

# **Shall the Authority Reconsider Exercising Its Option to Buy-Back the Pacifica Honolulu Condominium Reserved Housing Unit 609?**

## ***Staff Report***

November 4, 2015

**Background:** In the fourth quarter of 2011, Oliver McMillan Pacifica, LLC ("OMP") completed development of the Pacifica Honolulu condominium project in the Kakaako Community Development District. Pursuant to the Hawaii Community Development Authority ("HCDA") Mauka Area Rules in effect at the time of the development, OMP was required to provide at least one hundred twenty-four (124) two (2) bedroom reserved housing units within the project. Mr. Mark Kawabata and Ms. Chung-Ju Michelle Wei qualified to purchase a reserved housing unit and subsequently acquired Unit #609 on September 21, 2011.

At the HCDA September 2, 2015 Authority Meeting, an initial request was submitted by Mr. Kawabata and Ms. Wei requesting the Authority to waive its option to purchase the unit. The Authority decided to defer its decision pending more information, and requested staff obtain a current Preliminary Report. At the October 12, 2015 Authority Meeting, the same action item was presented to the board including the Preliminary Report. The Authority decided to exercise its right to purchase the unit utilizing the formula in the Mauka Area Rules (Chapter 22) of the Kakaako Community Development District. HCDA Staff sent a letter dated October 13, 2015 to Mr. Kawabata and Ms. Wei informing them of the Authority's decision, along with the purchase price the Authority would pay for their unit. (Attached as Exhibit A). On October 14, 2015, Mr. Kawabata and Ms. Wei requested a reconsideration of the Authority's decision. (Attached as Exhibit B)

Mr. Kawabata and Ms. Wei's original purchase price was FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000.00) and at that time the fair market value of the unit was FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00). Therefore, the HCDA has a shared equity encumbrance on the unit of at least TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). The unit is currently appraised at SIX HUNDRED THIRTY-FOUR THOUSAND SIX HUNDRED DOLLARS (\$634,600.00). The reserved housing unit is also subject to a "Buy-Back" provision which provides the HCDA with the first right-of-refusal to purchase the reserved housing unit at a price set by a formula if the purchaser decides to sell the unit during the five (5) years immediately following their purchase of the unit.

By a letter dated October 14, 2015 Mr. Kawabata and Ms. Wei asked the HCDA to reconsider their request to sell Unit #609 as they are now divorced. They are requesting the HCDA to reconsider their declaration with respect to its option to Buy-Back this reserved

housing unit. In their October 14, 2015 letter, they list two (2) other Pacifica Honolulu units within the 5 year Regulated term, similar to their term that received a waiver of the Buy Back option from the Authority. However, at that time of these requests, it is important to note that §206E-31.5, Hawaii Revised Statutes, precluded the HCDA from selling any property in the Kakaako Community Development District. Therefore, if the HCDA had exercised its Buy-Back option, the HCDA was unable to resell the unit, even if it chose to sell the unit to another qualified reserved housing unit buyer. A copy of their letter is attached hereto as Exhibit B. §15-22-186(c) (3), Hawaii Administrative Rules, provides that the Authority may:

- waive its option to purchase the unit, the HCDA will receive the shared equity;
- agree to buy the unit (the estimated HCDA option purchase price for the unit is approximately FOUR HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED FOUR DOLLARS AND SEVENTEEN CENTS (\$452,604.17) based on the formula provided in the rules); or
- provide a substitute buyer for the unit at the price calculated by its rules.

The HCDA's rules further require that the "Authority shall notify the owner of its decision within sixty (60) days of receipt of the owner's notification." Based on Mr. Kawabata and Ms. Wei's October 14, 2015, letter, the Authority has until December 14, 2015 being that the 60<sup>th</sup> day is Sunday, December 13, 2015, to notify them of its position regarding its option to Buy-Back the unit.

Act 61, Session Laws of Hawaii 2014, revised Chapter 206E in two sections with respect to Reserved Housing Units. First, Section 171-64.7, is amended and allows the HCDA to sell Reserved Housing Units without a prior concurrent resolution adopted by each house by at least a two-thirds majority vote of the members. Secondly, Act 61 specifically authorizes the Authority to sell Reserved Housing Units by amending the §206E-31.5 language prohibiting sale of Kakaako lands.

**Discussion:** With Act 61, SLH 2014, effective July 1, 2014, the HCDA now has the option to buy back Reserved Housing Units from owners who purchased and reside in a Reserved Housing Unit and subsequently request to sell their unit previous to their buy-back period's expiration. Given this tool, the HCDA now has the ability to purchase a Reserved Housing Unit and resell the unit at the current affordable sales price or find a substitute buyer utilizing the formula as stated in the applicable HCDA Mauka Area Rules. The HCDA also has the option to waive its rights to buy back the unit. While the HCDA staff implements revised Mauka Area Plan and Rules, staff believes the Authority should explore purchasing the unit rather than the Authority waiving its right to buy back the unit.

If the HCDA decides to waive its Buy-Back option and the unit is sold, the HCDA will receive its shared equity payment of at least TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) upon closing. This money would be deposited into the HCDA's Reserved

Housing sub-account and used to support the development of other projects. However, once the sale to any willing market purchaser takes place and the shared equity payment is made, the unit will no longer be a reserved housing unit.

**Recommendation:** The current balance as of date for the Reserved Housing Subaccount is EIGHT HUNDRED FORTY-THREE THOUSAND FIVE HUNDRED FORTY-THREE DOLLARS (\$843,543.00). Staff recommends the Authority exercise its right to buy back Pacifica Reserved Housing Unit #609.

Attachment: Exhibit A – October 13, 2015 letter from the HCDA to Mr. Kawabata and Ms. Wei regarding the HCDA Authority decision made at its October 12, 2015 Meeting.

Exhibit B - October 14, 2015 letter from Mr. Kawabata and Ms. Wei