

Kidder, Kapilialoha

From: DBEDT HCDA Contact
Sent: Tuesday, April 6, 2021 10:49 AM
To: Neupane, Deepak; Kidder, Kapilialoha
Subject: FW: Public Testimony Website Submission {Project Name:15}

From: RihuiYuan <rihuiy@hawaii.edu>
Sent: Tuesday, April 6, 2021 9:46 AM
To: DBEDT HCDA Contact <dbedt.hcda.contact@hawaii.gov>
Subject: Public Testimony Website Submission {Project Name:15}

Name

Rihui Yuan

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Do you support or oppose?

Oppose

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RIHUI YUAN

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April 5, 2021

Hawaii Community Development Authority
547 Queen Street
Honolulu, HI 96813

To whom it may concern,

I am testifying today to express my concerns with respect to the proposed amendments to the Hawaii Administrative Rules (“HAR”), Chapter 15-218, Kakaako Reserved Housing Rules (“RH Rules”), that would allow for the payment of equity sharing without sale or transfer of the Reserved Housing unit. The Hawaii Community Development Authority’s (“HCDA or Authority”) believes that the expanded flexibility of this policy would allow for owners of reserved housing units to pay the equity sharing out front rather than waiting for the resale or transfer of the reserved housing unit.

I commend the Authority for its efforts to expand access to affordable housing in Kakaako. I am somewhat doubtful that this amendment will help the Achieve its mission of developing affordable housing for the people of Hawaii. The lynchpin of shared equity homeownership programs is their ability to preserve the value of public investment by limiting the rate at which the prices of reserved housing units appreciate. In exchange for significant public support at the time of purchase, these programs require owners to pass that benefit along to future low-income buyers by reselling at an affordable price. I believe this proposed amendment would incentivize reserved housing unit owners with more liquid capital to maximize their profits by paying their equity up front and then selling their units at the end of the 10-year period. If reserved housing unit owners are incentivized to sell, these units essentially become temporary affordable housing and the pool of affordable housing units is diminished. I do not believe the benefits of the gains achieved by reserved housing owners upon resale outweigh the continuous hemorrhaging of reserved housing units from the pool. Moreover, I believe the Authority should provide further clarification on the “application” and “partial payment” portions of the proposed amendment. I am left with more questions than answers upon a review of the proposed amendment and the background provided by the Authority. Accordingly, I hope that the Authority consider my concerns with respect to the potential repercussions of this proposed amendment.

I express my attitude to Chair Whalen and the members of the HCDA for your attention and consideration of my testimony. For any concerns, you may get in touch with me through email at rihuiy@hawaii.edu.

Respectfully yours,

/s/ Rihui Yuan

Kidder, Kapilialoha

From: DBEDT HCDA Contact
Sent: Monday, April 5, 2021 4:03 PM
To: Kidder, Kapilialoha
Subject: FW: Public Testimony Website Submission {Project Name:15}

From: WilliamMorrison <wilmorrison@gmail.com>
Sent: Monday, April 5, 2021 3:45 PM
To: DBEDT HCDA Contact <dbedt.hcda.contact@hawaii.gov>
Subject: Public Testimony Website Submission {Project Name:15}

Name

William Morrison

Email

wilmorrison@gmail.com

Do you support or oppose?

Oppose

Comment

William Morrison
Regarding HCDA's Proposed Amendments to HAR Chapter 15-218, Kakaako Reserved Housing Rules
April 5, 2021

My name is William Morrison. I am providing the following testimony in my capacity as a law student in Professor David M. Forman's Administrative Law class at the William S. Richardson School of Law at the University of Hawaii at Manoa.

The Hawaii Community Development Association's ("HCDA" or "Authority") proposed amendments to Hawaii Administrative Rules ("HAR"), Chapter 15-218, Kakaako Reserved Housing Rules ("RH Rules"), proposes to allow for the payment of equity sharing without sale or transfer of the Reserved Housing unit. Specifically, HAR section 15-218-41 is to be amended by the insertion of the following provision:

(g) the owner of a reserved housing or workforce housing unit may pay all or part of the authority's share of equity at any time without a sale or transfer of the reserved housing or workforce housing unit by making an application to the executive director. The minimum amount of partial payment shall be no less than twenty-five percent of share equity. Provisions of this paragraph shall be applicable to all reserved housing units regulated under the authority's administrative rules pertaining to reserved housing units.

Under the current administrative rules, the Authority's share of equity in a Reserved Housing unit constitutes a percentage of the resale fair market value of the unit. HAR § 15-218-41(a). That percentage is determined by dividing the difference of the "original fair market value minus the original reserved housing sales" price by the "original fair market value" of the unit. Id. Under current rules, the Authority receives their equity share in the value of a reserved unit at the time of resale, provided that the unit sells for more than the original reserved housing sales price. Id. at §§ 15-218-41(b), 41(c).

The purpose of Chapter 15-218, and Hawaii Revised Statutes ("HRS") Section 206E-33 for which it was adopted, "is to establish an increased supply of housing for low-or moderate-income households within the Kakaako community development district." HAR § 15-218-1. I do not believe that the amendment to HAR Chapter 15-218 currently proposed by the HCDA will accomplish this goal, and it is my recommendation that the HCDA make further consideration of the following items.

1) The Amendment Will Reduce HCDA's Total Funds Recaptured from its Equity Share in Affordable Units in the Long Run

The main impact of the amendment will allow for owners of Reserved Housing units to buy out the Authority's equity in their unit, prior to a sale of the unit. The HCDA proposed this amendment based on recommendations of the Affordable Rental Housing Development Permitted Interaction Group. Specifically, the amendment was intended to allow for "[m]oney collected for early payment of equity sharing [to] be used for purchasing land for affordable rental housing projects and/or providing gap financing."

While both of these are deserving purposes, it does not appear that the proposed early equity buyout will significantly service either goals.

First, the early equity buyout as proposed will result in less total funds recaptured from the sale of Reserved Housing units. This is because under the current rules, the Authority receives its equity share at the time of a final sale, with the final sale acting as a fair market value against which the Authority receives its percentage share. As we have seen in recent years, the value of homes in Hawaii has reliably increased year over year. If the Authority were to wait until a unit is sold, this will net the largest possible value for the Authority's equity. Early payment of the Authority's equity may represent a windfall to an owner who holds on to a unit far beyond the date of repayment of the Authority's equity when a unit appreciates in value to which the Authority will no longer have any entitlement.

Second, the current amendment does not define how the Authority's equity will be calculated for early payments. Conceivably, the Authority will have to calculate the fair market value of the unit at the time of the payment. However, questions remain as to partial payments; will the fair market value be recalculated at the time of each partial payment? Will the fair market value be fixed from the date of the first partial payment? The current proposed amendment must be revised to provide clarity on this issue.

An additional issue is whether the Authority will retain any equity once full early payment has been made. As the amendment is currently written, it appears that the Authority's equity may be completely bought out by a unit owner. However, there is a strong argument to be made that the Authority should retain some interest in the unit to account for increases in the unit's value over time. The Authority would be able to both access its equity currently, and retain any future gains tied to increases in the property value by allowing only "partial repayment." In this model, the Authority would allow "partial repayment," up to the total value of the Authority's equity in the unit at the time of an early payment. Additionally, the Authority would retain an interest in the difference between the early payment equity amount, and the amount the Authority would have retained at a later sale. Thus, in this model the Authority would both be able to access its current equity in the short term, without giving up any future increases in equity that may result from increases in the unit's value. As a practical matter, this does not appear to increase the Authority's beyond existing statutory and rule based allowances, as the Authority is entitled to its percentage of proceeds at a final sale. See HAR §§ 15-218-41(b), 41(c).

2) The Amendment May Reduce the Total Number of Reserved Housing Units Available for Sale

An additional major concern for the proposed amendment is that it may reduce the total number of reserved housing units available. Under HAR § 15-218-35, the Authority is guaranteed a first option to purchase Reserved Housing units offered for sale. This option allows the authority to maintain the number of Reserved Housing units by purchasing these units and keeping them in the Reserved Housing pool. The proposed amendment will potentially reduce the total number of units in the Reserved Housing pool, because it incentivizes unit owners to prepay the Authority's equity. If the Authority's equity is calculated at the time of an early payment, a unit owner may be able to avoid a higher payment when a unit's value has appreciated. Once the Authority's equity has been paid off, the unit is no longer part of the Reserved Housing pool, and the total amount of affordable housing has been reduced. While the purpose of HAR Chapter 15-218 "is to establish an increased supply of housing for low-or moderate-income households within the Kakaako community development district[.]" maintenance of the supply of housing should also be a priority of the Authority.

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William Morrison
Regarding HCDA's Proposed Amendments to HAR Chapter 15-218, Kakaako Reserved
Housing Rules
April 5, 2021

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- 1) The Amendment Will Reduce HCDA's Total Funds Recaptured from its Equity Share in Affordable Units in the Long Run

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Interaction Group.¹ Specifically, the amendment was intended to allow for “[m]oney collected for early payment of equity sharing [to] be used for purchasing land for affordable rental housing projects and/or providing gap financing.”² While both of these are deserving purposes, it does not appear that the proposed early equity buyout will significantly service either goals.³

First, the early equity buyout as proposed will result in less total funds recaptured from the sale of Reserved Housing units. This is because under the current rules, the Authority receives its equity share at the time of a final sale, with the final sale acting as a fair market value against which the Authority receives its percentage share. As we have seen in recent years, the value of homes in Hawaii has reliably increased year over year.⁴ If the Authority were to wait until a unit is sold, this will net the largest possible value for the Authority’s equity. Early payment of the Authority’s equity may represent a windfall to an owner who holds on to a unit far beyond the date of repayment of the Authority’s equity when a unit appreciates in value to which the Authority will no longer have any entitlement.

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¹ Summary of Draft Amendments to the Kakaako Reserved Housing Rules, Haw. Com. Dev. Assoc. (2021), <https://dbedt.hawaii.gov/hcda/reserved-housing-rules-amendments-2021/>.

² *Id.*

³ Based on HCDA’s 2020 Annual Report, the Authority had over \$25 million in cash funds available as cash. 2020 Annual Report, Haw. Com. Dev. Assoc. (June 30, 2020), https://dbedt.hawaii.gov/hcda/files/2021/01/2020_HCDA_Annual_Report.pdf. These resources should be fully utilized before the Authority seeks to access additional revenue streams that may impact or even reduce the total number of affordable housing units available in the Kakaako area.

⁴ HNN Staff, *Median price of a single-family home on Oahu hits a new high: \$920,000*, HAWAII NEWS NOW (Mar. 4, 2021), <https://www.hawaiinewsnow.com/2021/03/05/prices-continue-soar-single-family-homes-oahu-with-some-reaching-over-k/>.

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