolution No. 234-06 which designated a non-profit corporation to lessen the burden of the County to provide affordable workforce housing. This provided the mechanism for the County of Hawai'i to deed to the Hawai'i Island Housing Trust (HIHT), a non-profit entity, approximately 276.882 acres of land for a fee of ten dollars (\$10.00); and

WHEREAS, once HIHT receives title to the Waikoloa property (TMK: 3/6-8-2:26 & 3/6-8-30:179), HIHT will issue a ninety-nine (99) year ground lease to the Special Purpose Entity (SPE) non-profit who will be responsible for carrying out the project; and

WHEREAS, upon the transfer of title from the County of Hawai'i to the HIHT, the HIHT/SPE will enter into a pre-development loan with the National Electrical Benefit Fund (NEBF) in the amount of \$4,250,000, for engineering, architectural, land planning, green building, utility fees, attorneys' fees, and other related pre-development activities; and

WHEREAS, in order for the HIHT/SPE to assume the development of a community of 800 to 1,200 for-sale and rental housing units, the HIHT/SPE will need to secure the NEBF pre-development loan against the ground lease through the execution of an Estoppel Agreement; and

WHEREAS, in the event that the WEHP does not move forward and the HIHT/SPE defaults on the NEBF pre-development loan, the County has the right to step in and assume the terms and conditions of the NEBF pre-development loan in order to retain the property; and

WHEREAS, in the event of litigation over the TDC/WDC agreements, the agreement requires the County to hold NEBF harmless from any claims against them and reasonable attorneys' fees up to \$200,000; and

WHEREAS, the timely closing of the NEBF loan is critical to the successful development of the WEHP.

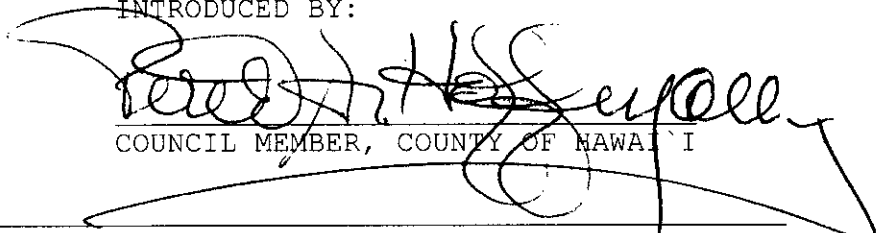
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I that the Mayor or his duly authorized representative is hereby authorized to negotiate, execute and submit the Estoppel Agreement between the County of Hawai'i and the National Electrical Benefit Fund for the Waikoloa Employee Housing Project.

BE IT FURTHER RESOLVED that the Mayor or his authorized representative is designated to act as the representative of the County.

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the Office of Housing and Community Development, the Hawai'i Island Housing Trust and the National Electrical Benefit Fund.

Dated at Hilo, this 7th day of July, 2006.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
County of Hawai'i
Hilo, Hawai'i

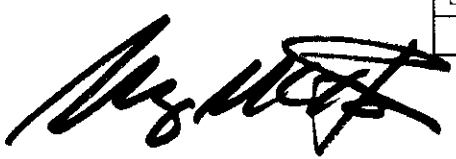
ROLL CALL VOTE

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on July 7, 2006.

ATTEST:

| | AYES | NOES | ABS | EX |
|----------|------|------|-----|----|
| ARAKAKI | X | | | |
| HIGA | X | | | |
| HOFFMANN | X | | | |
| HOLSCHUH | X | | | |
| IKEDA | X | | | |
| ISBELL | X | | | |
| JACOBSON | X | | | |
| PILAGO | X | | | |
| SAFARIK | | | X | |
| | 8 | 0 | 1 | 0 |





Reference C-961/Waived CHA

COUNTY CLERK

CHAIRMAN & PRESIDING OFFICER

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