



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

February 9, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Pursuant to the U. S. Department of Housing and Urban Development's invitation to participate in the National Call to Action for Affordable Housing through Regulatory Reform, the Governor's Office established the Affordable Housing Regulatory Barrier's Task Force via Executive Order No. 07-02 on August 22, 2007 to address this issue.

Task force members included representatives from the State, the Legislature, the counties, and the private sector. Their findings and recommendations are included in the enclosed Affordable Housing Regulatory Barriers Task Force report.

This report provides background for six legislative measures pending before the House and Senate:

- HB 1083/SB 901 - Relating to Housing
- HB 1084/SB 902 - Relating to Affordable Housing
- HB 1085/SB 903 - Relating to Planning
- HB 1089/SB 907 - Relating to the Dedication of Housing Infrastructure to Counties
- HB 1090/SB 908 - Relating to Affordable Housing
- HB 1091/SB 909 - Relating to Third-Party Review of Affordable Housing Projects

A copy of this report may be viewed electronically at www.hawaii.gov/gov/leg/session-2009.

Sincerely,



LINDA LINGLE

Enclosure



EXECUTIVE CHAMBERS
HONOLULU

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GOVERNOR

February 9, 2009

The Honorable Calvin Say, Speaker
and Members of the House of Representatives
Twenty-Fifth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear Mr. Speaker and Members of the House:

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LINDA LINGLE

Enclosure

REPORT OF THE GOVERNOR'S AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

December 2008

Introduction

“Red tape is literally choking the life out of housing that’s affordable to working families. Today, I’m calling on local communities to join us as we identify and remove these man-made barriers that prevent teachers, police officers, firefighters and others from living in communities of their choice. These are people who are the backbone of any community. We want them to be able to not just serve their community but be able to afford to live in it.”

- Mr. Alphonso Jackson, Secretary
United States Department of Housing and Urban Development
Address to the U.S. Conference of Mayors, June 2007

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In June 2003, the U.S. Department of Housing and Urban Development (HUD) launched the **America's Affordable Communities Initiative**. This initiative was in response to the growing crisis of people being priced out of buying or renting a home they could otherwise afford because of a web of government regulations. The goals of the initiative are to promote education on the impact of regulatory barriers on affordable housing, conduct studies on regulatory barriers across America, partner with outside organizations to educate state and local governments as well as the general public on the effect of regulations on affordable housing costs and development, provide incentives to state and local governments to encourage the removal of regulatory barriers, and to change the thinking from "Not in My Backyard" to "Why Not in Our Community."

Among those affected by the phenomenon of regulatory barriers on affordable housing in Hawaii are middle income workers including teachers, police officers, firefighters, veterans, hotel workers, and other vital contributors to society who are often forced to commute long distances because they are unable to find affordable housing in the communities they serve; lower income families, elderly kupuna or future retirees, and younger families or college graduates just starting out.

As a subset of America's Affordable Communities Initiative, in June 2007, Secretary Jackson announced the **National Call to Action for Affordable Housing through Regulatory Reform (NCA)**. HUD's NCA is a campaign designed to enlist states, local communities, and affordable housing advocacy groups across the nation to commit to producing affordable housing through public participation in a national network for regulatory reform.

HUD's goals in establishing the National Call to Action are:

- To create a national network of states, communities, and affordable housing advocacy groups who have made the pledge to regulatory reform and, by doing so, strengthen the national commitment to providing housing that is affordable for our workforce;
- To assist states and communities in initiating regulatory reform and increasing the supply of affordable housing by encouraging the creation of state and local affordable housing task forces;
- To educate affordable housing advocacy groups on the issues of regulatory barriers to affordable housing and by doing so, empower these organizations to work with their respective jurisdictions in addressing regulatory reform;
- To promote awareness of the Department's America's Affordable Communities Initiative and Regulatory Barriers Clearinghouse and encourage states, communities, and affordable housing advocacy

groups across the nation to address the need for regulatory reform to increase the supply of affordable housing.¹

The Regulatory Barriers Clearinghouse (RBC) works closely with the America's Affordable Communities Initiative (AACI) and the NCA to collect, process, assemble, and disseminate information on barriers faced in the creation and maintenance of affordable housing. The RBC is a virtual community that provides relevant, useful, and interesting information to housing professionals. The RBC database contains over 5,000 documents related to barriers and solutions to affordable housing. Information made available on the RBC website has been contributed by state and local governments, builders, nonprofits, and other organizations who have responded to NCA or AACI.

¹ United States Department of Housing and Urban Development

EXECUTIVE SUMMARY

In August 2007, Hawaii accepted the invitation by the United States Department of Housing and Urban Development to join the National Call to Action for Affordable Housing through Regulatory Reform. The NCA presented an opportunity for government to collaborate with other states, counties, municipalities, and private sector organizations to knock down the regulatory barriers imposed by governments in hopes of building more affordable housing.

Governor Lingle convened a statewide task force comprised of representatives from the counties, business, labor, developers, architects, non-profit providers of services, the state, and the legislature to carry out the mission of the National Call to Action and recommend solutions to address regulatory barriers to affordable housing. A complete list of task force members can be found in Appendix A. The task force held its first meeting in October 2007 and has met eleven times over the past year.

This report represents the findings and recommendations of the Governor's Affordable Housing Regulatory Barriers Task Force.

What We Know About Regulatory Barriers

In the context of building homes that are affordable, government regulations often work against the goal of delivering more affordable housing. Although government policies and regulations are often intended to control or direct growth, target resources, and prioritize areas of importance, the unintended consequence is often that these regulations add to the cost of building affordable homes. Many regulations are in place to ensure health and safety and to protect natural resources. However all regulation has some direct or indirect effect on the supply and cost of housing.

The most common types of regulation that affect housing are building codes, environmental regulations, zoning and land use systems, impact fees and exactions, fiscal policy, and administrative processes. A 1998 survey of builders conducted by the National Association of Home Builders estimated that the cost of a median priced home could be 10% less if some government delays, fees, and regulations were eliminated.² In Hawaii this is equivalent to a savings of up to \$60,000 per median priced home depending on the county. A recent study at the University of Washington by Theo Eicher estimated the costs added to a home in Hawaii that can be attributed to regulation may be as high as \$200,000.³

² Regulations and Housing Development: What We Know, Michael H. Schill, University of California, Los Angeles, for Cityscape: A Journal of Policy Development and Research, Volume 8, Number 1, 2005, U.S. Department of Housing and Urban Development, Office of Policy Development and Research

³ Housing Prices: Demand and Supply, Theo Eicher, University of Washington, 2007.

How Hawaii Measures Up

Adequate supply of affordable homes is a critical component of economic viability and economic development. In 2007, U.S. Census Bureau statistics showed that 45.7% of homeowners in Hawaii, the second highest in the country, were paying at least 30% of their income toward housing costs, almost ten percent above the national average of 36.9%. More money being spent on housing costs means less money invested in other sectors of our economy, and impacts the quality of life for the homeowner or renter. The statistics also showed that Hawaii residents pay the highest median rent in the nation, and that owner mortgages are third highest in the nation, second to California and New Jersey.

The absence of growth in wages that is sufficient to enable workers to meet their housing costs in Hawaii affects other social and economic factors in our communities. This dynamic presents a challenge for employers to recruit and retain qualified, skilled employees; creates an impossible environment for Hawaii college graduates to remain in the state and become contributing members of our society and economy; places stress on the homeowner or renter due to a decline in their quality of life; and affects educational and healthcare outcomes. Businesses losing out on prospective workers due to the lack of affordable housing supply, coupled with the migration of Hawaii's local workforce to mainland cities that are more affordable, create a significant loss to the economy.

In 2008, only 1.7% of Hawaii workers could afford to purchase a median priced home. This is due in part to the fact that between 2000 and 2008, home prices have increased over 103% while annual income averages have only grown by approximately 20%.⁴ There is a sharp decoupling of personal income growth from home prices and we are seeing that multiple median wage earners are now needed to afford a home.

Worldwide surveys have also been conducted on this subject. A 2007 Demographia survey placed the national median multiple, which is the median house price to median household income multiple, at 3.7 in the United States. This means, in general, that median house prices average 3.7 times or less the median household income. In contrast to the U.S. national average, this survey showed Honolulu's median multiple to be 10.3, the third highest in the world, making Honolulu the third most unaffordable housing market in the world in 2007. Honolulu maintains a 10.3 median multiple in the 2008 survey and is ranked the fourth most unaffordable market for 2008.⁵ The Demographia survey findings conclude that housing affordability is determined and controlled by regulatory restrictions on residential land supply.

⁴ Affordability by Occupation Survey, Charles P. Wathen, 2006-2008

⁵ 3rd and 4th Annual Demographia International Housing Affordability Survey, Wendell Cox and Hugh Pavletich, 2007, 2008

In 2007, the Wharton School at the University of Pennsylvania conducted a nationwide survey of local land use control environments focusing on processes and outcomes at the state and local levels. The questions focused on three areas. First, the questions sought general information on the regulatory process including who is involved in the process and the importance of various factors in the review process. Second, the questions focused on local residential land use regulation. Third, the questions asked about outcomes of the existing process. The survey, known as the Wharton Residential Land Use Regulatory Index (WRLURI), concludes that Hawaii is the most regulated state by the Wharton index, and is 2.3 standard deviations above the national mean.⁶ Honolulu was the only respondent to the survey. The survey, definitions, and scoring mechanism can be found in Appendix B.

“Once again, the Demographia survey leads inevitably to one clear conclusion: the affordability of housing is overwhelmingly a function of just one thing, the extent to which governments place artificial restrictions on the supply of residential land.”
- Dr. Donald Brash
Governor, Reserve Bank of New Zealand (1988-2002)
Chairman, Centre for Resource Management Studies

⁶ A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index, Joseph Gyourko, Albert Saiz, and Anita A. Summers, The Wharton School, University of Pennsylvania, March 29, 2007

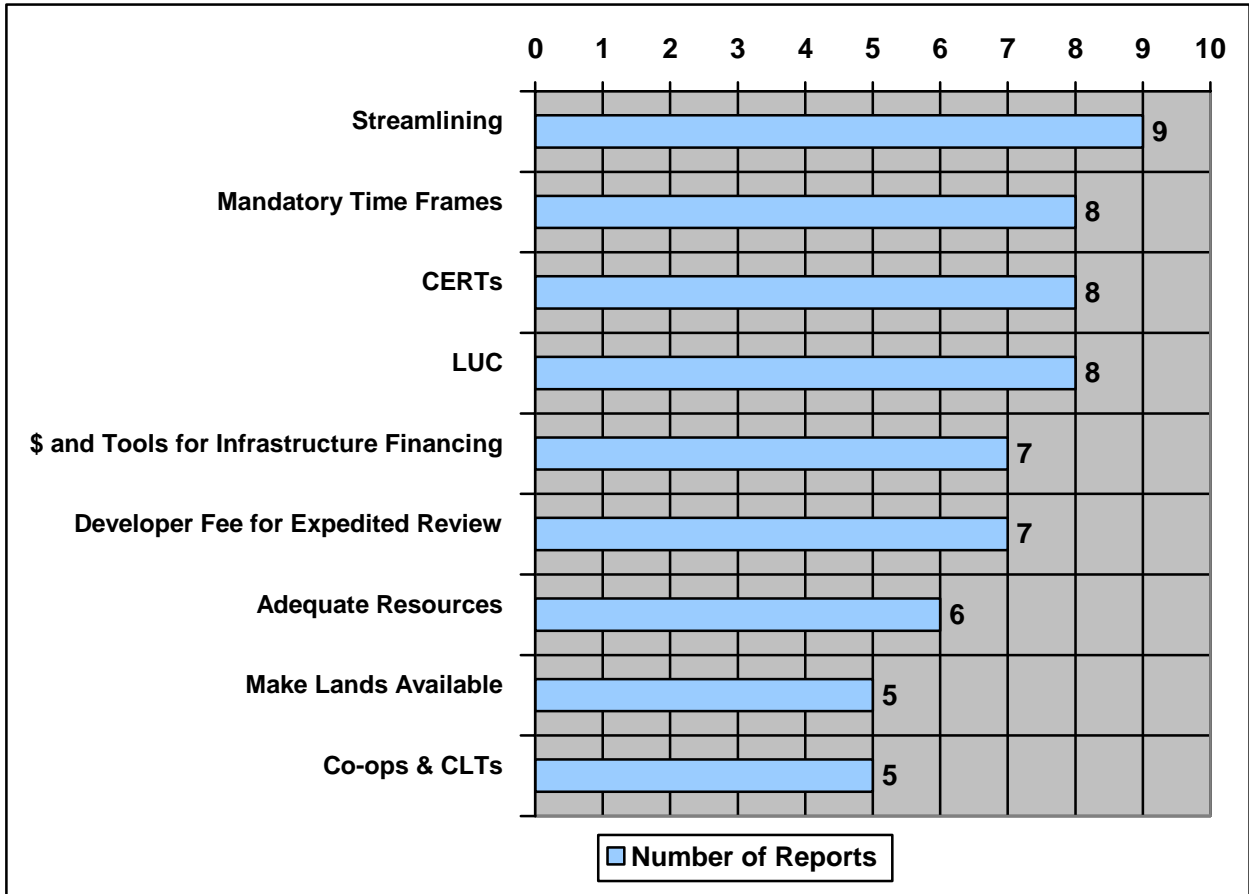
HAWAII'S REGULATORY SYSTEM

In addition to Hawaii's regulatory system, factors which contribute to the high cost of housing include a limited supply and high cost of available land, a lack of infrastructure to increase capacity usage, insufficient and unpredictable financing support for affordable housing, a long wait list for State and County assistance programs, high construction and labor costs, outdated or rigid building codes, and strict regulations including a costly entitlement and permitting process. Combine these challenges with rising interest rates, a surge in second home purchases by non-resident buyers on all islands, strong sentiments of NIMBYism, a decrease in the supply of developable land by way of urban growth boundaries, increased preference for more open space and improved views, a lack of incentives for developers to produce affordable housing, and the loss of existing stock to market rate condo-conversion or for-sale homes, and we have the "Perfect Storm" for Hawaii's housing crisis. While we acknowledge the presence of all of these challenges, this task force specifically identified and recommended solutions to regulatory barriers that affect the development and preservation of affordable housing.

The current regulatory system for a housing project can take seven years or more to complete from the initial presentation of a project, to construction. Perhaps the most time consuming element of Hawaii's regulatory process is the dual, and sometimes overlapping role that both State and county government agencies and policymakers play on a project by project approval/disapproval basis. Appendix C summarizes the steps involved in the land use entitlement process and provides an estimated timeline. Appendix D identifies the issues examined in the process and the stakeholders involved.

Appendix E is Chapter §201H-38, Hawaii Revised Statutes, commonly referred to as 201H, which relieves some of the regulatory burden on affordable housing projects by establishing an expedited review process for affordable housing projects that meet a set minimum criteria. A flowchart of the 201H application and review processes at the state and county levels is provided in Appendix F.

The task force also reviewed nine housing studies commissioned by the State and counties between 1991-2006. The studies revealed common themes, and frequently identical recommendations, that have recurred over the past fifteen years. Highlights from the review as they relate to regulatory issues are noted below; a complete copy of the review is attached as Appendix G.



- Nine studies recommended streamlining the regulatory process and creating development incentives for housing production.
- Eight studies recommended setting mandatory time frames for regulatory reviews and eliminating the duplication of services and reviews between the State and County levels.
- Eight studies recommended changing the functions of the Land Use Commission from a project specific zoning agency to a policy oriented body with broad and long range planning objectives.
- Eight studies recommended creating a single point of contact or clearinghouse for housing development, such as Community Economic Revitalization Teams (CERTs) to provide a single point of access to State and Federal programs in rural areas, and having housing expeditor positions to steer affordable housing projects through the county entitlement process.
- Seven studies recommended allowing developers to pay a fee and, in turn, receive an expedited review by private consultants hired to provide third party review for the State or Counties.
- Six studies recommended providing adequate resources including funding and staffing to State and County agencies that are responsible for reviewing

applications that assist with affordable housing or homelessness as well as giving priority review for affordable housing applications.

Hawaii is ahead of the curve in research and analysis of housing policy as it relates to regulatory barriers to affordable housing. This served as an advantage to the task force because there was a wealth of background information to draw on and review as the task force considered the current housing development climate, processes, challenges, and market. In addition to the above data, task force members reviewed county and State responses to the U.S. Department of Housing and Urban Development Questionnaire for HUD's Initiative on Removal of Regulatory Barriers. A summary spreadsheet of the surveys and answers can be found in Appendix H.

“Hawaii and Honolulu are suffering from a supply imbalance. When employment increases and the economy starts growing it takes too long and it is far too difficult because of the regulatory barriers for the housing industry to deliver adequate units quick enough and efficiently to temper the spiral,”
Paul H. Brewbraker, Senior Vice President and Chief Economist,
Bank of Hawaii, February 2007.

Mr. Brewbaker's comment was timely and reflective of the prosperity Hawaii had been experiencing with regard to the low unemployment rate and booming economy. It also provided incredible foresight to an issue that would take center stage in the discussion of Hawaii's housing market, particularly with regard to affordable housing, as our economy shifts and policy makers look to regulatory relief as a mechanism to boost residential and infrastructure development.

CHAPTER 201H EXPLAINED

Chapter 201H authorizes the Hawaii Housing Finance and Development Corporation to develop or assist in the development of housing projects which are exempt from certain statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon provided that:

- The project primarily or exclusively includes affordable housing units;
- The Corporation finds that the project meets minimum requirements of health and safety; and
- The development of the project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or various Boards of Water Supply.

The 201H expedited processing tool provides for greater design flexibility and cost savings for affordable housing projects. The HHFDC establishes its affordability threshold for projects as those projects that primarily are affordable to households with incomes at or below 140% of area median income. County governments have similar powers, and county governments establish their own affordability threshold criteria, which differ from the state's affordability level of serving households with incomes at or below 140%.

The particular exemptions requested through the 201H process are generally processed through the appropriate county agencies and consist of one or more of the following:

- a) Park Dedication Requirements;
- b) Height restrictions;
- c) Density Limits;
- d) Parking Requirements;
- e) Subdivision Conditions.

The particular exemptions requested through the 201H process are generally processed through the appropriate county agencies. For most developments, the county agencies will accept and process 201H applications. Developers are encouraged to begin the 201H process by first contacting the appropriate county:

- County of Hawaii, Office of Housing and Community Development;
- City and County of Honolulu, Department of Planning and Permitting;
- Kauai County, Office of Community Assistance, Housing Agency; or
- Maui County, Department of Housing and Human Concerns.

Occasionally, a county denies a 201H expedited processing request. If the project meets the state's eligibility criteria, the developer may apply to HHFDC for 201H expedited processing. HHFDC requires that the developer conduct at least one public meeting to solicit community input on the proposed project.

These are the threshold requirements for HHFDC acceptance of an application for review for 201H expedited processing:

- a. Developer has site control.
- b. Developer provides an explanation as to why the request is not being processed through the county process.
- c. Developer provides description of the project and percent of affordable units. The state currently requires that a 201H expedited processing project primarily or exclusively include housing units affordable to households with incomes at or below one hundred forty per cent of the median family income. The current income limits are available on the HHFDC website, <http://www.hawaii.gov/dbedt/hhfdc>.
- d. Developer acknowledgement that affordable units will be subject to HHFDC buyback and shared appreciation.
- e. Submittal of an approved EA (if an EA is required) or an equivalent document is a threshold requirement for any one of the following conditions:
 - A project is equal to or greater than 15 acres,
 - The project will rely on non-public sewer or water systems, OR
 - The project is a subdivision and requests subdivision exemptions.

Upon approval by the HHFDC of the proposed housing project and the satisfaction of any contingent requirements, HHFDC will submit the Chapter §201H Exemption Request package for review and approval of the requested exemptions to the appropriate City or County Council or the State Land Use Commission. The package will typically include preliminary plans, outline specifications, a draft agreement between the HHFDC and developer ensuring the project is built and operated as presented by the developer, and a draft resolution that itemizes each proposed exemption. The developer must provide sets of plans which reflect all amendments agreed upon during the agencies' review of the project for inclusion in the 201H Exemption Request package.

Chapter §201H, Review by City/County Council

The Council has 45 days from receipt of the 201H Exemption Request package to act on the resolution. The Council may require modifications to the project during the course of its deliberations.

Council action on the exemption request may take one of the following forms:

- a. The Council may vote to approve the exemption request.
- b. The Council may vote to approve the exemption request with conditions, including a time limit on development.
- c. The Council may vote to deny the exemption requests.
- d. The Council may choose not to act upon the exemption requests. If no action is taken, the exemption requests are deemed to be approved after the 45-day Council review period lapses.

Chapter §201H, Review by State Land Use Commission (LUC)

If LUC approval is required, the developer must follow the process as specifically described in the Hawaii Administrative Rules (HAR) for the Land Use Commission, HAR Chapter §15-15. Generally, notices of intent to file must be made to the public, the Land Use Commission, and particular state and county officials not less than sixty days prior to the filing of the petition. Pre-application meetings may be required. The developer must also provide additional information to the Land Use Commission.

The LUC shall approve, approve with modification, or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in Section §205-4. If, on the forty-sixth day, the petition is not disapproved, it shall be deemed approved by the commission.

Chapter §201H, Review by Other State Agencies:

Department of Education — Fair Share Contribution Agreement — Developer's negotiated contribution of land and vertical construction cost for public schools required to support development.

Department of Transportation — Enhancement fees for connections to any state highway or road. This is in addition to exactions for road and signal improvements necessary to mitigate impacts from the project.

The 201H process remains controversial in its effectiveness, efficiency, and impact. The task force paid considerable attention to the ability of state and county agencies and approving bodies to modify 201H affordable housing projects on numerous occasions throughout the application approval process. The task force scrutinized whether this has a positive or negative effect on the supply of affordable housing. The task force recognized that the level of discretionary and ministerial decisions afforded to approving agencies and bodies has a negative effect on supply. Simultaneously, there is important value in policy makers' involvement and accountability for providing affordable housing in our communities.

HOUSING REGULATORY ISSUES

Initial meetings of the task force provided an opportunity for members to review and discuss materials attached to this report in appendixes B through H. In addition to these materials, members were provided a copy of House Bill 1001 from the 2007 legislative session, attached to this report as Appendix I. House Bill 1001 exempted an eligible rental project that dedicated 100% of its affordable units in perpetuity from land use requirements, environmental impact statement laws, and all county land use, charter, ordinance, and rule provisions. The task force utilized these reports collectively as a starting point for discussions that served to identify regulatory issues in housing development.

Highlights of these early discussions include:

- Subdivision permits are too lengthy;
- Third party review should be utilized by state and county agencies;
- Self-certification should be utilized by state and county agencies;
- Housing problem is a supply issue, and only looking at affordable housing regulatory processes will not significantly help the overall housing supply;
- County processing divisions need capacity building;
- Duplicative reviews that cross state and county agencies should be deferred to counties;
- Environmental, health, and safety issues must be addressed in housing development and planning;
- Discretionary permits, and ministerial permits are difficult to obtain in a timely manner and increase cost for the housing consumer;
- Reviewing, monitoring, coordinating, and overseeing rules, regulations, and plans that have negative impacts on housing development is an ongoing process;
- State administrative process for 201H project applications are cumbersome and at times inefficient or incongruous with the county application process for 201H approval;
- State Land Use Commission land designations should conform to county designations in general plans or development plans; and
- Chapter 343 must be evaluated in conjunction with county processes in the context of housing supply goals.

The work of the task force progressed and members were able to identify coherent, specific regulatory barrier issues. The task force advanced discussions on solutions to the regulatory barrier issues and reached consensus on a number of proposed solutions.

Summary of Task Force Recommendations

REGULATORY BARRIER #1:

A county requires the developer to secure fifty percent of project funding in order to receive county approval. This presents a challenge when the developer is using tax credits as a method of financing the project.

DISCUSSION:

Task force members provided helpful insight into this barrier. We found that the only county in which this is occurring is the City and County of Honolulu. Rather than requiring secured financing, Maui County only requires that developers provide a financial plan that will cover 100% of the project. Similarly, Hawaii County developers need not show secured financing, but must instead demonstrate their ability to develop affordable housing. However, in the City and County of Honolulu, the administration requires the developer to demonstrate 50% commitment in financing otherwise the application will not be submitted to the City Council for action. The City and County of Honolulu does apply tax credits toward the funding commitment. There is no ordinance or rule that establishes this as a requirement, but it is a policy of the city administration.

RECOMMENDATION:

The task force strongly suggests that the City and County of Honolulu adopt practices similar to their counterparts on the neighbor islands. The counties should also convene to discuss best practices amongst themselves, and consider adopting model requirements.

METHOD:

Resolution and letter from Governor Linda Lingle and members of the task force. The task force member representing the City and County of Honolulu agreed to pursue this issue with the Mayor and other counties.

POLICY STATEMENT:

When conducting the review of an affordable housing project application, funding commitment requirements will not be so restrictive that they prevent or delay the approval of the application. Funding requirement policies will be periodically evaluated by the State to ensure compatibility with current economic and market conditions.

REGULATORY BARRIER #2:

Section §201H-38, Hawaii Revised Statutes, only provides an expedited review for housing projects that meet a limited criteria and threshold.

DISCUSSION:

Section §201H-38 should be expanded to include mixed use projects with affordable housing units, and infrastructure projects that are directly linked to an affordable housing project application or approved application.

Providing a process for expedited review and approval of these kinds of development will assist in increasing the overall supply of housing.

RECOMMENDATION:

Amend Section §201H-38 to allow mixed use projects and infrastructure projects associated with an affordable housing project or mixed use project to qualify for the expedited review and exemptions.

METHOD:

Communicate to policy makers that allowing mixed use developments and infrastructure projects to be eligible for an expedited review at the state and county levels will increase housing supply. Submit legislation to allow mixed use developments to qualify for 201H process. See Appendix J.

POLICY STATEMENT:

In order to increase the overall housing supply, expedited reviews and exemptions will be provided to mixed use developments that contain affordable housing or infrastructure projects that are associated with an affordable housing project.

REGULATORY BARRIER #3:

Non-discretionary, ministerial permit issuances for affordable housing projects are considerably delayed.

DISCUSSION:

Task force members discussed this issue in detail and contemplated the possibility of granting the Hawaii Housing Finance and Development Corporation the authority to approve a ministerial permit application if the counties did not approve the application within a defined amount of time. Some members were not comfortable with automatic approval and issuance of ministerial permits upon project application approval, and stressed the importance of health and safety issues that may be compromised with automatic issuance.

RECOMMENDATION:

The task force concluded that the barrier would be best addressed by establishing standard timeframes, rather than automatic approvals or issuances, for ministerial permits to be issued. This recommendation is two part.

Part I:

For approved 201H projects, county and state agency reviews for ministerial permits will run concurrently. In addition, agencies will review the application in its entirety and approve or disapprove the application within an established timeframe with no extensions or postponements.

Part II:

Enforcement of Section §91-14(d), Hawaii Revised Statutes, which states, "Notwithstanding any other law to the contrary, any agency that reviews and comments upon an application for a business or development-related permit, license, or approval for a housing project developed under section

201H-38 shall respond within forty-five days of receipt of the application, or the application shall be deemed acceptable as submitted to the agency."

METHOD:

Introduce a bill that will require all county and state agencies to issue all ministerial permits associated with approved affordable housing project within forty-five days from the time of the permit application. Any "ministerial" approvals that are not provided within 45 days of the applicant submitting a complete application shall be deemed approved. See Appendix J.

POLICY STATEMENT:

The review and approval of ministerial permits for approved affordable housing projects are a priority of the State and will be conducted in a reasonable and predictable amount of time.

REGULATORY BARRIER #4:

There is a lack of synergy between State and County agencies with regard to housing application reviews. These departments, agencies, and offices act independently when reviewing project applications for permits. There is a lack of a macro perspective, interdependence, and interconnectivity within the existing regulatory framework system.

DISCUSSION:

The majority of members agreed with this barrier and the importance of addressing it. The City and County of Honolulu offered that they have an electronic database, POSSE, which they use to track project applications, and POSSE provides limited public access. The counties of Maui and Hawaii have no electronic tracking system. A concern was raised on the ability to put building plans into an electronic form that can be easily reviewed. Consideration was given to creating a pilot program, possibly at the State level through the Hawaii Housing Finance and Development Corporation that allows developers to submit applications electronically the counties to tailor the electronic review program to their needs.

RECOMMENDATION:

Recognizing the model of the City and County of Honolulu's electronic tracking system, the State should implement a pilot program and allow neighbor island counties to tailor the system for their local use.

METHOD:

The State will work with the City and County of Honolulu and implement the POSSE model, or a similar program, at the Hawaii Housing Finance and Development Corporation.

POLICY STATEMENT:

The State and counties will take advantage of modern electronic and digital technologies available for streamlining and easing the permitting and plan review process.

REGULATORY BARRIER #5:

Hawaii Housing Finance and Development Corporation's internal review procedures for Chapter §201H applications are cumbersome, lengthy, micromanage project design, and employ challenging buyer qualification processes.

DISCUSSION:

Members discussed that there was a need to demonstrate fiduciary responsibility during a project application review, while exercising reasonable discretionary oversight of other project elements. In particular, there was discussion that the State establish a policy clearly defining housing supply as a priority, and implement regulatory procedures to support the policy. During the course of the task force work and the completion of this report, the Corporation undertook and completed a review of internal policies and procedures and addressed some of the barriers. In addition, they are reviewing internal project application review procedures and developing a "degree of completeness" technique that will serve as a tool to expedite their internal process prior to Board consideration. However, members expressed concern that the HHFDC did not include stakeholders and end users of the 201H process in this review, as was agreed to at a 2008 board meeting.

RECOMMENDATION:

The task force reached consensus to provide a general statement to the staff of the Hawaii Housing Finance and Development Corporation recommending standard criteria necessary for the Board to reach a decision on project applications. The statement will also request that the Corporation involve the private sector in an evaluation of internal policies on processing 201H applications.

METHOD:

The task force will send a letter to the Executive Director of the Hawaii Housing Finance and Development Corporation.

POLICY STATEMENT:

Because affordable housing is a priority of the State, the Hawaii Housing Finance and Development Corporation will engage in review procedures that encourage and expedite development.

REGULATORY BARRIER #6:

The request for proposal (RFP) criteria can be detail driven and discouraging to prospective affordable housing developers.

DISCUSSION:

Members commented that developers conduct an entire design development process in order to respond to a Hawaii Housing Finance and Development Corporation RFP. The application is then scrutinized at the staff level, and again at the Board level. Members' perception was that HHFDC places more scrutiny on detail and design rather than developer experience and this in

turn delays the RFP review process. Members acknowledged there is a distinction between the lengthy and challenging RFP process, and challenges with the 201H review process. While HHFDC can control internal review processes for a 201H application, they have no jurisdiction of procurement procedures that are required by law. Additionally, HHFDC revised its RFP criteria in 2007, and in recent years began awarding the highest points for developer experience. HHFDC also agreed that developer qualifications, which include experience, should be highly important in the selection criteria along with meeting HHFDC's housing objectives.

RECOMMENDATION:

Through further discussions with the HHFDC, the task force identified that a significant delay in RFP approval occurs when the HHFDC submits the proposal to the Department of Budget and Finance and line staff conduct substantive project reviews. The Department of Budget and Finance agrees that their review should not be substantive of the project. Therefore, the task force recommends a two part strategy that will review procurement procedures as they relate specifically to affordable housing, and clarify the role that the Department of Budget and Finance plays in reviewing requests for proposals or responses to requests for proposals.

Part I:

Partner with the State Policy Procurement Board and review the RFP process as it applies to affordable housing and related projects to identify possible methods of easing the regulatory burden. Current law gives the policy board the authority to, "...issue interim rules by procurement directives, which shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91." Interim rules adopted under these circumstances can be effective for eighteen months. The Board has authority to monitor and audit any rule that it implements, thereby providing oversight and assurances that mechanisms exist to prevent abuse of interim rules that may be considered for affordable housing and related developments. Parties that should be invited to participate in a discussion such as the one proposed here include the Department of the Attorney General, State Policy Procurement Board, State Procurement Officer, Department of Accounting and General Services, Hawaii Housing Finance and Development Corporation (HHFDC), all four county administrations, at least two developers that have developed affordable housing projects in conjunction with the counties or HHFDC, and a private sector professional with expertise in procurement. This group should be convened by the Officer of the Governor to show the State's commitment and leadership to expeditiously addressing the affordable housing shortage.

Part II:

Clarify in statute that the Department of Budget and Finance reviews requests for proposals, and submissions responding to a request for proposal, for a 201H project "as to form" only versus a substantive and project design review.

METHOD:

Part I should be conducted administratively. Introduce a bill or executive memo to accomplish Part II.

POLICY STATEMENT:

To expedite and increase the delivery of affordable housing supply, the State will minimize the number of agencies and departments conducting discretionary project design reviews because they severely, and negatively, impact the State's ability to produce affordable homes in a timely manner.

REGULATORY BARRIER #7:

Each county, the Hawaii Housing Finance Development Corporation, and the Land Use Commission all have different affordable housing applications and processes that are unique to their jurisdictions and independent of each other.

DISCUSSION:

Members discussed that a coordinated system of 201H applications and processes across State and county agencies would provide a more predictable process and therefore enable dialogue with community and public officials in a more organized manner. The Hawaii Housing and Finance Development Corporation indicated that they would be willing to analyze county applications and change HHFDC's application to mirror them.

RECOMMENDATION:

The State and counties will work together to decrease the time it takes to process and approve an affordable housing project proposal by developing a standard application form, and a standard application review process. This recommendation compliments the recommendation to Barrier no. 3 which was to establish standard timeframes for state and county agency issuance of ministerial permits for approved affordable housing projects.

The standard application review process will be applied statewide and provides a predictable timetable for affordable housing project applications to be reviewed. Items that will be addressed in the standard process include establishing the maximum number of hearings at the city council that a 201H project application may be heard; clarifying the 45 day time limit for county councils and the Land Use Commission reviews; and enforcing the 45 day time limit for state and county agency approvals while running them concurrently. The standard application and standard application review process must be developed collaboratively by the stakeholders. All four county administrations and county councils, the Hawaii Housing Finance and Development Corporation, the Land Use Commission, the Department of Health, and the Department of Transportation must participate in developing these items. Private sector developers should also be engaged in order to receive input from the community regarding what part of the process works well, and doesn't work well, from the perspective of the developer. A standard form and process will provide predictability and reliability for affordable housing project applications and the review process

statewide; this provides an incentive for developers to respond to 201H project requests. The manner in which the proposal would be implemented preserves the counties' and State's interests by giving them the authority to develop what the application and process will look like.

METHOD:

Administratively invite and convene individuals and organizations to participate.

POLICY STATEMENT:

The State and counties will adopt a standard 201H affordable housing project application and review process to provide predictability for developers and incentivize more affordable housing development.

REGULATORY BARRIER #8:

Counties do not accept dedication of public infrastructure in all cases.

DISCUSSION:

In some cases, counties do not act to affirmatively accept or reject public infrastructure that has been developed as part of a housing project. The City and County of Honolulu maintains that if infrastructure is constructed to standard as defined in various plans, rules, and regulations of the city, then the city will accept dedication. Of special mention was Kapolei, which the City and County of Honolulu maintains does not meet county specifications because the project was built under special flexibility granted to the Hawaii Finance Development Corporation (now HHFDC) under Act 15, Session Laws of 1988, and not certified by the city. Developers concurred that when infrastructure dedication is delayed project financing is jeopardized, particularly where a community facilities district has been established or tax increment financing is used.

RECOMMENDATION:

Establish a mechanism that requires counties to accept or reject infrastructure dedication, provided infrastructure meets standards and specifications, within a set time frame or the infrastructure is automatically dedicated to the city. Also, review current statutory barriers governing the ability of counties to pledge their full faith and credit to tax increment financing bonds.

METHOD:

Introduce a bill establishing timeframes for review and acceptance of infrastructure dedication. Conduct review into the existing tax increment financing statutes administratively. See Appendix J for a copy of the legislation.

POLICY STATEMENT:

Counties will establish review procedures that provide for the timely approval or disapproval of infrastructure dedication.

REGULATORY BARRIER #9:

The Hawaii Housing and Finance Development Corporation does not have the kind of authority granted to the Department of Hawaiian Homelands, or the Hawaii Community Development Authority with regard to exemptions and standards.

DISCUSSION:

Members discussed the special authorities granted and exercised by the Department of Hawaiian Homelands (DHHL) and the Hawaii Community Development Authority (HCDA). The DHHL derives its authority through federal statute, and the State would not be able to grant similar power to the Hawaii Housing Finance and Development Corporation. The HCDA is only granted authority in specific geographic areas. The question was raised regarding the ability of a developer to meet the affordable housing requirement set by HCDA for a proposed project in Kakaako or Kalaeloa by “transferring” the development for those affordable units to another community, such as Waianae. Members decided that due to the geographic restrictions on the HCDA, the issue would likely take legal action to resolve. A discussion then ensued on whether to create designated affordable housing zones across the State. The zones would be afforded standards and exemptions designed to encourage and expedite affordable housing development and should not be on lands classified as important agricultural lands.

RECOMMENDATION:

The counties will identify and designate affordable housing receiving zones and include this identification in their county general and development plans. These zones will have specific, consistent standards and allowable exemptions that are tailored to encourage the development of affordable housing. The State Land Use Commission will automatically reclassify any state designation of lands to correspond to a county designation of an affordable housing receiving zone. Affordable housing receiving zones should not be placed in lands classified as conservation.

METHOD:

Introduce a bill establishing the process for counties to identify affordable housing receiving zones and the automatic reclassification of these lands at the Land Use Commission if it is necessary. See Appendix J for a copy of the legislation.

POLICY STATEMENT:

To increase the supply of affordable housing, the State and counties will create affordable housing receiving zones that will maximize the development of affordable housing units through standards and reduced land development requirements.

REGULATORY BARRIER #10:

The State and counties have different income restrictions for affordable housing. In addition, there are also different set asides for various tiers of area median incomes on a project by project basis.

DISCUSSION:

The City and County of Honolulu has two programs under which the standard income qualification and percentage of units required will vary. These two programs are affordable housing as a condition of zone change or in a unilateral agreement, and affordable housing under the 201H process. As a matter of policy, under the unilateral agreement process, the City and County of Honolulu will require an amount of affordable units for those making 120% of the area median income or below. The unilateral agreement units are not kept affordable in perpetuity. The City and County of Honolulu will require 50% of the units developed under the 201H process to be set aside as affordable; within these units, 10% are for those earning below 80% of the area median income, 20% are for those earning between 81% and 120% of the area median income, and 20% are for those earning between 121% and 140% of the area median income. Although these parameters are in place, because of the discretionary review conducted at the city level, the city administration may recommend conditions of approval for a project, but the County Council may also set additional conditions of approval and modifications for a project. The variation and uncertainty in conditions for approval/requirements between the State, county, and federal government regulations make it difficult to finance affordable housing projects. Kauai County and Hawaii County do not have income restriction policies. Members discussed at length the Maui County policy of setting aside 50% of project units for affordable housing. Members expressed serious concern over two federal lawsuits that have been filed against Maui County and the impact this will have on the State and three other counties. Members discussed the option of setting a State cap on affordable housing set asides, and allowing the counties discretion to require units that are not in excess of the state cap.

RECOMMENDATION:

The State should establish a cap on affordable housing requirements and counties should be allowed discretion to require specific set asides up to the cap.

METHOD:

The Hawaii Housing Finance and Development Corporation will lead a review and analysis of what the state cap might be from both a green-field and in-fill development perspective. The analysis will be completed by mid 2009. There must also be an education campaign on the Maui housing policy and resulting lawsuits so that public officials understand the impact of such law suits and the cost to other counties and the State in terms of development.

POLICY STATEMENT:

The State will establish a cap for affordable housing requirements on project applications, and counties will be allowed the discretion to require units up to that amount as a condition of approval.

REGULATORY BARRIER #11:

There are duplicative processes within the State Land Use Commission and county level regulatory systems delay affordable housing production and increase the cost of the home.

DISCUSSION:

Members discussed at length the original intent of the Land Use Commission and how its role has changed over the past thirty years:

“In the early 1960’s, Hawaii enacted and implemented the nation’s first statewide land-use regulation system, commonly known as the State Land Use Law. Today, the State Land Use Commission (SLUC) remains actively engaged in regulating land use under the four mandated State Land Use Districts—Urban, Rural, Agricultural and Conservation. Lands that did not fall into one of the other three districts were placed in the Agricultural District. As the “residual” or “default” classification, the Agricultural District contains far more acreage than will ever be actively cultivated and thousands of acres that are not suited for any kind of farming.

The SLUC was established in 1961 as a quasi-legislative body. Its most important responsibility was to carry out a comprehensive, statewide review of district boundaries every five years. Accelerating growth pressures, however, brought about two key changes during the 1970s. First, the State turned away from the comprehensive five-year boundary review after the 1974 effort (the second review), which foundered due to controversy and landowner pressure. [Since 1974, the State has conducted one comprehensive district boundary review. Initiated by Gov. Waihee’s Office of State Planning in the early 1990s, this review focused primarily on resource preservation.] Second, the Legislature mandated that the SLUC adopt a quasi-judicial, contested case process for considering individual applications to redistrict lands. In effect, these changes turned the SLUC away from comprehensive planning reviews and towards case-by-case rezoning actions.

The past 25 years have seen various attempts at reforming the State Land Use Law, starting with a 1978 amendment to the Hawaii Constitution mandating that the Legislature define and map “important agricultural lands.” Despite sponsoring the development of a Land Evaluation and Site Assessment (LESA) system, designations have not occurred. Nor has the Legislature acted on other proposals for reform.”⁷

Members agreed that the Land Use Commission has evolved into an organization that involves itself in every project, which has very little to do with classifying lands, and does not meet the reasonable need for a statewide

⁷ Renewing Hawaii’s Land Use System, American Planning Association, Hawaii Chapter, February 2004

five year boundary review of land classification. Members also recognized that in addition to overlapping with review functions that are now established and conducted at the county level, the Land Use Commission does not operate in the context of the Hawaii State Plan. Initial discussions on a recommendation to address this regulatory barrier centered around refocusing the Land Use Commission on the broader planning needs of the State, requiring automatic conformance at the Land Use Commission of lands that are reclassified at the county level via a county general plan or development plan, and allowing counties to determine the urban and rural zoning issues in the entitlement process. A common theme throughout the discussion was the acknowledgement that county regulatory environments have significantly evolved since the Land Use Commission redirected its focus and procedural nature from broad-based planning to case-by-case quasi-judicial permitting back in 1975. Since then the counties have established local systems of government, adopted general and development plans, amended those plans numerous times as recently as 2002, established local planning commissions, advisory committees, and neighborhood boards; collectively, the systems established by each of the counties reflect the local perspective and preferences for directed planning and growth within each county. Members acknowledged that while the Land Use Commission focused on case-by-case project approvals, and the counties focused on local planning and growth, there was an absence of state-level planning and standards to lead the counties in developing general and development plans that would meet the overall needs and priorities of the State. “Unlike many state zoning enabling acts however, the Hawaii law sets no standards for the content or the process of preparing and adopting county general plans.”⁸ There must be State level planning and goal setting to assist counties to meet Hawaii’s affordable housing demands.

RECOMMENDATION*:

Members of the task force reached consensus that this is a regulatory barrier that cannot be ignored. However of equal importance is the role that the Land Use Commission plays in designating growth boundaries and establishing growth patterns, and therefore “abolishing” the Commission was not a practical or reasonable recommendation. The American Planning Association published the Growing Smart Legislative Guidebook in 2002. This guidebook provided model statutes for planning and zoning that would supplant the 1920s’ Standard Planning and Zoning Enabling Acts which most state and local governments, including Hawaii and our counties, base our government planning and zoning systems on. The task force recommends consideration of a proposal submitted by the American Planning Association, Hawaii Chapter, which applies the new “Growing Smart” techniques to Hawaii’s current processes and will renew Hawaii’s land use system. The proposal is outlined as follows:

⁸ Renewing Hawaii’s Land Use System, American Planning Association, Hawaii Chapter, February 2004

“I. State Land Use Commission

A. Vest the Land Use Commission with responsibility and authority to establish State planning goals and to collaborate with the counties to set standards for the county functional plans. The LUC would have the following responsibilities:

1. Set statewide planning goals and guidelines for areas of State interest and the four State land use districts.
2. Collaborate with the counties to set standards and guidelines for county general plans and conduct a mandatory review every five years.
3. Set standards and guidelines for State long-range functional plans, including but not limited to, transportation, infrastructure, and schools, with a mandatory review every five years.
4. Review and certify county general plans that meet the standards for county general plans. Amend State land use district boundaries in accordance with a certified county general plan.
5. Review State long-range functional plans for conformance to State goals and the standards for functional plans.
6. Review and consult with the counties concerning county land use regulations and zoning actions relative to consistency with the county general plan.

B. Redefine the State Land Use Districts in terms of policy goals:

1. The Urban District establishes the urban growth boundary, to be reviewed by each county every five years but not to be altered by individual applications.
2. The Agricultural District is coterminous with Important Agricultural Lands and is intended exclusively for agriculture, aquaculture and forestry uses.
3. The Rural District includes lands designated for rural community development, as well as other lands. In effect, Rural replaces the Agricultural District as the “residual district.”
4. The Conservation District remains essentially unchanged, as does the State’s authority for planning and regulating land use therein.

II. The Counties – These recommendations are not intended to be construed as infringing on county home rule.

A. Grant the counties authority to plan and regulate land use in the Rural and Agricultural Districts, as well as in the Urban District, based on statewide planning goals and standards for county general plans; mandate that county land use regulations be consistent with the county general plan. Conservation district management will remain with the Land Use Commission.

III. Collaboration and Support

A. Encourage the counties consult and work collaboratively with state agencies in all stages of the county general planning process.

B. Encourage State agencies, including but not limited to the Departments of Transportation and Education, consult and work collaboratively with each county in the development of long range functional plans.

C. Funding and technical support must be provided to the counties.”⁹

* Task force representatives from the Land Use Commission and City and County of Honolulu recused themselves from voting on this recommendation.

METHOD:

Introduce a comprehensive bill that makes changes to the Land Use Commission, and establishes State requirements for counties to satisfy in their general and development plans. See Appendix J for a copy of the legislation.

POLICY STATEMENT:

The State Land Use Commission will establish State guidelines, standards, and requirements for county general and development plans to ensure counties are making planning decisions that will meet the affordable housing needs and policy priorities of the State.

REGULATORY BARRIER #12:

There is a shortage of staff at the State and county levels to process project and permit applications in a timely manner.

DISCUSSION:

Members agreed that there is a shortage of workers at State and county agencies and that this shortage is a barrier to the delivery of affordable homes. Members discussed third party review and the experiences at the county level. Suggestions were made to expand existing third party review in the City and County of Honolulu beyond the current use for electrical and mechanical reviews. The City commented that testing for such expansion currently exists but there have been no applicants. The biggest barrier to expanding third party review is the liability issue. Aside from this, members reached consensus that third party review is a useful way to address this barrier. The City and County of Honolulu, Maui County, and Hawaii County agreed that liability is the barrier for counties to effectively utilize third party review. The counties also stressed that in the past key zoning issues have been missed and this contributes to the counties hesitation in utilizing third party and assuming liability. The County of Hawaii allows for project-based overtime for employees, at the discretion of the county, and paid for by developers to expedite processing.

⁹ Renewing Hawaii’s Land Use System, American Planning Association, Hawaii Chapter, February 2004

RECOMMENDATION:

Members reached consensus that both State and county agencies should utilize third party review. Funding must be appropriated to assist these agencies in accomplishing this; private funding from developers benefitting from third party review should also be required. To address the liability issue, the State and counties should look into creating a special fund that will provide insurance coverage for third party reviewers. The State, counties, developers, and stakeholders should work collaboratively to develop language that clarifies the roles, responsibilities, and liability for all agencies involved. For example, language that provides a disclaimer, limits liability, or pre-arranged agreements between government agencies and developers or permittees that waive liability and indemnification.

METHOD:

Introduce a bill establishing a comprehensive third party review system for the State and county government agencies. See Appendix J for a copy of the legislation.

POLICY STATEMENT:

The State of Hawaii supports and encourages the use of third party review to expedite the approval of project and permit applications at state and county agencies.

REGULATORY BARRIER #13:

Exactions, impact fees, and connection fees are a regulatory burden to affordable housing and greatly increase the cost of an affordable unit for the renter or buyer.

DISCUSSION:

Members expressed concern that in addition to the absence of known exemptions for affordable housing projects, developers often are required to comply with exactions and impact fees that counties and the State place on the project as a condition of approval. Often times the state or county agencies will require developers to provide parks, schools, traffic lights, roadway or sidewalk improvements, and other infrastructure improvements because of the “impact” the proposed project will have on existing infrastructure and public resources. Members shared the belief that affordable housing units should not be paying for these exactions, as the application of additional fees are directly added to the unit/consumer, and end up raising the price of the “affordable” home. In conjunction with this discussion, members related the absence of standard applications and the use of a rational nexus when impact fees and exactions are imposed on affordable housing projects. Simultaneously, incentives to develop affordable housing are discretionary. Such incentives would be more effective if they were applied on a standard, predictable basis. One member pointed out that if all connection fees were waived for all affordable housing units, then the State should consider subsidizing a percentage of the cost so that the cost is not redistributed amongst the other homebuyers. Members

clarified that the standards being referred to are not intended to mandate a “design” for affordable housing.

RECOMMENDATION:

The task force recommends exempting affordable housing projects from impact and connection fees while providing incentives for affordable housing projects. Packaging these strategies will engage more affordable housing development in the State. Incentives may include tax exemptions, priority permit review, density bonuses, height waivers, cluster zoning, reduction of parking requirements, greater design flexibility, procurement exemptions, waiving State wage requirements, priority infrastructure financing, and site flexibility. While counties currently provide the opportunity for developers to apply for exemptions and waivers, the process is discretionary. Affordable housing projects should have more predictability and certainty with regards to what exemptions and waivers projects will receive.

METHOD:

Introduce a bill that requires counties to provide incentives for affordable housing projects and prohibits counties from assessing connection fees to affordable housing projects. See Appendix J.

POLICY STATEMENT:

Incentives for affordable housing development and the imposition of exactions, impact fees, or connection fees on affordable housing units will be waived.

REGULATORY BARRIER #14:

Chapter 343, Hawaii Revised Statutes, delays the production of affordable housing due to recent judicial interpretation and the resulting application of the law.

DISCUSSION:

Members discussed the current interpretation of Chapter 343 which has changed the triggers for an EIS and EA and in effect broadened the triggers significantly. This interpretation is affecting all development negatively and not just affordable housing projects. The Hawaii Housing Finance and Development Corporation is exploring running 201H applications concurrently with the EIS review. While Hawaii County acknowledged that they may run the reviews concurrently, the City and County of Honolulu, County of Maui, and County of Kauai do not. A suggestion was made to exempt from an EIS any project that produces a certain percentage of affordable housing units. Members also discussed the suggestion to exempt from an EIS review any proposed project on property already zoned for development.

RECOMMENDATION:

A comprehensive analysis of Chapter 343 should be conducted and triggers reevaluated. Chapter 343 should be amended to encourage housing development and completion, rather than delay it. Consideration can be given to this barrier as regulatory barrier no. 9, which proposes to create

affordable housing receiving zones, is fleshed out. Perhaps the affordable housing receiving zone, as a special district, will have exemptions from Chapter 343 that are unique and tailored for affordable housing development.

METHOD:

The Office of the Governor will convene stakeholders and policy makers to address the impact of Chapter 343 on housing development and develop alternative applications for housing projects that will expedite the process. The review shall be completed by mid 2009.

POLICY STATEMENT:

Environmental assessments will protect the health and safety of Hawaii's people and resources, and will not place undue burdens on the construction of affordable housing.

CONCLUSION

The task force recognizes the significant cost burden and supply restriction that regulation and government policy has on housing. Members were able to reach consensus on fourteen regulatory barriers and identify potential solutions for stakeholders, policy makers, and policy implementers to consider:

1. Requiring funding commitments prior to project review by the county councils is prohibitive to the development of affordable housing.
2. Providing an expedited review for infrastructure projects and mixed use projects will increase the supply of affordable housing.
3. Non-discretionary, ministerial permits for affordable housing are considerably delayed.
4. There is a lack of a macro perspective, interdependence, and interconnectivity within the existing regulatory framework system.
5. The internal review procedures of the Hawaii Housing Finance and Development Corporation are a regulatory barrier.
6. The RFP process is discouraging to home builders.
7. There are too many variations between the State and county 201H project application and review processes.
8. Counties do not accept public dedication of infrastructure in all cases.
9. There is a lack of consistent housing policy that encourages the development of affordable housing.
10. Income restrictions and set asides requirements vary too greatly amongst State, county, and federal government systems.
11. The State must exercise greater macro planning authority to guide the counties in meeting housing needs of our communities.
12. There is a shortage of staff at the state and county agencies to conduct permit and project application reviews in a timely manner.
13. Exactions, impact fees, and connection fees are a regulatory burden to affordable housing and greatly increase the cost of an affordable unit for the renter or buyer.
14. Chapter 343, Hawaii Revised Statutes, delays the production of affordable housing due to recent judicial interpretation and the resulting application of the law.

This report contains bold and challenging recommendations that represent an enormous paradigm shift in Hawaii's housing policy. Hawaii's regulatory system has created a housing development environment that severely restricts our housing supply and impacts the cost of homes for our communities.

The time to act is now. These proposals and policy changes represent maximum change at minimal cost. Collectively, Hawaii has an opportunity to act and improve our quality of life for generations to come.

Guiding Policies for New Housing Initiatives

When conducting the review of an affordable housing project application, funding commitment requirements will not be so restrictive that they prevent or delay the approval of the application. Funding requirement policies will be periodically evaluated by the State to ensure compatibility with current economic and market conditions.

In order to increase the overall housing supply, expeditious reviews and exemptions will be provided to mixed use developments that contain affordable housing, and infrastructure projects that are associated with an affordable housing project.

The review and approval of ministerial permits for approved affordable housing projects are a priority of the State and will be conducted in a reasonable and predictable amount of time.

The State and counties will take advantage of modern electronic and digital technologies available for streamlining and easing the permitting and plan review process.

Because affordable housing is a priority of the State, the Hawaii Housing Finance and Development Corporation will engage in review procedures that encourage and expedite development.

To expedite and increase the delivery of affordable housing supply, the State will minimize the number of agencies and departments conducting discretionary project design reviews because they severely, and negatively, impact the State's ability to produce affordable homes in a timely manner.

The State and counties will adopt a standard 201H affordable housing project application and review process to provide predictability for developers and incentivize more affordable housing development.

Counties will establish review procedures that provide for the timely approval or disapproval of infrastructure dedication.

To increase the supply of affordable housing, the State and counties will create affordable housing receiving zones that will maximize the development of

affordable housing units through standards and reduced land development requirements.

The State will establish a cap for affordable housing requirements on project applications, and counties will be allowed the discretion to require units up to that amount as a condition of approval.

The State Land Use Commission will establish State guidelines, standards, and requirements for county general and development plans to ensure counties are making planning decisions that will meet the affordable housing needs and policy priorities of the State.

The State of Hawaii supports and encourages the use of third party review to expedite the approval of project and permit applications at state and county agencies.

Incentives for affordable housing development and the imposition of exactions, impact fees, or connection fees on affordable housing units will be predictable.

Environmental assessments will protect the health and safety of Hawaii's people and resources, and will not place undue burdens on the construction of affordable housing.

**AFFORDABLE HOUSING
REGULATORY BARRIERS TASK FORCE MEMBERS**

Mr. David Arakawa, Land Use Research Foundation

Representative Rida Cabanilla, State House of Representatives

Mr. David Callies, William S. Richardson School of Law

Ms. Elizabeth Chinn, City and County of Honolulu

Mr. Kyle Chock, The Pacific Resource Partnership

Senator Suzanne Chun Oakland, State Senate

Dr. Janine Clifford, Clifford Planning LLC

Mr. Mike Dang, Kamehameha Schools

Mr. Dan Davidson, Land Use Commission

Ms. Sherrilee Dodson, Habitat for Humanity-Maui

Mr. Gary Furuta, Hawaii Housing Development Corporation

Mr. Gordan Furutani, HUD, Region 9

Ms. Raenette Gee, City and County of Honolulu

Ms. Jacqui Hoover, Hawaii Leeward Planning Conference

Mr. Charles Jencks, Honua'ula Partners, LLC

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Senator Norman Sakamoto, State Senate

Ms. Karen Seddon, Hawaii Housing Finance and Development Corporation

Representative Maile Shimabukuro, State House of Representatives

Mr. Jim Tollefson, Chamber of Commerce of Hawaii

Mr. Dean Uchida, D. R. Horton

Mr. Craig Watase, Mark Development

Mr. Chuck Wathen, Wathen & Associates, Ltd.

Convenor:

Ms. Linda L. Smith, Office of the Governor

Support Staff:

Ms. Nani Medeiros, Housing Hawaii

APPENDIX B

State	WRLURI	Number of Observations	State	WRLURI	Number of Observations
1. Hawaii	2.34	1	26. Georgia	-0.20	56
2. Rhode Island	1.56	17	27. North Carolina	-0.33	64
3. Massachusetts	1.52	79	28. Montana	-0.33	6
4. New Hampshire	1.37	32	29. Ohio	-0.37	135
5. New Jersey	0.89	104	30. Wyoming	-0.43	7
6. Maryland	0.81	18	31. Texas	-0.45	165
7. Washington	0.71	49	32. Nevada	-0.45	7
8. Maine	0.64	44	33. North Dakota	-0.55	8
9. California	0.62	182	34. Kentucky	-0.58	28
10. Arizona	0.60	40	35. Idaho	-0.62	19
11. Colorado	0.51	48	36. Tennessee	-0.67	41
12. Delaware	0.51	5	37. Nebraska	-0.67	22
13. Florida	0.38	97	38. Oklahoma	-0.70	36
14. Pennsylvania	0.36	182	39. South Carolina	-0.75	30
15. Connecticut	0.35	65	40. Mississippi	-0.83	21
16. Vermont	0.33	24	41. Arkansas	-0.87	23
17. Minnesota	0.10	80	42. West Virginia	-0.93	15
18. Oregon	0.09	42	43. Alabama	-0.94	37
19. Wisconsin	0.09	93	44. Iowa	-0.99	59
20. Michigan	0.03	111	45. South Dakota	-1.01	11
21. Utah	-0.05	41	46. Alaska	-1.01	7
22. New Mexico	-0.08	16	47. Indiana	-1.02	47
23. New York	-0.12	92	48. Missouri	-1.02	67
24. Illinois	-0.17	139	49. Louisiana	-1.07	19
25. Virginia	-0.20	35	50. Kansas	-1.11	46

Zell/Lurie Real Estate Center
Wharton School, University of Pennsylvania

SURVEY ON RESIDENTIAL LAND-USE REGULATION

JURISDICTION

Name of Jurisdiction _____ Zip Code _____
 Type of Jurisdiction _____
(City, County, Township, Town, Village, Borough)
 Size of Jurisdiction _____ square miles
 Population
 Current population estimate _____
 Population growth: Past 5 years _____ % Projected next 5 years _____ %

GENERAL CHARACTERISTICS OF LAND REGULATORY PROCESS

1. In your community, how involved are the following organizations in affecting residential building activities and/or growth management procedures? Please rate the importance of each on a scale of 1 to 5 by circling the appropriate number (1 = not at all involved; 5 = very involved).

- Local Council, Managers, Commissioners	1	2	3	4	5
- Community pressure	1	2	3	4	5
- County legislature	1	2	3	4	5
- State legislature	1	2	3	4	5
- Local courts	1	2	3	4	5
- State courts	1	2	3	4	5

2. Which of the following are required to approve zoning changes, and by what vote?

	Yes	Yes, by simple majority	Yes, by more than simple majority	No
- Local Planning commission				
- Local Zoning Board				
- Local Council, Managers, Commissioners				
- County Board of Commissioners				
- County Zoning Board				
- Environmental Review Board				

3. Which of the following are required to approve a new project that does not need rezoning, and by what vote?

	Yes	Yes, by simple majority	Yes, by more than simple majority	No
- Planning Commission				
- Local Council, Managers, Commissioners				
- County Board				
- Environmental Review Board				
- Public Health Office				
- Design Review Board				

4. On a scale of 1 to 5, please rate the importance of each of the following factors in regulating the rate of residential development in your community (1 = not at all important; 5 = very important). Please circle the appropriate number.

	Single Family Units					Multi Family Units				
- Supply of land	1	2	3	4	5	1	2	3	4	5
- Cost of new infrastructure	1	2	3	4	5	1	2	3	4	5
- Density restrictions	1	2	3	4	5	1	2	3	4	5
- Impact fees/exactions	1	2	3	4	5	1	2	3	4	5
- City budget constraints	1	2	3	4	5	1	2	3	4	5
- City Council opposition to growth	1	2	3	4	5	1	2	3	4	5
- Citizen opposition to growth	1	2	3	4	5	1	2	3	4	5
- School crowding	1	2	3	4	5	1	2	3	4	5
- Length of review process for zoning	1	2	3	4	5	1	2	3	4	5
- Length of review process for building permits	1	2	3	4	5	1	2	3	4	5
- Length of review process for land development plan	1	2	3	4	5	1	2	3	4	5

RULES OF RESIDENTIAL LAND USE REGULATION

5. Does your community place annual limits on the total allowable:

	Yes	No
- No. of building permits – single family?		
- No. of building permits – multi-family?		
- No. of residential units authorized for construction – single family?		
- No. of residential units authorized for construction – multi-family?		
- No. of multi-family dwellings?		
- No. of units in multi-family dwellings?		

6. To build, do developers have to meet these requirements?

	Yes	No
- Meet the minimum lot size requirement? If yes: ½ acre or more _____ ¼ acre or less _____ 1 acre or more _____ 2 acres or more _____		
- Include “affordable housing” (however defined)?		
- Supply mandatory dedication of space or open space (or fee in lieu of dedication)?		
- Pay allocable share of costs of infrastructure improvement?		

SPECIFIC CHARACTERISTICS

7. How does the acreage of land zoned for the following land uses compare to demand?

	Far more than demanded	More than demanded	About right	Less than demanded	Far less than demanded
- Single-family					
- Multi-family					
- Commercial					
- Industrial					

8. How much has the cost of lot development, including subdivisions, increased in the last 10 years?
Please circle the appropriate category.

0-20% 21-40% 41-60% 61-80% 81-100% >100%

9. How much has the cost of a single family lot increased in the last 10 years?
Please circle the appropriate category.

0-20% 21-40% 41-60% 61-80% 81-100% >100%

10. What is the current length of time required to complete the review of residential projects in your community?

For single-family units: _____ months For multi-family units: _____ months

11. Over the last 10 years, how did the length of time required to complete the review and approval of residential projects in your community change?

	no change	somewhat longer	considerably longer
- Single-family units			
- Multi-family units			

12. What is the typical amount of time between application for rezoning and issuance of a building permit for development of:

	Less than 3 mos.	3 to 6 mos.	7 to 12 mos.	13 to 24 mos.	If above 24, How long?
- Less than 50 single family units					
- 50 or more single family units					
- Multi-family units					

13. What is the typical amount of time between application for subdivision approval and the issuance of a building permit (assume proper zoning is already in place) for the development of:

	Less than 3 mos.	3 to 6 mos.	7 to 12 mos.	13 to 24 mos.	If above 24, How long?
- Less than 50 single family units					
- 50 or more single family units					
- Multi-family units					

14. How many applications for zoning changes were submitted in your community in the last 12 months?

15. How many applications for zoning changes were approved in your community in the last 12 months?

In the event we might need to clarify any of the answers to the above questions, we would appreciate the following information, which will be held in total confidence.

Name _____
 Title _____
 Organization _____
 Address _____

 Phone _____
 Fax _____
 E-mail _____

Please check this box if you would like to receive the results of this survey.

Thank you very much for taking the time to complete this survey.

June 2004

APPENDIX 2 – INDEX CONSTRUCTION DETAILS

INDEX	COMPONENT	VARIABLE LONG NAME	DEFINITION	CODE	SOURCE
LPII	local	Local Council, Managers, Commissioners Involvement	The degree of involvement of the local council, managers, and commissioners in affecting the residential building activities and/or growth management procedures of a jurisdiction.	1 = not at all involved; 5 = very involved	Line item 1 of survey question 1
LPII	pressure	Community Pressure Involvement	The degree of involvement of community pressure in affecting the residential building activities and/or growth management procedures of a jurisdiction.	1 = not at all involved; 5 = very involved	Line item 2 of survey question 1
LPII	sfubudget	Importance of City Budget Constraints, Single Family	The importance placed on how a jurisdiction's budget constraints affect the rate of single family residential development.	1 = not at all important; 5 = very important	Line item 5 of survey question 4
LPII	mfubudget	Importance of City Budget Constraints, Multi Family	The importance placed on how a jurisdiction's budget constraints affect the rate of multi family residential development.	1 = not at all important; 5 = very important	Line item 5 of survey question 4
LPII	sfucouncil	City Council Opposition to Growth Important, Single Family	The importance of a jurisdiction's city council opposing growth, to the amount that it affects the rate of single family residential development in that jurisdiction.	1 = not at all important; 5 = very important	Line item 6 of survey question 4
LPII	mfucouncil	Importance of City Council Opposition to Growth, Multi Family	The importance of a jurisdiction's city council opposing growth, to the amount that it affects the rate of multi family residential development in that jurisdiction.	1 = not at all important; 5 = very important	Line item 6 of survey question 4
LPII	sfucitizen	Importance of Citizen Opposition to Growth, Single Family	The importance placed on how citizen opposition to growth affects the rate of single family residential development in each jurisdiction.	1 = not at all important; 5 = very important	Line item 7 of survey question 4
LPII	mfucitizen	Importance of Citizen Opposition to Growth, Multi Family	The importance placed on how citizen opposition to growth affects the rate of multi family residential development in each jurisdiction.	1 = not at all important; 5 = very important	Line item 7 of survey question 4

LPII	sfuschool	Importance of School Crowding, Single Family	The importance of a jurisdiction's school crowding in regulating the rate of single family residential development.	1 = not at all important; 5 = very important	Line item 8 of survey question 4
LPII	mfuschool	Importance of School Crowding, Multi Family	The importance of a jurisdiction's school crowding in regulating the rate of multi family residential development.	1 = not at all important; 5 = very important	Line item 8 of survey question 4
LPII	totinitatives	Total # of Conservation Initiatives Approved	Number of ballot initiative passed by the jurisdiction from 1996 to 2005.		Trust for the Public Land, Landvote database http://www.tpl.org/tier2_kad.cfm?content_item_id=0&folder_id=2607 Accessed on July 26, 2005
LPII=STANDARDIZED{STANDARDIZED[local+pressure+countyleg+(sfubudget+mfubudget)/2+(sfucouncil+mfucouncil)/2+(sfucitizen+mfucitizen)/2+(sfuschool+mfuschool)/2]+STANDARDIZED[totinitatives]}					
SPII	stateleg	State Legislature Involvement (STATE AVERAGE)	The degree of involvement of the state legislature in affecting the residential building activities and/or growth management procedures of a jurisdiction.	1 = not at all involved; 5 = very involved	Line item 4 of survey question 1
SPII	execrating	Executive and Legislative Rating	The level of activity in the Executive and Legislative branches over the past ten years that is directed toward enacting greater statewide land use restrictions.	Code: 1 = little recent activity, 2 = moderate activity, 3 = high level of activity	Foster and Summers (2005)
SII=STANDARDIZED{STANDARDIZED[STATE AVERAGE {stateleg}]+STANDARDIZED[execrating]}					
CII	judicialrating	Judicial Rating	The tendency of appellate courts to uphold or restrain municipal land use regulation.	1 = restricts local regulation, 2 = neutral, 3 = supports local regulation	Foster, and Summers (2005)

LZAI	commissionD	Local Planning Commission Required to Approve Zoning Changes	The requirement that a local planning commission review and approve a new project that entails rezoning.	0 = not required, 1 = required	Line item 1 of survey question 2
LZAI	loczoningD	Local Zoning Board Required to Approve Zoning Changes	The requirement that a local zoning board review and approve a new project that entails rezoning.	0 = not required, 1 = required	Line item 2 of survey question 2
LZAI	councilD	Local Council, Managers, Commissioners Required to Approve Zoning Changes	The requirement that local council, managers, or commissioners review and approve a new project that entails rezoning.	0 = not required, 1 = required	Line item 3 of survey question 2
LZAI	cntyboardD	County Board of Commissioners Required to Approve Zoning Changes	The requirement that the county board of commissioners review and approve a new project that entails rezoning.	0 = not required, 1 = required	Line item 4 of survey question 2
LZAI	cntyzoning	County Zoning Board Required to Approve Zoning Changes	The requirement that the county zoning board review and approve a new project that entails rezoning.	0 = not required, 1 = required	Line item 5 of survey question 2
LZAI	envboardD	Environmental Review Board Required to Approve Zoning Changes	The requirement that an environmental review board approve a new project that entails rezoning.	0 = not required, 1 = required	Line item 6 of survey question 2
LZAI	zonevote	Town Meeting Vote Required to Approve Zoning Changes	The requirement that all new projects that entail rezoning be voted on at a meeting of the jurisdiction's citizens	0 = not required, 1 = required	Survey response write-in for question 2
LZAI=commissionD+loczoningD+councilD+cntyboardD+cntyzoningD+envboardD+zonevote					
LPAI	commission_norezD	Local Planning Commission Required to Approve New Projects	The requirement that a local planning commission review and approve a new project that does not need rezoning.	0 = not required, 1 = required	Line item 1 of survey question 3
LPAI	council_norezD	Local Council, Managers, Commissioners Required to Approve New Projects	The requirement that local council, managers, or commissioners review and approve a new project that does not need rezoning.	0 = not required, 1 = required	Line item 2 of survey question 3
LPAI	cntyboard_norezD	County Board of Commissioners Required to Approve New Projects	The requirement that the county board review and approve a new project that does not need rezoning.	0 = not required, 1 = required	Line item 3 of survey question 3

LPAI	envboard_norezD	Environmental Review Board Required to Approve New Projects	The requirement that an environmental review board approve a new project that does not need rezoning.	0 = not required, 1 = required	Line item 4 of survey question 3
LPAI	pubhlth_norezD	Public Health Office Required to Approve New Projects	The requirement that the public health office review and approve a new project that does not need rezoning.	0 = not required, 1 = required	Line item 5 of survey question 3
LPAI	dsgnrev_norezD	Design Review Board Required to Approve New Projects	The requirement that a design review board approve a new project that does not need rezoning.	0 = not required, 1 = required	Line item 6 of survey question 3
LPAI=commission_norezD+council_norezD+cntyboard_norezD+envboard_norezD+pubhlth_norezD+dsgnrev_norezD					
SRI	sfupermitlimit	Limits on Building Permits, Single Family	Annual limit on the total allowable number of building permits for single family homes.	0 = no, 1 = yes	Line item 1 of survey question 5
SRI	mfupermitlimit	Limits on Building Permits, Multi Family	Annual limit on the total allowable number of building permits for multi family homes.	0 = no, 1 = yes	Line item 2 of survey question 5
SRI	sfuconstrlimit	Limits on Residential Units for Construction, Single Family	Annual limit on the total allowable number of single family residential units authorized for construction.	0 = no, 1 = yes	Line item 3 of survey question 5
SRI	mfuconstrlimit	Limits on Residential Units for Construction, Multi Family	Annual limit on the total allowable number of multi family residential units authorized for construction.	0 = no, 1 = yes	Line item 4 of survey question 5
SRI	sfudwelllimit	Limits on Number of Units in Multi Family Dwellings	Annual limit on the number of single family dwellings.	0 = no, 1 = yes	Line item 5 of survey question 5
SRI	mfudwelllimit	Limits on Multi Family Dwellings	Annual limit on the number of multi family dwellings.	0 = no, 1 = yes	Line item 6 of survey question 5
SRI=sfupermitlimit+mfupermitlimit+sfuconstrlimit+mfuconstrlimit+mfudwelllimit+mfudwelllimit					
DRI	minlotsize_oneacre	Minimum Lot Size 1 Acre or More	The requirement that developers build on lots no smaller than an area of 1 acre to 2 acres.	0 = no, 1 = yes	Line item 1 of survey question 6

DRI	minlotsize_twoacres	Minimum Lot Size 2 Acres or More	The requirement that developers build on lots no smaller than an area of 2 acres or more.	0 = no, 1 = yes	Line item 1 of survey question 6
DRI=1 if minlotsize_oneacre=1 or minlotsize_twoacres==1					
DRI=0 otherwise					
LAI	LAI	Local Assembly Index	Dummy variable indicating if a local assembly (Town Meeting) is involved in land regulation process	1= Town Meeting required to approve zoning changes, 0= otherwise	Post-survey phone interviews to all municipalities in our sample located in New England
OSI	OSI	Supply Open Space	Response indicating that developers are required to supply mandatory dedication of open space, or open space, or a fee in lieu of dedication in order to build.	0 = no, 1 = yes	Line item 3 of survey question 6
EI	EI	Pay Costs of Improvement	Response indicating that developers are required to pay allocable share of costs of infrastructure improvement in order to build.	0 = no, 1 = yes	Line item 4 of survey question 6
ADI	time_sfu	Length of Residential Review, Single Family	The average length of time required to complete the review of single family residential projects in a jurisdiction.		Line item 1 of survey question 11
ADI	time_mfu	Length of Residential Review, Multi Family	The average length of time required to complete the review of multi family residential projects in a jurisdiction.		Line item 2 of survey question 11
ADI	time1_150sfu	Rezoning Application Time, Less Than 50 Single Family Units	The typical amount of time between application for rezoning and issuance of a building permit for a project with less than 50 single family units.	1.5 = less than 3 months, 4.5 = 3 to 6 months, 9.5 = 7 to 12 months, 18.5 = 13 to 24 months, 24 = more than 24 months	Line item 1 of survey question 12

ADI	time1_m50sfu	Rezoning Application Time, More Than 50 Single Family Units	The typical amount of time between application for rezoning and issuance of a building permit for a project with more than 50 single family units.	1.5 = less than 3 months, 4.5 = 3 to 6 months, 9.5 = 7 to 12 months, 18.5 = 13 to 24 months, 24 = more than 24 months	Line item 2 of survey question 12
ADI	time1_mfu	Rezoning Application Time, Multi Family Units	The typical amount of time between application for rezoning and issuance of a building permit for a project with multi family units.	1.5 = less than 3 months, 4.5 = 3 to 6 months, 9.5 = 7 to 12 months, 18.5 = 13 to 24 months, 24 = more than 24 months	Line item 3 of survey question 12
ADI	time2_150sfu	Subdivision Approval Time, Less Than 50 Single Family Units	The typical amount of time between application for subdivision approval and the issuance of a building permit for a project with less than 50 single family units.	1.5 = less than 3 months, 4.5 = 3 to 6 months, 9.5 = 7 to 12 months, 18.5 = 13 to 24 months, 24 = more than 24 months	Line item 1 of survey question 13
ADI	time2_m50sfu	Subdivision Approval Time, More Than 50 Single Family Units	The typical amount of time between application for subdivision approval and the issuance of a building permit for a project with more than 50 single family units.	1.5 = less than 3 months, 4.5 = 3 to 6 months, 9.5 = 7 to 12 months, 18.5 = 13 to 24 months, 24 = more than 24 months	Line item 2 of survey question 13
ADI	time2_mfu	Subdivision Approval Time, Multi Family Units	The typical amount of time between application for subdivision approval and the issuance of a building permit for a project with multi family units.	1.5 = less than 3 months, 4.5 = 3 to 6 months, 9.5 = 7 to 12 months, 18.5 = 13 to 24 months, 24 = more than 24 months	Line item 3 of survey question 13
$ADI = \frac{(time_sfu + time_mfu)}{2} + \frac{(time1_150sfu + time1_m50sfu + time1_mfu)}{3} + \frac{(time2_150sfu + time2_m50sfu + time2_mfu)}{3} / 3$					



D: LAND USE APPROVALS IN HAWAII

Overview of Jurisdictions:

Hawaii’s centralized land use entitlement system involves the State Land Use Commission and the respective County Planning Commissions, Planning Departments, County Councils and Mayors. The State Land Use Commission (LUC) classifies or designates all of the lands in the State (fast and submerged lands) into one of four land use districts: Urban, Conservation, Rural and Agricultural. In the Rural and Agricultural Districts, the LUC not only designates the lands within these Districts but also provides management oversight on uses within these two districts.

Urban District (+/-194,000 acres) managed by the Counties through their respective General Plans, Community Plans, Development Plans, Land Use and Zoning maps. Reclassification of 15 acres or less of lands from the Agricultural District is also processed by the County and not the LUC.

Conservation District (+/-1.9 million acres) managed by the State Board of Land and Natural Resources.

Rural District (+/-10,000 acres) managed by both the State Land Use Commission and the Counties.

Agricultural District (+/-1.9 million acres) managed by both the State Land Use Commission and the Counties.

The Counties’ General/Development/Community plans are subsets of the State land use districts. Generally, the Counties identify existing and proposed urban areas in their respective General/Development/Community plans. County zoning is used to identify specific land uses within the State Urban Land Use District (i.e. residential, apartment, commercial, industrial, etc.). The Counties also zone uses within the State Conservation Land Use District (i.e. Preservation), and State Agricultural Land Use District (i.e. Agriculture).

Land Use Approval Process:

There are six (6) distinct elements of the Land Use Approval Process in Hawaii (see attached). In general, they are:

1. **Application/Petition Preparation**—Usually done when the site and project have been identified.
2. **County General/Development/Community Plan Amendment Process**— Depending on which County, this process occurs prior to, during or after the State Land Use Commission process.
3. **State Land Use Commission Reclassification**—Any major land use proposal requiring a land use district boundary amendment goes through a Land Use Commission quasi-judicial hearing process (Contested Case Hearings before Hearings Officer), with extensive information and notice requirements. It also involves the County process with significant overlaps on issues.
4. **County Rezoning Process**—Occurs after the Land Use Commission decision and requires much of the same information.

The first four (4) elements basically involve rezoning at the State and County levels. The next two (2) elements are more administrative and discretionary at the County level.

5. **Subdivision Process:**

- i. Product Development Varies

Time required for this item will vary from project to project depending upon the complexity of the specific project. The specific product needs to be developed sufficiently to have final building footprint dimensions in order to prepare an accurate site plan.

- ii. Preliminary Site Plan Varies

The Preliminary Site Plan is generally hand drawn by an architect or site planner. This is then converted to a CAD file for civil engineering design.

- iii. Final Site Plan 1 month

Time is for both the submission and review of the Preliminary Subdivision Map by the Department of Planning and Permitting (DPP). Action on the Map is required within 30 days, but action may consist of deferral.

- iv. Tentative Approval of Preliminary Map 3-4 months

The Preliminary Map and Mass and Pad Grading Plans [construction plans] may be submitted for review at the same time. Legally, approval of Pad Grading Plans is not permitted before approval of the Preliminary Map, although the Mass Grading Plan may be approved if it does not show lot lines. While the DPP may allow individual divisions and branches to review the construction plans before

tentative subdivision approval, the risk is that if the Preliminary Map changes, the plans need to be resubmitted to the reviewing agencies.

Some developers combine the Mass and Pad Grading Plans with the Roadway and Utility Plans into one set of construction plans. However, one option is to separate them in order to obtain approval of the grading plans sooner and start construction earlier. These plans typically only require Civil Engineering Branch review and DPP approval. Therefore, applicants may prepare and submit the Preliminary Map for review and approval *prior* to beginning design of the Roadway and Utility Plans.

v. Submittal of Construction Documents 6 months

Time includes both design and all required approvals. These plans are blueprints for all the roadway and utility improvements, including all underground utilities (sewer, water, storm drain, irrigation, electric, CATV, phone, etc.) and all surface improvements (curb and gutter, sidewalk, ramps, paving, etc.). These plans typically are approved by Urban Design Branch (street trees), Department of Design and Construction (street lights), Department of Transportation Services (traffic signals), Traffic Review Branch, Civil Engineering Branch, Wastewater Branch, Department of Water Supply, State Department of Health, Hawaiian Electric, Hawaiian Telcom and Oceanic Cable.

vi. Site Permitting 2 months

Time includes processing of grading, grubbing, and stockpiling permits which can be obtained concurrently.

vii. Site Building Permits 9 months

After the Roadway and Utility Plans are approved, a construction cost estimate based on final design needs to be submitted for review and approval. Building permits can take up to 6 months to obtain for site work, including walls and fences.

viii. Bonding of Improvements 2 months

After the construction estimate is approved, a subdivision bond needs to be submitted and accepted by the County prior to final subdivision approval.

ix. Final Map Approval 1-2 months

The Final Subdivision Map can now be approved, *before* the site improvements are constructed and certified, *if* a subdivision bond is obtained. This map **must be filed within 1 year** after tentative approval of the Preliminary Map has been received, although up to two 6-month extensions may be allowed.

x. Construction of Site Improvements 6-8 months

Upon approval of Construction Documents, roadway and utilities site improvements can be constructed, and upon approval of as-built documentation and final inspection, be certified.

- xi. Land Court Subdivision Recordation 6 months

Allow 6 months for recordation. Up until about two years ago this would take between 12 and 14 weeks. A year ago the time required increased to approximately 16 weeks. More recently, this process has taken between 23 and 27 weeks. Phasing of project construction to achieve faster recordation will no longer be permitted by the DPP.

- xii. First Building Construction 3 months

Permits for building construction can be obtained after Final Map Approval, but do not require recordation. Building construction can commence after roadway and utility construction is complete and accepted by the City Chief Inspector. Construction time for the building may be longer depending upon complexity of the building.

Items i, ii, iii & iv are sequential. Items v, vi & vii may begin at the same time but follow item iv. Item viii (bonding) is not required for construction of roadway and utilities, just for final subdivision approval. Other than grading, which may follow item vi (site permitting), item x (site construction) cannot begin until item vii (building permits) is approved. Item xii (building construction) must follow item ix (final map approval), but item xi (recordation) is not required.

- 6. **Other Discretionary permits** (does not include building permits)—The time frames listed after each permit or approval reflects the amount of effort or man-hours of staff time at the County. It does not reflect actual processing time for the approvals, as this will vary depending on staffing levels and work load.

Permit or Approval	Time Frame (Weeks)
Cluster Housing	6
Conditional Use Permit—Major	4
Conditional Use Permit—Minor	3
Discharge of Effluent other than Storm Water Runoff	1 Day
Driveways, Variance Applications	1 Day
Encroachments	1 Day
Exclusive Agriculture Site Approval	6
Existing Use	2
Flood Hazard District Interpretation	1
Flood Variance	2
Grading and Grubbing and Stockpiling Permit	1
Minor Modifications to Various Discretionary Permits	2
Nonconforming Use Certificate Renewal	1 Day
Plan Review Use	4
Planned Development—Commercial and Resort	50
Planned Development—Housing	6
Public Infrastructure Maps, Additions/Deletions to	3
Seawall and Non-Seawall Variances	4
Service Connection, Repairs to Utilities and Trenching	1 Day
Signs	1 Day
Site Development Plan	2
Special Districts: Downtown Building Heights in Excess of 350 Feet	6
Special Districts: Establishment of or Amendment to	6
Special Districts: Major Project	6
Special Districts: Minor Project	2
Special Management Area Minor Permits	1
Special Management Area Use Permit for Agriculture, Aquaculture or Outdoor Recreational Developments	4
Special Management Area Use Permit for All Other Developments	4
Special Use Permit, State	4
State Boundary Petition	4
Storm Drain, Private Connection Fee	1 Day
Subdivision (see Section 5 above)	2
Temporary Use Approval	1
Waiver	1
Zoning Adjustment	2
Zoning Board of Appeals, Contested Case Hearings	2
Zoning District Boundary Adjustment	2 Days
Zoning Variance	2
Zoning, Written Clearance or Confirmation	1

Exhibit 1-F: SUBDIVISION APPROVALS, CITY AND COUNTY OF HONOLULU

Subdivision Process (City and County of Honolulu)	Years		
	1	2	3
Months:	12	24	36
<p>Product Development Time required for this item will vary from project to project depending upon the complexity and final building footprint dimensions of the specific project.</p> <p>Preliminary Site Plan The Preliminary Site Plan is generally hand drawn by an architect or site planner, then converted to a CAD file for civil engineering design.</p> <p>Final Site Plan Time is for both the submission and review of the Preliminary Subdivision Map by the Department of Planning and Permitting (DPP).</p> <p>Tentative Approval of Preliminary Map The Preliminary Map and Mass and Pad Grading Plans may be submitted for review at the same time. Legally, approval of Pad Grading Plans is not permitted before approval of the Preliminary Map, although the Mass Grading Plan may be approved if it does not show lot lines.</p> <p>Submital of Construction Documents Time includes both design and all required approvals. These plans are blueprints for all Roadway and Utility Plans, including all underground utilities and all surface improvements.</p> <p>Site Permitting Time includes processing of grading, grubbing, and stockpiling permits which can be obtained concurrently.</p> <p>Building Permits (Site Work) After the Roadway and Utility Plans are approved, a construction cost estimate based on final design needs to be submitted for review and approval. Building permits can take up to 6 months to obtain for site work, including walls and fences.</p> <p>Bonding of Improvements After the construction estimate is approved, a subdivision bond needs to be submitted and accepted by the County prior to final subdivision approval.</p> <p>Final Map Approval The Final Subdivision Map can now be approved, before the site improvements are constructed and certified, if a subdivision bond is obtained. This map must be filed within 1 year after tentative approval of the Preliminary Map has been received, although 6-month extensions may be allowed.</p> <p>Construction of Site Improvements Upon approval of Construction Documents, roadway and utilities site improvements can be constructed and, upon approval of as-built documentation and final inspection, be certified.</p> <p>Land Court Subdivision Recordation Allow 6 months for recordation.</p> <p>First Building Construction Building permits can be obtained after Final Map Approval, but do not require recordation. Building construction can commence after roadway and utility construction is complete and accepted by the City Chief Inspector.</p>			

The basic principle that time is money is well known. The longer an investment takes to earn income, the lower the value of the investment. If the return on an investment is, for example, \$1,000, the present value of that investment varies a great deal, depending on the time it takes to earn a return:

E. ISSUES, STAKEHOLDERS AND MINIMUM DURATION OF PERMIT PROCESSES

1. Application/Petition Preparation:

Players: 1) Applicant

Time Frame: 12-18 Months

Issues Addressed in Process:

1. Air Quality	11. Notice to Buyers	22. Transportation Improvements
2. Archeological—State Historic Preservation Office	12. Park Dedication	23. Wastewater Improvements
3. Buyer Notification	13. Phasing	24. Solid Waste Management
4. Civil Defense	14. Police and Fire Facilities	25. Water Improvements
5. Drainage Improvements	15. Progress Reports	26. Child Care
6. Golf Course Tee Times (Public)	16. Public Access Easements	27. Ground Water Monitoring
7. Housing	17. Recording Conditions	28. Park and Ride
8. Land Transactions/Dedications	18. School Facilities (Fair Share Contribution)	29. Urban Design Plan
9. Noise	19. School Sites (Dedication)	30. Setbacks
10. Notice of Intent to Sell	20. Soil Erosion	31. Other Agency Approvals
	21. Sound Attenuation	

2. County General/Development/Community Plan Amendment:

Players: 1) Applicant
 2) Citizen's Advisory Committee
 3) County Agencies
 4) Planning Commission
 5) County Council
 6) Mayor

Process:

Citizen Advisory Committee	Public Hearing	Planning Commission Approval	Public Hearing	County Council Approval	Mayor Approval
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Time Frame: 22 Months [not including time for EA/EIS process, if not concurrent]

Issues Addressed in Process:

1. Statement of Problems and Opportunities	5. Design Principles
2. Social/Economic/Environmental Impacts	6. Historic/Archeological/Cultural Impacts
3. Development Patterns and Sequence	7. Transportation
4. Planning Standards and Principles	8. Population Goals

3. State Land Use Commission Reclassification:

- Players: 1) Applicant
 2) State Agencies
 3) County Agencies
 4) Interveners (Community and other interest groups)
 5) Land Use Commission

Process:

File Petition	Quasi-judicial Public Hearings with Various Parties (Interveners)	Commission Approval
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Time Frame: 18 Months

Issues Addressed in Process:

1. Air Quality** 2. Archeological—State Historic Preservation Office 3. Buyer Notification 4. Civil Defense 5. Drainage Improvements 6. Golf Course Tee Times (Public) 7. Housing	8. Land Transactions/ Dedications 9. Noise 10. Notice of Intent to Sell 11. Notice to Buyers 12. Park Dedication 13. Phasing 14. Police and Fire Facilities 15. Progress Reports 16. Public Access Easements	17. Recording Conditions 18. School Facilities (Fair Share Contribution) 19. School Sites (Dedication) 20. Soil Erosion** 21. Sound Attenuation 22. Transportation Improvements 23. Wastewater Improvements 24. Solid Waste Management 25. Water Improvements
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** Bold different from County Requirements

4. County Rezoning Process:

- Players: 1) Applicant
 2) County Agencies
 3) Planning Commission
 4) County Council
 6) Mayor

Process:

Public Hearings	Planning Commission Approval	Public Hearings	County Council Approval	Mayor Approval
-----------------	------------------------------	-----------------	-------------------------	----------------

Time Frame: 16 Months

Issues Addressed in Process:

1. Urban Design Plan *** 2. Archeological—State Historic Preservation Office 3. Buyer Notification 4. Civil Defense 5. Drainage Improvements 6. Golf Course Tee Times (Public) 7. Housing 8. Land Transactions/ Dedications 9. Noise 10. Notice of Intent to Sell	11. Notice to Buyers 12. Park Dedication 13. Phasing 14. Police and Fire Facilities 15. Progress Reports 16. Public Access Easements 17. Recording Conditions 18. Setbacks *** 19. School Site 20. School Facilities (FSC) 21. Other Agency Approvals ***	22. Sound Attenuation 23. Transportation Improvements 24. Wastewater Improvements 25. Solid Waste Management 26. Water Improvements 27. Child Care *** 28. Ground Water Monitoring *** 29. Park and Ride ***
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*** Bold different from State Requirements

5. **Subdivision Review and Approval:**

- Players: 1) Applicant
 2) County Agencies

Process:

Final Plan	Site	Preliminary Subdivision Map	Mass and Pad Grading Plans	Roadway and Utility Construction Plans	Final Subdivision Map	Certification of Site Improvements
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Time Frame: 28 Months [exclusive of recordation]*

Issues Addressed in Process:

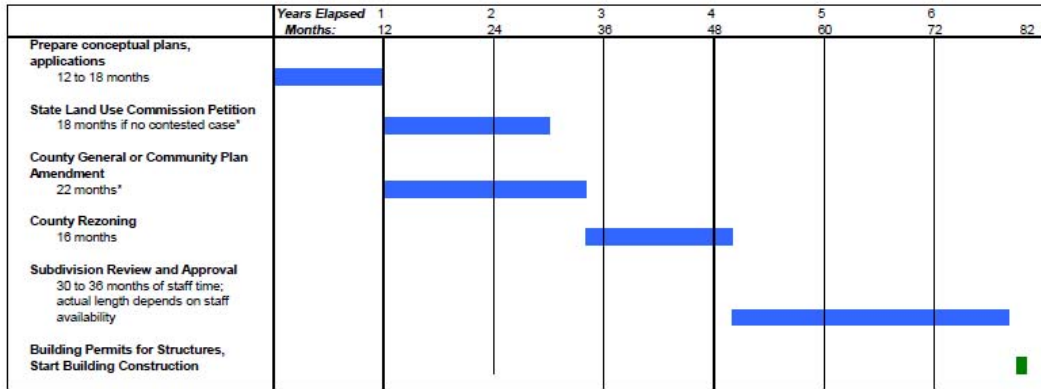
1. Grading, Grubbing, Stockpiling 2. Roadway Improvements (curb and gutter, sidewalk, curb ramps, paving) 3. Utilities Improvements (sewer, water, storm drain, irrigation, electric, CATV, telephone)	4. Construction Dewatering 5. Traffic Control Plan 6. Sign and Marking Plan 7. Street Trees 8. Street Lights
--	--

6. **Other Discretionary Permits**

Varies. See list of County permits in Appendix D. Not included here (as involving different timelines): Army Corps of Engineers permits for wetlands; State Department of Health involvement with brownfields, and other agencies with oversight.

SOURCE: LURF.

Exhibit 1-E: ESTIMATED TIMELINE FOR DEVELOPMENT OF HOUSING PROJECT



NOTES: All estimates are very rough, but based on recent experience.
 * Concurrent processing assumed. This is by no means automatic, and the two authorities may demand different data on shared topics.

F. HRS 201G-118

§201-G-118 Housing development; exemption from statutes, ordinances, charter provisions, rules. (a) The corporation may develop, on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon; provided that:

- (1) The corporation finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for the public utilities or the various boards of water supply authorized under chapter 54; and
- (3) The legislative body of the county in which the project is to be situated shall have approved the project.
 - (A) The legislative body shall approve or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
 - (B) 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; and
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation, or the responsible county official may certify maps and plans of lands connected with the project laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- (4) The land use commission shall approve or disapprove a boundary change within forty –five days after the corporation has submitted a petition to the commission as provided in section 205-4. If on the forty-

sixth day the petition is not disapproved, it shall be deemed approved by the commission.

(b) For the purpose of this section, "government assistance program" means a housing program qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise. [L 1997, c 350, pt of §2; am L 1998, c 212, §23]

DEVELOPER APPLICATION – ELIGIBLE DEVELOPER, INFORMATION REQUIRED, PROJECT PROPOSAL REQUIREMENTS

Developer submits a 201H application and other information to the HHFDC so that the Corporation may determine if the applicant is an eligible developer

Applicant must submit: contact information, proof of business status including articles of incorporation, partnership copies, or proprietorship copies; a resume of housing development experience; communications contact person; evidence of legal authority to incur obligations and sign and deliver documents necessary to finance, develop, and construct housing projects; a certificate of good standing from DCCA; tax clearance from DOTAX; evidence of capability to develop, own, manage, and provide services in connection with housing; evidence of applicant's credit worthiness including: three years' fiscal year end financial statements and tax returns, three years' fiscal year end financial statements or tax returns if the borrower or guarantor is an individual, documents to support corporate actions, and other documents determined by the Corporation; proof of applicant's ties to the community and support from local community groups, descriptions of all housing projects owned or operated by the applicant, description of any financial default, modification of terms of financing, or legal action taken or pending against the applicant or its principals, description of past or current business experiences other than housing that demonstrate applicant's management capabilities, evidence of the ability to secure financing and the ability to complete the housing project, statement of any involvement with HHFDC or HPHA and any assistance previously received, a project proposal, and any other information requested by the HHFDC.

Developers submit to the HHFDC a project proposal that contains, at a minimum:
 Contact information, evidence that the developer is an "eligible developer," a master plan of the proposed project which shows: evidence of site control, contact information for all holders of interest in the land and descriptions of each holder's interest, descriptions of the land and surrounding areas as well as improvements on the land, number of proposed dwelling units within the project and total area of the project, comprehensive site plan showing general development of the site including buildings, parking, service areas, and proposed and existing streets and drainage facilities, methods of waste disposal, water sources, and utilities, description of land contours, identification and description of historical or significant landmarks or natural features within and adjacent to the proposed project, description of existing improvements within and adjacent to the proposed project as well as off-site and on-site infrastructure and improvements requirements, proposed and existing uses of each phase of the proposed project, and existing uses of lots adjacent to the proposed project for parks and public places etc.; and shoreline setbacks; preliminary plans and specifications for housing units and other improvements in the project, number of proposed housing units, number of stories, number of units by size, special features, natural conservation devices, energy efficient designs utilized, description of indigenous plants for landscaping, proposed sales prices and rental rates for the units, proposed financing information including: manner of financing for all phases of the project, sources of repayment of the financing, start-up expenses and the sources of funds to meet these expenses, net equity contributed by the developer, and budgets and cashflow requirements, development timetable, market analysis, sales marketing program, other activities to successfully complete the project, description of how the proposed project addresses the housing needs of lower income families, description of the land as to present use, soil classification, agricultural importance, flood, and drainage conditions, an assessment of the effects of the development of the proposed project on the environment, agriculture, recreational, cultural, historic, scenic, flora, and fauna, or other resources of the area, the availability and adequacy of public services and facilities such as schools, sewers, water, sanitation, drainage, roads, police and fire protection and whether the development of the proposed project unreasonably burdens such services, comments from the community and community groups, accommodations for any displaced persons that result from the development, applicable provisions of existing state and county plans, zoning and land use requirements, and differences from the plans, zoning, or land use classification and the reasons for such differences, identify specific exemption requests allowed under Chapter 201H, any other information the Corporation requests to determine project eligibility.

HHFDC development staff reviews application for minimum requirements, completion, and EIS completion

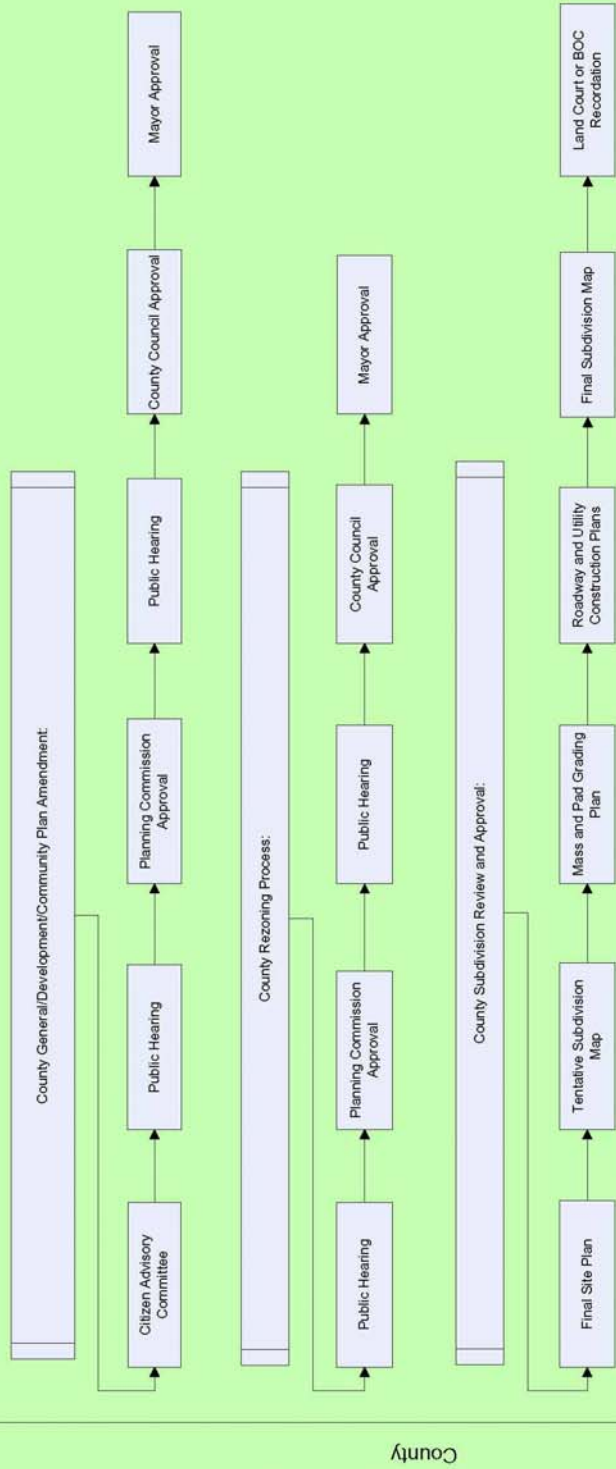
Is application complete?

No - Require developer to make revisions or submit additional information

Executive Director reviews application and presents project proposal to HHFDC Board of Directors for action

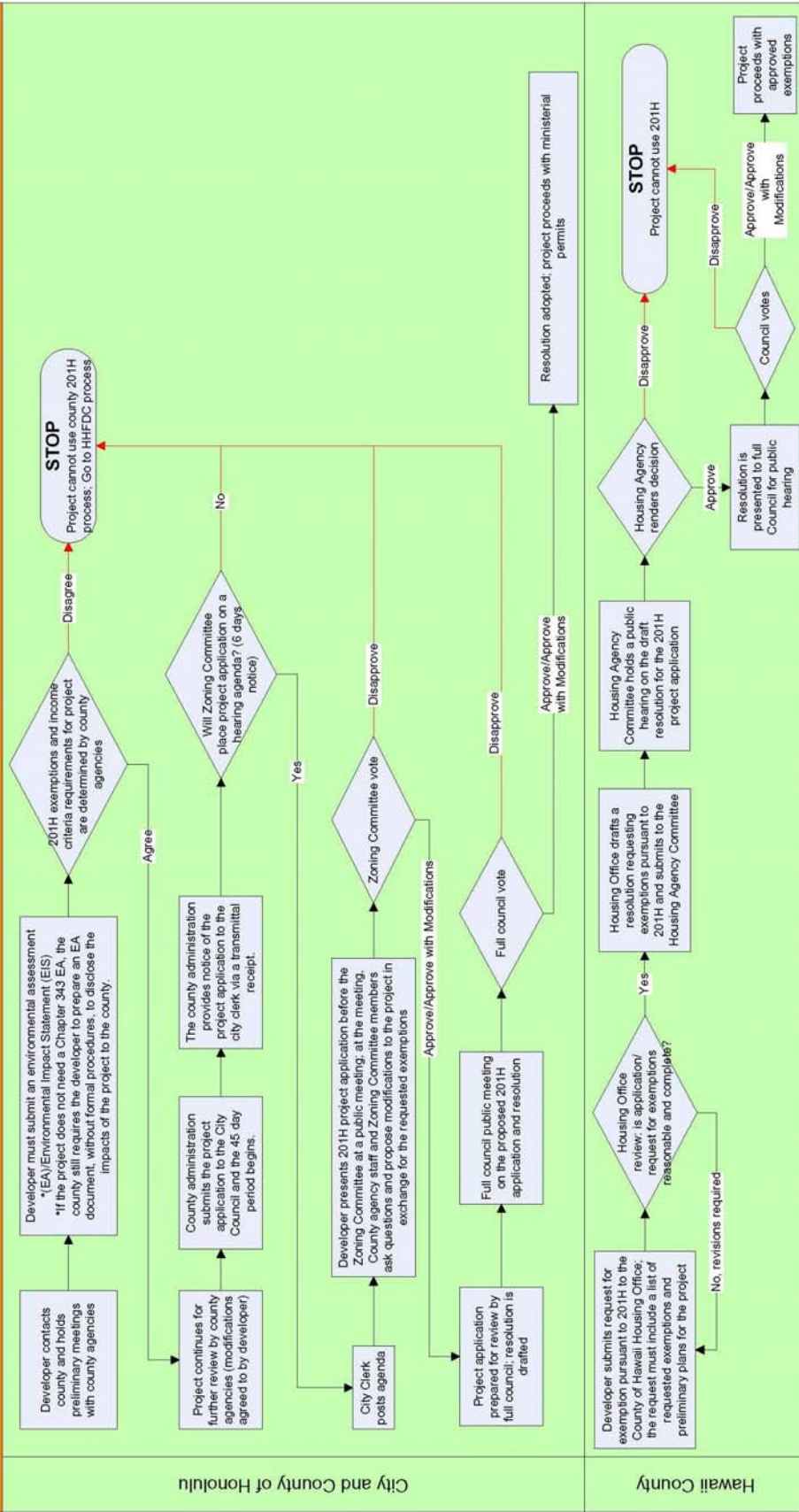
HHFDC

COUNTY DETAILS

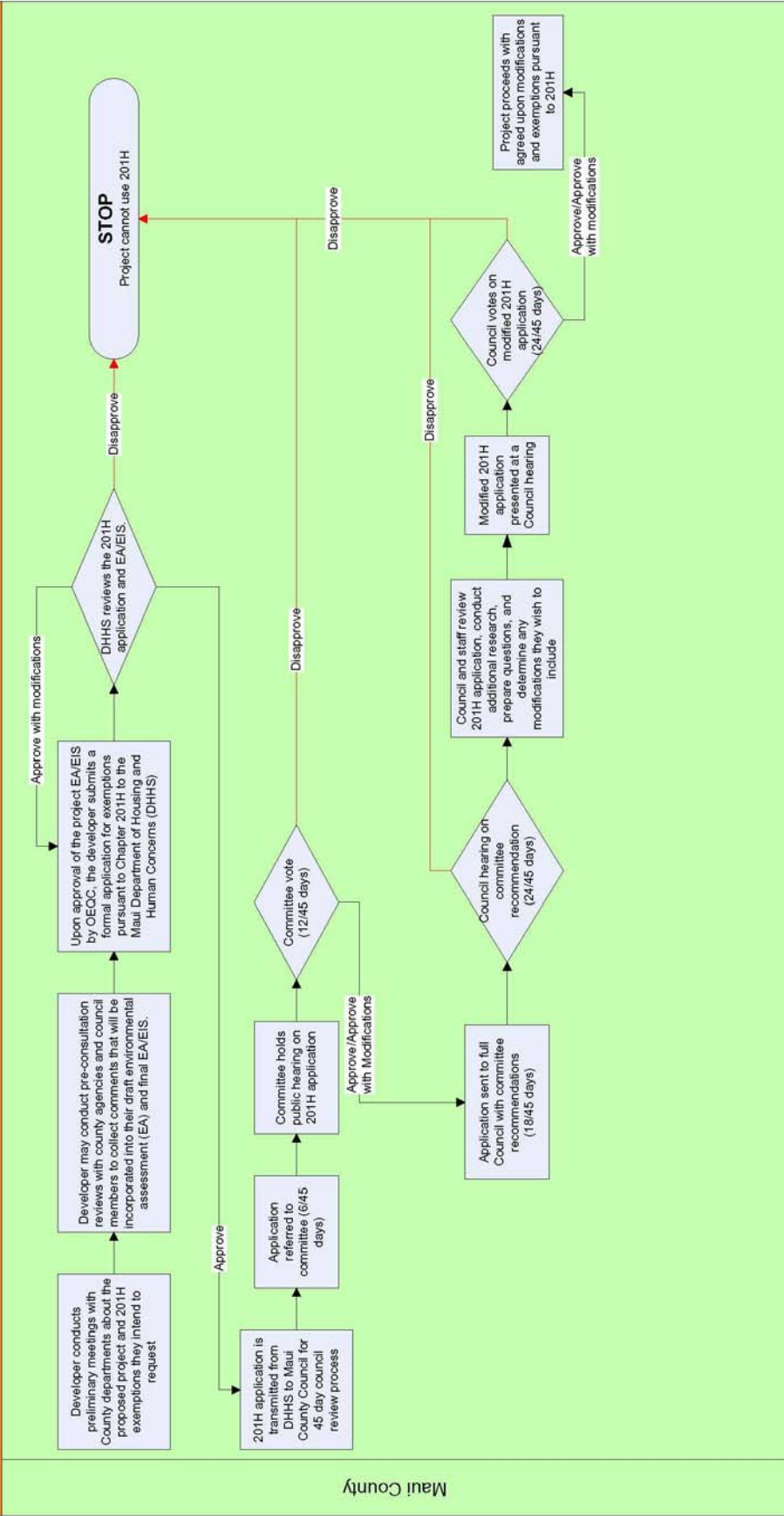


County

COUNTY 201H DETAILS

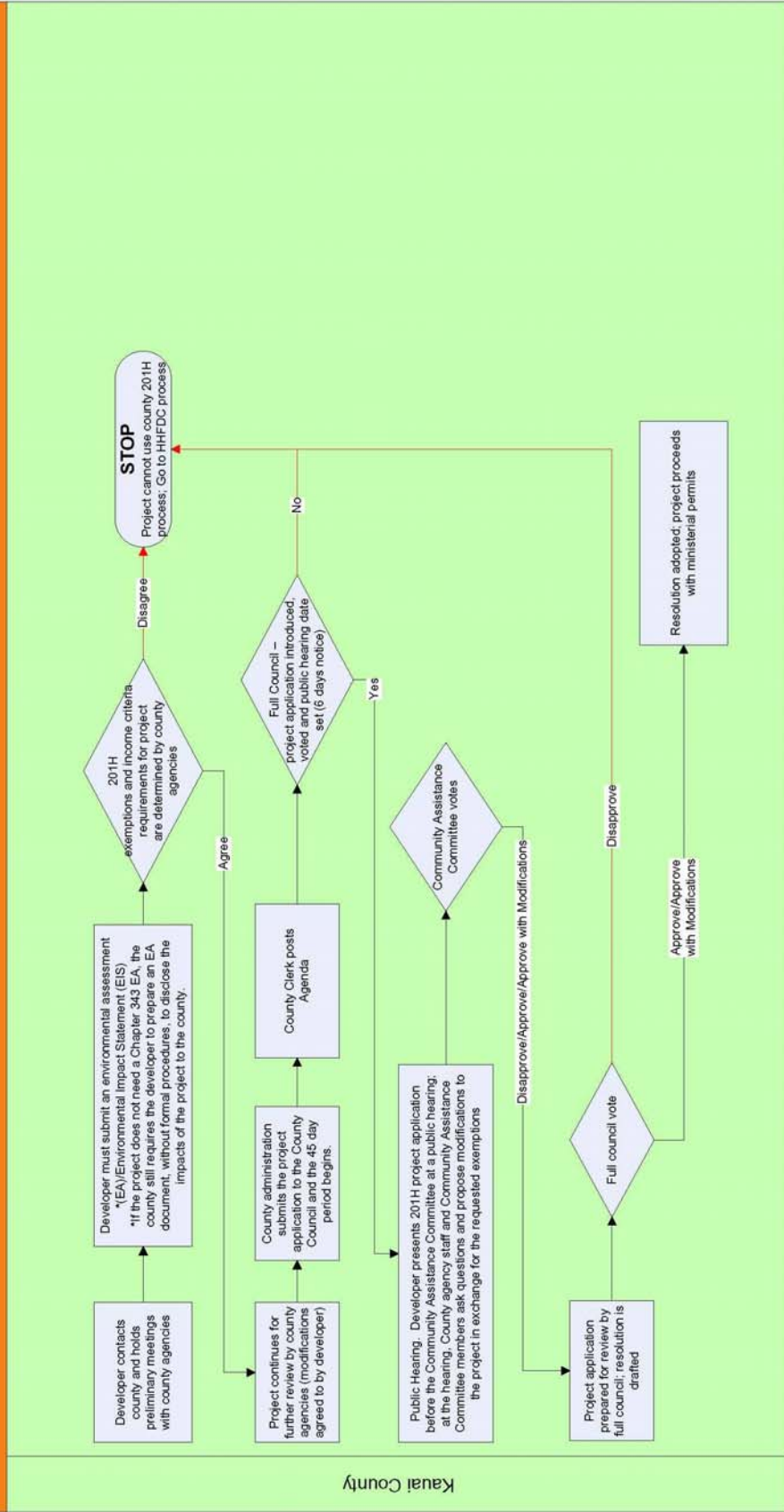


COUNTY 201H DETAILS



Maui County

COUNTY 201H DETAILS



Kauai County

LUC 45 DAY REVIEW

Land Use Commission

7 of 8

LUC MANDATORY CONDITIONS IMPOSED ON APPROVED 201H PROJECTS

If a 201H project is approved or approved with modification by the LUC on the 46th day, the following mandatory conditions apply to the project:

1. Petitioner must develop the reclassified area in substantial compliance with the representations made to the commission; failure to do so may result in a reversal of the decision or reclassification of the land
2. Petitioner is required to provide notice to the commission of any intent to sell, lease, assign, pace in trust or otherwise voluntarily alter the ownership interests in the reclassified area prior to development of the area
3. Petitioner must provide annual reports to the commission updating the status of the project
4. Petitioner must record with Bureau of Conveyances a statement of the required conditions imposed by the LUC and provide a copy of the recorded statement to the commission
5. Petitioner must provide affordable housing opportunities for low, low-moderate, and moderate income residents to the satisfaction of the county in which the reclassified land is located
6. If proposed use of land includes residential, the petitioner shall contribute to the development, funding, and construction of public school facilities as determined by the DOE
7. Petitioner shall participate in funding and construction of adequate wastewater transmission and disposal facilities, on a fair-share basis as determined by the county and HI-DOH
8. Petitioner shall prepare a traffic analysis report to identify traffic impacts and mitigation measures; report to be reviewed by HI-DOH and county transportation departments; petitioner may be required to fund or contribute to transportation improvements
9. Petitioner shall fund and construct on a fair-share basis adequate civil defense measures as determined by State Civil Defense
10. Petitioner shall have a professional archaeologist conduct an archeological inventory survey with significance evaluations and mitigation commitments acceptable to the State Historic Preservation Division (SHPD)
11. Petitioner shall submit and execute a detailed historic preservation mitigation plan to the SHPD to verify in writing that the plan has been successfully executed
12. Petitioner shall stop work if significant archaeological sites are found and may resume when mitigative measures have been implemented to the satisfaction of SHPD
13. Petitioner shall monitor air quality as specified by the HI-DOH
14. Petitioner shall mitigate noise pollution
15. If the approved boundary amendment involves conversion of prime agricultural land, the petitioner shall contribute to the protection of an equivalent amount of prime agricultural lands and related infrastructure via long-term agricultural conservation easements or other ag-related assets as determined by and to the satisfaction of the HI-DOA.
16. Petitioner shall notify all prospective buyers of property of the potential odor, noise, and dust pollution if there are agricultural district lands surrounding the reclassified area
17. Petitioner shall notify all prospective buyers of property of the Hawaii Right to Farm Act limitations on "nuisance" determinations
18. Petitioner shall fund the design and construction of drainage improvements to the satisfaction of State and county agencies
19. Petitioner shall address and provide for solid waste management in cooperation with HI-DOH and county agencies in accordance with a schedule/timeline satisfactory to HI-DOH
20. To the extent required by the HI-DOH, petitioner shall ensure that nearshore, offshore, and deep ocean waters remain in pristine condition
21. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed uses, as coordinated by State and county agencies
22. Petitioner shall protect and preserve existing native Hawaiian gathering rights

Land Use Commission

Compilation of Housing Studies Produced From 1991-2006

Reports	Issue Identified and Recommendations Formulated						FUNDING	
	TOOLS						Create Funding Sources	Leverage Sources
	Making Land Available	Infrastructure Financing	Streamline Regulatory Process	Development Incentives				
State Streamlining Task Force Report of 1993			X	X				
Hawaii Economic Revitalization Task Force of 1997			X	X				
Affordable Housing Task Force 2004	X	X	X	X	X			X
Joint Legislative Housing & Homeless Task Force 2005	X	X	X	X				X
Economic Momentum Commission 2005	X	X	X	X	X			X
RCAC Affordable Housing in High Cost Areas Conference 2005	X	X	X	X	X			X
Affordable Housing Advisory Committee City & County of Honolulu 2006	X	X	X	X	X			X
ULI Advisory Services Panel: County of Maui Affordable Housing Strategy 2006	X	X	X	X	X			X
"Not in My Backyard" Removing Barriers to Affordable Housing, USHUD 1991	X	X	X	X	X			X

Compilation of Housing Studies Produced From 1991-2006

Issue Identified and Recommendations Formulated		SUPPORT STRUCTURE						
Reports	FUNDING							
	Financing Strategies	Appropriate Additional Funds for Transitional Housing, Shelters, and Services	Coordination of Federal, State and County Programs	Preservation and Maintenance	Affordable Housing Institutional Structure	Adequate Resources	Funding, Staff, Equipment & Supplies	
State Streamlining Task Force Report of 1993							X	
Hawaii Economic Revitalization Task Force of 1997								
Affordable Housing Task Force 2004	X	X	X	X	X	X	X	
Joint Legislative Housing & Homeless Task Force 2005	X	X	X	X	X	X	X	
Economic Momentum Commission 2005	X	X	X	X	X	X	X	
RCAC Affordable Housing in High Cost Areas Conference 2005	X	X	X	X	X	X	X	
Affordable Housing Advisory Committee City & County of Honolulu 2006	X	X	X	X	X	X	X	
ULL Advisory Services Panel: County of Maui Affordable Housing Strategy 2006	X	X	X	X	X	X	X	
"Not in My Backyard" Removing Barriers to Affordable Housing, USHUD 1991	X	X	X	X	X	X	X	

QUESTIONNAIRE for HUD's INITIATIVE on REMOVAL of REGULATORY BARRIERS

QUESTION	RESPONSE					RESPONSE FOOTNOTES
	Honolulu	Maui	Kauai	Hawaii	State	
Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element?" A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question # 4.	Yes	Yes	Yes	Yes	N/A	
If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate and middle income families, for at least the next five years?	Yes*	No	No**	Yes	N/A	* The comprehensive plan does not provide estimates of housing needs by income categories. **Needs are assessed but not by income group limits within this plan. A separate housing study assesses needs by income group.
Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped "as of right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.), if the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.	Yes	Yes	Yes	Yes	N/A	
Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards?	No	No	No	No	N/A	
If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes.	Yes	Yes	Yes	No*	N/A	* Through Chapter 11, the County imposes an impact fee on developments requesting residential zoning. Likewise, inclusionary/fees are imposed on developments requesting resort and industrial developments.
If yes to question #5, does the statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation?	Yes	Yes	No	No	N/A	

	QUESTION	RESPONSE					RESPONSE FOOTNOTES
		Honolulu	Maui	Kauai	Hawaii	State	
7	<p>If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?</p> <p>Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through graduated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "Smart Codes in Your Community: A Guide to Building Rehabilitation Codes" (www.huduser.org/publications/desstech/smartcodes.html)</p>	Yes*	No	Yes	No**	N/A	<p>* There is no standard waiver of fees for affordable housing projects. However, projects utilizing the 2011H process can be granted extensions to fees such as Park Dedication and EWA Highway Impact Fee.</p> <p>**The County provides incentives for the development of affordable housing, such as expedited permit processing and density bonuses. Waiver of the fees is not considered, as development of affordable housing is a condition of rezoning to the respective residential, resort or industrial use.</p>
8	<p>Does your jurisdiction use a recent version (i.e. published within the last 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification. In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes?</p>	Yes	No	Yes	Yes	N/A	
9	<p>Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability.</p>	Yes*	Yes	Yes	Yes	N/A	<p>* Revisions to the local building code are in the process of being adopted by the Honolulu City Council, and may be approved as early as July 2007. They follow national model code ICC 2003.</p>
10	<p>Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?</p>	Yes	No	Yes	Yes	N/A	

QUESTION	RESPONSE					RESPONSE FOOTNOTES
	Honolulu	Maui	Kauai	Hawaii	State	
11	Yes	No	Yes*	Yes	N/A	* A Housing Policy Ordinance was adopted in November 2007. An Affordable Housing Task Force has been created to facilitate permitting of larger affordable housing projects in the County. As of January 2007, affordable housing is exempt from some building permit fees.
12	Yes	Yes*	No**	Yes***	N/A	* Passed new ordinance establishing a Residential Workforce Housing Policy effective 12/05/2006. ** A Housing Policy Ordinance was adopted in November 2007. An Affordable Housing Task Force has been created to facilitate permitting of larger affordable housing projects in the County. As of January 2007, affordable housing is exempt from some building permit fees. *** The County continues to amend Chapter 11 to encourage development of affordable housing and will continue to do so as market supply and demand changes.
13	No	No	No	No*	N/A	* Hawaii Revised Statutes allows exemptions from various code requirements if the project meets the "affordable" requirements established. The County uses this tool when developing affordable housing projects. No modification or new authorization needed.
14	No	No	Yes*	Yes	N/A	* Housing Policy Ordinance includes density bonus.
15	No	Yes	No	No	N/A	

QUESTION	RESPONSE					RESPONSE FOOTNOTES
	Honolulu	Maui	Kauai	Hawaii	State	
16	Yes*	Yes	No**	Yes	N/A	* "Fast track" processing is available for all affordable housing projects under the expedited 201H processing procedure, but the developer always has the option not to "fast track" his project. ** A Housing Policy Ordinance was adopted in November 2007. An Affordable Housing Task Force has been created to facilitate permitting of larger affordable housing projects in the County. As of January 2007, affordable housing is exempt from some building permit fees
17	Yes	No	No	Yes	N/A	
18	Yes	Yes	Yes	Yes	N/A	
19	No	No	No	No*	N/A	* The County has pursued and been granted exemptions from parking requirements with past affordable housing requirements; so a policy that waives the requirements is not deemed necessary.
20	No	Yes	No	No	N/A	
1					No	
2						
3						
4					No	

	QUESTION	RESPONSE					RESPONSE FOOTNOTES
		Honolulu	Maui	Kauai	Hawaii	State	
	Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact upon housing affordability address these barriers to affordability?						
5	Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal?					No	
6	Does your state have specific enabling legislation for local impact fees? If no skip to question #9.					No	
7	If yes to the question #7, does the state statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus) and a method for fee calculation?					Yes*	* Specifically for public schools and the Ewa Highway Impact Fee.
8	Does your state provide significant financial assistance to local governments for housing, community development and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities?					Yes	
9	Does your state have a mandatory state-wide building code that a) does not permit local technical amendments and b) uses a recent version (i.e. published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification?					No	
10	Alternatively, if the state has made significant technical amendment to the model code, can the state supply supporting data that the amendments do not negatively impact affordability?					No	
	Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through graduated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "Smart Codes in Your Community: A Guide to Building Rehabilitation Codes" (www.huduser.org/publications/dstech/smartcodes.html)					No	
11	Within the past five years has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other State-administered permits or programs involving housing development. If yes, briefly list these changes.					No	
12						Yes*	* Housing programs only within the HHFDC. No permits, and not water and environmental.

	QUESTION	RESPONSE					RESPONSE FOOTNOTES
		Honolulu	Maui	Kauai	Hawaii	State	
	Within the past five years, has your state (i.e., Governor, legislature, planning department) directly or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing?					Yes	
13	Within the past five years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the states' "Consolidated Plan submitted to HUD"? If yes, briefly list these major regulatory reforms.					Yes*	* 45 day time limit.
14	Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions.					Yes	Kakaako and Kalaeloa.

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 1001

A BILL FOR AN ACT

RELATING TO HOUSING.

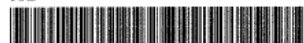
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 201H, Hawaii Revised Statutes, is
2 amended by adding a new section to part II to be appropriately
3 designated and to read as follows:

4 "§201H- Eligible rental housing project, exemptions;
5 public lands rent. (a) Any eligible project, as defined in
6 section 201H-122, shall be exempt from the requirements of
7 chapters 205 and 343 and all other statutes, charter provisions,
8 ordinances, and rules of any state or county government agency
9 relating to planning, land use, zoning, and other permits
10 required for the development of residential housing; provided
11 that the eligible project shall not be exempt from construction
12 standards for subdivisions, the applicable county building code,
13 and other construction standards for dwelling units.

14 (b) If the eligible project is to be developed on public
15 lands, then sections 10-13.6 and 171-18 notwithstanding, the
16 land shall be set aside to the corporation, without the approval
17 of the board of land and natural resources as required by
18 section 171-11, and the corporation shall make the land

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1 available to the eligible project at a lease rent of \$1 per year
2 for the useful life of the project; provided that if the land is
3 of the public land trust, then twenty per cent of all rental
4 units in the eligible project shall be made available to native
5 Hawaiians, as defined in section 10-2.

6 (c) This section shall only apply to an eligible project
7 that:

8 (1) Maintains one hundred per cent of its units for
9 families or individuals whose incomes do not exceed
10 one hundred forty per cent of the area median income
11 as determined by the United States Department of
12 Housing and Urban Development;

13 (2) Provides rental units with rents that do not exceed
14 thirty per cent of the monthly income of the family or
15 individual tenant after all mandatory withholdings;
16 and

17 (3) Is dedicated to meet the requirements in paragraphs
18 (1) and (2) for the useful life of the project.

19 (d) If the eligible project meets the subdivision
20 standards and building code requirements of the county where the
21 eligible project is situated, the county shall allow the project
22 to connect to the county's infrastructure, including but not

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1 limited to its water, sewer, and drainage systems, upon the
2 payment of the applicable meter and connection fees and utility
3 costs.

4 (e) The corporation shall monitor and enforce the tenancy
5 and rent requirement of this section and allow the office of
6 Hawaiian affairs the same right of monitoring the units reserved
7 for native Hawaiians.

8 (f) For purposes of this section, the "useful life of the
9 project" means the duration that the project may be reasonably
10 and economically repaired, refurbished, redeveloped, and
11 maintained in a safe and habitable condition, but in no event
12 may that duration be less than thirty years."

13 SECTION 2. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval;
15 provided that:

16 (1) Section 1 of this Act shall be repealed on June 30,
17 2010; and

18 (2) Section 1 shall continue to apply to any project for
19 which a completed building permit application is
20 submitted by June 30, 2010.

21

INTRODUCED BY:

Calvin K. ...

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Mel Carroll

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Tom Brown

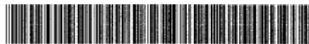
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Marilyn B. Lee

HB LRB 07-1093.doc



Report Title:

Housing; Rentals; Land Use

Description:

Exempts any eligible rental project that is dedicated to 100% affordable in perpetuity from the requirements of land use and environmental impact statement laws, and all county land use, charter, ordinance, and rule provisions. Provides that if the eligible project is on public lands, the housing finance and development corporation shall lease the land at \$1 per year. Requires that if the land is ceded land then 20% of the units be made available to native Hawaiians. Repealed 6/30/2010.

HB LRB 07-1093.doc



S.B. NO. 901

JAN 26 2009

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In August 2007, Hawaii accepted an invitation
2 by the United States Department of Housing and Urban Development
3 to join the National Call to Action for Affordable Housing
4 Through Regulatory Reform. The Call to Action presented an
5 opportunity for Hawaii to receive technical assistance from the
6 federal government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The State recognizes that the need for more affordable
17 housing in Hawaii remains a significant problem affecting all
18 segments of society. Although there is a process in place that

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S.B. NO. 901

1 provides an opportunity to develop affordable housing projects
2 using an expedited review at the state and county levels, there
3 is no similar process in place for mixed use projects with an
4 affordable housing component, or infrastructure projects that
5 are associated with housing projects or mixed use housing
6 projects. If an expedited review were provided for these types
7 of projects, the state may be able to stimulate more affordable
8 housing development at a faster pace. Accordingly, the purpose
9 of this Act is to allow mixed use housing projects and
10 infrastructure projects that are associated with an affordable
11 housing or mixed use housing project to be eligible for the
12 expedited review process currently offered to qualifying housing
13 projects.

14 SECTION 2. Section 201H-1, Hawaii Revised Statutes, is
15 amended by adding two new definitions to be appropriately
16 inserted and to read as follows:

17 "Infrastructure" means any facility, public work, or
18 utility installed or improved by the government for the
19 functioning of a community, or private or government owned
20 facility."

21 "Mixed-Use Housing" means the combination of different uses
22 in a housing project including commercial, public facilities,

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S.B. NO. 901

1 industrial, and residential uses, which may include single
2 family, multi-family, for sale, lease, rental, low, moderate,
3 workforce, affordable, and market housing, or combinations of
4 all of the above, but at least twenty per cent of the housing
5 units, developed under this chapter, must be affordable to
6 households with incomes at or below one hundred forty per cent
7 of the median family income or as may be determined by the
8 United States Department of Housing and Urban Development."

9 SECTION 3. Section 201H-38, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§201H-38 Housing development; exemption from statutes,**
12 **ordinances, charter provisions, and rules.** (a) The corporation
13 may develop on behalf of the State or with an eligible
14 developer, or may assist under a government assistance program
15 in the development of [7] housing projects, mixed use housing
16 projects, or infrastructure projects associated with a housing
17 or mixed use housing project, that shall be exempt from all
18 statutes, ordinances, charter provisions, and rules of any
19 government agency relating to planning, zoning, construction
20 standards for subdivisions, development and improvement of land,
21 and the construction of dwelling units thereon; provided that:

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- 1 (1) The corporation finds the housing project, mixed use
2 housing project, or infrastructure project associated
3 with a housing or mixed use housing project is
4 consistent with the purpose and intent of this
5 chapter, and meets minimum requirements of health and
6 safety;
- 7 (2) The development of the proposed housing project, mixed
8 use housing project, or infrastructure project
9 associated with a housing or mixed use housing project
10 does not contravene any safety standards, tariffs, or
11 rates and fees approved by the public utilities
12 commission for public utilities or of the various
13 boards of water supply authorized under chapter 54;
- 14 (3) The legislative body of the county in which the
15 housing project, mixed use housing project, or
16 infrastructure project associated with a housing or
17 mixed use housing project is to be situated shall have
18 approved the project with or without modifications:
- 19 (A) The legislative body shall approve, approve with
20 modification, or disapprove the project by
21 resolution within forty-five days after the
22 corporation has submitted the preliminary plans

GOV-07(09)

S.B. NO. 901

1 and specifications for the project to the
2 legislative body. If on the forty-sixth day a
3 project is not disapproved, it shall be deemed
4 approved by the legislative body;

5 (B) No action shall be prosecuted or maintained
6 against any county, its officials, or employees
7 on account of actions taken by them in reviewing,
8 approving, modifying, or disapproving the plans
9 and specifications; and

10 (C) The final plans and specifications for the
11 project shall be deemed approved by the
12 legislative body if the final plans and
13 specifications do not substantially deviate from
14 the preliminary plans and specifications. The
15 final plans and specifications for the project
16 shall constitute the zoning, building,
17 construction, and subdivision standards for that
18 project. For purposes of sections 501-85 and
19 502-17, the executive director of the corporation
20 or the responsible county official may certify
21 maps and plans of lands connected with the
22 project as having complied with applicable laws

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1 and ordinances relating to consolidation and
 2 subdivision of lands, and the maps and plans
 3 shall be accepted for registration or recordation
 4 by the land court and registrar; and

5 (4) The land use commission shall approve, approve with
 6 modification, or disapprove a boundary change within
 7 forty-five days after the corporation has submitted a
 8 petition to the commission as provided in section
 9 205-4. If, on the forty-sixth day, the petition is
 10 not disapproved, it shall be deemed approved by the
 11 commission.

12 (b) For the purposes of this section, "government
 13 assistance program" means a housing program qualified by the
 14 corporation and administered or operated by the corporation or
 15 the United States or any of their political subdivisions,
 16 agencies, or instrumentalities, corporate or otherwise."

17 SECTION 4. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon approval.

20
 21 INTRODUCED BY: _____
 22 BY REQUEST

GOV-07 (09)

SB 901

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO HOUSING.

PURPOSE: To stimulate affordable housing development by allowing mixed use housing projects, including infrastructure projects for a housing or mixed use housing project, to be eligible for expeditious review at the state and county levels.

MEANS: Amend sections 201H-1 and 201H-38, Hawaii Revised Statutes.

JUSTIFICATION: In 2007, Governor Lingle convened the Affordable Housing Regulatory Barriers Task Force in response to the U.S. Department of Housing and Urban Development's National Call to Action. The Task Force's main objective is to identify barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

One of the regulatory barriers identified by The Task Force is the protracted review process for affordable housing developments that contain a mixed income component or that involve infrastructure construction at the state and county levels. The Task Force collectively agreed that one remedy is to expand the projects that qualify for the expeditious review process currently offered to qualifying housing projects in section 201H-38, Hawaii Revised Statutes.

Accordingly, this bill expands the eligibility for expeditious review to include mixed use projects and infrastructure projects associated with a housing project or mixed used project.

This bill will enable faster project reviews and therefore directly stimulate a quicker

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delivery of affordable housing to the residents across the state that need it.

Impact on the public: This bill will expedite the development of affordable housing to the public.

Impact on the department and other agencies: This bill will increase the amount of affordable housing reviews that qualify for expedited review at government agencies.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	Hawaii Housing Finance and Development Corporation, Hawaii Land Use Commission, City and County of Honolulu, Maui County, Kauai County, Hawaii County
EFFECTIVE DATE:	Upon approval.

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S.B. NO. 902

JAN 26 2009

A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In August 2007, Hawaii accepted an invitation
2 by the United States Department of Housing and Urban Development
3 to join the National Call to Action for Affordable Housing
4 Through Regulatory Reform. The Call to Action presented an
5 opportunity for Hawaii to receive technical assistance from the
6 federal government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The State recognizes that the need for more affordable
17 housing in Hawaii remains a significant problem affecting all
18 segments of society. Although there is a process in place that

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S.B. NO. 902

1 provides an opportunity to approve affordable housing project
2 proposals in an expedited manner at the state and county levels,
3 the ministerial permits that are issued subsequent to project
4 approval may take a significant amount of time to issue. This
5 delay adds costs to the affordable housing project, ultimately
6 affecting the buyer or renter, and lengthens the time it takes
7 for the unit to be constructed and occupied. Accordingly, the
8 purpose of this Act is to place standard time frames on agency
9 issuance of ministerial permits for approved affordable housing
10 projects.

11 SECTION 2. Section 201H-38, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§201H-38 Housing development; exemption from statutes,**
14 **ordinances, charter provisions, and rules.** (a) The corporation
15 may develop on behalf of the State or with an eligible
16 developer, or may assist under a government assistance program
17 in the development of, housing projects that shall be exempt
18 from all statutes, ordinances, charter provisions, and rules of
19 any government agency relating to planning, zoning, construction
20 standards for subdivisions, development and improvement of land,
21 and the construction of dwelling units thereon; provided that:

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S.B. NO. 902

- 1 (1) The corporation finds the housing project is
2 consistent with the purpose and intent of this
3 chapter, and meets minimum requirements of health and
4 safety;
- 5 (2) The development of the proposed housing project does
6 not contravene any safety standards, tariffs, or rates
7 and fees approved by the public utilities commission
8 for public utilities or of the various boards of water
9 supply authorized under chapter 54;
- 10 (3) The legislative body of the county in which the
11 housing project is to be situated shall have approved
12 the project with or without modifications:
- 13 (A) The legislative body shall approve, approve with
14 modification, or disapprove the project by
15 resolution within forty-five days after the
16 corporation has submitted the preliminary plans
17 and specifications for the project to the
18 legislative body. If on the forty-sixth day a
19 project is not disapproved, it shall be deemed
20 approved by the legislative body;
- 21 (B) No action shall be prosecuted or maintained
22 against any county, its officials, or employees

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S.B. NO. 902

1 on account of actions taken by them in reviewing,
2 approving, modifying, or disapproving the plans
3 and specifications; and
4 (C) The final plans and specifications for the project
5 shall be deemed approved by the legislative body
6 if the final plans and specifications do not
7 substantially deviate from the preliminary plans
8 and specifications. The final plans and
9 specifications for the project shall constitute
10 the zoning, building, construction, and
11 subdivision standards for that project. For
12 purposes of sections 501-85 and 502-17, the
13 executive director of the corporation or the
14 responsible county official may certify maps and
15 plans of lands connected with the project as
16 having complied with applicable laws and
17 ordinances relating to consolidation and
18 subdivision of lands, and the maps and plans
19 shall be accepted for registration or recordation
20 by the land court and registrar; and
21 (4) The land use commission shall approve, approve with
22 modification, or disapprove a boundary change within

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S.B. NO. 902

1 forty-five days after the corporation has submitted a
2 petition to the commission as provided in section
3 205-4. If, on the forty-sixth day, the petition is
4 not disapproved, it shall be deemed approved by the
5 commission.

6 (b) For the purposes of this section, "government
7 assistance program" means a housing program qualified by the
8 corporation and administered or operated by the corporation or
9 the United States or any of their political subdivisions,
10 agencies, or instrumentalities, corporate or otherwise.

11 (c) State and county agencies shall issue any ministerial
12 permits associated with any project approved pursuant to
13 subsection (a) or section 46-15.1, within forty-five days from
14 the date the application for such permit is approved by the
15 applicable legislative body or state or county agency; provided
16 that the review procedure for ministerial permits performed by
17 any state or county agency is limited to not more than two
18 comprehensive reviews.

19 (d) For the purposes of this section, "ministerial
20 permits" means any nondiscretionary permit for which the permit
21 administrator needs to determine only conformity with applicable
22 ordinances before approving the project."

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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon approval.

4
5
6

INTRODUCED BY: _____


BY REQUEST

GOV-08 (09)

SB 902

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING.

PURPOSE: Establishes standard timeframes that govern permit issuances for affordable housing projects to expedite the construction of affordable housing units.

MEANS: Amend Section 201H-38, Hawaii Revised Statutes.

JUSTIFICATION: In 2007, Governor Lingle convened the Affordable Housing Regulatory Barriers Task Force in response to the U.S. Department of Housing and Urban Development's National Call to Action. The Task Force's main objective is to identify barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

One of the regulatory barriers identified by the Task Force is that non-discretionary, ministerial permits that are issued subsequent to approval of an affordable housing project takes a significant amount of time to issue. To remedy this, the Task Force recommends the establishment of standard timeframes that govern permit issuances for affordable housing projects.

Accordingly, this bill requires state and county agencies to issue any ministerial permits associated with an approved affordable housing project within 45 days from the time of approval, by the applicable legislative body or state or county agency. The bill also creates a cap on the number of reviews allowed.

Impact on the public: Enables a faster delivery of affordable housing to the public.

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Impact on the department and other agencies:
Requires state and county agencies to adjust
their permit issuance processes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Hawaii Housing Finance and Development
Corporation, City and County of Honolulu,
Maui County, Kauai County, and Hawaii
County.

EFFECTIVE DATE: Upon approval.

GOV-08 (09)

JAN 26 2009

A BILL FOR AN ACT

RELATING TO PLANNING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In August 2007, Hawaii accepted an invitation
2 by the United States Department of Housing and Urban Development
3 to join the National Call to Action for Affordable Housing
4 Through Regulatory Reform. The Call to Action presented an
5 opportunity for Hawaii to receive technical assistance from the
6 federal government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The Task Force identified a need to facilitate the
17 development of affordable housing by correcting inefficiencies
18 in the land classification process. This Act establishes a new

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1 process that improves the state land use commission's procedures
2 for county government petitions for boundary amendments that are
3 based on adopted county general and development plans. District
4 boundary amendments conducted under this process would be
5 conducted in a holistic, regional manner conducive to best
6 practices planning.

7 SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended
8 by adding a new section to be appropriately designated and to
9 read as follows:

10 "§205-A State and county-initiated district boundary

11 amendments. (a) The office of planning or any county planning
12 department may apply to the commission for a regional change in
13 the boundary of a district provided that the following
14 requirements are met:

- 15 (1) The application covers a land area that is regional in
16 geographic coverage, involving multiple parcels of
17 land;
18 (2) The application conforms the land area to the land use
19 element of a county general or development plan that
20 has been approved by a county council pursuant to
21 section 226-D, provided that the application cover
22 only a portion of the land use changes identified in

GOV-10(09)

S.B. NO. 903

1 the land use element of the county general plan or
2 development plan and may include only those lands
3 within a particular urban or rural expansion area
4 identified in the land use element of the county
5 general plan or development plan; and

6 (3) The application shall identify the land areas for
7 which land use district boundary amendments are being
8 sought and the rationale for the proposed land use
9 district boundary amendment.

10 (b) Section (a) shall apply only to applications submitted
11 by the state or any county planning agency for changes in
12 district boundaries of lands contained within an approved county
13 general or development plan. All other petitions for district
14 boundary amendments shall be subject to sections 205-3.5 and
15 205-4 as applicable.

16 (c) The land use commission shall conduct at least one
17 public hearing on the island or islands in which the lands are
18 situated within sixty days of the filing of the state or county
19 application. The commission shall provide timely notice in a
20 media of general circulation statewide which is printed or
21 communicated and issued at least twice weekly in the county
22 affected by the proposed action. The notice shall include:

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- 1 (1) A statement of the topic of the public hearing;
2 (2) A statement that a copy of the application will be
3 mailed to any interested person who requests a copy,
4 pays the required fees for the copy and the postage,
5 if any, together with a description of where and how
6 the requests may be made;
7 (3) A statement of when, where, and during what times the
8 application may be reviewed in person; and
9 (4) The date, time, and place where the public hearing
10 will be held and where interested persons may be heard
11 on the proposed application.

12 The notice shall be mailed to all persons who have made a
13 timely written request to the commission for advance notice of
14 its public hearing and to all persons with a property interest
15 in the lands identified in the application; provided that the
16 adoption or rejection to adopt an amendment in an application as
17 determined by the commission shall not be invalidated solely
18 because of the inadvertent failure to mail an advance notice of
19 a public hearing.

20 (d) If the State initiates an application for a boundary
21 amendment under this section, the State shall provide notice to
22 the affected county through its county planning agency at the

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1 time of filing with the commission, and provide copies of such
2 application to the county planning department. The county
3 planning department shall provide written comments on the
4 county's position to the land use commission within forty-five
5 days of receipt of the state application. The planning
6 department shall include in its comments a description of
7 general agreements made between the State and the county over
8 implementation of the county general or development plan, any
9 disagreements between the State and the county that remain
10 unresolved, potential measures to resolve the disagreement, and
11 recommendations for proposed boundary amendments for lands
12 affected by any outstanding disagreement between the state and
13 the county.

14 (e) If a county initiates an application for a boundary
15 amendment under this section, the county shall provide notice to
16 the state office of planning at the time of filing with the
17 commission, and provide copies of such application to the office
18 of planning. The office of planning shall provide written
19 comments and a position on the application to the commission
20 within forty-five days of receipt of the county application.
21 The office shall include in its report a description of general
22 agreements made between the State and the county over

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1 implementation of the county general or development plan, any
2 disagreements between the state and the county that remain
3 unresolved, potential measures to resolve the disagreement, and
4 recommendations for proposed boundary amendments for lands
5 affected by any outstanding disagreement between the state and
6 the county.

7 (f) The commission shall act within one hundred eighty
8 days of receipt of a complete filing of an application to
9 approve, approve in part, or deny the application. Ex parte
10 communications with the commissioners shall be prohibited. Any
11 decision under this section shall require the affirmative vote
12 of a majority of the members to which the commission is
13 entitled. The commission shall not impose any conditions on any
14 land or any owner of property reclassified to a different state
15 land use classification under this application process.

16 (g) The commission shall base its decision on conformance
17 to the county general plans or development plans, consistency
18 with land use district standards under chapter 205, the land use
19 decision-making criteria of section 205-17, and the degree of
20 consensus reached between state and county agencies.

21 (h) The commission shall issue a written decision and
22 order, and shall provide copies to the state office of planning

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1 and affected county planning department if the application or a
2 portion thereof is not approved. The written decision shall
3 identify the reasons for the land use commission's decision and
4 shall be announced at a public commission meeting.

5 (i) The zoning of the affected lands shall remain in full
6 force and effect until such time as the lands are rezoned by the
7 county.

8 (j) Notwithstanding any other law to the contrary, the
9 boundary amendment process conducted pursuant to this section
10 shall be exempt from chapter 343, except for boundary amendments
11 that reclassify land from the conservation district; provided
12 that any application for a proposed use on lands reclassified
13 pursuant to this section, which require subsequent discretionary
14 approval by a county or a state body shall be subject to chapter
15 343 in those subsequent processes where such proposed uses
16 require conformance to chapter 343.

17 (k) This section shall not apply to any application for a
18 district boundary amendment that does not meet the requirements
19 of subsection (a)."

20 SECTION 3. Section 46-4, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

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1 " (a) This section and any ordinances or rules and
2 regulations adopted in accordance with this section shall apply
3 to lands not contained within the forest reserve boundaries as
4 established on January 31, 1957, or as subsequently amended.
5 Zoning in all counties shall be accomplished within the
6 framework of a long-range, comprehensive general plan prepared
7 or being prepared to guide the overall future development of the
8 county. Zoning shall be one of the tools available to the
9 county to put the general plan into effect in an orderly manner.
10 Zoning in the counties of Hawaii, Maui, and Kauai means the
11 establishment of districts of such number, shape, and area, and
12 the adoption of regulations for each district to carry out the
13 purposes of chapters 205, 205A, and this section. In
14 establishing or regulating the districts, full consideration
15 shall be given to all available data as to soil classification
16 and physical use capabilities of the land so as to allow and
17 encourage the most beneficial use of the land consonant with
18 good zoning practices. The zoning power granted herein shall be
19 exercised by ordinance which may relate to:
20 (1) The areas within which agriculture, forestry,
21 industry, trade, and business may be conducted;

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- 1 (2) The areas in which residential uses may be regulated
- 2 or prohibited;
- 3 (3) The areas bordering natural watercourses, channels,
- 4 and streams, in which trades or industries, filling or
- 5 dumping, erection of structures, and the location of
- 6 buildings may be prohibited or restricted;
- 7 (4) The areas in which particular uses may be subjected to
- 8 special restrictions;
- 9 (5) The location of buildings and structures designed for
- 10 specific uses and designation of uses for which
- 11 buildings and structures may not be used or altered;
- 12 (6) The location, height, bulk, number of stories, and
- 13 size of buildings and other structures;
- 14 (7) The location of roads, schools, and recreation areas;
- 15 (8) Building setback lines and future street lines;
- 16 (9) The density and distribution of population;
- 17 (10) The percentage of a lot that may be occupied, size of
- 18 yards, courts, and other open spaces;
- 19 (11) Minimum and maximum lot sizes; and
- 20 (12) Other regulations the board or city council find
- 21 necessary and proper to permit and encourage the

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1 orderly development of land resources within their
2 jurisdictions.

3 The council of any county shall prescribe rules,
4 regulations, and administrative procedures and provide personnel
5 it finds necessary to enforce this section and any ordinance
6 enacted in accordance with this section. The ordinances may be
7 enforced by appropriate fines and penalties, civil or criminal,
8 or by court order at the suit of the county or the owner or
9 owners of real estate directly affected by the ordinances.

10 Any civil fine or penalty provided by ordinance under this
11 section may be imposed by the district court, or by the zoning
12 agency after an opportunity for a hearing pursuant to chapter
13 91. The proceeding shall not be a prerequisite for any
14 injunctive relief ordered by the circuit court.

15 Nothing in this section shall invalidate any zoning
16 ordinance or regulation adopted by any county or other agency of
17 government pursuant to the statutes in effect prior to July 1,
18 1957.

19 The powers granted herein shall be liberally construed in
20 favor of the county exercising them, and in such a manner as to
21 promote the orderly development of each county or city and
22 county in accordance with a long-range, comprehensive general

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1 plan to ensure the greatest benefit for the State as a whole.
2 This section shall not be construed to limit or repeal any
3 powers of any county to achieve these ends through zoning and
4 building regulations, except insofar as forest and water reserve
5 zones are concerned and as provided in subsections (c) and (d).

6 Neither this section nor any ordinance enacted pursuant to
7 this section shall prohibit the continued lawful use of any
8 building or premises for any trade, industrial, residential,
9 agricultural, or other purpose for which the building or
10 premises is used at the time this section or the ordinance takes
11 effect; provided that a zoning ordinance may provide for
12 elimination of nonconforming uses as the uses are discontinued,
13 or for the amortization or phasing out of nonconforming uses or
14 signs over a reasonable period of time in commercial,
15 industrial, resort, and apartment zoned areas only. In no event
16 shall such amortization or phasing out of nonconforming uses
17 apply to any existing building or premises used for residential
18 (single-family or duplex) or agricultural uses. Nothing in this
19 section shall affect or impair the powers and duties of the
20 director of transportation as set forth in chapter 262."

21 SECTION 4. Section 226-58, Hawaii Revised Statutes, is
22 amended by adding a new subsection to read as follows:

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1 "**§226-58 County general plans.** (a) The county general
2 plans and development plans shall be formulated with input from
3 the state and county agencies as well as the general public.

4 County general plans or development plans shall indicate
5 desired population and physical development patterns for each
6 county and regions within each county. In addition, county
7 general plans or development plans shall address the unique
8 problems and needs of each county and regions within each
9 county. The county general plans or development plans shall
10 further define applicable provisions of this chapter; provided
11 that any amendment to the county general plan of each county
12 shall not be contrary to the county charter. The formulation,
13 amendment, and implementation of county general plans or
14 development plans shall take into consideration statewide
15 objectives, policies, and programs stipulated in state
16 functional plans approved in consonance with this chapter.

17 (b) County general plans shall be formulated on the basis
18 of sound rationale, data, analyses, and input from state and
19 county agencies and the general public, and contain objectives
20 and policies as required by the charter of each county. Further,
21 the county general plans should:

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- 1 (1) Contain objectives to be achieved and policies to be
2 pursued with respect to population density, land use,
3 transportation system location, public and community
4 facility locations, water and sewage system locations,
5 visitor destinations, urban design, and all other
6 matters necessary for the coordinated development of
7 the county and regions within the county; and
8 (2) Contain implementation priorities and actions to carry
9 out policies to include but not be limited to land use
10 maps, programs, projects, regulatory measures,
11 standards and principles, and interagency coordination
12 provisions.
13 (c) County general plans and development plans shall
14 include recommendations to amend district boundaries of lands.
15 Recommendations for district boundary amendments that are part
16 of an approved county general plan or development plan shall be
17 used by the counties to initiate and submit an application to
18 the land use commission for changes in district boundaries of
19 lands, pursuant to chapter 205A."

20 SECTION 6. Statutory material to be repealed is bracketed.
21 New statutory material is underscored.

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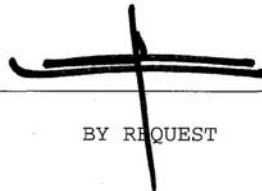
S.B. NO. 903

1 SECTION 7. In codifying the new sections added to chapter
2 205 and 226, Hawaii Revised Statutes, the revisor of statutes
3 shall substitute appropriate part numbers and section numbers
4 for the letters used in the new sections designated in this Act.

5 SECTION 8. This Act shall take effect upon its approval.

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7
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INTRODUCED BY: _____

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BY REQUEST

GOV-10(09)

SB 903

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO PLANNING.

PURPOSE: The purpose of this bill is to facilitate the development of affordable housing by correcting inefficiencies in the land classification process. It provides an efficient process before the land use commission by which the counties or the office of planning may request consistency between the state and county land use designation to assist in the implementation of approved county general plans and development plans. The intent is to ensure coordination with state and county planning agencies which share responsibility for serving the State's growth needs and improve the congruence of state land use district boundaries with the adopted county land use plans to promote effective implementation of these plans.

MEANS: Add one new section to chapter 205 and one new subsection to chapter 226-58. Amend sections 46-4(a) and 226-52(a), Hawaii Revised Statutes.

JUSTIFICATION: County general and development plans direct land use and zoning at the local level. Since these plans play an important role in guiding affordable housing developments, and related growth, county plans contain key plan elements that address issues of statewide concern. These plans reflect that counties are now fully capable of developing and guiding growth and preservation within their respective jurisdictions. It is important that county plans are coordinated with State agency programs and efforts, particularly where the State has responsibility for infrastructure, facilities, services, or natural resource

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management needed to achieve the desired land use pattern in county plans.

County general and development plans have been prepared with extensive community input and have been prepared at the level closest to those affected. The proposed legislation would allow a land use commission review for petitions for boundary amendments based on county plans. These plan-based petitions would not be development project specific but would cover larger regional or island-wide areas, acknowledging the need for a holistic approach to local planning.

Under the proposed legislation, plan-based petitions would be subject to quasi-legislative rather than quasi-judicial review by the state land use commission. This will streamline the review process for these plan-based petitions. Different procedures are warranted since the petitions will be based on county plans which have undergone considerable community review, multiple public hearings, acknowledge and reflect housing needs and have received county council and mayor approval. Furthermore, the quasi-legislative process will remain a public process with public hearings and opportunities for public testimony. In addition, state and county governments will have agreed on the areas to be reclassified under the plan-based petitions.

Impact on the public: Increased coordination of state and county agency plans would be addressed and help facilitate the development of affordable housing. The plan-based process may also provide greater predictability to the public and development community about where growth is to occur.

Impact on the department and other agencies: The state land use commission and its staff would be required to work under a new procedure, but the process reduces the

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number of individual petitions the commission must consider. The workload of the Office of Planning will also decline.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-144 and BED-103.

OTHER AFFECTED AGENCIES: Office of Planning, Land Use Commission, County Planning Departments, and other state agencies.

EFFECTIVE DATE: Upon approval.

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S.B. NO. 907

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE DEDICATION OF HOUSING INFRASTRUCTURE TO COUNTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In August 2007, Hawaii accepted an invitation
2 by the United States Department of Housing and Urban Development
3 to join the National Call to Action for Affordable Housing
4 through Regulatory Reform. The Call to Action presented an
5 opportunity for Hawaii to receive technical assistance from the
6 federal government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The legislature recognizes that the need for more
17 affordable housing in Hawaii remains a significant problem

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1 affecting all segments of society. Although there is a process
2 in place that provides an opportunity to review affordable
3 housing projects proposals in an expedited manner at the state
4 and county levels, delays arise when counties do not act timely
5 to affirmatively accept public infrastructure that has been
6 developed as part of a housing project. The purpose of this Act
7 is to require counties to accept a public infrastructure
8 dedication that has been developed as part of a housing project
9 when the infrastructure has been constructed to applicable
10 county standards within sixty days of the dedication request to
11 ensure that the delivery of affordable housing is not delayed.

12 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
13 by adding a new section to be appropriately designated and to
14 read as follows:

15 "§46- Time limit on acceptance of dedication of housing
16 infrastructure to counties. A county shall accept a dedication
17 request by the developer of a housing project constructed under
18 chapter 201H, Hawaii Revised Statutes, to connect the project's
19 infrastructure to the county's infrastructure, including but not
20 limited to its roadways, and water, sewer, and drainage systems,
21 upon the payment of the applicable meter and connection fees and
22 utility costs; provided that the infrastructure conforms to

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1 applicable county building codes; and provided further that the
2 dedicated infrastructure is certified to be in compliance by
3 either the county inspector responsible for accepting dedicated
4 infrastructure, or a licensed, third-party building inspector.
5 If the infrastructure dedication is not accepted by the county
6 within sixty days of the dedication request, the infrastructure
7 shall be automatically dedicated to the county.

8 For the purposes of this section "third-party building
9 inspector" means a licensed private sector inspector that is
10 contracted by a state or county agency to perform building plan
11 review functions including but not limited to building
12 inspections, mechanical inspections, electrical inspections, and
13 plumbing inspections."

14 SECTION 3. Section 264-1, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) All roads, alleys, streets, ways, lanes, trails,
17 bikeways, and bridges in the State, opened, laid out, or built
18 by private parties and dedicated or surrendered to the public
19 use, are declared to be public highways or public trails as
20 follows:

21 (1) Dedication of public highways or trails shall be by
22 deed of conveyance naming the State as grantee in the

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1 case of a state highway or trail and naming the county
2 as grantee in the case of a county highway or trail.
3 The deed of conveyance shall be delivered to and
4 accepted by the director of transportation in the case
5 of a state highway or the board of land and natural
6 resources in the case of a state trail. In the case
7 of a county highway or county trail, the deed shall be
8 delivered to and accepted by the legislative body of a
9 county.

10 (2) Surrender of public highways or trails shall be deemed
11 to have taken place if no act of ownership by the
12 owner of the road, alley, street, bikeway, way, lane,
13 trail, or bridge has been exercised for five years and
14 when, in the case of a county highway, in addition
15 thereto, the legislative body of the county has,
16 thereafter, by a resolution, adopted the same as a
17 county highway or trail.

18 (3) Dedication of public highways or trails by request of
19 a developer to a county shall be deemed to have taken
20 place if the road, alley, street, bikeway, way, lane,
21 trail, or bridge is part of a housing project
22 developed pursuant to chapter 201H; provided that it

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1 conforms to applicable county building codes; and
2 provided further that the dedicated infrastructure is
3 certified to be in compliance by either the county
4 inspector responsible for accepting dedicated
5 infrastructure, or a licensed third-party building
6 inspector. Dedication shall be deemed to have taken
7 place if the infrastructure dedication is not accepted
8 by the county within sixty days of the dedication
9 request.

10 For the purposes of subsection (3) "third-party building
11 inspector" means a licensed private sector inspector that is
12 contracted by a state or county agency to perform building plan
13 review functions including but not limited to building
14 inspections, mechanical inspections, electrical inspections, and
15 plumbing inspections.

16 In every case where the road, alley, street, bikeway, way,
17 lane, trail, bridge, or highway is constructed and completed as
18 required by any ordinance of the county or any rule, regulation,
19 or resolution thereof having the effect of law, the legislative
20 body of the county shall accept the dedication or surrender of
21 the same without exercise of discretion."

22 SECTION 4. New statutory material is underscored.

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S.B. NO. 907

1 SECTION 5. This Act shall take effect upon its approval.

2

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INTRODUCED BY: _____

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4

BY REQUEST

GOV-19 (09)

SB 907

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO THE DEDICATION OF HOUSING INFRASTRUCTURE TO COUNTIES

PURPOSE: The purpose of this bill is to create a timeframe for the dedication of infrastructure that is part of an affordable housing development.

MEANS: Add a new section to chapter 46, Hawaii Revised Statutes and amend section 264-1 (c), Hawaii Revised Statutes.

JUSTIFICATION: In 2007, Governor Lingle convened the Affordable Housing Regulatory Barriers Task Force in response to the U.S. Department of Housing and Urban Development's National Call to Action. The Task Force's main objective is to identify regulatory barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

The Task Force discovered that in some cases counties do not act to affirmatively accept public infrastructure that has been developed as part of an affordable housing project. When infrastructure dedication is delayed project financing may be jeopardized.

Accordingly, this bill establishes a timeframe for counties to accept public infrastructure that is part of an affordable housing development when the infrastructure is built in accordance with county standards. This will ensure that affordable housing projects progress within reasonable lengths of time and the housing needs of the state are continuing to be met.

Impact on the public: Establishing a timeframe for public infrastructure

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dedication will ensure expeditious delivery of affordable housing to the public.

Impact on the department and other agencies:
Creates a clear standard for county agencies that will assist them in executing their work.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Hawaii Housing Finance and Development Corporation, Department of Hawaiian Home Lands, and Counties.

EFFECTIVE DATE: Upon approval.

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JAN 26 2009

A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In August 2007, Hawaii accepted an invitation by
2 the United State Department of Housing and Urban Development to
3 join the National Call to Action for Affordable Housing through
4 Regulatory Reform. The Call to Action presented an opportunity
5 for Hawaii to receive technical assistance from the federal
6 government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The Legislature recognizes that the need for more
17 affordable housing in Hawaii remains a significant problem
18 affecting all segments of society. The development of

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1 residential housing is bridled by significant varying
2 regulations placed on the industry at both the state and county
3 levels. Recent analysis shows that regulations and conditions
4 placed on developers can potentially delay a project for up to
5 seven years. This delay in time leads to a level of uncertainty
6 for the housing industry, adds cost to the total development
7 project, jeopardizes funding streams for affordable housing
8 projects, and ultimately results in a more expensive home for
9 the homebuyer or renter.

10 The purpose of this Act is to authorize the counties to
11 identify and designate affordable housing receiving zones to
12 facilitate the development of affordable housing.

13 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 **"PART . AFFORDABLE HOUSING RECEIVING ZONES**

17 **§201H-A Purpose.** The purpose of this part is to encourage
18 the development of affordable housing in this State by providing
19 for the establishment of affordable housing receiving zones.
20 The counties are best equipped to determine where affordable
21 housing developments should be located within geographic areas

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S.B. NO. 908

1 designated for population growth as determined in general plans
2 adopted by the counties pursuant to section 226-58.

3 **§201H-B Definitions.** As used in this part:

4 "Affordable housing" means housing that is affordable to
5 households with incomes at or below one hundred forty per cent
6 of the median family income or as may be determined by the
7 United States Department of Housing and Urban Development.

8 "Affordable housing receiving zone" means an area nominated
9 by, and within the jurisdiction of, a county government declared
10 by the corporation to be eligible for the benefits of this part.

11 "Corporation" means the Hawaii housing finance and
12 development corporation.

13 **§201H-C Administration.** The corporation shall administer
14 this part and have the following powers and duties:

- 15 (1) To establish criteria for counties to use in
16 determining what areas qualify as affordable housing
17 receiving zones; provided that no affordable housing
18 receiving zone shall include any lands designated
19 important agricultural lands or conservation lands.
20 The criteria shall be the minimum required for
21 implementation of an affordable housing receiving
22 zone;

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- 1 (2) To monitor the implementation and operation of this
2 part;
- 3 (3) To conduct a continuing evaluation program of
4 affordable housing receiving zones;
- 5 (4) To assist counties in reducing rules within affordable
6 housing receiving zones;
- 7 (5) To submit annual reports evaluating the effectiveness
8 of the program and any recommendations for further
9 legislation;
- 10 (6) To administer and enforce the rules adopted by the
11 corporation; and
- 12 (7) To administer this part in such a manner that the area
13 to be designated as an affordable housing receiving
14 zone will most benefit the area and the State.

15 **§201H-D Affordable housing receiving zone designation.**

- 16 (a) The governing body of each county shall identify in the
17 form of a written application to the corporation areas that may
18 be declared affordable housing receiving zones. Each
19 application shall include a description of the location of the
20 area or areas in question, and a general statement identifying
21 proposed local incentives to complement the state and any
22 federal incentives.

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1 (b) The corporation shall approve the designation of up to
2 twenty areas in each county as affordable housing receiving
3 zones for a period of twenty years. The corporation shall adopt
4 rules setting forth appropriate standards for counties to use in
5 the designation of affordable housing receiving zones. Private
6 landowners may request to the county that their lands be
7 included in such zones.

8 **§201H-E Application review.** (a) The corporation shall
9 review each application upon receipt and shall secure any
10 additional information that the corporation deems necessary for
11 the purpose of determining whether the area or areas described
12 qualify as affordable housing receiving zones.

13 (b) The corporation shall complete review of, and either
14 approve or deny, the application within sixty days of the last
15 date designated for receipt of an application. If approving,
16 the corporation shall approve, in writing, those applications
17 that have identified areas that qualify as affordable housing
18 receiving zones; provided that the number of allowable
19 affordable housing receiving zones for the county as established
20 under section 201H-D(b), is not exceeded. If an application is
21 denied, the corporation shall inform the governing body in
22 writing of that fact together with the reasons for the denial.

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1 Upon denial, the county shall resubmit the application with the
2 changes or modifications necessary until the application is
3 approved.

4 **§201H-F Rules.** The corporation, in consultation with the
5 counties, shall adopt rules pursuant to chapter 91 to implement
6 this part, including rules relating to health, safety, building,
7 planning, zoning, and land use that shall supersede all other
8 ordinances and rules relating to the use, zoning, planning, and
9 development of land and construction in an affordable housing
10 receiving zone. Rules adopted under this section shall follow
11 existing law, rules, and ordinances as closely as is consistent
12 with standards meeting minimum requirements of energy
13 efficiency, health, and safety. The corporation may provide by
14 rule that lands within an affordable housing receiving zone
15 shall not be developed beyond existing uses or that improvements
16 thereon shall not be demolished or substantially reconstructed,
17 or provide other restrictions on the use of the zone.

18 **§201H-G Eligibility; qualified affordable housing project.**

19 (a) Any housing project may be eligible to be designated a
20 qualified affordable housing project for purposes of this part
21 if:

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- 1 (1) The housing project is established within an
2 affordable housing receiving zone;
- 3 (2) No less than twenty per cent of the units in the
4 housing project are affordable to households with
5 incomes at or below one hundred forty per cent of the
6 area median family income or as may be determined by
7 the United States Department of Housing and Urban
8 Development; and
- 9 (3) The housing project consists of at least fifteen
10 units.
- 11 (b) A housing project also may be eligible to be
12 designated a qualified affordable housing project for purposes
13 of this part if the housing project qualified as an affordable
14 housing project prior to the area being designated an affordable
15 housing receiving zone.
- 16 (c) After designation as an affordable housing receiving
17 zone, each qualified affordable housing project in the zone
18 shall complete and submit to the corporation, on a form supplied
19 by the corporation, the information necessary for the department
20 to determine whether the housing project qualifies as a
21 qualified affordable housing project. If the corporation
22 determines that the housing project qualifies as a qualified

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1 affordable housing project, then the corporation shall approve
2 the completed form and forward copies of the completed and
3 approved form to the governing body of the county.

4 (d) A completed form approved by the corporation, referred
5 to in subsection (c), shall be prima facie evidence of the
6 eligibility of a housing project for the purposes of this
7 section.

8 **§201H-H Local incentives, waivers, and regulatory**

9 **flexibility.** (a) In applying for designation as an affordable
10 housing receiving zone, the applying county shall propose in its
11 application local incentives, which may include, but not be
12 limited to:

- 13 (1) Reduction or waiver of permit fees;
- 14 (2) Reduction or waiver of user fees;
- 15 (3) Reduction or waiver of impact fees;
- 16 (4) Reduction or waiver of water and sewer connection
17 fees;
- 18 (5) Reduction or waiver of parking requirements;
- 19 (6) Reduction of real property taxes;
- 20 (7) Priority permit review;
- 21 (8) Priority financing, construction, and dedication of
22 infrastructure;

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- 1 (9) Density bonuses;
- 2 (10) Height waivers;
- 3 (11) Cluster zoning;
- 4 (12) Exemption from environmental impact reviews for any
- 5 affordable housing project on property that has
- 6 already been zoned for development;
- 7 (13) Procurement exemptions;
- 8 (14) Design flexibility;
- 9 (15) Site flexibility;
- 10 (16) Reduction or waiver of public facility set aside and
- 11 fees; public facility requirement flexibility;
- 12 (17) Waiver of state wage requirement; and
- 13 (18) Other public incentives and exemptions proposed in the
- 14 locality's application, which shall be binding upon
- 15 the locality upon designation of the affordable
- 16 housing receiving zone.

17 **§201H-I Termination of an affordable housing receiving**
18 **zone.** Upon designation of an area as an affordable housing
19 receiving zone, the proposals for regulatory flexibility, tax
20 credits, waivers, and other public incentives authorized in this
21 part shall be binding upon the county governing body to the
22 extent and for the period of time specified in the application

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1 for zone designation. If the county governing body is unable or
2 unwilling to provide any of the incentives set forth in section
3 201H-H or other incentives acceptable to the corporation, and
4 the corporation has not adopted rules pursuant to section 201H-F
5 that supersede inconsistent ordinances and rules relating to the
6 use, zoning, planning, and development of land and construction
7 in an affordable housing receiving zone, then the affordable
8 housing receiving zone shall terminate. Qualified affordable
9 housing projects located in the affordable housing receiving
10 zone shall be eligible to receive the incentives and waivers
11 provided by this part even though the zone designation has
12 terminated. No housing project may become qualified after the
13 date of zone termination. The county governing body may amend
14 an application submitted pursuant to section 201H-D with the
15 approval of the corporation; provided that the county governing
16 body proposes an incentive equal to or superior to the unamended
17 application."

18 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Any law to the contrary notwithstanding, any county
21 shall have and may exercise the same powers, subject to
22 applicable limitations, as those granted the Hawaii housing

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1 finance and development corporation pursuant to chapter 201H
2 insofar as those powers may be reasonably construed to be
3 exercisable by a county for the purpose of developing,
4 constructing, and providing low- and moderate-income housing;
5 provided that no county shall be empowered to cause the State to
6 issue general obligation bonds to finance a project pursuant to
7 this section; provided further that county projects shall be
8 granted an exemption from general excise or receipts taxes in
9 the same manner as projects of the Hawaii housing finance and
10 development corporation pursuant to section 201H-36; and
11 provided further that section 201H-16 shall not apply to this
12 section unless federal guidelines specifically provide local
13 governments with that authorization and the authorization does
14 not conflict with any state laws. The powers shall include the
15 power, subject to applicable limitations, to:

- 16 (1) Develop and construct dwelling units, alone or in
17 partnership with developers;
- 18 (2) Acquire necessary land by lease, purchase, exchange,
19 or eminent domain;
- 20 (3) Provide assistance and aid to a public agency or other
21 person in developing and constructing new housing and
22 rehabilitating existing housing for elders of low- and

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S.B. NO. 908

- 1 moderate-income, other persons of low- and moderate-
2 income, and persons displaced by any governmental
3 action, by making long-term mortgage or interim
4 construction loans available;
- 5 (4) Contract with any eligible bidders to provide for
6 construction of urgently needed housing for persons of
7 low- and moderate-income;
- 8 (5) Guarantee the top twenty-five per cent of the
9 principal balance of real property mortgage loans,
10 plus interest thereon, made to qualified borrowers by
11 qualified lenders;
- 12 (6) Enter into mortgage guarantee agreements with
13 appropriate officials of any agency or instrumentality
14 of the United States to induce those officials to
15 commit to insure or to insure mortgages under the
16 National Housing Act, as amended;
- 17 (7) Make a direct loan to any qualified buyer for the
18 downpayment required by a private lender to be made by
19 the borrower as a condition of obtaining a loan from
20 the private lender in the purchase of residential
21 property;
- 22 (8) Provide funds for a share, not to exceed fifty per

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1 cent, of the principal amount of a loan made to a
2 qualified borrower by a private lender who is unable
3 otherwise to lend the borrower sufficient funds at
4 reasonable rates in the purchase of residential
5 property; [~~and~~]

6 (9) Establish affordable housing receiving zones pursuant
7 to part of chapter 201H; and

8 [~~(9)~~] (10) Sell or lease completed dwelling units.

9 For purposes of this section, a limitation is applicable to
10 the extent that it may reasonably be construed to apply to a
11 county."

12 SECTION 4. Section 226-58, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) County general plans shall be formulated on the basis
15 of sound rationale, data, analyses, and input from state and
16 county agencies and the general public, and contain objectives
17 and policies as required by the charter of each county.

18 Further, the county general plans should:

19 (1) Contain objectives to be achieved and policies to be
20 pursued with respect to population density, land use,
21 transportation system location, public and community
22 facility locations, water and sewage system locations,

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S.B. NO. 908

- 1 affordable housing zones, visitor destinations, urban
2 design, and all other matters necessary for the
3 coordinated development of the county and regions
4 within the county; ~~and~~
- 5 (2) Contain implementation priorities and actions to carry
6 out policies to include but not be limited to land use
7 maps, programs, projects, regulatory measures,
8 standards and principles, and interagency coordination
9 provisions[-]; and
- 10 (3) Contain implementation actions to identify, designate,
11 and establish affordable housing receiving zones
12 pursuant to part of chapter 201H."

13 SECTION 5. It is the intent of this Act not to jeopardize
14 the receipt of any federal aid nor to impair the obligation of
15 the State or any agency thereof to the holders of any bond
16 issued by the State or by any such agency, and to the extent,
17 and only to the extent, necessary to effectuate this intent, the
18 governor may modify the strict provisions of this Act, but shall
19 promptly report any such modification with reasons therefore to
20 the legislature at its next session thereafter for review by the
21 legislature.

GOV-20(09)

S.B. NO. 908

1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 7. In codifying the new sections added to chapter
5 201H, Hawaii Revised Statutes, by section 2 of this Act, the
6 revisor of statutes shall substitute appropriate section numbers
7 for the letters used in the designations, and references to,
8 those new sections in this Act.

9 SECTION 8. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect upon its approval.

12
13
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INTRODUCED BY: _____

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BY REQUEST

GOV-20 (09)

SB 908

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING.

PURPOSE: Establishes affordable housing receiving zones to expedite and increase the development of affordable housing.

MEANS: Add a new part to chapter 201H, Hawaii Revised Statutes, and amend sections 46-15.1(a) and 226-58(b), Hawaii Revised Statutes.

JUSTIFICATION: In 2007, Governor Lingle convened the Affordable Housing Regulatory Barriers Task Force in response to the U.S. Department of Housing and Urban Development's National Call to Action. The Task Force's main objective is to identify barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

The Task Force recognizes that regulatory burdens can potentially delay the development of an affordable housing project for up to seven years, which leads to a more expensive home. The Task Force finds that these types of delays can increase the cost of a home or rental unit by \$10,000 to \$50,000.

To address this problem the Task Force recommends that the State authorize the counties to identify and designate affordable housing receiving zones. The zones will have incentives and exemptions that are tailored to encourage and expedite affordable housing development. Counties are encouraged to identify and include the zones in their county general and development plans. The bill also prohibits counties from designating affordable housing

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receiving zones on conservation or important agricultural lands.

Impact on the public: This bill creates a mechanism for counties to apply incentives and exemptions to an entire zone that has been designated for affordable housing, as opposed to granting these same incentives and exemptions on a per parcel basis. The public will benefit from increased access to affordable housing units, constructed in these pre-designated areas.

Impact on the department and other agencies: Fee exemptions may impact the amount of funds received by county agencies.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	Hawaii Housing and Finance Development Corporation, Department of Education, Counties, Department of Land and Natural Resources, and Board of Water Supply.
EFFECTIVE DATE:	Upon approval.

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JAN 26 2009

A BILL FOR AN ACT

RELATING TO THIRD-PARTY REVIEW OF AFFORDABLE HOUSING PROJECTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In August 2007, Hawaii accepted an invitation
2 by the United States Department of Housing and Urban Development
3 to join the National Call to Action for Affordable Housing
4 through Regulatory Reform. The Call to Action presented an
5 opportunity for Hawaii to receive technical assistance from the
6 federal government and collaborate with other states, counties,
7 municipalities, and organizations to knock down the barriers
8 imposed by governments in hopes of building more affordable
9 housing. Governor Lingle convened a statewide task force
10 comprised of representatives from the counties, business, labor,
11 developers, architects, nonprofit providers of services, and the
12 State to carry out the mission of the Call to Action and
13 recommend solutions to address barriers to affordable housing.
14 Accordingly, the purpose of this Act is to implement the
15 legislative recommendations of the task force.

16 The legislature recognizes that the need for more
17 affordable housing in Hawaii remains a significant problem
18 affecting all segments of society. Although there is a process

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1 in place that provides an opportunity to review affordable
2 housing projects proposals in an expedited manner at the state
3 and county levels, there is a shortage of staff at the state and
4 county levels to process project and permit applications in a
5 timely manner.

6 In 2005 the city and county of Honolulu began to address
7 their staffing shortage by utilizing third-party reviewers for
8 electrical and mechanical reviews for the building permit
9 approval process. The utilization of third-party review can
10 significantly shorten the review process time from months to
11 weeks. This in turn helps keep construction costs low and
12 ensures that homes remain affordable. The purpose of this Act
13 is to clarify the authority of counties and state agencies to
14 hire outside parties to handle permits and review approvals and
15 to limit the liability of outside parties who conduct reviews.

16 SECTION 2. Chapter 103, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§103- State and county contracts for services; civil
20 service exemption. (a) Notwithstanding any other law to the
21 contrary, services that are customarily and historically
22 provided by civil servants may be obtained through state or

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1 county contracts for services with private entities for any
2 reviews related to affordable housing projects, including but
3 not limited to permit applications, inspections, discretionary
4 permits, and ministerial permits, provided that:

5 (1) The service provided in a contract authorized by this
6 section is for an affordable housing development as
7 defined by the counties or for housing projects that
8 qualify for affordable housing development pursuant to
9 chapter 201H; and

10 (2) The estimated time necessary for civil servants to
11 complete the service is longer than forty-five days
12 from the time that the project or permit application,
13 or applicable request was submitted to the State or a
14 county.

15 (b) Services obtained through contracts authorized by this
16 section shall not be subject to, and shall be exempt from, the
17 requirements of chapters 46 and 76.

18 (c) This section does not limit the authority of the State
19 or a county to ensure that the project and permit reviews for
20 the buildings, structures, and facilities within an affordable
21 housing development comply with state and county building codes

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1 or to limit the authority and responsibility of the fire
2 official to conduct safety inspections under chapter 132.

3 (d) Private entities providing services to the State or a
4 county through contracts authorized by this section shall be
5 immune from liability, except for liability arising out of the
6 intentional misconduct, gross negligence, or malfeasance of the
7 private entity."

8 SECTION 3. Section 46-33, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§46-33 Exemption of certain county positions.** In any
11 county with a population of 500,000 or more, the civil service
12 to which this section refers is comprised of all positions in
13 the public service of such county, now existing or hereafter
14 established, and embraces all personal services performed for
15 such county, except the following:

- 16 (1) Positions of officers elected by public vote;
17 positions of heads of departments; position of the
18 clerk; position of the manager of the board of water
19 supply and position of the chief of police[-];
20 (2) Positions in the office of mayor, but such positions,
21 except those of the heads of the offices of
22 information and complaint and budget director, shall

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- 1 be included in the position classification plan.
2 Employees of the municipal library and of the offices
3 of information and complaint and budget director,
4 other than the head of such offices, however, shall
5 not be exempted from civil service[-];
6 (3) Positions of deputies of the corporation counsel,
7 deputies of the prosecuting attorney, and law
8 clerks[-];
9 (4) Positions of members of any board, commission, or
10 equivalent body[-];
11 (5) Positions filled by inmates, patients, or students in
12 city institutions or in the schools[-];
13 (6) Positions of district magistrates, jurors, and
14 witnesses[-];
15 (7) Personal services obtained by contract where the
16 director of civil service has certified that the
17 service is special or unique, is essential to the
18 public interest and that, because of circumstances
19 surrounding its fulfillment, personnel to perform such
20 service cannot be obtained through normal civil
21 service recruitment procedures. Any such contract may
22 be for any period not exceeding one year[-];

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- 1 (8) Personal services of a temporary nature needed in the
2 public interest where the need for the same does not
3 exceed ninety days, but before any person may be
4 employed to render such temporary service the director
5 of civil service shall certify that the service is of
6 a temporary nature and that recruitment through normal
7 civil service recruitment procedures is not
8 practicable. The employment of any person for service
9 of a temporary nature may be extended for good cause
10 for an additional period not to exceed ninety days
11 upon similar certification by the director subject to
12 approval of the civil service commission[-];
- 13 (9) Personal services performed on a fee, contract, or
14 piecework basis by persons who may lawfully perform
15 their duties concurrently with their private business
16 or profession or other private employment, if any, and
17 whose duties require only a portion of their time,
18 where it is impracticable to ascertain or anticipate
19 the portion of time devoted to the service of the city
20 and such fact is certified to by the director of civil
21 service[-];

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- 1 (10) Positions of temporary election clerks in the office
2 of the clerk employed during the election periods, but
3 the positions filled by such employees shall be
4 included in the position classification plan[-];
- 5 (11) Positions of one first deputy and private secretaries
6 to heads of departments and their first deputies, but
7 private secretarial positions shall be included in the
8 position classification plan. The first deputy in the
9 department of civil service, however, shall not be
10 exempt from civil service[-]; and
- 11 (12) Personal services that are obtained through a contract
12 or agreement for a grant, subsidy, or purchase of
13 service made pursuant to chapter 42F, 103D, 103F, 103-
14 , or 201H.

15 The director of civil service shall determine the applicability
16 of this section to specific positions."

17 SECTION 4. Section 76-16, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) The civil service to which this chapter applies shall
20 comprise all positions in the State now existing or hereafter
21 established and embrace all personal services performed for the
22 State, except the following:

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- 1 (1) Commissioned and enlisted personnel of the Hawaii
2 national guard as such, and positions in the Hawaii
3 national guard that are required by state or federal
4 laws or regulations or orders of the national guard to
5 be filled from those commissioned or enlisted
6 personnel;
- 7 (2) Positions filled by persons employed by contract where
8 the director of human resources development has
9 certified that the service is special or unique or is
10 essential to the public interest and that, because of
11 circumstances surrounding its fulfillment, personnel
12 to perform the service cannot be obtained through
13 normal civil service recruitment procedures. Any such
14 contract may be for any period not exceeding one year;
- 15 (3) Positions that must be filled without delay to comply
16 with a court order or decree if the director
17 determines that recruitment through normal recruitment
18 civil service procedures would result in delay or
19 noncompliance, such as the Felix-Cayetano consent
20 decree;
- 21 (4) Positions filled by the legislature or by either house
22 or any committee thereof;

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- 1 (5) Employees in the office of the governor and office of
2 the lieutenant governor, and household employees at
3 Washington Place;
- 4 (6) Positions filled by popular vote;
- 5 (7) Department heads, officers, and members of any board,
6 commission, or other state agency whose appointments
7 are made by the governor or are required by law to be
8 confirmed by the senate;
- 9 (8) Judges, referees, receivers, masters, jurors, notaries
10 public, land court examiners, court commissioners, and
11 attorneys appointed by a state court for a special
12 temporary service;
- 13 (9) One bailiff for the chief justice of the supreme court
14 who shall have the powers and duties of a court
15 officer and bailiff under section 606-14; one
16 secretary or clerk for each justice of the supreme
17 court, each judge of the intermediate appellate court,
18 and each judge of the circuit court; one secretary for
19 the judicial council; one deputy administrative
20 director of the courts; three law clerks for the chief
21 justice of the supreme court, two law clerks for each
22 associate justice of the supreme court and each judge

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1 of the intermediate appellate court, one law clerk for
2 each judge of the circuit court, two additional law
3 clerks for the civil administrative judge of the
4 circuit court of the first circuit, two additional law
5 clerks for the criminal administrative judge of the
6 circuit court of the first circuit, one additional law
7 clerk for the senior judge of the family court of the
8 first circuit, two additional law clerks for the civil
9 motions judge of the circuit court of the first
10 circuit, two additional law clerks for the criminal
11 motions judge of the circuit court of the first
12 circuit, and two law clerks for the administrative
13 judge of the district court of the first circuit; and
14 one private secretary for the administrative director
15 of the courts, the deputy administrative director of
16 the courts, each department head, each deputy or first
17 assistant, and each additional deputy, or assistant
18 deputy, or assistant defined in paragraph (16);
19 (10) First deputy and deputy attorneys general, the
20 administrative services manager of the department of
21 the attorney general, one secretary for the
22 administrative services manager, an administrator and

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1 any support staff for the criminal and juvenile
2 justice resources coordination functions, and law
3 clerks;

4 (11) (A) Teachers, principals, vice-principals, complex
5 area superintendents, deputy and assistant
6 superintendents, other certificated personnel,
7 not more than twenty noncertificated
8 administrative, professional, and technical
9 personnel not engaged in instructional work;

10 (B) Effective July 1, 2003, teaching assistants,
11 educational assistants, bilingual/bicultural
12 school-home assistants, school psychologists,
13 psychological examiners, speech pathologists,
14 athletic health care trainers, alternative school
15 work study assistants, alternative school
16 educational/supportive services specialists,
17 alternative school project coordinators, and
18 communications aides in the department of
19 education;

20 (C) The special assistant to the state librarian and
21 one secretary for the special assistant to the
22 state librarian; and

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- 1 (D) Members of the faculty of the University of
2 Hawaii, including research workers, extension
3 agents, personnel engaged in instructional work,
4 and administrative, professional, and technical
5 personnel of the university;
- 6 (12) Employees engaged in special, research, or
7 demonstration projects approved by the governor;
- 8 (13) Positions filled by inmates, kokuas, patients of state
9 institutions, persons with severe physical or mental
10 handicaps participating in the work experience
11 training programs, and students and positions filled
12 through federally funded programs that provide
13 temporary public service employment such as the
14 federal Comprehensive Employment and Training Act of
15 1973;
- 16 (14) A custodian or guide at Iolani Palace, the Royal
17 Mausoleum, and Hulihee Palace;
- 18 (15) Positions filled by persons employed on a fee,
19 contract, or piecework basis, who may lawfully perform
20 their duties concurrently with their private business
21 or profession or other private employment and whose
22 duties require only a portion of their time, if it is

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1 impracticable to ascertain or anticipate the portion
2 of time to be devoted to the service of the State;
3 (16) Positions of first deputies or first assistants of
4 each department head appointed under or in the manner
5 provided in section 6, Article V, of the State
6 Constitution; three additional deputies or assistants
7 either in charge of the highways, harbors, and
8 airports divisions or other functions within the
9 department of transportation as may be assigned by the
10 director of transportation, with the approval of the
11 governor; four additional deputies in the department
12 of health, each in charge of one of the following:
13 behavioral health, environmental health, hospitals,
14 and health resources administration, including other
15 functions within the department as may be assigned by
16 the director of health, with the approval of the
17 governor; an administrative assistant to the state
18 librarian; and an administrative assistant to the
19 superintendent of education;
20 (17) Positions specifically exempted from this part by any
21 other law; provided that all of the positions defined

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- 1 by paragraph (9) shall be included in the position
2 classification plan;
- 3 (18) Positions in the state foster grandparent program and
4 positions for temporary employment of senior citizens
5 in occupations in which there is a severe personnel
6 shortage or in special projects;
- 7 (19) Household employees at the official residence of the
8 president of the University of Hawaii;
- 9 (20) Employees in the department of education engaged in
10 the supervision of students during meal periods in the
11 distribution, collection, and counting of meal
12 tickets, and in the cleaning of classrooms after
13 school hours on a less than half-time basis;
- 14 (21) Employees hired under the tenant hire program of the
15 Hawaii public housing authority; provided that not
16 more than twenty-six per cent of the authority's work
17 force in any housing project maintained or operated by
18 the authority shall be hired under the tenant hire
19 program;
- 20 (22) Positions of the federally funded expanded food and
21 nutrition program of the University of Hawaii that

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1 require the hiring of nutrition program assistants who
2 live in the areas they serve;

3 (23) Positions filled by severely handicapped persons who
4 are certified by the state vocational rehabilitation
5 office that they are able to perform safely the duties
6 of the positions;

7 (24) One public high school student to be selected by the
8 Hawaii state student council as a nonvoting member on
9 the board of education as authorized by the State
10 Constitution;

11 (25) Sheriff, first deputy sheriff, and second deputy
12 sheriff;

13 (26) A gender and other fairness coordinator hired by the
14 judiciary; ~~and~~

15 (27) Positions in the Hawaii national guard youth challenge
16 academy[-]; and

17 (28) Personal services that are obtained through a contract
18 or agreement for a grant, subsidy, or purchase of
19 service made pursuant to chapter 42F, 103D, 103F, 103-
20 , or 201H.

21 The director shall determine the applicability of this
22 section to specific positions. Nothing in this section shall be

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1 deemed to affect the civil service status of any incumbent as it
2 existed on July 1, 1955."

3 SECTION 5. Section 76-77, Hawaii Revised Statutes is
4 amended to read as follows:

5 **"§76-77 Civil service and exemptions.** The civil service to
6 which this part applies comprises all positions in the public
7 service of each county, now existing or hereafter established,
8 and embraces all personal services performed for each county,
9 except the following:

- 10 (1) Positions in the office of the mayor; provided that
11 the positions shall be included in the classification
12 systems;
- 13 (2) Positions of officers elected by public vote,
14 positions of heads of departments, and positions of
15 one first deputy or first assistant of heads of
16 departments;
- 17 (3) Positions of deputy county attorneys, deputy
18 corporation counsel, deputy prosecuting attorneys, and
19 law clerks;
- 20 (4) Positions of members of any board, commission, or
21 agency;

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- 1 (5) Positions filled by students; positions filled through
2 federally funded programs which provide temporary
3 public service employment such as the federal
4 Comprehensive Employment and Training Act of 1973; and
5 employees engaged in special research or demonstration
6 projects approved by the mayor, for which projects
7 federal funds are available;
- 8 (6) Positions of district judges, jurors, and witnesses;
- 9 (7) Positions filled by persons employed by contract where
10 the personnel director has certified that the service
11 is special or unique, is essential to the public
12 interest, and that because of the circumstances
13 surrounding its fulfillment, personnel to perform the
14 service cannot be recruited through normal civil
15 service procedures; provided that no contract pursuant
16 to this paragraph shall be for any period exceeding
17 one year;
- 18 (8) Positions of a temporary nature needed in the public
19 interest where the need does not exceed ninety days;
20 provided that before any person may be employed to
21 render temporary service pursuant to this paragraph,
22 the director shall certify that the service is of a

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- 1 temporary nature and that recruitment through normal
2 civil service recruitment procedures is not
3 practicable; and provided further that the employment
4 of any person pursuant to this paragraph may be
5 extended for good cause for an additional period not
6 to exceed ninety days upon similar certification by
7 the director;
- 8 (9) Positions of temporary election clerks in the office
9 of the county clerk employed during election periods;
- 10 (10) Positions specifically exempted from this part by any
11 other state statutes;
- 12 (11) Positions of one private secretary for each department
13 head; provided that the positions shall be included in
14 the classification systems;
- 15 (12) Positions filled by persons employed on a fee,
16 contract, or piecework basis who may lawfully perform
17 their duties concurrently with their private business
18 or profession or other private employment, if any, and
19 whose duties require only a portion of their time,
20 where it is impracticable to ascertain or anticipate
21 the portion of time devoted to the service of the
22 county and that fact is certified by the director;

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- 1 (13) Positions filled by persons with a severe disability
2 who are certified by the state vocational
3 rehabilitation office as able to safely perform the
4 duties of the positions;
- 5 (14) Positions of the housing and community development
6 office or department of each county; provided that
7 this exemption shall not preclude each county from
8 establishing these positions as civil service
9 positions;
- 10 (15) The following positions in the office of the
11 prosecuting attorney: private secretary to the
12 prosecuting attorney, secretary to the first deputy
13 prosecuting attorney, and administrative or executive
14 assistants to the prosecuting attorney; provided that
15 the positions shall be included in the classification
16 systems; [and]
- 17 (16) Positions or contracts for personal services with
18 private persons or entities for services lasting no
19 more than one year and at a cost of no more than
20 \$750,000; provided that the exemption under this
21 contract shall apply to contracts for building,
22 custodial, and grounds maintenance services with

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1 qualified community rehabilitation programs, as
2 defined in section 103D-1001, lasting for no more than
3 a year and at a cost of no more than \$850,000 [-] and
4 (17) Personal services that are obtained through a contract
5 or agreement for a grant, subsidy, or purchase of
6 service made pursuant to chapter 42F, 103D, 103F, 103-
7 , or 201H.

8 The director shall determine the applicability of this
9 section to specific positions and shall determine whether or not
10 positions exempted by paragraphs (7) and (8) shall be included
11 in the classification systems.

12 Nothing in this section shall be deemed to affect the civil
13 service status of any incumbent private secretary of a
14 department head who held that position on May 7, 1977."

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 7. In codifying the new section added to chapter
18 103, Hawaii Revised Statutes, the revisor of statutes shall
19 substitute appropriate part numbers and section numbers for the
20 letters used in the new sections designated in this Act.

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1 SECTION 8. This Act shall take effect upon its approval.

2

3

INTRODUCED BY: _____

A large, bold, handwritten signature in black ink, consisting of a horizontal stroke with a vertical stroke crossing it, is written over the line for the name of the person who introduced the bill.

4

BY REQUEST

GOV-21 (09)

SB 909

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO THIRD-PARTY REVIEW OF AFFORDABLE HOUSING PROJECTS.

PURPOSE: The purpose of this bill is to support the development of affordable housing by facilitating the permitting and review process at the state and county levels through the use of third-party reviewers.

MEANS: Add a new section to chapter 103, Hawaii Revised Statutes, and amend sections 46-33, 76-16, and 76-77 Hawaii Revised Statutes.

JUSTIFICATION: In 2007, Governor Lingle convened the Affordable Housing Regulatory Barriers Task Force in response to the U.S. Department of Housing and Urban Development's National Call to Action. The Task Force's main objective is to identify regulatory barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

The Task Force discovered that there is a shortage of workers at state and county agencies to review project and permitting applications for affordable housing developments. Even though there is a process in place that provides an opportunity to review affordable housing project proposals in an expedited manner, the staffing shortages still create significant delays.

Accordingly, this bill clarifies that state and county departments and agencies have the authority to contract with private agencies to conduct reviews of project and permit applications when there is a legitimate need for staffing assistance.

Impact on the public: An expedited review process will quicken the delivery of

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affordable housing and ensure that home prices are kept as low as possible.

Impact on the department and other agencies:
Remedies staffing shortages at state and county agencies conducting affordable housing development permitting reviews.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Hawaii Housing Finance and Development Corporation, Department of Health, Department of Land and Natural Resources, Department of Transportation, and county agencies.

EFFECTIVE DATE: Upon approval.

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**AFFORDABLE HOUSING REGULATORY BARRIERS TASK
FORCE**

MEETING 1 – October 16, 2007

PRESENT:

Linda Smith, Senior Policy Advisor	Office of Governor Linda Lingle
Charles Jencks, President	Honua'ula Partners
Chuck Wathen, President	Pier Management Hawaii, LLC
Dan Davidson, Executive Officer	Hawaii Housing Finance and Development Corporation
Dean Uchida, Vice President	Ho'opili, D.R. Horton Schuler Division
Sherrie Dodson, Executive Director	Habitat for Humanity – Maui
Raenette Gee, Special Advisor	City and County of Honolulu
Ann Wooten, Grants Program Manager	County of Kauai (representing Wallace Rezentes, Jr., Director of Finance)
Jeremy McComber	County of Hawaii – Housing Office
Kyle Chock, Director	The Pacific Resource Partnership
Vanessa Medeiros, Director	County of Maui – Department of Housing and Community Services
Dr. Janine Clifford	Clifford Planning LLC
Jacqui Hoover, President	Hawaii Leeward Planning Conference
Pat Liu	Land Use Research Foundation (representing David Arakawa, Executive Director)
Maile Shimabukuro, Chair	State House of Representatives Human Services and Housing Committee
Laurie	Representing State Senator Suzie Chun-Oakland
Gordon Furutani, Field Office Director	HUD, Region 9

EXCUSED:

Lisa Judge, Chair	Land Use Commission
Craig Watase, President	Mark Development
Jim Tollefson, President & CEO	Chamber of Commerce of Hawaii
Gary Furuta, President	Hawaii Housing Development
Corporation	
David Callies, Esq.	William S. Richardson School of Law

STAFF:

Nani Medeiros, Executive Director	Office of Governor Linda Lingle
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MJ Gonzalvo, Operations Analyst

Iroquois Point Island Club

GUESTS:

Bryant Applegate, Senior Counsel

US Department of Housing and
Urban Development – Office of
Community Planning and
Development

Krista Mills, Field Office Director

US Department of Housing and
Urban Development – Kentucky
Office

I. Call to Order and Roll Call of Members – Linda Smith

The Affordable Housing Regulatory Barriers Task Force meeting was called to order at 10:00 a.m. in the Governor’s Conference Room by Linda Smith, Chair of the task force.

A. Mission of the Task Force

Ms. Smith provided an overview of Governor Lingle’s Executive Order 07-02, the direction of this task force, and the expectations for deliverable outcomes in the next few months. Ms. Smith announced that two representatives from the National Call to Action were joining the meeting to provide guidance to Hawaii’s task force. Ms. Smith asked everyone around the table to introduce themselves and describe their position and field of work. (Details of the introductions are available upon request.)

B. Introduction of Guests

Mr. Furutani introduced Mr. Applegate and Ms. Mills. Mr. Furutani indicated he wishes to serve as a bridge between Hawaii and other federal agencies involved in the permitting process such as the EPA.

II. Informational Briefing on National Call to Action – Bryant Applegate & Krista Mills

Mr. Applegate and Ms. Mills provided an overview of the National Call to Action and answered questions from task force members specific to Hawaii and the relationship between HUD and our efforts.

Mr. Applegate thanked the task force members for their commitment to public service. Mr. Applegate pointed out the work that is done in Hawaii will have an impact around the country

because of the unique problems for Hawaii; other states have signed on to the Call to Action, but Hawaii is the first statewide task force appointed by a Governor, specifically to address the Call to Action; Mr. Applegate emphasized that other states have joined, but Hawaii is the first one with this type of task force.

Ms. Mills complimented Ms. Smith on the task force and commended the task force membership and representation.

Mr. Wathen pointed out that in Hawaii it takes 205% of the area median income here to purchase a home; he elaborated on the unique problem facing Hawaii when you compare the amount of income needed to rent or own a home, versus the price of a home or rental.

Ms. Mills related that many of the issues in Hawaii are in fact shared by other jurisdictions around the country, but that the context is different. Ms. Mills relayed that Nashville has adopted electronic permitting, Bowlinggreen has reduced their processing time for permits to five days, and Florida has mandated that every vacant parcel, regardless of ownership, had to be documented and made available and accessible by anyone online. Bowlinggreen in particular reviewed the questionnaire provided by HUD when conducting their SuperNOFA; Bowlinggreen reviewed the questionnaire and decided point by point whether something should be done based on their response to HUD.

Mr. Uchida asked Ms. Mills how long Bowlinggreen's permitting process took before they reduced it to five days.

Mr. Applegate responded that processing times are project dependent. Mr. Applegate acknowledged that the federal government has a responsibility to address regulation on the federal level. Mr. Applegate explained that HUD's current policy requires that before any new regulation is approved or made public it must be reviewed by his team to ensure consistency with efforts to reduce regulatory barriers.

Ms. Hoover raised a question about a FEMA flood rule that is being interpreted by local policy makers as a way of blocking affordable housing. Ms. Hoover asked if this was an example of a situation that Mr. Applegate could provide assistance with interpreting or vetting.

Mr. Applegate confirmed that it was a situation his office would want to be aware of; he cautioned that he could not promise the answer we may want, but that his office would look into things and will continue their effort to communicate and coordinate with other agencies including FEMA and the EPA.

Mr. Uchida asked if Mr. Applegate's office reviewed existing regulations or is limiting their review to only new, proposed regulations.

Mr. Applegate indicated that his office sent out a request for comments on existing regulations and they only received about three dozen comments. Mr. Applegate pointed out that they are changing the mindset of those at the department who actually draft the regulations. Mr. Applegate stressed that if there are regulations on the books that impact the cost of housing his office wants to know about it. Mr. Applegate gave the example that no one is against environmental protection; the issue is do you have to deal with five different departments to address environmental protection.

Ms. Smith asked if there is something comparable where HUD looks at other departments' regulations and see if they are affecting home prices.

Mr. Uchida agreed citing the example that HI-DOT is looking at increasing enhancement fees as a way of counteracting a decline at the federal level for highways funding.

Mr. Applegate said they can look into that.

Ms. Smith commented that sometimes it is a matter of the State's interpretation of what the federal rule is.

Mr. Applegate indicated that there is a Regulatory Barriers Clearinghouse (RBC) summary available on the RBC website; if we are concentrating efforts on impact fees, then the RBC staff can provide technical assistance by doing a compilation for us on impact fee data from other jurisdictions. Mr. Applegate mentioned another way of imposing impact fees is as a tax at the end of the year rather than imposing it up front. Mr. Applegate discussed Orange County, FL, and their efforts as a task force. OC's task force met for two years and issued twenty-four recommendations to the county commission; the commission formally adopted all twenty-four recommendations with the goal of meeting them; OC

faces strong environmental protection issues in addition to workforce and affordable housing.

Ms. Mills explained that our binders included a summary of what recipients of the Robert L. Woodson Award have done in reducing regulatory barriers.

Ms. Smith pointed out that Hawaii has already done better than Austin in that we have a state law that enables us to lease land to non-profits at \$1 per year.

Mr. Applegate recounted a story about the collapse of the Minneapolis Bridge and how twenty minutes after the collapse there was a ticker that ran across the bottom of the television screen that asked all off-duty firemen to report to duty. The question then became, how many off-duty firemen lived one to two hours away from downtown Minneapolis because they could not afford to live there.

Ms. Clifford asked if there has been any organization that has been able to get through all the muck.

Mr. Applegate responded that Bob Wible's organization has done a great job at going to counties and states and educating them; Mr. Applegate will get us that information.

Mr. Davidson commented that some of the discretionary land use practices have gotten better. However, ministerial permits have gotten remarkably worse; the permits that happen after you get zoning. Mr. Davidson pointed out that staffing has a lot to do with it, and it is a bigger problem that it was 5, 10, or 15 years ago. Mayors are probably key players in the process; if mayors get involved then we will make progress. Those working in permitting departments are bombarded.

Mr. Uchida asked if HUD has thought about bundling monies as an incentive for affordable housing.

Ms. Mills explained that other than the move toward a work designation for public housing authorities whereby your funds would not be segregated, you cannot shift federal funds.

III. Public Comment

There was no public comment.

IV. Schedule of Future Meetings

Ms. Smith reviewed the tentative schedule of future meetings and asked members to come to the next meeting on November 7, 2007 prepared to discuss the barriers to affordable housing development in Hawaii.

VI. Adjournment

The meeting adjourned at 12:07 p.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 2 – November 7, 2007

PRESENT:

Linda Smith, Senior Policy Advisor
Chuck Wathen, President
Dan Davidson, Executive Officer

Lisa Judge, Chair
Dean Uchida, Vice President
Sherrilee Dodson, Executive Director
Wallace Rezendes, Jr., Director of Finance

Jeremy McComber
Vanessa Medeiros, Director

Dr. Janine Clifford
Pat Liu

Maile Shimabukuro, Chair

Suzanne Chun-Oakland, Chair

Michael Flores

Craig Watase, President
David Callies, Esq.
Gary Furuta, President Corporation

Office of Governor Linda Lingle
Pier Management Hawaii, LLC
Hawaii Housing Finance and Development Corporation
Land Use Commission
Ho'opili, D.R. Horton Schuler Division
Habitat for Humanity – Maui
County of Kaua'i

County of Hawaii – Housing Office
County of Maui – Department of Housing and Community Services
Clifford Planning LLC
Land Use Research Foundation (representing David Arakawa, Executive Director)

State House of Representatives Human Services and Housing Committee
Senate Committee on Human Services and Housing Committee
HUD, Region 9 (representing Gordon Furutani, Field Office Director)
Mark Development
William S. Richardson School of Law
Hawaii Housing Development

EXCUSED:

Charles Jencks, President
Jim Tollefson, President & CEO
Jacqui Hoover, President
Raenette Gee, Special Advisor
Kyle Chock, Director

Honua'ula Partners
Chamber of Commerce of Hawaii
Hawaii Leeward Planning Conference
City and County of Honolulu
The Pacific Resource Partnership

STAFF:

Nani Medeiros, Executive Director
MJ Gonzalvo, Operations Analyst

Office of Governor Linda Lingle
Iroquois Point Island Club

I. Call to Order and Roll Call of Members – Linda Smith

The Affordable Housing Regulatory Barriers Task Force meeting was called to order at 1:10 p.m. in the Governor's Conference Room by Linda Smith, Chair of the task force.

Mr. Wathen moved for the approval of the minutes from October 16, 2007.

Ms. V. Medeiros seconded the motion.

There was not discussion.

The minutes were approved.

II. Regulatory Barrier Review

Ms. Smith reviewed the handouts for today's discussion including the list of entitlement and permit process that LURF prepared, HB 1001, and a draft bill that addresses ministerial permits.

Rep. Shimabukuro requested that a copy of the draft ministerial permits bill be emailed to her.

Ms. N. Medeiros emailed a copy to Rep. Shimabukuro.

Ms. Smith asked Rep. Shimabukuro to elaborate on HB 1001 and the evolution of the bill in this past legislative session.

Rep. Shimabukuro explained that the two daily newspapers immediately came out in opposition to HB 1001; so did the environmentalists and the City and County of Honolulu. At the end of conference, when HHFDC was asked if HB 1001 would help with affordable housing the answer was no. Kathy Sokugawa from City and County of Honolulu DPP noted at the end of conference committee that just giving counties more money for third party review would help the counties; third party reviewers vs. civil servants is preferable so that there are not positions we must continually fund should the affordable housing crisis ever end.

Mr. Davidson agreed with Rep. Shimabukuro's summation. He noted that whenever you get everyone involved in a streamlining bill you will have difficulties. Third party review is an important component, but does not solve all.

Ms. Smith asked if we need to have a separate discussion on third party review. Ms. Smith clarified the changes that HB 1001 went through last year.

Mr. Rezentes clarified that years ago Kauai County created a Building Permit and Revolving Fund and hired contract employees and has been able to build up five or six people within the building permit and planning system who are non-civil service by earmarking a percentage of fees for these positions and exempting them from civil service.

Ms. V. Medeiros noted that permitting on Maui is in another department so she is not familiar with it.

Ms. Dodson commented that Maui's permitting process is quite cumbersome.

Ms. Clifford commented that in Hawaii County there is an option to pay for an expedited review so she finds working with them a bit easier.

Mr. Wathen brought up self-certification and the problem with insurance; self-certification is much smoother but we cannot get insurance to cover it.

Ms. Smith asked if self-certification would be the responsibility of the developer.

Ms. Clifford clarified that it would be the architect and engineer.

Mr. Wathen offered that architects cannot find enough insurance to cover them.

Ms. Smith asked how much time and money may be saved by self-certification.

Ms. Judge answered that it could be years, as in Maui County.

Ms. Smith asked if that meant there was something to considering modification of staffing as County of Kauai did, or self-certification.

Mr. Davidson commented that self-certification is a good idea that never seems to work, third party reviewer would be better but you'd need a lot of reviewers.

Mr. Furuta commented that on third-party review civil engineering is not part of third-party review and that review is the one that takes the longest (civil engineering).

Mr. Watase commented that the subdivision permits are taking the longest.

Mr. Uchida offered that on self-certification, it has always been profession, the architect, the engineer, etc. who assumes the responsibility, but no one has looked at having the developer assume responsibility.

Ms. Clifford offered that she did a project on Maui where the developer indemnified them but the county came back and then said they had no certificate of occupancy and they were fined.

Mr. Uchida said that third party review and self-certification will only work if counties want it to work; without county buy-in we won't get anywhere.

Ms. Dodson commented that when they go in to the county for permit (building) approvals, they have to constantly educate the clerks on the process.

Ms. Smith asked to clarify if for only a building permit, since Habitat for Humanity would presumably have the zoning and everything else in order but just need the building permit, they still have to explain everything.

Ms. Dodson said yes, it seems like every single time they go in they have to repeat themselves and show them the statute.

Rep. Shimabukuro asked if we should consider allowing self-certification for discretionary permits.

Mr. Davidson explained the ministerial permits bill.

Mr. Wathen asked about the undue costs that may be passed onto projects. Is there language we can insert to prevent undue burdens placed on the home-buyer?

Mr. Davidson responded that you would have to look at subdivision requirements, could probably insert language ensuring a rational nexus, etc.

Rep. Shimabukuro asked if the runoff permits, etc., the things the environmentalists were concerned about, are still going to be required.

Mr. Davidson answered yes.

Rep. Shimabukuro asked who would be the target AMI. Mr. Davidson and Ms. Smith cited Chapter 201H and that under those programs we go all the way up to 140% AMI. The point was made that we want to be consistent and not set up new income thresholds and parameters for developing affordable housing.

Mr. Watase acknowledged that this task force relates to affordable housing only. He pointed out that the mayor's task force concluded that the problem with housing overall was a supply/demand issue. If we don't help with the overall inventory and we focus on affordable housing first, we won't be helping overall with the inventory. We need to give the counties capacity to process more period, whether its market homes or affordable/subsidized housing. He observed that there weren't any county processing divisions represented at the table. Mr. Watase concluded that it comes down to funding and availability.

Mr. Wathen commented that there are very few certified permit people in the State of Hawaii. The county councils do not seem to appreciate the budgetary constraints and the importance of the work. They don't consider it. We almost need to create a financial incentive in capacity, such as HB 929.

Ms. Clifford asked if there was a way to change this bill to offer financial assistance to the counties to expedite reviews. It seems like this bill reorders how permits are reviewed.

Mr. Uchida commented that we need to find a county who is willing to do this; if they don't want to implement it then we won't get anywhere.

Ms. Smith asked if architects and engineers need to be certified in Hawaii.

Ms. Clifford commented that they work with a virtual permitting company. The company is currently in the process of being a third party reviewer with the City and County of Honolulu.

Mr. Davidson echoed Mr. Uchida's comment to find a county that would be willing to pilot this kind of effort.

Mr. Uchida clarified that infrastructure could be used as an incentive for counties in terms of their willingness to streamline and tying it to the priority of their CIP requests.

Ms. Smith recapped that this ministerial bill could be changed to accommodate a pilot program with incentives.

Ms. Clifford asked the question of whether the ministerial permits bill could be amended to defer any duplicative State review to the county.

Sen. Chun-Oakland asked for specific examples and Ms. N. Medeiros referred Sen. Chun-Oakland to the LURF handout for specific criteria.

Mr. Davidson pointed out that the way LUC handles that now for housing conditions, in order to re-classify land; you have to meet the county affordable housing requirement.

Ms. Judge explained that the commission is deferring to home rule as much as possible right now; we have certain statutory requirements but we usually say as long as you comply with applicable county requirements, it's fine.

Rep. Shimabukuro said the ability to go between planning and LUC is critical. There is a strong sentiment in Leeward against housing, any housing. Rep. Shimabukuro said she would share the ministerial bill with environmentalists to seek their comments.

Mr. Davidson commented that the second or third version of HB 1001 set up a pilot program in one county. He suggested a pilot program in one county to do expedited processing of subdivisions, with additional funding for CIP or staffing.

Mr. Uchida suggested bringing the counties to the table and have the Mayors talk about what incentives will work.

Mr. Wathen asked if we can tie professional self-certification to the back of third party review.

Ms. Clifford clarified that the self-certification requires the certified to certify that the document meets all county criteria.

Mr. Wathen asked if we can't mandate the counties to do that.

Ms. Judge commented that SHPD comments can take years.

Ms. Smith acknowledged that we are addressing SHPD administratively.

Ms. Judge commented that DOT reviews have improved.

Ms. Smith suggested that State processes that are administrative in nature be discussed in detail at a future meeting.

Mr. Davidson summarized a separate pilot program expediting ministerial permits combined with incentives for the counties with real deadlines.

Ms. N. Medeiros clarified that the environmental groups were invited to participate in this task force. Ms. Medeiros emphasized the importance of including the environmental community in the discussion and encouraging them to provide solutions rather than only dissenting opinions. Ms. Medeiros reminded members that our task is to address the regulatory barriers that hinder our ability to put people in homes. Ms. Smith responded that Jeff Mikulina from the Sierra Club and Suzanne Case from the Nature Conservancy were both invited.

Ms. Smith said that the Governor's Policy Office and HHFDC will take the lead to draft language and share with the counties' Mayors and their department directors.

Mr. Callies brought up the idea of mobile homes and the necessity to consider it.

Mr. Davidson asked the developers to come up with concrete deadlines that are realistic for both themselves and the counties.

Sen. Chun-Oakland asked that we look at preservation of existing inventory and barriers that exist to deter the preservation. This will be done at a future task force meeting.

III. Public Comment

There was no public comment.

IV. Schedule of Future Meetings

The next meeting will be scheduled in January.

VI. Adjournment

The meeting adjourned at 3:00 p.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 3 – January 9, 2008

PRESENT:

Vanessa Medeiros, Director	County of Maui – Department of Housing and Community Services
Charles Jencks, President	Honua'ula Partners LLC
Jim Tollefson, President & CEO	Chamber of Commerce of Hawaii
David Callies	William S. Richardson School of Law
Chuck Wathen, President	Wathen & Associates, Ltd.
Craig Watase, President	Mark Development
Dr. Janine Clifford	Clifford Planning LLC
Sherrilee Dodson, Executive Director	Habitat for Humanity – Maui
Dan Davidson, Executive Officer	Hawaii Housing Finance and Development Corporation
Linda Smith, Senior Policy Advisor	Office of Governor Linda Lingle
Jeremy McComber	County of Hawaii – Housing Office
Kyle Chock, Director	The Pacific Resource Partnership
Dean Uchida, Vice President	Ho'opili, D.R. Horton Schuler Division
Maile Shimabukuro	Hawaii State Representative
Jacqui Hoover, President	Hawaii Leeward Planning Conference
David Arakawa, Executive Director	Land Use Research Foundation

EXCUSED:

Lisa Judge, Chair	Land Use Commission
Gary Furuta, President	Hawaii Housing Development Corporation
Wallace Rezentes, Jr., Director of	County of Kaua'i
Raenette Gee, Special Advisor	City and County of Honolulu
Gordon Furutani	HUD, Region 9
Suzanne Chun-Oakland	Hawaii State Senator

STAFF:

Nani Medeiros, Executive Director	Office of Governor Linda Lingle
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GUESTS:

Robert Stanfield	City and County of Honolulu – DPP
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Ms. Smith called the meeting to order at 1:10 p.m.

I. Call to Order and Roll Call of Members – Linda Smith

II. Approval of Minutes of November 7, 2007 Meeting

Member Medeiros moved for approval of the minutes. Jencks seconded. Minutes approved.

III. Regulatory Barrier Review

a. Regulatory Barriers that Limit Affordable Housing Developments – Peter Savio’s presentation will be rescheduled.

Members Smith and Davidson summarized Savio’s remarks, which compared State and private affordable housing requirements. The three areas that were briefly discussed included shared appreciation requirements, buy-back provisions, and income verification documents.

Mr. Stanfield pointed out that these requirements do not always apply to county projects.

Member Wathen indicated that the Plantations project in Central Oahu used in Mr. Savio’s example has a number of challenges.

Member Jencks said these concerns are not new. He agreed with Member Wathen that these two projects are hard to compare with different price points, and number of units. He noted that Maui’s for sale requirement for owner occupancy is 25 years and rental units must remain affordable for perpetuity.

Member Stanfield pointed out that we are looking at a philosophical difference on how to address the housing problem in Hawaii: do we focus on maintaining an inventory of affordable housing or look at moving families into homeownership. It is a larger strategy of helping Hawaii families accumulate wealth through homeownership.

Member Callies noted that you are loading a lot into the fair housing bucket if you include the social economic issues of getting someone on the upward mobility escalator. Letting a unit go from affordable into the market, you lose that unit forever. He expressed concern with the concept that government has an obligation to put people on the escalator at the expense of keeping an affordable housing inventory.

Member Watase said this is an issue of supply and demand. We should not just talk about government subsidized housing and how to protect it. We should be looking at barriers to housing, not just affordable housing. If you don't fix the overall barriers stopping the production of housing then you aren't going to fix the problem, you are just shifting the definition of affordable housing.

Member Hoover pointed out there are unintentional barriers. She noted on Hawaii Island recently a developer was ready to do 10% affordable (from CA) and when he went before the county council, they asked him to do a study on what schools were necessary for the regional area where the development was going to occur in. The developer decided to pull out. This is an example of the county placing responsibility on the wrong entity.

Member Callies noted that for affordable housing you don't need to address all the barriers for all housing.

b. Legislative Options

Nani Medeiros provided an overview of the legislative proposal that had been drafted as a result of earlier task force suggestions and studies.

Member Jencks said he has the most problems with discretionary permits, not ministerial permits.

Member Clifford suggested we consider the county boundary amendment bill proposed several years ago.

Member Hoover asked about a body to oversee or coordinate the review of rules, regulations, and plans that have negative impacts on housing development.

Representative Shimabukuro outlined the Joint House and Senate Majority Caucus Housing Package. The package includes: extending the sunset date for the deposit of 50% of conveyance tax revenues into the Rental Housing Trust Fund for another five years until 2013; approving \$30 million in general obligation bonds into the Dwelling Unit Revolving Fund; appropriating \$500,000 for 3rd party reviews for discretionary, ministerial, and other permits at the county level; providing a 180 day grace period for recipients of the State rent supplement program to find housing, similar to the grace period provided to Section 8 recipients; creating a self-help housing trust fund within the Hawaii Housing Finance and Development

Corporation which would receive 15% of conveyance tax revenues annually; and directing the Department of Human Services to support asset building for qualified participants through individual development accounts. Other legislative suggestions include a grant program for counties to voluntarily participate in and work with the State Office of Planning to streamline housing permits and review procedures; the Office of Hawaiian Affairs is proposing to exempt all affordable housing projects from any county regulations and laws; the Waianae neighborhood board suggests legalizing camp grounds on State land; and capping property tax rates and home exemptions for rents offered at less than the affordable rental rate.

c. Mayors' Gathering

Member Smith provided an overview of the Mayor's discussion regarding homelessness and affordable housing. She shared a memo from the State to those attending the meeting. The meeting reaffirmed their commitment to supporting the Governor's affordable housing budget and bills. This is a significant step in developing a united position on solving our affordable housing crisis.

Member Hoover asked if "major repairs for public housing" would include cesspool EPA requirements; the answer was yes.

Member Watase said the sale of public housing should be revisited. It can be put into private ownership where private owners can take advantage of taxes and do repair and renovations. The State could pay off debts by selling these assets.

Member Smith pointed to a pilot program to allow ownership of Wilikina Apartments Manor in Wahiawa (10 stories, 125 units) for three reasons. She noted the building is fully paid off, no mortgage owed; it comes with a trust fund of \$4.5 million that has been set aside for the repairs and renovations; and it is a project based Section 8 so it is an attractive purchase for a buyer. We've worked with tenants to ensure they are comfortable with the rents, and the neighborhood board and legislators so they would be comfortable with the sale. The State is in the process of finalizing the specifications for the building.

There was some discussion of how the proceeds will be used to help repair and operate other public housing units.

Member Wathen suggested we invite ULI and APA to present the barriers they have identified to this group. Member Smith said she will schedule them as well as other organizations who want to participate at future meetings.

- IV. The next meeting of the task force was tentatively scheduled for March 19th. The meeting adjourned at 3:15 p.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 4 – April 16, 2008

PRESENT:

Representative Maile Shimabukuro Michael Flores, Director	Hawaii State House of Representatives Office of Public Housing, Honolulu Office, U.S. Department of Housing and Urban Development
Dan Davidson, Executive Director	Hawaii Housing Finance and Development Corporation
Linda Smith, Senior Policy Advisor Raenette Gee, Special Housing Advisor to the Mayor	Office of Governor Linda Lingle City and County of Honolulu
Chuck Wathen, President Charles Jencks, Chair Jim Tollefson, President & CEO Kyle Chock, Director Dean Uchida, Vice President David Callies David Arakawa, Executive Director Vanessa Medeiros, Director	Wathen & Associates, Ltd. HHFDC Board of Directors Chamber of Commerce of Hawaii The Pacific Resource Partnership Ho'opili, D.R. Horton Schuler Division William S. Richardson School of Law Land Use Research Foundation County of Maui – Department of Housing and Community Services Habitat for Humanity – Maui
Sherrilee Dodson, Executive Director	

EXCUSED:

Craig Watase, President Senator Suzanne Chun-Oakland	Mark Development Hawaii State Senate
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STAFF:

Nani Medeiros, Executive Director	Office of Governor Linda Lingle
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GUESTS:

Mr. Peter Savio, President Mr. David Miller, Architect	Hawaii Island Homes, Ltd. Urban Land Institute
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Ms. Smith called the meeting to order at 1:10 p.m.

I. Call to Order and Roll Call of Members – Linda Smith

The minutes of the January 9, 2008 meeting were approved as submitted.

II. Regulatory Barriers Review

Member Smith introduced guest speaker Peter Savio who spoke on regulatory and other barriers to affordable housing development and occupancy, using Plantation Apartments as an example.

- 1) Approximately 150 units were sold although 400 applicants were needed to sign up because of State and City regulatory barriers. State (140% AMI) and City (120% AMI) affordable housing income requirements were different, which posed a challenge to qualified buyers. The State gave a short term lease for 35 years rather than a long term 90-year lease. While the units were fee simple, the parking lot was leasehold. Applicants were also hesitant to purchase without an understanding of shared appreciation impacts.
- 2) Utilizing Chapter 201H, the State does not allow the buyer to choose a specific unit to purchase. Rather, the State requires a cumbersome application process and after the buyer is approved then he or she may choose a unit. This creates an uncertainty for the buyer over what he or she will end up with. Examples of the cumbersome application process are as follows: an applicant must show secured funding to purchase the unit. In order to secure funding, applicants often borrow from traditional banks or other financial institutions (lenders). Lenders require the applicant to provide paychecks over the 28 day period and the lender verifies the applicant's income either through employee records, tax records, or other records of the State. After the applicant files an application with the State to purchase a unit, even though the lender has already verified the income, the State requires the applicant to provide 30 days worth of paychecks, and the State further verifies income through employee, tax, and other records of the State. This effort is duplicative of the work already completed by the lender, adds time to the approval process, and is cumbersome for the applicant and the State.
- 3) Another requirement of the application is to disclose if the applicant is pregnant and requires a doctor's certification to provide proof of pregnancy. The application also asks if the applicant is engaged in legal custody issues; questions about children and provision of divorce decree documents are requested in the application. The application requires disclosure of any legal dependants if the applicant meets income qualifications, but the State still requires this information. The State also requires applicants to re-qualify prior to closing (so they can go through all of this again). Further, if you buy a home through a

State-sponsored program and are forced to sell due to divorce or other circumstances, you are not allowed to apply to the system again (first time homebuyer limitation).

- 4) Owning property overseas is also an issue. Owners must disclose owning property in other states or countries, and this may disqualify them from purchasing a State-subsidized unit.
- 5) Mr. Savio indicated because single mothers usually do not earn as much money as men, the average single mother has a hard time owning or renting. They need special attention, special interest rates, or special consideration. Mr. Savio suggested the State loan money for down payments, create non-traditional payment plans, and have the single parent pay as much as he or she could.

Member Wathen clarified that one needs to be careful with fair housing laws because by offering these benefits to single mothers only and not others (i.e. single fathers) may be in violation of such laws.

Mr. Savio responded that rental housing should be a build up to owning a home, a process that allows tenants to save money while renting so that they may eventually buy a home. Mr. Savio proposes to give tenants the equity in the unit they are renting. He recommended that public housing and affordable housing should be the incubator for home ownership.

Member Shimabukuro said she supports perpetuity and the incubator concept to move people to homeownership, and there are nonprofits helping people getting into homeownership too.

In response to a question from member Wathen, Mr. Savio suggested the State needs to look at whether the housing is a saleable product. Once you have a saleable product out there, it should not take four months to get someone in the unit. Mr. Savio said that when he does a project, he asks the home ownership association to obtain the required building permits rather than doing it himself as the developer. Mr. Savio shared that when he applies to the City, they want him to make additional changes. For example, he said the City wants a developer to do all these upgrades to their project, or provide parks, etc., and that ultimately increases the cost of the housing unit to the buyer. By allowing the homeowner association to get the building permit, it is more effective and efficient.

III. ULI Technical Assistance

Member Smith introduced Mr. David Miller of the Urban Land Institute to discuss the capabilities of their group to assist us. Urban Land Institute is an international organization with about 35,000 members, formed to promote best practices and use of land. This group does not lobby, but seeks broad perspectives on urban planning. They have offered to work with the Regulatory Barriers Task Force. Member Callies said the group is interested in getting the Bar Association to look at methods of financing affordable housing, such as Tax Increment Financing, which are not being utilized.

Member Wathen said the ULI's main interests are affordable housing, transportation, and sustainability committees. There are about 300 members locally, with a growing number of young leaders (under 40 years old).

Mr. Miller said that he and the group that he is representing has recently asked Henry Eng to put on a presentation to ULI on what his department has been doing lately.

Member Jencks said a few years ago ULI came to Maui and worked on the residential workforce housing policy for Maui County in which many anticipated an independent study and recommendation from ULI. Instead, they ended up endorsing what Maui County had been pushing for and now it has basically stopped the development of affordable housing on Maui. Mr. Miller explained that the group that did the Maui study was from ULI national, not the local Hawaii chapter, and that locally, ULI Hawaii is disappointed that the recommendations did not represent the views of the community.

IV. Housing Legislation

Member Shimabukuro provided an overview of three housing bills covering low income housing tax credits, increasing the required amount of reserved housing for projects developed in Kakaako, and a bill that would extend the review time for counties on affordable housing permit applications.

V. Barriers Discussion

Member Jencks said the Maui County workforce housing policy bill has resulted in zero units being built and that the likelihood of the number of units that will be approved or built this year is zero. He said key issues in Maui County include infrastructure. The County Council passed a resolution that requires the landowner to demonstrate that even if you have zoned land, you have to prove that you have water.

Traffic is another key issue. He pointed out the land use entitlement process takes too long and a no growth approach from most Council members who utilize procedures to delay the progress of these hearings and this delays the approval for the project.

So far, two community plans have called for more residential and commercial development, and open space. Member Jencks said that his project meets those requirements, but his project said in the file for four years before being heard. He had 28 meetings on this application, seven of which were public hearings where the public could testify. Meanwhile, Maui County adopted their workforce housing policy.

Member Jencks suggested when a county does a general plan or development plan; the State LUC should automatically urbanize that area. He recommended that if a project meets the criteria of Chapter 201H, the HHFDC should be the approving body for the project and the developer should not have to go back to the county for additional approvals.

Member Wathen suggested that we focus on the Land Use Commission and make recommendations to change the way it handles affordable housing projects. Member Arakawa pointed out that HB 2523 has been enrolled to the Governor. (ACT 26, 4/22/2008. This law requires the State Land Use Commission to consider county general plans in its decision making criteria for reclassification petitions. The Administration has introduced legislation in the past that would have required automatic reclassification of lands to conform to county general and developments plans. This law creates the possibility for movement toward automatic reclassification in the near future.)

Member Davidson said that as long as the LUC is the approving body for an EIS, the process will continue to be a specific parcel by parcel process. He stressed that this task force must look at everything together, Chapter 343 and county processes.

Member Hoover said Hawaii Island had two affordable housing projects and that Chapter 343 has killed them both. In addition, small projects are now triggering the EIS process.

Member Arakawa said that Honolulu County and the State DOT debate over who requires the EA and which agency is the accepting authority. Kathy Kealoha at OEQC has been trying to help by doing initial reviews and sending letters to DOT and the county. She may find, after reviewing all the documents applicable to the project application, that an EA or EIS is not necessary.

Member Uchida pointed out that the comprehensive review of Chapter 343 is back in the budget and interested parties are concerned about how that review or process will work.

Member Arakawa said that we may need a legislative solution to address the scope of Chapter 343.

VI. Next Steps

Member Wathen suggested the task force come out with policy statements that clearly say this group takes a position on this issue. Chapter 343 ought to be repealed because one, it adds cost, and two, it oversteps the county authority, was his judgment.

Member Smith said that we should look at a policy statement on the current approval process for affordable units, the role of the Land Use Commission, Chapter 343, and the role of the counties. Her staff will be preparing an analysis for the task force's consideration at its next meeting.

VII. Adjournment

The meeting adjourned at 2:48 p.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 6 – September 16, 2008

PRESENT:

Senator Suzanne Chun Oakland
Representative Maile Shimabukuro
Michael Flores, Director

Dan Davidson, Executive Officer
Raenette Gee, Special Housing
Advisor to the Mayor
Elizabeth Chinn

Jeremy McComber, Housing Specialist
Jo-Ann Ridao, Executive Assistant
to the Mayor
Linda Smith, Senior Policy Advisor
Chuck Wathen, President
Dean Uchida, Vice President
David Callies
David Arakawa, Executive Director
Jacqui Hoover, Executive Director
Janine Clifford
Mike Dang
Karen Seddon, Executive Director

Hawaii State Senate
Hawaii State House of Representatives
Office of Public Housing, Honolulu
Office, U.S. Department of Housing and
Urban Development

Land Use Commission
City and County of Honolulu

City and County of Honolulu Department
of Planning & Permitting
County of Hawaii
County of Maui

Office of Governor Linda Lingle
Wathen & Associates, Ltd.
Ho'opili, D.R. Horton Schuler Division
William S. Richardson School of Law
Land Use Research Foundation
Hawaii Leeward Planning Conference
Clifford Planning LLC
Kamehameha Schools
Hawaii Housing Finance and
Development Corporation

EXCUSED:

Craig Watase, President
Jim Tollefson, President & CEO
Kyle Chock, Director
Sherrilee Dodson, Executive Director
Charles Jencks
Gary Furuta, Project Manager

Wallace Rezentes, Jr., Director

Mark Development
Chamber of Commerce of Hawaii
The Pacific Resource Partnership
Habitat for Humanity, Maui
Honua'ula Partners, LLC
Hawaii Housing Development
Corporation
Department of Finance, County of Kauai

STAFF:

Nani Medeiros, Deputy Policy Advisor
Kainoa Kaumeheiwa-Rego, Junior
Policy Analyst

Office of Governor Linda Lingle
Office of Governor Linda Lingle

I. Chair Smith called the meeting to order at 1:05 p.m.

Chair Smith started the meeting with preliminary comments. She indicated that former Governor Ariyoshi would be unable to speak to the members of the task force, but noted that Member Chun Oakland would try to convey his thoughts on the role of the Land Use Commission (LUC).

Chair Smith shared with the task force that she spoke with Bryant Applegate, Assistant Secretary of the U.S. Department of Housing and Urban Development (HUD). She said that HUD has been following the work of the task force carefully via periodic reports from Member Flores and Ms. Medeiros.

Member Chun Oakland explained former Governor Ariyoshi's position on the LUC. He said the LUC is an important mechanism for preserving Hawaii's unique beauty and pristine natural resources in perpetuity for Hawaii's citizens. It is the job of the LUC to designate land as Conservation, Agricultural, or Urban. Within the Urban classification, the counties are granted the authority to dictate the type of urbanization to occur on that parcel.

Chair Smith commented that Member Chun Oakland has provided an excellent segue into a discussion about the Solution Strategies Worksheet. She thanked Ms. Medeiros for putting the worksheet together and proceeded to give a brief description of its layout.

II. Presentation of Regulatory Barriers Task Force Solution Strategies Worksheet - Nani Medeiros, Office of the Governor

Ms. Medeiros briefly summarized Barrier #12 – Duplicative Approval Process of the LUC and counties, the solution, strategy, and the potential advantages and issues. In response to a question from Member Chun Oakland, Ms. Medeiros said that in the case of Urban and Rural areas, this strategy would give the counties the flexibility to rezone lands to Urban as market conditions change.

Member Callies expressed his strong support for Strategy #12. He said the LUC has evolved into an organization that involves itself in every project, which has little to do with classifying lands. Member Callies said this strategy would return the LUC to its original goals and purposes, recognize the counties and their role in development as regional governments, and return the State's focus to important agricultural lands. He also suggested the LUC re-instate its compulsory, every 5 year boundary review.

Member Clifford agreed with the suggestion for re-instatement of the LUC's compulsory 5 year review. Member Chinn echoed and supported Member Callies' position. In response to a question from Chair Smith, Member Chinn indicated that there is a mechanism for public input via the county process.

Member Arakawa said the Land Use Research Foundation (LURF) supports the general concept of Strategy #12, but emphasized the importance of the LUC in deciphering patterns of human development and designating Conservation, Agricultural, Urban, and Rural districts.

In response to a question from Member Ararkawa about "Rural Districts," Member Chinn said the county does not see a need for the creation of a fourth land use district as their "Country District" zoning code is capable of addressing the buffering between urban and agricultural land use districts.

Member Shimabukuro shared several concerns with the task force, specifically:

1. Standard for LUC membership in terms of selecting representatives from the various parts of the community;
2. Continued involvement of the LUC in re-zoning Rural to Urban; and
3. Adoption of Sustainable Community Plans by the respective counties.

Member Callies suggested the removal of the provision in statute that allows non-agriculturally useful land to be classified as agricultural.

Member Davidson suggested the task force concentrate on fleshing out the strategy in terms of what it really means. He also suggested sharing this with the LUC as well as the Office of Planning who he indicated is responsible for boundary reviews.

Member Ridao voiced the County of Maui's general support for strategy #12. Member McComber also voiced the County of Hawaii's general support but indicated some concern about the details of implementation.

Chair Smith said it is important to speak to key members of the Legislature and the community to clearly define what this strategy means and to make sure the LUC's ability to protect natural resources remains uncompromised. She summarized the discussion of the task force and indicated that she hears general consensus, but a desire to see more details regarding this strategy.

Member Clifford indicated that she would need to leave the meeting shortly and wanted to cover items regarding the 201H process, specifically, Barriers #2, 3, and 7.

With regard to Strategy #3 – Immediate Issuance of Relevant Permits, she pointed out the difficulty of automatically issuing ministerial permits when 201H approval is granted. She said ministerial permits require the review of life-safety and those kinds of issues that the State is not equipped to review.

Member Clifford voiced strong support for Strategy #7 – Creating a standard form and procedure for 201H applications. She said a co-coordinated system that would enable dialogue with community and public officials in a more organized manner would aid the process.

With regard to Strategy #6 – Rewrite of RFP Specifications, she pointed out that the streamlined RFP is still quite lengthy. She said it requires a developer to go through an entire design development process to actually submit any kind of RFP with the State.

She concluded by thanking Ms. Medeiros for her thorough work.

In response to a comment from Member Chun Oakland, Member Clifford said she understands that every agency has a need to review and the community has the right to be heard, but streamlining the 201H process would greatly aid developers. She indicated her support for Strategy #2 – Application of 201H to Mixed Use Development and Infrastructure Projects.

Ms. Medeiros clarified the difference between affordable housing projects – any project with an affordable unit component and 201H projects – projects that meet the criteria in 201H of 50% or more at affordable.

Member Callies suggested that Strategy #20 be amended to apply to any project that has an affordable component. Member Arakawa supported his suggestion.

Member Seddon said it is important to understand that what is time consuming is the process that leads up to submission of an application for a 201H project. She also noted we should not confuse the RFP process with the 201H process because RFPs are used for various things other than 201H. Member Seddon also commented that the issuance of ministerial permits is an instance in which third party review can be utilized.

Member Chinn indicated that the City and County of Honolulu currently uses third party review, but shared that it has been disappointing because reviewers have missed some key zoning issues. Member Ridao indicated that the County of Maui does not use third party review, specifically for the reason cited by Member Chinn. Member McComber said the County of Hawaii does not have third party review because there is no one willing to assume the liability.

Member Chinn clarified, with respect to Strategy #20, that the City and County already accepts requests for waiver of any fee they administer. Chair Smith said the question is to what extent fees should be waived, lowered, or discretionary.

Member Callies pointed out that Barriers #15 – Developing Standard Rules, Regulations, Design Standards, Fees and Exactions, and #20 are linked. He suggested completely getting rid of exactions.

Ms. Medeiros clarified that the intent of Strategy #20 was to provide predictability for developers doing 201H projects, in terms of knowing what fees would not be assessed, which in turn would keep the cost of the home low. Member Chinn said the Honolulu City and County has a policy position via ordinance regarding waiving fees.

Member Chinn provided comments on the 201H process, specifically:

1. The City and County's authority to modify projects necessitates a longer period of time to process applications;
2. The documents submitted to Council, while detailed, are far more conceptual than those submitted for a building permit, which hinders the Council from issuing immediate approval;
3. The City and County requires Development Agreements for every 201H project and, in some instances, it can take years for the developer to sign; and
4. If developers submit a 201H application and they intend to use State land or money, it triggers Chapter 343 and the county is unable to approve until the EIS law has been complied with.

Member Wathen pointed out that the definition of 201H needs to be changed. He said he favors the City and County's 201H definition and process, particularly because utilization of development agreements can aid the developer in securing financing.

Member Hoover pointed out that part of the confusion is the lack of understanding that "affordable" does not mean free. She pointed out the need to exclude all affordable housing, not just 201H, from impact fees. She said it is necessary because once you add the cost of roads,

sidewalks, and other amenities, the homes are no longer affordable. In response to a question from Chair Smith, Member Hoover said she agrees with Member Callies' amendment to Strategy #20, which was to make all connection fees waive-able for all affordable housing projects.

In response to a question posed by Member Arakawa, Member Callies said it is his position that you can excuse, for the social good, all affordable housing from any kind of impact fee and make it more affordable.

Member Uchida cautioned that, in his experience, government does not have the financial capacity to make up what the task force is suggesting they waive, and without government stepping up and providing incentives for the developer to put in excess capacity, the financial burden for the affordable housing infrastructure is displaced upon the new home buyer. He suggested taking a look at realistic economic incentives for those developers who put in more capacity, outside of waivers or exemptions.

Member Davidson noted that it is almost impossible to argue with the notion that affordable rentals, at a minimum, should be exempted from virtually every possible exaction because most people know that rentals don't pencil without a subsidy. He indicated that creating a strong definition would be a step in the right direction.

Chair Smith circled back and indicated that there was general consensus on Strategy #7. Member Seddon concurred with the fact that it would be easier if the 201H application was the same for all the counties and HHFDC. She indicated that she would be open to working with the counties to change HHFDC's 201H application to mirror those they currently utilize. Chair Smith noted that these changes can be done administratively.

Ms. Medeiros suggested the members pay particular attention to paragraph two of the strategy. Chair Smith said it will be important for her and Ms. Medeiros to work closely with the counties to find areas of commonality, both on the application and throughout the process.

There was discussion regarding when the forty-five day process actually begins. Chair Smith said it would be necessary to find out how State and County entities count the forty-five days and how they interpreted the statutory requirement.

Chair Smith said that based on discussion, she will be tabling Barrier #3 because of the problems raised regarding ministerial permits. Member Seddon suggested that the issue isn't necessarily standardized approval,

but standard timeframes in which one can expect those permits to be issued.

To summarize, Chair Smith noted the desire of the task force to expand Strategy #20 to include any affordable housing project and to couple it with Strategy #16.

There was discussion on the Barrier #8 – Consolidation of Public Hearings and Barrier #14 – Consolidation of Contested Case Hearing. Members resigned to the fact that consolidation of either would be difficult. Per consensus of the task force, Barrier #14 was removed from the worksheet.

Member Chun Oakland suggested that we make room to discuss how the task force can help a developer be prepared to engage in the affordable housing and 201H process. Chair Smith agreed that it is something the task force should take a look at.

The committee members agreed to focus on the balance of the strategies not discussed at this meeting at their October meeting. These discussions and concurrences will form the basis for the final task force report.

III. Public Comment

No public comments were offered.

IV. Adjournment

Meeting adjourned at 2:54 p.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 7 – October 30, 2008

PRESENT:

Senator Suzanne Chun Oakland
Representative Maile Shimabukuro
Dan Davidson, Executive Officer
Raenette Gee, Special Housing
Advisor to the Mayor
Elizabeth Chinn

Jeremy McComber, Housing Specialist
Jo-Ann Ridao, Executive Assistant
to the Mayor
Gordan Furutani

Linda Smith, Senior Policy Advisor
Dean Uchida, Vice President
David Callies
David Arakawa, Executive Director
Janine Clifford
Mike Dang
Jim Tollefson, President & CEO

Hawaii State Senate
Hawaii State House of Representatives
Land Use Commission
City and County of Honolulu

City and County of Honolulu Department
of Planning & Permitting
County of Hawaii
County of Maui

Office of Public Housing, Honolulu
Office, U.S. Department of Housing and
Urban Development
Office of Governor Linda Lingle
Ho'opili, D.R. Horton Schuler Division
William S. Richardson School of Law
Land Use Research Foundation
Clifford Planning LLC
Kamehameha Schools
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EXCUSED:

Craig Watase, President
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Gary Furuta, Project Manager

Wallace Rezendes, Jr., Director
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Jacqui Hoover, Executive Director
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Hawaii Housing Finance and
Development Corporation
Hawaii Leeward Planning Conference
Wathen & Associates, Ltd.

STAFF:

Nani Medeiros, Deputy Policy Advisor
Kainoa Kaumeheiwa-Rego, Junior
Policy Analyst
Jordann Ares, Policy Analyst

Office of Governor Linda Lingle
Office of Governor Linda Lingle

Office of Governor Linda Lingle

- I. Chair Smith called the meeting to order at 1:16 p.m.

Chair Smith made two announcements. First, she announced that Ms. Medeiros has been offered and accepted the executive directorship for Housing Hawaii, a non-profit organization that focuses on affordable housing. Chair Smith thanked Ms. Medeiros for her service in the Office of the Governor over the last six years and wished her luck on her new endeavor. Second, she introduced Ms. Jordann Ares, the newest member of the Governor's Policy Team, who will be picking up Ms. Medeiros' subject areas, which include education, affordable housing, and human services.

- II. Public Comment

No public comments were offered.

- III. Presentation of Regulatory Barriers Task Force Solution Strategies Worksheet (continued) – Nani Medeiros, Office of the Governor

Chair Smith briefly summarized Barrier #1 – 50% Project Funding. Member Ridao indicated that this is not an issue for Maui County as developers need only to provide a financial plan that will cover 50% of the project. Member McComber indicated that Hawaii County also does not require secured financing during the approval process. He said developers need only to demonstrate their ability to develop affordable housing for 201H approval.

Member Chinn clarified that the City and County does not require proof of financing for submission and processing of the application. But, she indicated that the application will not be submitted to the City Council unless the developer can demonstrate 50% commitment in financing. She further clarified that resolutions from the Council are only good for two years; if no construction permit is pulled within that timeframe, all exemptions die.

In response to a question from Member Arakawa, Member Chinn indicated the core of the problem is not necessarily the percent required for securing financing, but the limited staffing capacity to process and re-process applications based on a developer's failure to secure full financing within in a two year period.

In response to a question from Member Uchida, Member Chinn said it is not a rule but the policy of the city to require 50%. She said it is a means of prioritizing and sending to the City Council those projects which are deemed viable because they have funding committed.

In response to a question from Member Davidson, Member Chinn said the county does allow tax credits to be counted as part of the approved financing.

There was a general consensus that the best method to approach this barrier is to have the counties convene and discuss best practices amongst themselves as well as for the task force to encourage the City and County of Honolulu to adopt practices similar to their counterparts on the neighbor islands.

Chair Smith briefly summarized Barrier #4 – Lack of Synergy between State and County Agencies, noting the suggested solution is to create an online database for 201H applications, accessible only to relevant State and county agencies.

Member Shimabukuro voiced her support for creating an online database and noted that while there may be a need for additional funding, it would probably be minimal. Member Chinn pointed out that the only problem she foresees is putting plans in to electronic form, as they may be difficult to review. She also said that the city has its own electronic database, known as the POSSE system, to track the progress of an application.

In response to a question from Member Arakawa, Member Chinn indicated that the public does have limited access to some of the data in the POSSE system.

In response to a question from Ms. Medeiros, Member McComber and Member Ridao indicated that Hawaii County and Maui County do not have a similar tracking system for their 201H applications. Member Ridao said that her predecessor was working on creating a tracking system but infrastructure is a problem.

The general consensus from the task force was to recognize what the City and County of Honolulu has done to track projects, suggest it be implemented on a pilot basis at the State level, and allow the neighbor island counties to tailor this tracking system for their local use.

Chair Smith summarized Barrier #5 – HHFDC Internal Procedures, and its suggested solution. Member Ridao commented that she understands the rationale that to ensure a good quality affordable housing unit is built, there is a need to demonstrate fiduciary responsibility, but suggested a reduction in requirements for the initial submittal would help address Barrier #5. Member Arakawa agreed and suggested that proof of fiduciary responsibilities can be satisfied at a later point in the process.

Member Uchida commented that the task force should keep in mind that the real issue and focus of the State and counties should be the shortage of affordable housing across the State. In light of this, he said government agencies should worry less about what color the home will be and do more to encourage development.

After some discussion, Chair Smith summarized the conclusions of the task force. The task force will provide a general statement to HHFDC staff indicating the type of information necessary for the Board to come to a decision and encourage HHFDC to evaluate internal policies on processing 201H applications.

With regard to Barrier #9 – Dedication of Infrastructure, Member Chinn clarified for the task force that if the infrastructure is constructed according to City and County of Honolulu standards, as defined in various plans, rules, and regulations, the City and County of Honolulu will accept dedication of said infrastructure. She noted that Kapolei is an exception because most of the infrastructure was not built within county specifications and the project was undertaken when Act 15 was in effect.

It was suggested by Member Uchida that a timeframe for dedication be enforced with a default option. The county can agree or disagree to accept dedication, but if it fails to act within a specific timeframe, it is automatically dedicated. Member Uchida said this would force the County Councils to take affirmative action in either a 'yes' or 'no' case and give the developer predictability. He also noted that this is essential in circumstances where CFDs or tax increment financing are used to finance infrastructure construction.

Member Arakawa cautioned that the County Councils still need to formally accept because it will be assuming liability and, in some instances, land.

The consensus of the group was to explore if infrastructure specs are met, a time limit to not accept dedication would be established. Ancillary to that recommendation would be to take a look at current statutory barriers on the county's ability to pledge full faith and credit for tax increment financing, as suggested by Member Callies.

Ms. Medeiros summarized Barrier #12 – Inability to Exempt Certain Requirements and Standards, and its solution, which would be to replicate the relationship between DHHL and the counties with other State providers of affordable housing, including HHFDC and HCDA.

Member Chinn noted that DHHL and HCDA exercise their authority within geographically specific areas. If this was granted to affordable housing efforts, it is likely the counties will object on the basis of home rule.

Ms. Medeiros pointed out that collectively a handful of other solutions may address #10 in other ways. She further clarified that the issue raised was if a developer was doing a project under HCDA, which has defined boundaries, and if it was to cross over to Waianae, would it still need county approval.

Chair Smith and Member Callies agreed that it would be a legal issue.

Member Davidson suggested the creation of affordable housing designated zones. Member Callies expanded on Member Davidson's suggestion and suggested that Affordable Housing Receiving Zones be created and allowed to function similar to DHHL or HCDA regions.

Member Chun-Oakland noted that an issue to be considered is the sale of affordable homes because when it is sold it becomes unaffordable. Member Callies indicated that shared appreciation addresses this concern. Chair Smith suggested that Barrier #18 – Shared Appreciation, be struck from the strategies worksheet.

Member Furutani clarified that DHHL derives its ability to develop outside of county and State rules and regulations because it was established by the federal government. In essence, they are allowed to function like the military. They are not obligated, but DHHL makes an effort to be in compliance with county rules.

Ms. Medeiros clarified the question as should we use DHHL federally granted power and incorporate them in Affordable Housing Receiving Zones, which are designated by the counties.

Members engaged in discussion about agricultural classified lands and their use in this affordable housing initiative. Member Chun-Oakland requested a map or visual aid to identify areas that are designated as urban by the general plan from the counties, but designated agricultural by the Land Use Commission.

There was a general consensus that the idea of Affordable Housing Receiving Zones will be pursued in draft legislation.

IV. Next Steps

Chair Smith thanked members for their participation. She noted that there are a few more items that need to be addressed at the next meeting to be scheduled in November. Chair Smith also asked members to review several proposals that have been drafted, digest them, and come prepared to the next meeting to decide on which legislative and administrative actions to include in the final report.

Member Arakawa asked that Barrier #18 remain on the strategies worksheet as he would like to have time to discuss it with his Board, as well as the opportunity to discuss it more at the next meeting.

V. Adjournment

Meeting adjourned at 3:03 p.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 8 – November 25, 2008

PRESENT:

Dan Davidson, Executive Officer	Land Use Commission
Elizabeth Chinn	City and County of Honolulu Department of Planning & Permitting
Jeremy McComber, Housing Specialist	County of Hawaii
Gordan Furutani	Office of Public Housing, Honolulu Office, U.S. Department of Housing and Urban Development
Linda Smith, Senior Policy Advisor	Office of Governor Linda Lingle
Dean Uchida, Vice President	Ho'opili, D.R. Horton Schuler Division
David Callies	William S. Richardson School of Law
David Arakawa, Executive Director	Land Use Research Foundation
Janine Clifford	Clifford Planning LLC
Mike Dang	Kamehameha Schools
Craig Watase, President	Mark Development
Wallace Rezentes, Jr., Director	Department of Finance, County of Kauai
Karen Seddon, Executive Director	Hawaii Housing Finance and Development Corporation
Chuck Wathen, President	Wathen & Associates, Ltd.

EXCUSED:

Senator Suzanne Chun Oakland	Hawaii State Senate
Representative Maile Shimabukuro	Hawaii State House of Representatives
Raenette Gee, Special Housing Advisor to the Mayor	City and County of Honolulu
Jo-Ann Ridao, Executive Assistant to the Mayor	County of Maui
Jim Tollefson, President & CEO	Chamber of Commerce of Hawaii
Kyle Chock, Director	The Pacific Resource Partnership
Sherrilee Dodson, Executive Director	Habitat for Humanity, Maui
Charles Jencks	Honua'ula Partners, LLC
Gary Furuta, Project Manager	Hawaii Housing Development Corporation
Jacqui Hoover, Executive Director	Hawaii Leeward Planning Conference

STAFF:

Nani Medeiros, Executive Director	Housing Hawaii
Kainoa Kaumeheiwa-Rego, Junior Policy Analyst	Office of Governor Linda Lingle
Jordann Ares, Policy Analyst	Office of Governor Linda Lingle

I. Chair Smith called the meeting to order at 10:06 a.m.

Chair Smith made two announcements. Ms. Smith described her Washington D.C. meeting earlier in the month with Bryant Applegate, Assistant Secretary in the U.S. Department of Housing and Urban Development. She shared the Solutions Spreadsheet and the HUD Questionnaire with Mr. Applegate and indicated that he was impressed with the efforts of the task force. In light of the task force's work, Chair Smith announced that Mr. Applegate will be nominating the task force for the Woodson Foundation award. Secondly, she announced that Mr. Applegate has applied to travel to Iraq and use his experience with the U.S. Department of Housing and Urban Development to build new communities there.

II. Approval of Minutes from October 30th meeting

The minutes were approved as amended.

III. Public Comment

Chair Smith introduced David Miller of the Hawaii Urban Land Institute (ULI). Mr. Miller said the ULI is committed to supporting the work of the task force, and thanked Ms. Medeiros for articulating the task force's initiatives in a clear and focused manner, which has been essential in ULI's effort to acquire member support.

IV. Presentation of Regulatory Barriers Task Force Solution Strategies Worksheet (continued) – Nani Medeiros, Housing Hawaii

Chair Smith and Ms. Medeiros briefly summarized Barrier #11 – Lack of a Standardized Income Percentage and Income Qualifications for Affordable Housing Projects. In response to a comment from Member Uchida, Member Chinn clarified that the City and County of Honolulu has two different programs, under which the standard percentage and income qualifications vary. The first is affordable housing as a condition of zone changes or in unilateral agreements. The City requires developers to produce and deliver homes for those making 120% AMI or below. Under the 201H process, 50% of the development project must be set-aside for affordable housing. Within the 50%, affordable housing is further divided into tiers based on AMI: 10% of the units for those earning below 80% AMI, 20% for those earning 81%-120% AMI, and 20% for those earning 121%-140% AMI.

Member Uchida pointed out that this variation in requirements between the counties, State, and federal government make it difficult to finance affordable housing projects.

In response to a question from Member Arakawa, Member Chinn said the 120% AMI standard used by the City in unilateral agreements is policy. In response to Member Arakawa's follow-up question, Member Chinn said the council does, technically, negotiate the unilateral agreement. She indicated that staff may recommend conditions of approval, but it is technically a negotiation between the County Council and the developers. Member Chinn concluded by sharing with the task force that through these unilateral conditions, the City and County of Honolulu has delivered nearly 14,000 units of housing over a thirty-year period.

Member McComber said that because the Big Island has the lowest median income level, they prefer not to have income restrictions. Member Rezendes of Kauai concurred with Member McComber's position.

Member Callies raised the issue of the percentage of affordable housing a developer must build as part of a project. He commented on his concern over Maui's 50% set-aside requirement, which attracted two major federal lawsuits, adding that the State as well as other counties should be concerned because such requirements make housing projects unfeasible and raise nexus issues. Member Callies suggested that a State cap be placed on mandatory set-asides.

In response to Ms. Medeiros's comments, Member Dang suggested that the counties be allowed the flexibility to determine mandatory set-asides under a maximum cap.

Mr. Miller pointed out that if given a range between 20% and 30%, as the percentage of affordable units required in a development, the cost of the market units begin to rise to compensate for the affordable housing units. As a result, this policy encourages more luxury versus middle-to-upper income housing to be built. He noted that in a counter-cyclical environment, such increases would result in more projects failing to be economically viable.

Member Wathen noted that counties could provide incentives to help developers meet those percentage requirements, such as density bonuses. Member Clifford suggested that the task force recommend setting a cap and convening another group to research what the actual number for the cap should be.

Member Uchida concurred with Member Clifford's suggestion. He suggested that HHFDC take the lead in analyzing what these percentages should look like from a green-field and an in-field development perspective. Member Uchida noted that the analysis by the State allow for an objective review and gives more time to come up with appropriate legislation. He added that it would be important to educate public officials about the Maui set-aside issue and the impact and cost of lawsuits on the counties and State in such instances.

Member Clifford suggested Jan Yokota of General Growth Properties might be able to aid in this research. She said General Growth has convened a committee of developers to discuss the workforce housing dilemma and how to jumpstart delivery in Kaka'ako.

Member Wathen suggested the State contract out the research. Member Arakawa reminded Member Wathen that some contractors agreed with Maui's 50% set-aside.

Chair Smith briefly summarized Barrier #13 – Insufficient Staff at the County Level to Process Plans and Permits. Member Uchida recommended that third party review be expanded beyond its current use for electrical and mechanical reviews. Member Chinn clarified that such testing exists, but no entity has applied to take the test.

Member Clifford shared with the group that the County of Hawaii allows for project-based overtime, which is allowed at the discretion of the County and paid for by developers to get processing done more rapidly. Member Clifford also suggested the State also utilize third party review, but noted that one of the major detractions is such a system could be seen as favoring bigger developers who have more money.

Member Chinn pointed out that the biggest barrier to third party review is liability. Member Watase commented that the barrier is the City's refusal to accept responsibility on behalf of the third party reviewer. He pointed out that the only way to get more third party reviewers is to have the City accept liability on their behalf, as if a City employee conducted the review. Member Chinn said the City would not indemnify third party reviewers.

Member Wathen and Member Arakawa agreed with Member Watase's comment. Member Chinn deferred to the Corporation Counsel. Member Watase suggested that a special fund be set up to afford insurance coverage for third party reviewers. Chair Smith said that Member Shimabukuro will be introducing a bill for third party reviewer certification this legislative session.

Chair Smith summarized Barrier #17 – Streamline Review Process for Chapter 343. Ms. Medeiros suggested the task force wait to see what becomes of the UH and OEQC review due later this year.

In response to a suggestion from Member Callies, Chair Smith indicated that as part of the task force report it can be stated that a big opportunity to incentivize the construction of more affordable housing would be to exempt from the EIS projects when a developer agrees to a specific percentage of affordable housing.

Member Seddon clarified that there is nothing preventing developers from running their 201H and EIS reviews concurrently. Ms. Medeiros pointed out that while HHFDC may allow it, the counties wait for the EIS to be completed before the application will be submitted to Council. Member McComber indicated that Hawaii County does run them concurrently depending on the project.

Member Dang suggested a regional EIS review, which will allow for expedited processing. Member Uchida pointed out that the consequence of the recent Superferry judgment is that building permits, such as utility connections, not zoning, now trigger an EIS review. A remedy could be to exempt EIS reviews on property already zoned for development. Member Davidson agreed with Member Uchida's suggestion and indicated that the State needs to reform Chapter 343 for all projects, not just affordable housing.

Member Davidson suggested that language be placed in the report that advocates for reforming Chapter 343 in terms of triggers and how housing projects are treated. Chair Smith indicated that she and Ms. Medeiros will circle back with Member Davidson and Member Callies to articulate this statement in the report.

Chair Smith summarized Barrier #18 – Elimination of Shared Appreciation and Buy Back Restrictions. Member Seddon is opposed to this strategy and clarified that the purpose of the buyback is to prevent speculation and the shared appreciation is to recapture a share of the value contributed by government. Member Callies concurred with Member Seddon and her opposition.

The general consensus of the group was to see if the group wants to revisit the issue after Member Seddon and HHFDC have had the opportunity to review the 10-year buyback limit when it applies to multi-family buildings.

Chair Smith summarized Barrier #19 – State Income Verification Regulations. Member Seddon pointed out that this is a moot point as they've taken the constructive criticism given and simplified the State requirements.

V. Completion Actions

Chair Smith asked members to review the bill drafts, justification sheets, and summaries of the task force's legislative proposals distributed at this meeting and forward comments to Ms. Medeiros by December 2nd. She indicated that for those bills that have not been drafted, drafts will be forwarded for member review and comment prior to the mid-December meeting.

Chair Smith noted that there has been a change in leadership in both the House and Senate Housing Committees. Representative Shimabukuro will be succeeded by Representative Cabanilla and Senator Chun-Oakland will be succeeded by Senator Sakamoto. Chair Smith will be meeting with the new Committee Chairs.

VI. Adjournment

The meeting adjourned at 11:57 a.m.

AFFORDABLE HOUSING REGULATORY BARRIERS TASK FORCE

MEETING 9 – December 16, 2008

PRESENT:

Dan Davidson, Executive Officer	Land Use Commission
Elizabeth Chinn	City and County of Honolulu Department of Planning & Permitting
Gordan Furutani	Office of Public Housing, Honolulu Office, U.S. Department of Housing and Urban Development
Linda Smith, Senior Policy Advisor	Office of Governor Linda Lingle
David Callies	William S. Richardson School of Law
David Arakawa, Executive Director	Land Use Research Foundation
Janine Clifford	Clifford Planning LLC
Mike Dang	Kamehameha Schools
Craig Watase, President	Mark Development
Karen Seddon, Executive Director	Hawaii Housing Finance and Development Corporation
Chuck Wathen, President	Wathen & Associates, Ltd.
Senator Suzanne Chun Oakland	Hawaii State Senate
Representative Maile Shimabukuro	Hawaii State House of Representatives
Representative Rida Cabanilla	Hawaii State House of Representatives
Raenette Gee, Special Housing Advisor to the Mayor	City and County of Honolulu
Jo-Ann Ridao, Executive Assistant to the Mayor	County of Maui
Sherrilee Dodson, Executive Director	Habitat for Humanity, Maui
Gary Furuta, Project Manager	Hawaii Housing Development Corporation
David Tanoue	City and County of Honolulu Department of Planning & Permitting
Jim Tollefson, President & CEO	Chamber of Commerce of Hawaii

EXCUSED:

Kyle Chock, Director	The Pacific Resource Partnership
Charles Jencks	Honua'ula Partners, LLC
Jacqui Hoover, Executive Director	Hawaii Leeward Planning Conference
Jeremy McComber, Housing Specialist	County of Hawaii
Wallace Rezentes, Jr., Director	Department of Finance, County of Kauai
Dean Uchida, Vice President	Ho'opili, D.R. Horton Schuler Division

STAFF:

Nani Medeiros, Executive Director	Housing Hawaii
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Kainoa Kaumeheiwa-Rego, Junior
Policy Analyst
Jordann Ares, Policy Analyst

Office of Governor Linda Lingle
Office of Governor Linda Lingle

I. Chair Smith called the meeting to order at 12:03 p.m.

Member Chun-Oakland introduced Senator Norman Sakamoto. She announced that he will be the chair of the Senate Committee on Education and Housing. Chair Smith welcomed and introduced Representative Rida Cabanilla, the new chair of the House Committee on Housing. Representative Cabanilla described the ideas presented at an informational briefing she held earlier that day, and shared with the Task Force that she will be holding another informational briefing focused on Homelessness on January 5th.

II. Public Comment

No public comments were offered.

III. Task Force Report

On behalf of the task force, Chair Smith thanked Ms. Medeiros for her diligence in putting together a draft of the Task Force Report.

Chair Smith gave a brief synopsis of the structure and content of the draft Task Force Report and asked Ms. Medeiros to guide the Task Force recommendations discussion. Ms. Medeiros briefly described Regulatory Barrier #1 – 50% Project Funding, the discussion, recommendation, method of implementation, and policy statement.

After some discussion and clarification, the Task Force approved the recommendation to send a letter from Governor Lingle to the City and County of Honolulu, requesting they review and consider adopting practices similar to those found in Maui and Hawaii County.

Ms. Medeiros briefly described Regulatory Barrier #2 – Expedited Review Limited to Housing Projects that meet a Specific Criteria and Threshold, the discussion, recommendation, method of implementation, and policy statement. Chair Smith clarified that this recommendation would expand §201H-38 to apply to any project that has a mixed use or infrastructure component, so a project would not have to be pure affordable housing to qualify for expedited review or exemptions.

Member Seddon clarified that mixed use projects are already allowed under 201H as long as they are directly related to the affordable housing

project. Member Chinn indicated that the City and County allows mixed use affordable housing projects where appropriate.

In response to Chair Smith's question, Member Seddon said Infrastructure is covered under 201H, but is referred to as a "site improvement." In response to Member Seddon's observation, Chair Smith asked the Task Force if it would be necessary to seek a statutory change. After some discussion, the task force came to the conclusion that a statutory change is not necessary to enable this recommendation.

Member Davidson suggested that the recommendation should be converted to an encouragement of both the State and County to promote the use of mixed use development under 201H. Member Callies suggested keeping expedited in the language of the recommendation. Member Arakawa suggested changing "and" to "or" in the section of the policy statement that says, "...that contain affordable housing, and infrastructure projects."

The Task Force approved the recommendation to craft a communication in which the suggestion is made to State and County agencies to encourage and clarify use of 201H for mixed use industrial or commercial projects as well as infrastructure in a predictable process and manner.

Ms. Medeiros briefly summarized Regulatory Barrier #3 – Non-Discretionary Ministerial Permit Issuances, the discussion, recommendation, method of implementation, and policy statement.

Member Tanoue shared that it is his experience that many architects and developers appreciate the City and County ministerial permitting process for 201H. They view it as a means to best vet their plans prior to building inspections.

Member Clifford indicated her frustration with the current 45-day process. She suggested the task force recommend the creation of an expedited, separate track for 201H projects within a more realistic timeframe. Member Clifford also suggested that all comment be sent in at one time.

After some discussion, Chair Smith shared her observation that this barrier may not require statutory changes to enable the group's recommendation. At her suggestion, the Task Force agreed to let the Governor's staff discern if a bill would need to be drafted.

Ms. Medeiros briefly described Regulatory Barrier #4 – Lack of Synergy between State and County Agencies. Chair Smith indicated that this recommendation would provide the State and neighbor island Counties a

reliable and open system for tracking affordable housing and 201H projects. Chair Smith thanked the Honolulu City and County for their willingness to share their POSSE system with the State and the neighbor island counties. The Task Force approved the recommendation for Barrier #4.

Ms. Medeiros briefly described Regulatory Barrier #5 – HHFDC Internal Review Procedures. Chair Smith commended Member Seddon and the HHFDC for its efforts to try to address concerns expressed about HHFDC's internal review procedures. Member Seddon shared with the group the changes HHFDC has made, in particular she mentioned they've made an effort to edit their application and created a rubric called the "degrees of completeness" by which to assess 201H applications. She added that there is still work to be done, but there has been a huge effort by her organization to make changes.

In response to a question from Chair Smith, Member Wathen insisted that some form of communication from the Task Force to HHFDC was necessary. The Task Force agreed to construct a letter acknowledging HHFDC's work thus far and encouraging their continued commitment to bettering the 201H approval process. Member Wathen also asked that the portion in the discussion section regarding 10 day processing be deleted from the report.

Ms. Medeiros briefly described Regulatory Barrier #6 – RFP Criteria, the discussion, recommendation, method of implementation, and policy statement. Ms. Medeiros clarified the suggestion is to 1) discuss with the State Policy Procurement Board making exemptions with in the request for proposal (RFP) process for affordable housing projects and 2) clarify via statute the Department of Budget and Finance's role to approve a 201H project "as to form" only.

Member Seddon pointed out that to accomplish Part II of this recommendation the task force could recommend the use of an Executive Memo from the Governor. Member Arakawa agreed and further suggested that the State Procurement Board work with the Office of the Attorney General to craft language to enable their Part I recommendation.

The Task Force approved the recommendation to collaborate with the State Procurement Board and to craft a bill or an executive memo from the Governor to address Part II.

Ms. Medeiros briefly described Regulatory Barrier #11 – Duplicative State and County Processes, the discussion, recommendation, method of implementation, and policy statement. In response to a comment from

members, Ms. Medeiros clarified that this recommendation suggests changes to both the Land Use Commission (LUC) and counties, specifically; these changes would return the LUC to its original purpose and granting and recognizing the counties authority to plan and regulate land use in the Rural, Agricultural, and Urban districts.

Representative Cabanilla said that this recommendation is something that she and some of her colleagues in the State House of Representatives strongly support. She did caution that attempting such a monumental change will be an up-hill battle.

Member Davidson requested that Ms. Medeiros input an asterisk indicating that he did not vote on this recommendation as he has not been granted the authority by his board to do so. Member Tanoue also requested an asterisk indicating that they would not vote on this recommendation as well.

After some discussion, the Task Force reached consensus on Member Furutani's observation that some of the language for the recommendation is too prescriptive. Member Clifford suggested that the language be rewritten to suggest that the LUC will work with the Counties to produce planning goals and guidelines for the State plan.

The Task Force amended and approved the recommendation and method to include Member Clifford's amendment.

Member Dang inquired about a recommendation to address Set Aside caps. Ms. Medeiros directed his attention to Regulatory Barrier #10 – Set Asides and Income Restrictions.

Member Dang indicated his support for this recommendation and addressing this barrier. He said discretion is critical, particularly in tough economic times.

In response to Member Clifford's, Chair Smith said a Mid-2009 deadline, by which to craft a recommendation, should be added to the language of the recommendation.

The Task Force amended and approved the recommendation and method to include Chair Smith's amendment.

Ms. Medeiros briefly described Regulatory Barrier #13 – Exaction, Impact Fees, and Connection Fees. Member Chinn said she would prefer the opportunity to solicit comments from other City agencies. She also

pointed out that the City and County of Honolulu has a two-tier system, one for normal development and one for affordable housing.

Member Wathen suggested that the word “predictable” in the policy statement be changed to “waive.”

The Task Force members amended and approved the recommendation and method to include Member Wathen’s suggestion.

Ms. Medeiros briefly described Regulatory Barrier #14 – Chapter 343. Member Davidson indicated that he felt the Office of the Governor should take the lead in convening a discussion with stakeholders regarding this task force recommendation. Chair Smith added that the group should be convened as soon as possible and a deadline of Mid-2009 should be set.

The Task Force members amended and approved the recommendation and method to include Chair Smith and Member Davidson’s suggestion.

Chair Smith and Ms. Medeiros asked that all members of the Task Force return any comments they may have on the draft task report and proposed legislation by December 26th.

Chair Smith thanked the task force for their commitment to addressing the affordable housing crisis. She specifically commended Ms. Medeiros and indicated that she has been a vital asset to this task force. Chair Smith also thanked her staff, Ms. Ares and Ms. Kaumeheiwa-Rego, for serving as staff for the task force.

V. Approval of Minutes from November 25th meeting

The minutes were approved as amended.

VI. Adjournment

The meeting adjourned at 2:30 p.m.