

## **FOR ACTION**

### **I. REQUEST**

Petition by the Executive Director to Request a Waiver or Suspension of Certain Provisions of Hawaii Administrative Rule § 15-22-186(c)(1) Regarding the Conditions on Transfer of Reserved Housing Units to Allow Non-Governmental Agencies to Buyback Reserved Housing Units Pursuant to Hawaii Administrative Rule § 15-219-98, Which Provides for Waiver or Suspension of Administrative Rules.

### **II. BACKGROUND**

This is a follow up to the agenda item introduced at the October 5, 2022 regular monthly meeting. The purpose of this request is to facilitate and develop a proactive strategy to maintain more of the current inventory of reserved housing units within the Kakaako Community Development District (“District”) as affordable units for a longer period of time.

This discussion focuses on the Hawaii Community Development Authority’s (“HCDA”) one-time option to purchase a reserved housing unit that is offered for sale during the unit’s regulated term (“Buyback Provision”). Most of the reserved housing units in the District are governed by Subchapter 7 of Hawaii Administrative Rules (“HAR”) §15-22 (“2005 Mauka Area Rules”).

Under the 2005 Mauka Area Rules, the regulated terms are based on unit affordability at the time of purchase and the duration of these regulated terms varies (two years, five, and ten years).

Once an owner notifies the HCDA of the owner’s intent to sell the reserved housing unit during the applicable regulated term, HCDA’s options are as follows:

- a. Exercise the Buyback Provision – buyback the unit; this is currently done through an agreement with the Hawaii Housing Finance and Development Corporation (“HHFDC”), a state governmental entity, which serves as HCDA’s designated buyback agent; or
- b. Waive the Buyback Provision – this allows the owner to either: (1) sell the unit at the current market rate and pay the shared equity due to the HCDA upon closing, or (2) rent the unit at the current market rate.

If the HCDA chooses option b and waives the Buyback Provision, owner occupancy is no longer required. Therefore, the unit may be rented or sold at market prices and the affordability of the unit is lost. The only restriction that remains is the payment of shared equity upon sale of the unit.

### III. DISCUSSION

Currently, HAR §15-22-186(c)(1) limits the right to buyback to the HCDA or governmental agencies approved by the HCDA:

§15-22-186 Conditions on transfer of reserved housing units.

.....

(c) The conditions for transferring reserved housing units during the regulated term are as follows:

(1) If an owner wishes to transfer title to the reserved housing unit, the authority or a governmental agency approved by the authority (underlining added for emphasis) shall have the first option to purchase the unit at a sales price based on the lower of:

(A) The current fair market value of the reserved housing unit less the authority's share of the equity in the unit as determined by section 15-22-187 of this chapter; or

(B) The original sales price of the reserved housing unit adjusted proportionately to the change in median income computed from the date of the purchase to the date of the sale.

(emphasis added.)

As the HCDA does not have the staff or financial resources to buyback and resell individual reserved housing units on its own, the HCDA relies on its sister state agency, the HHFDC, to buyback available units through a Memorandum of Agreement. Upon buyback by HHFDC, the reserved housing units become part of HHFDC's affordable housing inventory and are governed by HHFDC rules. So far, the HHFDC has repurchased five reserved housing units and resold them to income-restricted buyers under HHFDC's own affordable housing program. HHFDC regulates all of its affordable housing units for ten years.

Since 2018 HHFDC has declined to buy back any reserved housing units. Per the 2005 Mauka Area Rules, the waiver of buyback allows these units to be rented or sold at market prices, despite still being under the regulated term. The shared equity provision still applies upon sale of the unit.

HCDA Staff will therefore be requesting a suspension or waiver of certain provisions of HAR § 15-22-186(c)(1) and to enable HCDA Staff to utilize the resources of a nongovernmental entity, such as a nonprofit housing trust dedicated to the creation and preservation of affordable housing in Hawaii, to avoid waiving HCDA's right to buyback reserved housing units.

The process involved in seeking the requested suspension or waiver of HAR § 15-22-186(c)(1) is as follows:



The petition requests a waiver or suspension of HAR §15-22-186(c)(1) to allow any agency approved by the authority, such as qualified nonprofit housing trust, to buyback reserved housing units during the regulated term. HCDA Staff proposes to define “Qualified nonprofit housing trusts” as follows:

§ 206E-2 Definitions.

**"Qualified nonprofit housing trust"** means a corporation, association, or other duly chartered organization that is registered and in good standing with the State; is recognized by the Internal Revenue Service as a charitable or otherwise tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and has the capacity and resources as determined by the authority to carry out the requirements of the reserved housing and workforce housing programs.

Such qualified nonprofit housing trusts may purchase homes and renovate them before reselling them to eligible buyers under the trust’s own affordable housing program. These affordable housing programs should have similar requirements and restrictions to HCDA’s Reserved Housing Program, such as income/asset restrictions and a Buyback Provision when the homeowner decides to sell the unit.

The requested suspension of the portion of HAR §15-22-186(c)(1) that limits the exercise of the right of the first option to purchase to HCDA and governmental entities, would allow nongovernmental entities vetted and approved by the Kakaako Authority such as qualified nonprofit housing trusts, to undertake the responsibilities and obligations currently performed by HHFDC to attempt to ensure that the subject reserved housing units remain affordable for an additional ten years or more.

The requested waiver or suspension of the 2005 Kakaako Mauka Area Rules to allow non-governmental entities to exercise the Buyback Provision for HCDA reserved housing units is consistent with HCDA’s Reserved Housing rule amendments subsequently promulgated in 2011, 2018, and 2021 (HAR § 15-218-36, HAR § 15-218-35, and HAR § 15-218-35, respectively), which state:

“[i]f the owner of a reserved housing unit wishes to sell the unit during the regulated term, the authority or an entity approved by the authority shall have the first option to purchase the unit ....” HAR § 15-218-36, HAR § 15-218-35, HAR § 15-218-35

The rules cited above do not limit the buyback right to a governmental agency.

**IV. RECOMMENDATION**

Based on the foregoing, HCDA Staff respectfully requests that the Kakaako Authority approve the Executive Director's Petition for Waiver or Suspension of Administrative Rules, Pursuant to Hawaii Administrative Rules § 15-219-98, Regarding the Conditions on Transfer of Reserved Housing Units under Hawaii Administrative Rules § 15-22-186(c)(1) for the limited purpose of allowing non-governmental entities to buyback HCDA's reserved housing units.

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Reviewed By: Lindsey Doi, Asset Manager 

Attachments



# HAWAII COMMUNITY DEVELOPMENT AUTHORITY

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December 7, 2022

**Petitioner:**

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Hawaii Community Development Authority ("HCDA"):

Re: Petition for Waiver or Suspension of Administrative Rules  
Pursuant to Hawaii Administrative Rules §15-219-98

***The specific provision of the administrative rules of the HCDA's Kakaako Community Development District ("District") for which petitioner seeks a waiver:***

Hawaii Administrative Rules § 15-22-186(c)(1) ("2005 Mauka Area Rules") § 15-22-186  
Conditions on transfer of reserved housing units.

(c) The conditions for transferring reserved housing units during the regulated term are as follows:

(1) If an owner wishes to transfer title to the reserved housing unit, the authority or a governmental agency approved by the authority shall have the first option to purchase the unit at a sales price based on the lower of:

(A) The current fair market value of the reserved housing unit less the authority's share of the equity in the unit as determined by section 15-22-187 of this chapter; or

(B) The original sales price of the reserved housing unit adjusted proportionately to the change in median income computed from the date of the purchase to the date of the sale.

***Effect of the strict application of the provision for which petitioner seeks a waiver:***

Reserved housing units are regulated by the HCDA through the requirement that shared equity is owed to the HCDA whenever the reserved housing unit is sold, and through HCDA's one-time right to buy back the reserved housing unit if the unit will be sold during the unit's regulated term.

2005 Mauka Area Rules allow the authority, or a governmental agency approved by the authority to have the first option to purchase the unit and do not include qualified nonprofit housing trusts.

To maintain and encourage more of the current inventory of reserved housing units to be maintained as affordable units for a longer period of time, additional buy back agents should be designated. If the buyback option is waived, the owner is allowed to 1) sell the unit at market rates and pay the shared equity due to the HCDA upon closing, or 2) rent the unit at market rates. If buyback is waived, the affordability of the unit is lost, as owner occupancy, rent, and sales prices are no longer regulated.

***Reasons why the petitioner seeks to avoid the strict application of the provision for which petitioner seeks a waiver:***

Proposing the following modification: If an owner wishes to transfer title to the reserved housing unit, the authority, or ~~a governmental agency~~ **an entity** approved by the authority shall have the first option to purchase the unit at a sales price based on the lower of:

1. Consistency with Hawaii Revised Statutes § 206E-4.2:
  - a. Reserved and workforce housing units; transfer to qualified nonprofit housing trust. (a) Notwithstanding any law to the contrary, the authority may authorize a designated qualified nonprofit housing trust to administer the covenants and rules related to the reserved housing and workforce housing programs. Additionally, the authority may waive its right to repurchase a reserved or workforce housing unit during the restriction period and may transfer that right of repurchase to a qualified nonprofit housing trust for the purpose of maintaining the reserved or workforce housing unit as an affordable housing unit. If the repurchase rights are transferred to a qualified nonprofit housing trust, the restrictions prescribed in this chapter or in rules adopted by the authority shall be automatically extinguished and shall not attach in subsequent transfers of title; provided further that the qualified nonprofit housing trust shall establish new buyback restrictions for the purpose of maintaining the unit as affordable for as long as practicable, or as otherwise required by the authority.
  - b) A qualified nonprofit housing trust shall report the status and use of its housing units to the authority by November 30 of each calendar year. [L 2017, c 159, §2]

2. Consistency with HAR § 15-218-36:

First option to purchase. If the owner of a reserved housing unit wishes to sell the unit during the regulated term, the authority or an entity approved by the authority shall have the first option to purchase the unit. The purchase price shall be based on the lower of.

3. To maintain and encourage more of the current inventory of reserved housing units within the District to be maintained as affordable units for a longer period of time.

***Alternate plan or other means by which the spirit and intent of the provision for which petitioner seeks a waiver can be accomplished other than the strict application of the provision:***

The HCDA currently does not have the staff or financial resources to buyback and resell individual units on its own; therefore, we would waive buyback for any unit offered for sale during the regulated term if we did not have a willing partner to repurchase the unit on our behalf. An alternative plan is to procure a realtor to conduct the repurchase and resale of reserved housing units on HCDA's behalf; however, such plan will come at an additional cost and administrative burden to the HCDA.

***Extent to which such waiver is in the best interest of the subject community development district:***

There are currently 501 Reserved Housing units in the District that are still within the regulated term, with another 697 to be built in the next few years. Most of the reserved housing units that are in their regulated term are regulated under the 2005 Mauka Area Rules.

In situations where a governmental agency declines to buyback a unit during the regulated term, the HCDA would like to utilize the resources of another entity, such as a non-profit organization dedicated to the creation and preservation of affordable homes in Hawaii, instead of waiving the HCDA's right to buyback the subject unit. These non-profits purchase homes and renovate them before reselling them to eligible buyers under their own affordable housing program. These programs have similar requirements and restrictions to HCDA's Reserved Housing Program, such as income restrictions and a first option to purchase (buyback provision) whenever the homeowner decides to sell the unit.

Waiving HAR § 15 22-186(c)(1) to allow HCDA to expand its buyback authority to include entities approved by the Authority, such as qualified nonprofit housing trusts, would enable more reserved housing units to be kept affordable in the long term.

***Extent to which such waiver may endanger the health, safety, or welfare of the subject community development district:***

There are no impacts identified in which such waiver may endanger the health, safety, or welfare of the subject community development district.

I will submit any additional information requested by the Authority after the petition has been submitted. If approved, I will accept imposed terms and conditions on the grant of waiver including, but not limited to, the authority's ability to revoke the waiver at any time if the waiver creates a threat to the health, safety, or welfare of the subject community development district or a restriction on the transferability of the waiver.

Thank you for your time and attention on this matter.

Sincerely,



Craig K. Nakamoto  
Petitioner HCDA Executive Director

☐ Approved

☐ Disapproved

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Chason Ishii, Chairperson  
Hawaii Community Development Authority