

MINUTES

**COMMUNITY ASSISTANCE/INTERGOVERNMENTAL
RELATIONS COMMITTEE**

October 10, 2007

A meeting of the Community Assistance/Intergovernmental Relations Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Shaylene Iseri-Carvalho, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, October 10, 2007, at 1:40 p.m., after which the following members answered the call of the roll:

Honorable Shaylene Iseri-Carvalho
Honorable Tim Bynum
Honorable Ron Kouchi
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Bill "Kaipo" Asing, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

There being no objections, the Committee recessed at 1:40 p.m.

The meeting was called back to order at 2:55 p.m., and proceeded as follows:

Minutes of the September 12, 2007 Community Assistance/Intergovernmental Relations Committee Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Yukimura, and unanimously carried, Minutes of the September 12, 2007 Community Assistance/Intergovernmental Relations Committee Meeting was approved.

The Committee proceeded on its agenda items as shown out of order in the following:

C 2007-350 Communication (09/26/2007) from Shaylene Iseri-Carvalho, Chair, Community Assistance/Intergovernmental Relations Committee, transmitting the following proposals for Council consideration and approval, for inclusion in the 2008 Kaua'i County Legislative Package:

STATE CIP

- a. Pouli Road Improvements
- b. Coqui Frog Eradication
- c. Retrofit of Lights at Recreational Facilities
- d. Mitigation Plan for Endangered Species Act (Shearwaters)
- e. Wastewater Projects
- f. Shoreline (seawall) Projects

[This item was deferred.]

SHAYLENE ISERI-CARVALHO, CA/IGR COMMITTEE CHAIR: With respect to this agenda item, I received a call from Mr. Heu that they are still working on finalizing the request that they want Council to consider and that it may change from what is contained on the agenda. Therefore, at this time, they are requesting a motion to defer. Before entertaining that motion, is there anyone in the public who wishes to testify on the State CIP package? There being none, is there any further discussion? If not, a motion to def...

MEL RAPOZO: Just... thank you.

Ms. Iseri-Carvalho: Councilmember Rapozo?

Mr. Rapozo: Just that, you know, although it is not critical (the timing), it will be as the session gets close, so if we could just make sure that they are ready on the next meeting. Because it does take some time on our part as well as theirs to put the package together and get it approved and sent to the Leg, so a... I think they are aware of that and I just want to make sure that they are and that is it. Thank you.

Ms. Iseri-Carvalho: Thank you Councilmember Rapozo. We also will be... although this is our own State CIP, did you have something to say before I...

JOANN A. YUKIMURA: Before we defer.

Ms. Iseri-Carvalho: Yes, okay. Why don't you go ahead Councilmember Yukimura.

Ms. Yukimura: I concur with Councilmember Rapozo and I would ask that on the next Committee when we take up this subject that we also outline our legislative package in terms of the other statutory amendments that we are proposing, so we just have the whole package before us.

Ms. Iseri-Carvalho: Alright, thank you Councilmember Yukimura. That is a great idea. Anyone else? Yea, I would like to say that we did, over a month ago, send out a schedule that this Committee had wanted to adhere to, so that the Committee would have the opportunity again, ample time to review the State CIP package as well as the entire legislative package that we intend to submit to this year's Legislature session. You know, it hasn't been followed as much as we would like. There has been discussions back and forth with Mr. Heu. I would like to say for the record that it is really imperative that we have a completed State CIP request proposal by the 24th which is the next Community Assistance/Intergovernmental Relations Committee. There is an HSAC committee and although this is separate from the HSAC committee, HSAC also gives us an opportunity to meet with people on the other islands. This next session is going to be in Kona. I will also be flying over to Hilo to be discussing some of these potential

projects. It gives me an opportunity to wise use of our time while we have these meetings with the neighbor islands and with their Legislators there to consider these early, in advance and if there are any updated information that we have or there are any other questions that we can provide to them trying to utilize as much time as we can before the Legislative session is important, for me, as well I believe, for the HSAC President who also will be lobbying for these projects as well. So it is important and I have indicated to Mr. Heu that we would appreciate it if they would come with a complete package. He had indicated to be that he will be contacting the Councilmembers to go over any revisions to this list and, hopefully, again, the next deadline will be adhered to and that we will have something that we can approve out of Committee. Alright, if I can get a motion to defer?

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Yukimura, and unanimously carried, C 2007-350 was deferred.

Bill No. 2202 A BILL FOR AN ORDINANCE TO ESTABLISH A NEW CHAPTER, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE HOUSING POLICY FOR THE COUNTY OF KAUA'I
[This item was deferred.]

Ms. Iseri-Carvalho: Staff, if we could have the proposed amendments from Housing. We just received them hot off the press from Housing as they walked in, so this is the earliest that I am able to provide that to you. I will, at this time, suspend the rules.

There being no objections, the rules were suspended.

Ms. Iseri-Carvalho: First, if there is anyone who wants to speak on the matter, I know it is kind of difficult because no one in the public has seen this, but if you want to give some preface before Housing comes up, you are more than free to do so. I will, though, allow an opportunity to speak after Housing gives its presentation. If not, suspend the rules. Thank you Ken. I know it was a real challenge to try to get this document together for today. I know that it is still being worked on. It does consist of 36 pages. There has been numerous revisions, so we will take this time to go page by page with the revisions.

KEN RAINFORTH, EXECUTIVE ON HOUSING: Thank you and for the record, my name is Ken Rainforth, the Executive on Housing. First of all, I'd like to clarify that these really aren't the Housing Agency's amendments, but these are amendments that we have prepared for the Community Assistance Committee.

Ms. Iseri-Carvalho: That is correct, by request.

Mr. Rainforth: Yes, and we have had many meetings with the Committee Chair and we listened to testimony from many developers and interested citizens in trying to come up with amendments to the original bill that, hopefully, can satisfy the majority of the Council. I know it is going to be some time... it will take some time for you to debate the worthiness of the proposed amendments, but we are hoping and targeting that you will be able to complete your deliberations before the end of this calendar year. I am not sure if we should try to go page by page to look at the amendments because it will probably take three (3) or four (4) hours to do so.

Ms. Iseri-Carvalho: I think Ken...

Mr. Rainforth: What I propose to do is just jump to the assessment section and alternative section because those should be the items that are foremost on the minds of the development community and which typically, the important part of a housing assessment ordinance.

Ms. Iseri-Carvalho: Okay, and that would be fine as long as we can follow it. So if you can state the page number that we are on, no problem.

Mr. Rainforth: Article 2 begins on page 7, but we are deleting all of the previous text that we... we are proposing to delete all of the previous text that was earlier submitted. I recall that there was a recommendation for such from John Frazier of Kaua'i Housing Development Corporation (KHDC). We found that after listening to the public and listening to the Councilmembers debate that, it will be easier to start over, so on page 11, the new text for the Housing assessment begins...

Ms. Yukimura: Is that 2.1?

Mr. Rainforth: Yes, 2.1 general requirements and we are proposing... keeping with the 40% workforce assessment and there will be two (2) categories of housing project sizes. Under (a), for small projects which are five (5) to twenty-five (25) units... there is a 40% assessment to assist households earning between 80% to 140% and the requirement be for sales of units that would be affordable to... an average price of 100% of median income. (b) is the same amount of assessment of 40% assessment and this is for projects of 26 units or more.

Ms. Yukimura: Where does that start?

Ms. Iseri-Carvalho: The middle of the page.

Ms. Rainforth: 2.1 (b).

Ms. Yukimura: Thank you.

Mr. Rainforth: It is the same income group targeted, 80% to 140%. In this case, however, we have broken down the requirement by income groups and these percentages come directly from the SMS survey, housing need survey 2006, so we understand that over time, these amounts would be subject to amendment as the housing needs change. Right now, the housing needs indicate that for home ownership needs that 20% of the required units or 20% of the 40% needs to address households who earn no more than 80% of the median income, 6% for households earning 100% of the median income, 6% for households earning up to 120% of the median income and 8% for households earning up to 140% of the median income.

Ms. Iseri-Carvalho: In that section, Ken, on the third bullet, we just need to amend 80 to 120.

Mr. Rainforth: Oh, yes.

TIM BYNUM: Some typo there.

Mr. Rainforth: The next section, Section 2.2, Exemption to General Requirements provide small developers an opportunity to be exempt from this housing policy if their project is 10 units or less... the intended transferring units to immediate family members and is a very broad definition from immediate family members and they accept the shared appreciation program, so this program is not abused. Section 2.3, Incentives, gives the developer an opportunity to reduce the percentage requirement. We took the stance that a developer would provide off-site workforce housing and probably multi-family units to satisfy the requirement. So we started with the 40% requirement and then to reduce that requirement, we have certain incentives... the intention of the incentives are to provide housing units that the residents have clearly demonstrated that they prefer. The first one is integration... if a 25% reduction in the requirement could be achieved by integrating the workforce housing units amongst all the other units, so that would change a 40% requirement to a 30% requirement. Another incident if which can be used or combined with the integration one is the desire for single family units. For detached single family units would be a 25% reduction. For single family attached, a 20% reduction, so potentially you can have integrated units that were single family and have a 20% requirement rather than a 40% requirement.

There is a third incentive called, building green which would be available for developers who built their entire project using building green concepts. Section 2.4, Density Bonus, a 10% increase in density can be awarded to a developer who provides all the workforce housing units on site and integrate it. Section 2.5 describes... what we expect to see as Workforce Housing Units. Part (a) is the size, part (b) would be quality and part (c) we further defines what integration means and I will read that. Integration: On-site workforce housing units shall be together and interspersed with the market units of a developer's project, and shall be provided in a configuration approved by the Housing Agency. We believe it is important that the concept of integration is difficult to describe and, therefore, we

want to reserve the right to be sure that the proposed project or developer who is proposing to integrate their project is conforming to what we understand is the Community Assistance Committee's desire.

Section 2.6, Off-Site Housing: In this section, we described that there are certain limits to where off-site housing would be and it should be within the same real property tax district or within five (5) miles of the project. Part (b) provides that there could be overriding circumstances where the off-site location could be other than within the limits that were described above.

Section 2.7, Workforce Credits: In (a), we described where... I should go back for a second. Hold on. No, okay, I am sorry. I sometimes get lost. There has been three (3) of us preparing this document separately and we only just combined them after lunch or before lunch, so I get lost sometimes looking at the document myself. Under 2.7, Workforce Housing Credits: (a) describes that similar to what we proposed before that the workforce housing unit should be the same type or size as the market units. For example, if the market units are three (3) bedroom, two (2) baths, a workforce unit should be a three (3) bedroom, two (2) bath as well. If a developer would like to build units of different size, then there should be an adjustment on how many credits is earned, and therefore, we have a schedule here which would make those adjustments. Similarly, for a lot sizes, there are also adjustments for different lot sizes and that would end the assessment section or the requirement section.

Then we come to Article 3 which is alternatives and as with the requirement section, we are deleting that entire section and moving onto some new alternative sections starting on page 16.

Ms. Iseri-Carvalho: Or 3.1.

Mr. Rainforth: Yes, 3.1, thank you. There are three (3) alternatives that are provided. The first one would be in lieu fees and the in lieu fees would be calculated according to the otherwise known requirement of producing units for sale and then using the schedule towards the bottom of the page for the fee for each income group that needs to be supported or paid for. The second alternative is dedication of land and the dedication of land is... utilizes the same calculations to figure out what the dollar amount of the workforce housing contribution should be, then there would be an appraisal for the proposed land to be dedicated to be sure that the land is worth more than or equal to what the in lieu fee would be.

The third alternative is a developer can build rental units for the same required income groups with a affordability period of 40 years. Before we move on, I think we should... I'd like to make a couple of comments. Previously, there was the requirement for developers to dedicate land as well as provide units for sale. In our research in preparing these amendments for the Community Assistance Committee, we came to agreement with several developers who testified before you

that such a requirement is... would almost certainly be viewed in the course as a taking, so we are trying to limit our liability, so we remove that from the proposed provisions. But, clearly, we look at dedication of land as a very desired alternative. I fully believe that the County needs to have building sites available and to have a land bank. So when it is able to... (inaudible) non-profit organizations would be able to build housing units in the housing crunch that I believe is just passing, we have been unable to address housing needs ourselves except at Kalepa Village because we do not have an inventory of sites that are suitable for building workforce or affordable housing. In section, or Article 1 in the original bill... the original bill triggers for the assessment or for zoning amendments and the proposed amendments that we submitted months ago, we expanded that assessment trigger to include building permits and subdivision approvals. While those amendments have been modified and reworded, they are still contained in the proposed amendments. It would probably behoove you to review Section 1.4 on page 5 which outlined just what I said. Section 1.4, Applicability: part (a) is for any new zoning ordinances in State Land Use Boundary amendments of 15 acres or less. Previously approved zoning amendments which have an affordable housing condition has not been satisfied, that is under (b). And under (c), there is the other approvals where we list subdivisions and zoning of building permits.

We added provisions from the original text to describe what the assessment would be... as Section 1.5. Section 1.6, we talk about delivery time and a new Section 1.8 is appeal and we are still struggling with this. We have been advised by the County Attorney's Office and Community Assistance Committee that we need to have an appeal process to try and limit our liability and to give a aggravated developer due process. We don't have that text yet. There needs to be a... we believe there needs to be a board or a commission that a developer could appeal to. We looked at the possibility of having that done with the Planning Commission. We don't think that is appropriate. We think that there should be a housing board or commission which does not yet exist, so we are talking that perhaps there needs to be a Charter amendment to create some type of housing board for not only receiving appeals, but for other housing related matters, such as the other provisions within this ordinance. With that, I would like to answer questions.

Ms. Iseri-Carvalho: Hold on. What we will do is go by Articles. If there is any definition and I guess 1.3 was a definition. If there is any definition that anybody has any problems with, then we will do that. We are on Section 1.3.

Mr. Rainforth: I'd also like to mention that on page 1 of the bill, we intend to have a fairly lengthy preamble to this bill to describe why we are having a housing policy and why it is needed and justify... provide justification for this Council to pass such a bill. Thank you.

Ms. Iseri-Carvalho: Thank you. We will start with 1.3. Any questions on 1.3 for Ken? Councilmember Bynum?

Mr. Bynum: Does there need to be a definition for green building?

Mr. Rainforth: I don't have (inaudible) definition. It is kind of a fluid thing at the moment. We are all learning about building green. We know what is important that sustainability is important that we reduce our carbon footprint and those kinds of things. So it should be in this policy... we believe that Council should encourage developers to build green, but, no, I am sorry, I don't have a good definition as of yet, but maybe in the future we can have something that is fairly in sync that we can use. We are looking at... Councilmember Rapozo suggested that we try and come up with some kind of scale, so we cannot be arbitrary in deciding or figuring out what the amount of the credits should be.

Mr. Bynum: And then the County buyback rights definition (inaudible) removed?

Mr. Rainforth: It has really been moved or replaced. If you look under the R's, restriction...

Ms. Iseri-Carvalho: On sale or transfer and use.

Mr. Rainforth: The text went over there.

Ms. Iseri-Carvalho: It is on the bottom of page 4.

Mr. Bynum: Thank you.

Ms. Iseri-Carvalho: Any questions on Section 1.3? If not, we are moving to applicability, 1.4. Questions on 1.4? Councilmember Yukimura?

Ms. Yukimura: I just want to state that it is hard to absorb all of this, so the fact that I may not have questions right now doesn't mean that I won't have later and I just want to state that.

Ms. Iseri-Carvalho: Well, we are going to try to follow some sort of format here, so 1.4?

Ms. Yukimura: That is fine.

Ms. Iseri-Carvalho: Councilmember Bynum?

Mr. Bynum: Just a quick statement. This is a critical provision from my point of view and, you know, my quick reading of it, it needs to remain and stay there.

Ms. Yukimura: It needs to what?

Mr. Bynum: Stay, remain. I am going back to the very first version that was presented here several months ago that didn't have these triggers and was something I brought up at the time that made the bill pretty much of a paper tiger in terms of the short term in the next 10 years so to speak. You know, my reading, my brush reading of this looks good.

Ms. Iseri-Carvalho: What we are going to do is we are actually looking at the language, so if you have comments whether it is good or not good, this would not be the appropriate time, so if you don't have any questions with respect to the language, 1.5, assessment? Questions? Councilmember Yukimura?

Ms. Yukimura: I am, I guess, quite disturbed that we have taken out the land dedication provision and I would like to know if we have a legal opinion on that because it seems to be based on that, on a legal reading of some sort.

Mr. Rainforth: No, it is based on reviewing housing ordinances that we have been reviewing and trying to write this from the mainland.

Ms. Yukimura: Well, you know, we had extensive discussions with the City of Davis and I recall them saying that for the very reasons that you just articulated it, the importance of having developed land or, you know, site, that if there was any one provision in their ordinance, it was that land dedication that was the most important provision in their housing bill and you also just reiterated the importance of having land with... that was already in growth areas with, you know, infrastructure close by or... So I am wondering why something that has been touted in a community where they are successfully providing affordable housing, why that has been taken out.

Mr. Rainforth: We believe or suspect... California Legislature has a statute which requires local jurisdictions to have a housing policy and our Legislature has no such mandate, so there is that difference.

Ms. Yukimura: That is no difference.

Mr. Rainforth: I really can't explain it and if you like to, we could ask Barbara Pendragon to come up who did the research on this matter.

Ms. Iseri-Carvalho: Councilmember Yukimura, did you want Ms. Pendragon to explain... this was part of her section that is why.

Ms. Yukimura: Well, yes, I just hope that there is some actual legal backing to the research.

Ms. Iseri-Carvalho: From what I got out of it, it wasn't based on any legal backing, but Barbara if you could come up and explain that portion that has

concerns by Councilmember Yukimura. Portable mike staff. Thank you Barbara. If you could just state your name and position I guess.

BARBARA PENDRAGON, HOUSING AGENCY PLANNER: Barbara Pendragon, Housing Planning with the Housing Agency. We did withdraw that portion because it is a brought up as a... has a strong case for takings when dedication of land is required, there is a strong case for taking. However, again, I think what Ken was trying to explain is the differences within the 9th Circuit Court District which reviews the cases, the Housing cases for Hawai'i, California and several other states (Western States). We do see some court cases where that may be considered a taking; however, they may have originated from a State that has a different form of legislation than what the State of Hawai'i does. One thing that we might want to look at because, currently, the Council has the ability to require dedication of land and/or in lieu fee through the State Land Use District Boundary amendment process and also I would think through the zoning amendment process pursuant to...

Ms. Yukimura: And those are the kinds of things that are covered by this Act. That is the applicability portion is it not?

Ms. Pendragon: It could be that we want to widen the portions in the ordinance parts to include the land dedication, but we cannot do it from... I don't believe that from what research that I saw that we would be able to do it from a zoning permit or a subdivision.

Ms. Yukimura: I see what you are saying.

Ms. Pendragon: ... process where you are not looking at an ordinance process, so it may be that Kaua'i would do some kind of a mix where the ordinance portions would be able to put that in there.

Ms. Yukimura: Okay, I mean, that makes a lot more sense to me because I don't believe there really is a legal basis to argue takings when it is done through a zoning or a land use districting process and as you point out, it is done all the time. If by stretching the applicability of this law to zoning permits, then you say the question is raised, then maybe we make the distinctions, but I think and I don't even... I am not familiar with the law as to zoning permits and so forth and I would like to have a very good legal dissertation on that. But if that is the case, I would actually be in... I think the tradeoff is too big to take out the land dedication part just because we have put in the zoning permit applicability part.

Ms. Pendragon: I agree and I would have to say as a Planner that I see both sides of everything, so I am likely to say one thing one minute and another thing another. I just...

Ms. Yukimura: Well, I appreciate that. The thing is, I don't think we understand the value of having parcels of land with infrastructure on it that are part of a neighborhood or a growing area of the community to supply in housing that is needed for our people and I think if we look at the history of our... of Kaua'i in where affordable housing... I mean in the last five (5) years as Mr. Rainforth pointed out, it has come from Kalepa where we had land and if you look at the major obstacles, why did the Mayor go and ask for State land, it is because we need land in order to provide the kind of housing that developers don't want to provide because the subsidy is too deep. And, yet, is the kind of housing we need the most of by our housing needs assessment. So, you know, I thought it was like creating a win/win that we would (change side of tape)... if the developers would provide the land, it addressed the integration part, you know. There were many really important parts to it and also based on Davis which is known as a, you know, a community that has been providing affordable housing in a pretty effective and aggressive way where their recommendation was, that is the most important provision in your housing ordinance, so that is why I raise the questions.

Ms. Pendragon: I agree that we probably need better integration of this chapter that is being drawn up with the existing State Land Use District Boundary amendment Chapter 11 to make sure that Council is not giving up their ability to require land and/or... because they are enabling... or in lieu fee because they are the enabling legislative body on this. The State has not enabled the counties to do that as they do in California where they specifically have.

Ms. Yukimura: Right. Well, they... California mandated a housing policy, right?

Ms. Pendragon: Right.

Ms. Yukimura: And the State hasn't, but we have the authority, so that is... you know, we are still in the clear as far as I am concerned. The thing and if we have the authority as a Council to require land dedications as we have in the past, we should be really careful that we don't give that up.

Ms. Pendragon: I agree that this needs better integration with the existing Chapter 11 and I apologize for...

Ms. Yukimura: No, no, don't... apologies aren't necessary. I mean this is a very creative, very thoughtful proposal and I am not criticizing, I am just raising the issues which I thought this was the purpose of our meeting to do. Please, I should have started by saying how much I appreciate the work that has been done and really creative work that is trying to recognize the nuances and the complexity of this whole issue. I think this is the most creative proposed housing policy that I have seen in the State and, you know, I am really proud of the work that you all have done and I think we are on the right track, but I am afraid that if this one provision falls through the cracks that we might be really handicapping ourselves.

Ms. Iseri-Carvalho: Okay, anyone else? Hold on Barbara in case they have any other questions with respect to this section because I know you handled this section.

Mr. Rapozo: I have a question.

Ms. Iseri-Carvalho: Go ahead Councilmember Rapozo.

Mr. Rapozo: I am not familiar about the mainland policies, but in the mainland, is it land and units as well? Is it land dedication plus, you know, 10% land, 30% units.

Ms. Pendragon: Again, it is based on the State.

Ms. Iseri-Carvalho: Enabling.

Ms. Pendragon: It depends on what the State Legislature has enabled the counties to do.

Ms. Yukimura: Or mandated it. There is a difference you know, enabling and mandate.

Ms. Pendragon: That is true and I am more familiar with California than I am with others because there are more court cases that have come out of there.

Mr. Rapozo: If you have the case law, that is good. If we are working with a case that already... I mean a State that already has been sued, I think it is probably more informative, but I guess my question is... because I heard Councilmember Yukimura's concerns. I am just wondering if that is standard where you take land and make them both units as well versus just giving us land and we... I thought I kind of heard that is what you were saying, you know, give us the land and we will build the units.

Ms. Yukimura: No, no. It is a combination.

Mr. Rapozo: And I am just wondering if that is common to your knowledge.

Ms. Pendragon: No, I don't know.

Mr. Rapozo: Okay, thank you.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: I just want to add to this discussion. At least as far as Davis is concerned and they are in California, their ordinance requires both... a certain percentage in in-kind houses and then land as well.

Mr. Rapozo: I am not familiar with Davis and I would actually want more than Davis. I just want to know what is the standard around the country I guess is pretty much what I am looking at.

Ms. Yukimura: And I think, Barbara, we had done a lot of extensive research with respect to Davis and although there were some similarities, there were a lot of dis-similarities too with respect to their type of community and their requirements, their caps... they have a really different system that may not necessarily work here. It is not something we can transplant from there and, you know, put here, so Council Chair.

Chair Asing: I guess I am coming from someplace else. Someplace else meaning that in all the years that I have been on the Council, I have heard often, often that developers can build housing units faster, cheaper and better than the County. So in my opinion, you know, I have reservations about getting land because I think they can do it cheaper, better, faster and I have always had that opinion and that has been coming back and forth, so I have this concern about that. Also, I know that history will also show, as an example, that we have had Pa'anau. We had Pa'anau probably 20 years before we developed Pa'anau. You know, we have had land there and we never did anything, but we had the land, so I have some concerns about that, so I just want to leave it at that.

Ms. Yukimura: We need another Mayor.

Chair Asing: And I know we've had Kalepa... we've had that for years too. It has not been a short period of time.

Ms. Yukimura: But we have been developing it.

Chair Asing: We had that over a long period of time and we took a long time to build it too, so I am just saying that I have some reservations about the intent.

Ms. Iseri-Carvalho: Councilmember Yukimura, we've got two (2) more minutes to the caption break. Can you finish your question?

Ms. Yukimura: Sure. So I think I understand the Chair's concerns. If the private sector can develop housing faster and more efficiently, we don't have it. I mean we have this affordable housing crisis because the market hasn't been providing it and if you look at the type of housing that we are talking about providing in the biggest need, the government has provided that statewide and Countywide, the government has provided the most units of those rental... below

80, below 100%. So, you know, Kalepa... I agree about Pa'anau and you know that when I was Mayor, I was the one who started developing Pa'anau, but Kalepa, we have developed... there has been no delay in that. The only delay was the housing glut that came after the hurricane because vacation units became long term rentals and the landlord, private landlords who came in and told the County don't develop anymore affordable housing when we maybe should have been doing it then. But Kalepa we have done sequentially and I think we have done it really responsibly in terms of timing and meeting the needs.

Chair Asing: I am not sure and let me just throw this out. We've had from the State where the State gave us land. What do we do? We are still sitting, we still talking.

Ms. Yukimura: Because it doesn't have the infrastructure.

Chair Asing: And the Governor said, here, here is the six (6) parcels of land, it is yours.

Ms. Yukimura: That makes my point Mr. Chair.

Chair Asing: What are we doing? Because the Governor says here, you have all these parcels (inaudible-more than one person talking at the same time).

Ms. Iseri-Carvalho: The Chair has the floor, so let's try not to talk out of turn. It is at 3:40 and, therefore, we will take a 10 minute caption break and return back at 3:50. Thank you.

There being no objections, the Committee recessed at 3:40 p.m.

The meeting was called back to order at 3:55 p.m., and proceeded as follows:

Ms. Iseri-Carvalho: At this time, Ken? We are back... Councilmember Yukimura, you had a question right before the break or you forgot?

There being no objections, the rules were suspended.

Ms. Yukimura: Yea, I forgot.

Ms. Iseri-Carvalho: Okay, so anymore questions on Section 1.4? You do, okay, Councilmember Yukimura?

Ms. Yukimura: On page 16, the calculation of in lieu fees, how did we get the...

Ms. Iseri-Carvalho: Where are you?

Ms. Yukimura: Page 16 at the bottom you have a table. I trust it was based on some kind of calculation or data.

Ms. Iseri-Carvalho: Councilmember Yukimura, we are up on the assessments. We are only on page 6, so any questions for Section 1.4? There being none, we will move on.

Ms. Yukimura: I just have one more thing.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: I think it is really important to be able to define green building because otherwise, you know, like sustainability and green building, people can just throw it around like a PR word and if there is not enough substance to it, you will be giving people credit for something that is not meaningful.

Ms. Iseri-Carvalho: I think we have already gone there Ken. That we are working on that section and that definition, so I think we got the point. We are not going to resolve it today, so we will move on. Section 1.5.

RON KOUCHI: If I could...

Ms. Iseri-Carvalho: On 1.4?

Mr. Kouchi: Yea. Again, Ken, because that was a suggestion to be LEED certified to be qualified as a green building and LEED is, you know, environmental energy efficient... whatever is the acronym. Anyway, as far as I know, they have lead certified standards for commercial buildings and multi-family buildings, but the National Builders Council, I believe which is the one that affixes the certifications as of yet has not determined what a LEED standard would be to a single family unit. So I think that the issue that is being raised by the Chair and Councilmember Yukimura is important because, you know, if by the time we are adopting this, the National Building Council does not have a LEED certified standard for that green building yet adopted. We, actually, would be setting cutting edge policy, but you are going to have to somehow define it because there is no national standard that you can go back to look at and then how would that national standard apply to us because of the lack of requirement for heating and things of that nature too, so that would be my only...

Mr. Rainforth: In response to the statement or discussion, the intent of the building (inaudible) provision farther along in the ordinance is to not to require a developer to achieve some standard that was established. The intent when originally written was to try and encourage developers to simply build affordable... build all units with a deeper overhangs in the roofs, installation, all kinds of things to try and reduce the carbon footprint. In the discussion with Community

Assistance Committee, we may change that initial idea to look at having a standard. If you look at the (inaudible) provision, you know, there was a range. It went from 1/2% to 10% credit and it would depend on the degree or the amount that was provided. And the reason we would like to have some flexibility in awarding so many credits is that we know from discussions with John Fraizer who is... when he looked at the possibility of achieving some HUD standard or some national standard of building green for phase III and, whereas, Kalepa Village has a lot of green features with solar heating, gas water heater, sustainable landscape and several other things, the additional dollars to make it up to that certain standard didn't justify that expense. So we don't want to have a provision that nobody wants to spend that kind of money on nobody does anything, so we would like to have some flexibility there, but we agree that it needs more definition for guidance.

Mr. Kouchi: And I think Hawai'i climate issues, you know, wind up creating a whole different set of needs.

Mr. Rainforth: Yes.

Mr. Kouchi: That is why I am saying, though, it worries me that certain people would automatically go straight to LEED standards as how they, in their mind, would have measured and I agree with what you said. That doesn't necessarily accurately measure... I like that it is in there, I like that you are trying to give incentives by doing it, so I think it would be a lot better as you just articulated that you know what you would like to see from the Housing and/or County administratively that works for our community. If we articulate it upfront, then if somebody picked up the ordinance, they would know that I get these credits and these are the design standards that I should be looking at doesn't make sense right away. We are helping give a road map about try to do something that we are trying to create some incentives and not just, you know, be exacting and punitive.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: I agree that I think we need a standard and it is good that you research or that Mr. Frazier had that input because the LEED standard is really high. I mean it was created because of a similar thing. If people said they were doing green, you wanted to know that it was actually green or how green, but LEED is very high and they have platinum and something else. Actually, at the smart growth conference talked about now doing a standard for neighborhoods that they are doing a LEED standard for neighborhoods in terms of transit and all of these other things and they may be at another level. The thing is, though, if you create your own standards, that is a whole bill in itself and it would be nice if you could get something that was off the shelf so to speak that could be then tailored to Kaua'i or tropical climates and I don't know that they exist. But bravo that you folks are thinking along these lines. I think all of us are just concerned about making it a really workable provision that actually acts like you want it to be an incentive and also achieves what you want to achieve some real sustainable

building or something that really achieves lowering the carbon footprint.

Ms. Iseri-Carvalho: Okay, Section 1.5, assessment, any questions?
Councilmember Yukimura?

Ms. Yukimura: I think it is on the right section. Page 14, off-site?

Ms. Iseri-Carvalho: No, we are on 6 and then on 7.

Ms. Yukimura: Assessments?

Ms. Iseri-Carvalho: Yes. We are going in chronological order, so...

Ms. Yukimura: Oh, within the section.

Ms. Iseri-Carvalho: Right, so we are at 1.5.

Chair Asing: I have a question. What was the idea on page 7, item (c).

Ms. Iseri-Carvalho: 1.5, item (c)?

Chair Asing: Yea, 1.5. The only reason for my asking is, you know, when I look at final subdivision approval and I look at zoned permit approval or building permit application and I take that and I tie that to, you know, with the Housing Agency and County Council approval, so I am just wondering what the intent was behind that section.

Ms. Iseri-Carvalho: Is this your section or Barbara's.

Mr. Rainforth: It is Barbara's, but I believe...

Ms. Iseri-Carvalho: Okay, well, Barbara is walking up Ken.

Mr. Rainforth: I believe we are trying to specify when you... a developer will understand that there is going to be a workforce housing assessment, but the specifics wouldn't happen at zoning level because the project isn't designed yet. You don't know how many units you are going to have, etc., so when you get to the point when you are doing your subdivision or you getting your zoning permit, you have your property designed and a proper assessment can be made at that time.

Chair Asing: I think my concern was, you know, when I see building permit, I am saying, wow, that is ready to build.

Ms. Iseri-Carvalho: Yea.

Chair Asing: And you mean we are talking about this approval and we are ready to build?

Mr. Rainforth: That is why we are saying that the developer should resolve their requirement before they apply for their permit because otherwise their permit is going to be held up if there is long discussions on what the... how to resolve the assessment.

Mr. Kouchi: ... legal question or this is for you, but I guess I kind of thought that if we adopted a policy, then it would have been clear even at the time of zoning, what would have been required of a developer by way of the housing assessment on a new zoning request. And what this seems to imply at least to me is that a developer could get a rezoning request, could come up with a proposal for doing their affordable housing within the parameters that are spelt out here and the Council might tell, nah, I don't like that plan. I want you to do a different plan even though that plan meets all of the requirements that are in here and do we have that kind of authority and are we writing a bill that says that after they follow all of the policy, they are still one more approval back to the Council?

Mr. Rainforth: That is not...

Mr. Kouchi: The Council can deny something that complies.

Mr. Rainforth: That wasn't my intent and I have to ask Barbara to answer why we have the Council in there.

Mr. Rapozo: Ken, I think it says, County Council if necessary. Maybe we have to put a couple of commas in there because then it makes sense because there are some provisions that do require Council approval. So I think the "if necessary" in commas would...

Ms. Pendragon: I think that was the intent.

Mr. Kouchi: And I guess my point is Councilmembers tend to read this language in an ambitious way that greatly favors what they (inaudible).

Ms. Iseri-Carvalho: (Inaudible).

Mr. Kouchi: So I just think that we need to protect your agency from future Councils.

Ms. Iseri-Carvalho: Yea, not this one.

Mr. Kouchi: I mean, no, we might all have an agreement here.

Ms. Pendragon: Not present Council.

Ms. Iseri-Carvalho: No.

Mr. Kouchi: But not if we all agree although we can quickly agree that...

Ms. Iseri-Carvalho: And if there is a legal question, we will follow up with Harrison, but otherwise you guys know the concerns that were raised. Councilmember Yukimura, you had any questions on 1.5?

Ms. Yukimura: Actually 1.5 (b), (c), and (d). Wherever... I mean, I thought one of the reasons for this Housing policy was to take the County Council out of the process so that it would be a more certain and efficient process for the developers and also for getting housing done quickly. I mean one of the problems now is because there is no clear rules. The developers don't know what is needed and also the Council negotiates things on a case by case basis, but I thought by having the Council set the rules in this policy, it is pretty much applied and you don't have to come back to the Council is what I was expecting. I mean one of the things we want to do is give... we want to give certainty and efficiency even as we give some hard requirements, you know, but we give clear requirements that are across the board so to speak. There are some alterations, but we have clear guidelines for how we make those.

Mr. Rainforth: We did attempt to do what you are suggesting and I believe in the requirement section, it is fairly clear in Article 2 I mean. You have to ask Barbara why we have the County Council reference in (b) and (c).

Mr. Kouchi: Because...

Ms. Iseri-Carvalho: I think land that we received as an asset. The County Council would have to approve it anyway.

Mr. Rainforth: That is true.

Ms. Yukimura: Well, we are not receiving any... I mean it does (inaudible)... special case where we receive it, but when they are in a zoning permit, you know, in the sequence of development, when they are in a zoning permit, the Council is out of it already. We have addressed it at zoning amendment time, but it will really actually distort the general planning sequence if the Council gets involved at time of zoning permit.

Ms. Pendragon: I understand your concern on that. I believe it is because there are a few places in the requirement section where County Council approval is required as an alternative if there is an alternative that requires Council approval.

Ms. Yukimura: And what are those alternatives?

Ms. Iseri-Carvalho: We are not going to get into that until we get to that section Barbara.

Ms. Pendragon: That is the reason for the reference-if County Council approval is required for any portion of the process that it would have to come back.

Mr. Rapozo: It is defined right there in (b). In lieu fees and land in lieu in (b), item (b) on page 7.

Ms. Iseri-Carvalho: That is the only one that has to be...

Mr. Rapozo: That is the reasons that you would need Council approval and it is clearly spelled out.

Ms. Iseri-Carvalho: But (c) says the specific...

Mr. Rapozo: If necessary which...

Ms. Yukimura: That is what I mean. I mean...

Ms. Pendragon: Specifically, I can think of the off-site location if a person chooses to do an off-site location of affordable housing because there is a community preference for that and that requires review of the Council. So mostly this section is really... it should probably be called timing of assessment and that would be because it is... try to advise the developer what the timing sequence is for performance of their process, so they don't get to the end and then find out, oh, you mean, I have to go to County Council to do this instead if they don't... if they put it off until the very end and they have an accounting for it in their planning process.

Ms. Yukimura: Well, and maybe, you know, you just say if they have to be, I don't know and you say under the specific section, so it is limited to that. I mean, you don't have to say that we have to come back for land because we have to anyway.

Ms. Iseri-Carvalho: Well, then there is some situations like we say, yea, some people may know that, sometimes they don't. I mean sometimes we see legal agreements that, you know, are supposed to have been recorded here, but hasn't come and that is why we have it every place where it is necessary for them to come back. This ties in with the satisfaction alternatives.

Mr. Rainforth: And there could be a situation where a... the Housing Agency agrees with the developer on the dedication of a certain parcel of land and he is ready to get his building permit or zoning permit and does so, and then the Council refuses to accept the dedication, then what?

Ms. Iseri-Carvalho: That is right.

Mr. Rainforth: Because they didn't like the site.

Ms. Yukimura: Okay, I mean, I understand the issue of dedicated land.

Mr. Rainforth: The in lieu fee shouldn't require Council (inaudible) because you are adopting this policy which makes it real clear cut calculations.

Ms. Yukimura: Yea, I think so too. It is...

Mr. Rapozo: I don't know. Can the Council... I mean, can a County accept funds without Council approval?

Mr. Rainforth: I pay my property taxes and you don't approve that.

Mr. Rapozo: That is pre-approved.

Ms. Iseri-Carvalho: Well, and the in lieu fees would be pre-approved too by virtue of the law. I mean we really are trying to think... you know, for me anyway, there was a trade off between certainty and not too much levels of bureaucracy and getting some really tough, but fair, housing requirements. So, anyway, I think you folks understand it and that should make some amendments.

Ms. Iseri-Carvalho: Well, there is that added, I guess that goal was for certainty, but of course, there are legal issues that we have to resolve when we say this is mandatory what you have to do and that is why there are these satisfaction alternatives that are different from what the policy dictates and that is the reason why that would need County Council approval.

Ms. Yukimura: Yea, if we say so. If we feel that it is such an important deviation from the regular requirements that our approval is needed, but it is us to decide whether we want to make them come here and I will wait until we get... because I did have a question about the off-site requirements. I mean we do have the power to say which ones we want people to come back to us for, but I am hoping that we are cognizant of the development community's concern, so that we, you know, minimize that come back because I thought that was one of the purposes of this whole effort toward a clear policy.

Ms. Iseri-Carvalho: Councilmember Bynum?

Mr. Bynum: So if our preference is that they meet the ordinance, avoiding County Council might be a real incentive to...

Mr. Rainforth: It is.

Ms. Iseri-Carvalho: Next is 1.6. The next would be 2.1, general requirements. Questions?

Ms. Yukimura: That starts on page...

Ms. Iseri-Carvalho: 11. I really like your 2.1 (b) which is based on some data and, you know, is really recognizing the need at the bottom because contrary to some people, I believe this housing policy could impact the homeless issue because, you know, these people in the 80% and below are the people who are, you know, what is it, 20 days away from homelessness if they lose their job or something like that and this is really important. So I like that and the question is whether you couldn't include some kind of a change mechanism that doesn't require an ordinance amendment every time, so that... you know, likely tie things to the CIP and I asked this before, are we going to have an annual housing survey, so that we do get current information on housing need every year or every two (2) years or every three (3) years and we tie it to whatever housing survey results, so that you don't have to get an amendment. You go through this crazy process as long as we are assured that these percentages are determined by a valid and reliable housing survey.

Ms. Iseri-Carvalho: Ken, I think with respect to this question... SMS... the State hires SMS to do the housing?

Mr. Rainforth: No.

Ms. Iseri-Carvalho: Each County pays money.

Mr. Rainforth: They (inaudible) four (4) times that the SMS has done a housing need study, it has been a (inaudible) of State and County housing organization often including private sector as well.

Ms. Iseri-Carvalho: And that is done regularly?

Mr. Rainforth: Theoretically every five (5) years, but it is three (3) to six (6) years we have been doing it.

Ms. Iseri-Carvalho: Because we had one in 2003 and then we had one in...

Mr. Rainforth: 2006.

Ms. Iseri-Carvalho: In your consortium or in your discussions with the other counties and the State, is there a movement toward making that a regular thing? I mean because I think everybody knows that current data is really important and if it is becoming a more institutionalized thing I guess is my question.

Mr. Rainforth: We actually had a great deal of discussion about doing an annual contract with SMS. It was even an option in this last go around. It was decided in the end that it wasn't a good idea. It is a... actually, rather challenging to work with... statisticians who prepare housing studies, their ability to do the statistical numbers has fallen, but their ability to render those results into riding is very challenging for them at some time. We spent a great deal of time editing their work over and over again trying to get a report that is at least semi adequate enough to submit to you for your review and probably because of that frustration, we decided that we didn't want to do that every year.

Ms. Yukimura: Maybe you have the wrong contractor.

Mr. Rainforth: We followed (inaudible)... we do request for proposal, we have proposals from other entities and so far SMS has won the contract for four (4) times.

Ms. Yukimura: Well, if people are having a hard time with their work, something is wrong with the system of procurement. Anyway...

Mr. Rainforth: (Inaudible) to data is important.

Ms. Yukimura: Well, and the question is, is there anyone else who can do both jobs getting the data and presenting it in a clear fashion. But, I mean, we, the County, could just authorize a study as well. I am sure it would cost more than if we did it collaboratively, but, you know, we could say, hey, data is really important. We need it every year, every two (2) years, every three (3) years and just make that a normal part of doing our housing work because it will help us anticipate, you know... I mean it is hard to substitute for good data and making decisions.

Mr. Rainforth: I agree. We don't believe that we have a consistent source of the data in order to make annual or bi-annual adjustments at this time. When we see that it probably needs to be reconsidered from time to time with the County Council until we, perhaps have a data source that can tell us what the need is continuously.

Ms. Yukimura: Thank you.

Ms. Iseri-Carvalho: Section 2.2 or do you have questions on that? Go ahead.

Mr. Bynum: Yea, just... so under this plan under 2.1, the developer with 26 units or more would use these numbers. You know, I thought at one point we were looking at a credit system where...

Ms. Iseri-Carvalho: It is coming up.

Mr. Bynum: In the credit there. I see credits for incentives, but if they prefer to build more of a different size unit, but we will try and...

Mr. Rainforth: I believe that was a recommendation... perhaps a suggestion from a developer.

Mr. Bynum: Isn't that what they do on the Big Island now?

Mr. Rainforth: The Big Island system is based on that.

Mr. Bynum: Alright, so it has more flexibility on what kind of units are built. What we are attempting to build...

Mr. Rainforth: The Big Island is 20% of your project for affordable housing and they have a credit system of two (2) credits for households 80% below, 1 ½ credits for 100%, 1 credit for 120% and ½ a credit for 140%. That is their whole assessment policy.

Mr. Bynum: We are trying to target the housing...

Mr. Rainforth: The advisory committee and (inaudible) questions with the Mayor and Community Assistance Committee, we all feel that we want to be different and we want to address the specific needs and provide housing for that (inaudible).

Mr. Bynum: Thank you.

Ms. Iseri-Carvalho: Hold on Kaipō. BC needs to change the tape, so just stay in your seats and...

There being no objections, the Committee recessed at 4:24 p.m.

The meeting was called back to order at 4:27 p.m., and proceeded as follows:

Ms. Iseri-Carvalho: Kaipō, I forgot.

There being no objections, the rules were suspended.

Chair Asing: I have a question on... Ken, can you give me an example of a developer that was going to do, say, five (5) or six (6) residential units, what would he required to do?

Mr. Rainforth: If it was the minimum five (5) units with a... excuse me. Well, let's use five (5) units and that... the minimum with the 40% assessment there, we are required to have two (2) units which were workforce housing... those

units can be multi-family, it could be off-site, the developer could reduce the requirement by using the two (2) incentives that are provided... reduce it to 20% (inaudible).

Chair Asing: Just basic. I am going to do a five (5) unit subdivision and I am going to build five (5) houses and that is my intent, so what are my requirements now? My intent is to build five (5) single family dwelling units and that is my intent, so...

Mr. Rainforth: (Inaudible) assume that the units were developed for sale, so according to Section 2.1 (a), you have a 40% workforce housing requirement, so two (2) of those units would need to be sold to households who earn between 80 and 140% of median income. The sales price needs to be... the sales price of the two (2) units would need to average 100% of the median income. Now the developer could reduce the requirement because if you are not going to provide your workforce housing off-site and multi-family units... if you are going to provide the workforce housing units on-site...integrated for other units on your subdivision and you build single family detached units, then you are eligible for two (2) different reductions in the requirement which would result in a 20% workforce housing requirement and 20% of five (5) units would be one unit, so you would be required to do one single family detached unit with a new subdivision for workforce housing and the sales price should be affordable to a household earning 100% of the median income.

Chair Asing: So out of the five (5) units that you build, one would be sold at 100%?

Mr. Rainforth: Of the median income and the other four (4) could be sold at no restriction.

Mr. Kouchi: Who would select the buyer?

Mr. Rainforth: The Housing Agency. We would follow the sales provisions in this proposed ordinance.

Mr. Kouchi: So it would go back to your list though?

Mr. Rainforth: Yes.

Ms. Iseri-Carvalho: Except that there is an exemption.

Mr. Rainforth: There is an exemption under 2.2.

Chair Asing: (Inaudible) going to be able to afford it... end up doing the CPR rather than (inaudible). Anyway, I just looked at this and I said who can afford to build something like this and, you know, I don't know how the guy is going to be able to afford this.

Mr. Kouchi: I just was wondering what the exemption was.

Ms. Iseri-Carvalho: 2.2 family if you transfer it to family.

Mr. Kouchi: Oh, okay, my concern... I was thinking about the Chairman's project that he had to sell some units to pay... his children were the ones that were qualified, so as long as they would...

Chair Asing: I want to leave that there. All I want to say is that I am thinking about somebody that has a small piece of property and wants to build some houses and what would be the requirement, so that is the question. So you said these five (5) units that they build, one of the units would have to be sold at 100% below the median income?

Mr. Rainforth: That is correct.

Chair Asing: Okay, thank you.

Mr. Rapozo: I just had a... the 100% median, what does that equate to? Do you remember Ken? I am just lazy to go pick up in that folder. Ballpark, \$300,000?

Mr. Rainforth: No, it is around 250.

Mr. Rapozo: 250, okay.

Chair Asing: I don't think that, Councilmember Rapozo, that, you know, you can look at the number. The number will change as time goes on.

Mr. Rapozo: Yea, I am just thinking about today's market, but I agree exactly what you are saying. That is a concern... my question is five (5) too small?

Chair Asing: And that is the reason for asking the question.

Mr. Rapozo: Yesterday I asked the same scenario sitting on this table and I used the number five (5) as well because... but in today's market, it is excellent. You sell four (4) of them for half a million bucks a piece, that is \$2 million and then you sell one off at 250 and that is a pretty good deal, but that may not always be the case and I think that is what...

Mr. Rainforth: There are provisions in the ordinance to allow a family to develop a subdivision.

Chair Asing: I am not talking about family. I don't want to go there. That is a separate issue that I might go there later on, but I don't want to go there

now. I want to just take care of this as a scenario on what would be the requirements. You've answered the question and I have reservations because of that. Thank you.

Mr. Bynum: So under that scenario, also the person could pay an in lieu fee?

Mr. Rainforth: That is correct.

Mr. Bynum: Of \$120,000, so they develop five (5) units, sell them at market or four (4) at market... you can sell all five (5) at market and pay an in lieu fee of one point. If you are developing five (5) housing units out of your market property, you pay 120.

Mr. Rainforth: Exactly.

Mr. Bynum: It looks like that would be workable and current market.

Mr. Rainforth: We do.

Mr. Bynum: And still turn to profit and...

Chair Asing: I don't think so. You know, development cost is not that cheap. I know, I went through it. Development cost is quite expensive and it is not that easy to recoup, on top of that, paying the additional expenses and I just think that a small five (5) unit subdivision is... I don't know, it is going to hurt some people I think who owns small parcels on (inaudible) prohibited... anyway, thank you.

Ms. Iseri-Carvalho: Thank you. Next is the exemption to the general requirements of Section 2.2. That begins on the bottom on page 11. Any questions there? Councilmember Bynum?

Mr. Bynum: Just play out a scenario. If somebody has three (3) kids, they divide their property, built 10 homes (up to 10 units or less), each person could get three (3) of those homes, right? There doesn't say anything here about owner occupancy and they can rent them out.

Mr. Rainforth: No, it doesn't. The provision is fairly... we think that the provision will be reasonable to a family developing lands that they wanted to pass on to their children (change side)... I believe so, yes.

Mr. Bynum: Because sometimes the scenario is okay. I want to build these homes, but I need to get some extra dollars to pay infrastructure cost to develop the units at the first place. I just want to lay that scenario out because there is an equity... what is it called? Shared appreciation clause and another way

to generate income from a new home is to do long term rental, right?

Mr. Rainforth: I am sorry. What was the last part of your question?

Mr. Bynum: So you could build more homes than you had kids and rent the additional homes and generate revenue for this family hui, right?

Mr. Rainforth: I don't think there is anything from preventing that.

Chair Asing: Okay, thank you.

Ms. Iseri-Carvalho: 2.2, no questions? 2.3, incentives, (a) integration, (b) single family units. We are on page 12 bottom.

Ms. Yukimura: You know my position already. I feel this is a very anti-smart growth provision. I also was talking to an architect recently from Kaua'i and he was telling me about the need for multi-family housing and then remember the recent article in Honolulu and I am sure the first reaction will be, well, that is Honolulu. But about how many people stood outside the night before when there were these apartments that were available, affordable housing and there was such a need for housing that... and this was multi-family housing, this was housing in a high rise. Yes, it is not people's ideal dream, but I don't think that is our job as a County to provide everybody's ideal dream. I think we should be providing them with decent affordable, sturdy, energy efficient housing at less than 30% of their income (household cost). So I am... I understand the concern about the... what is that common area costs?

Mr. Rainforth: Yes.

Ms. Yukimura: And I am thinking, you know, we might address that by just putting some restriction on common area cost or something like that, so that something doesn't exceed more than 30% of the income. I don't know, but I would like to explore that if that is the main concern because, actually, whether it's the developer providing the housing or the County or a non-profit providing the housing, you will address the needs of more families with the same amount of investment or money needed. We will get a bigger bang for our bucks if we have a multi-family housing. Now, I am not saying you should have multi-family housing, but I really object to an incentive that encourages single family housing.

Mr. Rainforth: We on the neighbor islands when we have our discussions at the Housing Director's meeting fully recognize that the housing wants and desires of the neighbor islands are completely different from those of Honolulu. I mean (inaudible), an urban center and all the neighbor islands are (inaudible) rural. I do agree that it makes more economic sense to have multi-family units to satisfy affordable housing requirements. In the latest SMS study, however, it was overwhelming repetition of our populace's desire to have single family units. We

can talk about trying to guide people into more reasonable or sensible housing... that being multi-family units, but in the past we have seen where we have developed multi-family affordable units and they did not come. The units were offered, offered again, went through a restrictive sales period and they went to open market. So if we don't build workforce units that our populace is willing to step up to the plate and become homeowners for, I think we are doing the wrong thing. So for... we feel that we need to encourage developers to build single family attached and detached and really like the idea of single family attached units without CPR ownership as a solution to providing workforce housing on Kaua'i. I really like the concepts of where you have duplexes, but I don't want the idea of having the project condominiumized or even four-plexes, you need to develop it more like the rural houses in San Francisco and on the mainland where you own your turf and there is no common element. Once you have the CPR, you have an association that controls the common elements and you... the big expense in most of these would be your insurance for fire and your liability insurance... if your association also includes common areas that need maintenance, that can also become a big ticket item and see that the common area charges are high. For example, in the project currently being sold, Hookena, the common area charges for the larger three (3) bedroom are I think over \$300 or maybe \$350. That really bites into your ability to get a mortgage loan, so... and we recognize that a lot of the residents on this island would rather remain a renter in the single family home than purchase an multi-family condominium unit.

Ms. Yukimura: I appreciate that very much and I think your point about common area is really well taken. Why not just give advantages to detached then, rather than attached. I mean that is the way that Big Island is going in terms of their development at Waikoloa, right?

Mr. Rainforth: That is correct.

Ms. Yukimura: So then you get some advantages of the economies of scale or building and you still have... you avoid the common area charges because, you know, I don't know how the survey captures future needs, but I know that young people are much more open to, you know, start a unit in a more multi-family context and older people now are also becoming more interested in houses without lawns to take care of and so forth. So if we are planning for more than just the next three (3) or four (4) years, I think we need to look at that. And then the other thing is that you were right about, you know, they didn't come, but they didn't come in a market that was becoming flooded. You know, after the hurricane, you know, we know that a good number of vacation rentals and short term rentals turn into long term rentals. So we...

Mr. Rainforth: Well, with Hookena which is being developed right now, approximately half of the units went to the income target group and now it has opened up to households of any income. So really tight market right now and it demonstrates that there is not that many purchasers willing or able to...

Ms. Yukimura: And are they available single family houses that people... similar prices that people are qualifying for?

Mr. Rainforth: Not now, but when we do our... did the housing fairs last October, almost everyone who came up and talked to me about the Hanamā'ulu Triangle project which really has four (4) different projects in it... they are only interested in the single family subdivision. But we know from the survey that they are willing to accept something else (some are willing).

Mr. Kouchi: Ken, I will just add. Unofficially, I received all calls directed to Kaua'i Lagoons in relationship to the affordable housing and when it was mentioned, it was rental, thank you very much, let me know if you have something for sale.

Ms. Yukimura: Well, who was asked making those calls or what income levels.

Mr. Kouchi: No, people that saw that they were affordable units going to be made available were calling, but when they found out it they were affordable rentals...

Ms. Yukimura: They might have been in the 160 median income.

Mr. Kouchi: I am just saying (inaudible), they just called to say that I saw in the paper that you have an affordable housing project, I am interested, I said, yes, we have rentals, it is not for sale, no it is not, thank you very much.

Ms. Iseri-Carvalho: And I think we had this discussion at the last workshop and I think it was Chair Asing's knowledge about what is in the community that was validated by the SMS study and was validated by also the housing fairs that there is a desire for single family and that most people will stay... will double up until they can make the money to purchase a single family and that we had that experience and we spoke about Hookena and their project and Tracy was here. I mean, there were different issues, I mean, people, because of the mortgage rate, had not been able to qualify, so they dropped out. Eventually, what did we end up with? We wanted a project that would service the affordable families and now it is up for market families. You can own three (3), four (4) houses and buy it at the same price that an affordable family was intended for. So I can see, Ken, that you did analyze all of the data that was provided at all the housing fairs including the SMS study to come up with this formula based on what people want and what they could afford. I mean some of the duplexes I guess, might be another alternative as Councilmember Yukimura talked about... not duplexes, but the detached single family, but, still, when you talk about multi-family, there really isn't that kind of demand. Again, that was based on the last study that we just had.

Mr. Rapozo: I have one quick question.

Ms. Iseri-Carvalho: Yes.

Mr. Rapozo: Do we have problems filling the buybacks that we often approve here... the single family homes that go back into the inventory, back to your office, we don't have any problems filling those with income qualified people, correct?

Mr. Rainforth: No, we don't.

Mr. Rapozo: We don't have anybody saying, no, that is okay, call me when you have a duplex or call me when you have a condo. I think it is clear that when we have those inventory... those units back in inventory... it doesn't take long. You have the list, those people are looking for homes, we get them income qualified and we re-sell or get that house back.

Mr. Rainforth: Yes, we are able to sell the units that we buyback and remember we are reselling them as leasehold estates and not fee simple.

Ms. Iseri-Carvalho: So, you know, we are still maintaining that principle about, you know, having it in perpetuity affordable. Even with the leasehold restriction, we are still able to turn that over relatively quickly. I mean, we always had a buyer lined up before the unit came on availability. Yes, Tim?

Mr. Bynum: So in the incentive section... we start with this base figure of 40%...

Chair Asing: What page are you on?

Ms. Iseri-Carvalho: Page 12, but he is referring to the 40% in the front.

Mr. Bynum: We start with the base of 40%, but if a development integrates, builds single family attached or detached, builds green... well, let's start with that. They build integrated single family detached residences, it is 20%, right?

Mr. Rainforth: Correct.

Mr. Bynum: They build green could go down to 16%.

Mr. Rainforth: Correct.

Mr. Bynum: They could also get a density bonus.

Mr. Rainforth: If they get the bonus for integration, they automatically get the density bonus.

Mr. Bynum: Okay, or it could... let's see, like 22 or whatever it figures out to be if they are attached units like the pinwheel concept that we saw from UniDev on the Big Island where there is actually four (4) units attached... four-plex. So, you know, we are not comparing ourselves to Maui anymore, right? On Maui has a 50% affordable housing requirement. We start at 40 and with these incentives, move pretty readily to 20.

Mr. Rainforth: That is correct.

Mr. Bynum: Pretty significant incentives.

Mr. Rainforth: We think they need to be.

Mr. Bynum: Okay. I just want to make sure that I have the math right.

Mr. Rainforth: Yes, you do, yes. I was talking to one of the developers in the audience and we probably should improve the language. Some of them thought that you take the 40% requirement and then you subtract 25%, the resulting requirement would be 15% and then if you subtract 25% again, you get... plus, plus.

Ms. Iseri-Carvalho: That was the CPA, right?

Mr. Bynum: Another way to look at this would be... because the other concern that I know you've addressed in other areas of the bill to some extent is our initial bill started with a gap housing provision between 160, 140 and 180 for an additional 10%. If we added that back to speculate, if we added that back in and started with a 50% figure and put these incentives in, it would go down to 25%.

Mr. Rainforth: Yea.

Mr. Bynum: Okay.

Ms. Iseri-Carvalho: Well, we would discuss that adding back in the 160 and 180 and based on the study, that did not appear to be feasible because there was not that group that had units that were in demand.

Mr. Rainforth: Comments from the Councilmembers and comments from developers, the majority seem to indicate that the policy should focus on households of 140% of median and below and not go up to the gap groups. However, the gap group is fully recognized here because almost... most housing projects with the restricted sales period, you are targeting specific incomes, but after a 60 day period, you move up in income group, so the units that are affordable to 140 if not all sold within that time period would be available to households who earn 160% of the median income. And then if they don't sell to residents, then it would go to any

household (inaudible) Kaua'i regardless of income.

Mr. Bynum: And that is the provision I was referring to that in this... that does address that group potentially, you know, because that is a significant... with the run up of values if they stay even close to what they have been, there is still those people in the 140 to 180 group that are solid citizens on Kaua'i would love to be homeowners and hopefully we can give them an opportunity.

Mr. Rainforth: Yes, I am really happy with our... I am jumping ahead.

Ms. Iseri-Carvalho: And I would ask, again, that we stick with the chronological order as the Chair has set, Ken, so if anybody doesn't have any further questions...

Mr. Kouchi: Just a comment to Ken about that, this particular section. You know, I think Ken, probably what I appreciate about this is that I have been saying all along how many new rezonings residentially have we had before the Council in the last four (4) or six (6) years and I think outside of the down zoning of Kukui'ula, you know, anything for 50 lots or greater, it has been zero. So even if we come up with a wonderful exaction policy on new rezonings on how to get affordable housing units, if nobody new comes in, we will have zero new affordable units.

Mr. Rainforth: The comment that I was giving people, there will be... the ordinance would benefit our grandchildren.

Mr. Kouchi: And then the second, even if it would be when you are trying to get a building permit or at time of subdivision to try and address all of the land that is currently zoned today which is significant. If it isn't with some incentive to bring it in, they will continue to land bank it or as it was mentioned earlier, CPR and use other methods that would avoid the exactions that would have been in a housing policy. So we certainly need to try and create an incentive to come in and we have a lawsuit that was filed on Maui for the percentages that are in their bill and on the issue of can you retroactively do it. And we normally have people said, but this is so important, County of Kaua'i, you need to litigate it, but the end result of us litigating the housing policy and several years of litigation would be a stalemate and no activity in the housing market for that period that would further exacerbate the shortage that exist today... drive prices further out of the reach of the common or the local residents who were trying to get something and I agree that we need to try to work to find some common ground on what we think would result in a good product for the County and residents and, yet, a product that works for owners of property, so we are not caught up in litigation and we are not years away from building some of these houses, but the effort is a joint effort, so that we can come out with win/win. I appreciate it that you have looked at some creative ways in trying to create some of those incentives.

Mr. Rainforth: Thank you.

Ms. Iseri-Carvalho: Yes, thank you. 2.4, density bonus. No questions. 2.5, workforce housing units. Councilmember Yukimura?

Ms. Yukimura: What made you go within a five (5) mile radius?

Ms. Iseri-Carvalho: Is that in 2.5?

Mr. Rainforth: 2.6.

Ms. Iseri-Carvalho: We are on 2.5.

Ms. Yukimura: Oh, I am sorry.

Ms. Iseri-Carvalho: That is on the bottom on page 13.

Ms. Yukimura: Oh, I am sorry.

Ms. Iseri-Carvalho: 2.5, no, okay. Go ahead.

Mr. Bynum: Just that striving to work toward integration under quality of units talks about having the workforce housing be visually compatible with... in the exterior, so in essence, you drive through a neighborhood and you don't know which is workforce housing, which is market housing...

Mr. Rainforth: We think that is very important.

Mr. Bynum: I agree with that, but it is another kind of incentive here I think or makes it a little easier to develop by saying, on the interior, the amenities can be different. So, perhaps the cabinetry, the appliances are more functional in the workforce housing to keep cost down. I still will be meeting their criteria where in the market it might be more upgrade or... that is the intent here, is that correct?

Mr. Rainforth: Exactly.

Mr. Bynum: So it is also kind of a... I see as a provision to make it easier for developers to meet these standards by reducing their... that is going to potentially reduce their cost.

Mr. Rainforth: Yes.

Ms. Iseri-Carvalho: 2.6, yes, Councilmember Yukimura?

Ms. Yukimura: So now my question about the five (5) mile.

Mr. Rainforth: I believe in our original bill we had a... I forget the number.

Ms. Iseri-Carvalho: 10 miles.

Mr. Rainforth: A 10 mile radius. We listened to objections from some developers when we suggested tax district because it is possible... I think the example was the Hanapēpē/‘Ele‘ele area where, you know, right... there is one community, but it is in different tax districts, so we... the intent of having a location requirement is to try and have workforce housing fairly close to where employment centers would be where... close to the market project, so within a tax district would achieve that, but then to alleviate the problem of something like the Hanapēpē/‘Ele‘ele community, you have additional provision where it could be within five (5) miles. Why five (5) miles, no particular reason. We are trying to be as flexible, but still maintain the intent of having the workforce housing unit in the same community or general claiming area as the market units.

Ms. Yukimura: But, again, if they were on the edge of a community, they could be quite outside of the community by five (5) miles. My other question is, five (5) miles by a public road, why not just a five (5) mile radius from the center of the project or something like that or from the edge of the... you know...

Mr. Rainforth: I think I stole that language from the Big Island’s description which had a clear location requirement.

Ms. Yukimura: Okay, so you drive from five (5) miles no matter how curly or whatever?

Mr. Rainforth: Correct.

Ms. Iseri-Carvalho: Further questions?

Ms. Yukimura: How are you measuring it? From what boundaries? Anywhere?

Mr. Rainforth: The outer edge of the market unit to the outer edge of the proposed off-site location.

Ms. Yukimura: Okay.

Mr. Rapozo: You said the developers... you had opposition from the developers from when it was 10?

Mr. Rainforth: I heard comments. No, originally it was 10 miles and there was the discussion and we were proposing that maybe it should be the tax district and then when we talked about that, there was some comments.

Mr. Rapozo: Okay.

Ms. Iseri-Carvalho: It was about the tax district.

Mr. Rapozo: Right, okay, and the only reason I am very familiar with Wailua Houselots which is seven (7) miles away from Līhu'e.

Ms. Yukimura: Yea.

Mr. Rapozo: I mean, I think that is practical, I don't know. 10 is... is that a flexible number or a negotiable number at this point?

Mr. Rainforth: It is up to you. You are the authority.

Ms. Yukimura: But, you know, the 10 is if you are using a standard of driving and if we were to think about walkable communities, 10 is in another community. I mean eight (8) miles, you know, Līhu'e from Kapa'a is eight (8) miles, right?

Mr. Rainforth: Uh huh.

Ms. Yukimura: So it will be at a different community. Now you are saying that this still needs Council approval, right?

Mr. Rainforth: You need to adopt the policy.

Ms. Yukimura: Okay, so... (inaudible).

Ms. Iseri-Carvalho: Off-site, the next one.

Mr. Rapozo: If they wanted to go beyond the limits, then you will need Council approval.

Mr. Rainforth: Correct.

Ms. Iseri-Carvalho: That is (b) JoAnn.

Ms. Yukimura: Oh, I see, okay.

Ms. Iseri-Carvalho: This one is just the Housing Agency.

Ms. Yukimura: Right. Okay, well, that is good. I don't think you should require Council approval to apply the basic requirements, but I do... a question for five (5) miles.

Ms. Iseri-Carvalho: Next, 2.6. Next (b). Any questions about (b)?

Mr. Bynum: 2.6?

Ms. Iseri-Carvalho: Yes. They basically would have to come to Council if you want to go beyond the allowable limits and still get the credit. 2.7?

Mr. Bynum: Can you give an example or scenario where this would play or why you would want to make these changes for these two (2) credit issues that are in (a) and (b)? Why are they in here? What are they going to accomplish by having it?

Mr. Rainforth: A developer could be building a upscale project of three (3) and four (4) bedroom luxury homes and they work with the Housing Agency and the current need and their desire would be to build a rental project which would ideally have some one bedrooms, a lot of two (2) bedrooms and some three (3) bedrooms. So in order to achieve that and not violate Section 2.7 (a), they would need some way to... we need some way to account for the difference in the size unit. We are talking about something like the Kaua'i Lagoons project which they are building luxury units and they are building rental projects, so that is how we can convert. So, for example, if it is a three (3) bedroom, two (2) bath market unit and they were going to build one bedroom, one bath workforce unit, they would get .86 credits for that unit rather than one credit.

Mr. Bynum: Okay, I got it. And these numbers were arrived at by a formula that...

Mr. Rainforth: It is using math. Before we had a proposal... there was a great big chart would add three (3) times as many numbers on it as this. We still have that, but we just made it simpler to see and understand. So we can make adjustments for a number of bathrooms, etc. beyond this chart or table.

Mr. Bynum: And the same is true of the lot size, same kind of rationale?

Mr. Rainforth: Exactly.

Mr. Bynum: Okay, thank you.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: So when you say unit size of the market unit, what if there are several different kinds of market units even though they are all one, you know... the ratio of bedrooms and baths are the same, is that possible that you would have large two (2) bath, three (3) bedrooms market units that vary.

Mr. Rainforth: We don't distinguish with the square foot of a market unit and a square footage of a workforce unit.

Ms. Yukimura: Uh huh.

Mr. Rainforth: And the proposal that the Housing Agency would be working with the developer with the workforce housing agreement, we would certainly look at the size of the units that the developer is proposing and insist on certain minimums which we can provide (inaudible) developer whenever they ask us for.

Ms. Yukimura: Okay, so you have a development and there is a requirement for... well, you are going to break down first the percentage by affordability and then I am not really clear how you apply this I guess.

Mr. Rainforth: We tried to go through this exercise a few times. The math can get very complicated if you have a large project with multiple different types of market units. The possibilities are almost endless, so the developer needs to make certain decisions on where he wants to go for us to help him figure out how many housing credits he is amassing in order to satisfy his requirement. I am not... I know that is not answering your question, but does it shed any light?

Ms. Yukimura: Well, one of the things is the complexity of application, you know, I mean, we want to do laws that are kind of easy to apply whether you are administering them or whether you are being applied to... whether you are being a developer.

Mr. Rainforth: Initially we say, if you build a three (3) bedroom, two (2) bath market unit, you build a three (3) bedroom, two (2) bath workforce unit. But if you don't want to and the Housing Agency agrees, you could build something different, but you don't get a one for one credit.

Ms. Yukimura: But if you have a market development of 50 units and they vary... so then you say you are doing proportionately if you have so many one bedroom units out of 50, then that is the portion you have to have of your affordable units?

Mr. Rainforth: That is correct.

Ms. Yukimura: And then of those amounts, the percentage of income affordability have to be...

Mr. Rainforth: Yes.

Ms. Yukimura: That sounds really complicated. Is there any simpler way?

Mr. Rainforth: We have been looking, but we tried to simplify the language in describing it for an ordinance, but you are right in the application, it is a... we have our staff working on a fairly complicated spreadsheet in order to assist a developer in trying to figure out what their assessment would be. Because there is a lot of... there are so many options. There is so much flexibility, it is not just one little simple formula. By providing the flexibility, you make it complicated.

Ms. Yukimura: Okay, um, I guess I just need to try to absorb it a little bit better. Thank you.

Mr. Bynum: So these workforce housing credits would be simpler if... is this presuming off-site... that these are all being built off-site or could it also be part of an integrated plan?

Mr. Rainforth: In writing the section or Article 2, we changed our initial approach which was, here is the assessment, here is the penalties for going off-site, etc. and then we turned it around and say, okay, here is your assessment. We assume that you are going to off-site in multi-family (inaudible)... we assume that, but if you do it on-site, you will reduce the amount. If you do the desire of single family units, we would reduce the amount. Does that answer your question?

Mr. Bynum: In terms of these credits, they would only apply on off-site?

Mr. Rainforth: No, they...

Mr. Bynum: They could be integrated.

Mr. Rainforth: That is correct.

Mr. Bynum: And I understand that it is complex, but the flexibility also may be very desirable and help you meet the needs of the community and also the...

Mr. Rainforth: I think we heard every developer say that it needs to be flexible.

Mr. Bynum: Right, okay, thank you.

Ms. Iseri-Carvalho: Okay, anymore questions? Okay, we are moving onto 2.7.

Ms. Yukimura: 2.7 (b), we were on (a), yea?

Ms. Iseri-Carvalho: Yea.

Ms. Yukimura: I have a question about (b) if I may.

Ms. Iseri-Carvalho: Okay, go ahead.

Ms. Yukimura: Why are we talking lots? I thought we sort of informally abandon the idea of vacant lots.

Mr. Rainforth: Well...

Ms. Yukimura: Because we've had such problems with them in the past. They don't get built upon. They get speculated on and how do you have any owner occupant requirement when it is only a lot. I mean, you know, you are supposed to build within so many years, they don't build... I mean, and they also need so much in order to be able to even build a house.

Mr. Rainforth: Again, flexibility. We understand that sell the affordable or workforce lots is more of a challenge for the buyers, but, again, flexibility, but this is not applied just for vacant lots. This is also applied for house and lot packages where... if a developer is building luxury units on half acre lots and they are going to provide workforce housing units that are not on half acre lots... at something else, then there is an adjustment and you follow the schedule for that.

Ms. Yukimura: You mean, but they are still going to do house and lot?

Mr. Rainforth: Or if they want the incentive for single family.

Ms. Iseri-Carvalho: Councilmember Rapozo?

Mr. Rainforth: I think I am losing some people.

Mr. Rapozo: Yea, I think... I guess I am confused, but it is not hard to do. So it did... you are not saying that they have an opportunity to get two (2) credits if they have a same size lot with the same size house, right? Is this in addition to the...

Mr. Rainforth: No, these are multiplying factors.

Mr. Rapozo: So if they build a market unit, three (3) bedroom, two (2) bath house and they build an affordable unit, three (3) bedroom, two (2) bath, they get one credit.

Mr. Rainforth: Correct.

Mr. Rapozo: So where is this lot credit come in?

Mr. Rainforth: In that same scenario you have, if the market unit was a 2,200 square foot half acre subdivision lot and your workforce unit was on a 4,000 square foot lot, then they lose or... it is only worth .76 credits.

Mr. Rapozo: Even if the house was the same?

Mr. Rainforth: That doesn't seem right, does it?

Ms. Yukimura: Yea. You know...

Mr. Rapozo: I just want to know if it is either or, or can you combine the two (2)? I am not sure.

Mr. Rainforth: Well, the intention was to combine the two (2).

Ms. Yukimura: You know...

Mr. Rainforth: Multiplying not dividing.

Ms. Yukimura: It is already complicated just working with houses and units and I feel like our history with lots... you are not really getting somebody into a house when you give them a lot and it tends to be the higher end people who can do anything with a lot. So I think it is better policy not to... and we've had more or less over years... we used to sell off vacant lots or, you know, make them affordable... is to make them available as part of the affordable housing package, but I think our history on it is that it is so difficult to actually get a family into a house when you are just dealing with lots. And you have to wait a long time before you find out, you know, whether they are going to actually build or not and you want to go buy it back because they are defaulting and it is such administrative hassle. It really is worth more time and money to provide a unit whether it is public, private... I mean it is County, private or non-profit, I think we spent our money and time better that way.

Mr. Rainforth: Well, you are correct that it is more administrative to administer compliance with a vacant lot, but on the other hand, if a developer is building a subdivision with lots for sale, they are not building houses, so what do you do?

Ms. Iseri-Carvalho: Uh huh.

Ms. Yukimura: You require them to provide housing off-site somewhere else because that is our end goal to have houses that people can live in. We are so far behind. We need to do those things that actually get people into houses.

Ms. Iseri-Carvalho: The next point. We are moving to Article 3, satisfaction alternatives that begins on the top of page 16, 3.1 and I guess we will stick first with (a) which is a payment of in-lieu fees.

Ms. Yukimura: I have a question.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: Yes, I had jumped ahead and asked how we got the in-lieu fees remembering our little efforts with Kaua'i Lagoons.

Mr. Rainforth: We calculated the... in order to derive an in-lieu fee, we are trying to estimate the average subsidy that will be required, so to do that, you would need to find... you would need to look at the cost of providing a unit and then subtract the price that a certain income group can afford and the difference theoretically is the subsidy amount. So we did that and we have the math and we can show it to everybody, but everybody will say that the price per square foot for this particular house or this size of the house is... they have a better number or the cost of doing the infrastructure or the raw land is all different, so it is not in here, but they can be provided for people to look at. And we looked at the cost of single family or actually average the cost to what single family would cost and multi-family would cost, so this is an average of what the subsidy would be for these income groups. It is... I am not sure what else to say. Often times when we talk to developers or when affordable housing developers get together and talk to somebody who is desiring to build an affordable project, the question is who is going to provide the subsidy because for these units that you want, you need to provide \$100,000 or \$150,000 per unit to make it affordable to your intended target group. So we estimate these prices ourselves and we are suggesting that you have fixed amounts because administratively, we would not be able to negotiate with every developer because they would all have their numbers and it would be butting heads trying to decide on what the number would be. So we have decided that put down these numbers and we think they are reasonable and we suggest that they need to be annually adjusted by the Honolulu Consumer Price Index.

Ms. Yukimura: I agree that it should be a fixed number. I think it is much better for administration and I think if you have some calculations and layout your assumptions... so that people can actually can examine that it was done with some rational that is reasonable to me.

Mr. Rainforth: Yes.

Ms. Yukimura: Do I understand that you averaged a multi-family and a single family to get this? This is an average, so that if you actually do a single family, it will be more like...

Mr. Rainforth: Actually less. It seems weird, but because of the association fees involved with a multi-family unit, there is more subsidy... well, that is not right. I am sorry. I am tired, so I am not pretty sharp at the moment, sorry.

Ms. Yukimura: That is fine.

Mr. Rainforth: But, yes, they are averaged.

Ms. Yukimura: I mean I am thinking that a \$174,000 is little low for a single family house for an 80% and below median income.

Mr. Rainforth: Yes, because that income (change side of tape)... for no more than \$200,000 and if a unit cost \$350,000 to \$400,000, it seems a little short.

Ms. Yukimura: Yea, it probably is more like \$250,000 or something that is actual sub... in-lieu fee which is my point about single family houses, but that is okay. And the consumer price index, is that really the proper index or is there a construction index that is more accurate?

Mr. Rainforth: You know, I looked on the web page where they have this information provided and I couldn't find a more appropriate one, so we have used this in the past for other ordinances.

Ms. Yukimura: It sounds like it was researched and lastly, does this include land prices?

Mr. Rainforth: Yes, it does.

Ms. Yukimura: Okay. Alright, thank you.

Chair Asing: Ken, any reason you put dollar figures in here? Anytime you put, you know, dollar figures in an ordinance or a policy, you know, dollar figures just will change with time, so I am not sure the reasonableness of dollar figures...

Mr. Rainforth: We felt that it was important to fix in an ordinance that the Council...

Chair Asing: And I understand that, but I think the 80%, yea, would be the guideline. I don't think that the dollar figure would be what would be looking at. Why the dollar...

Ms. Yukimura: We are talking about in-lieu fees and you have to calculate...

Chair Asing: Well, and I understand that, but, you know, how long are we going to keep this 174... I am just looking at the 80%.

Mr. Rainforth: If you look at number 2 below, we are saying that it should be adjusted annually according to the Consumer Price Index, so if it adopted 2007, a year later, we will adjust it according to the change in CPI from 2007-2008.

Chair Asing: Which item is that?

Ms. Iseri-Carvalho: Number 2.

Ms. Yukimura: In-lieu fees would...

Ms. Iseri-Carvalho: Can I have a question? On number 2, it says may be subject, is that shall be? I mean, it will happen automatically, right?

Ms. Yukimura: Yea.

Ms. Iseri-Carvalho: It is not something negotiated.

Ms. Yukimura: Yea.

Mr. Rainforth: It should be shall, yes.

Ms. Iseri-Carvalho: Yea, because we don't want to get into all the (inaudible). Are you finish Kaipo?

Chair Asing: I guess the may in item 2, in lieu fees may... why the word may?

Ms. Iseri-Carvalho: Shall.

Mr. Rainforth: I agree it should be shall.

Ms. Iseri-Carvalho: Shall.

Chair Asing: I don't know. I just think...

Ms. Iseri-Carvalho: He announced that it should be shall.

Chair Asing: Okay, thank you.

Ms. Iseri-Carvalho: He announced that earlier. Yes, Councilmember Rapozo?

Mr. Rapozo: Okay, a follow up and I think I see the Chair's point. Is there a way to write the formula into the ordinance, so that the number will change whenever the cost of building homes will change and not so much with the CIP (sic) because I don't think they are comparable. I don't think they reflect each other equally, you know, as far as CPI and the cost of building homes. So I know there is a formula because I know you explained it to me how you got to that number a while back and I think it is a reasonable formula. I think it is a fair formula, but otherwise, I think what the Chair is saying, every time that changes, if the cost to build a home or land goes up or down, we have to amend the ordinance. So is it... because I know you explained to me verbally and I didn't see it written. Is it possible or you wouldn't expect too much fluctuation in the numbers from the CPI.

Mr. Rapozo: And we can discuss that later I guess because I am trying to remember what the formula was.

Mr. Rainforth: Are you saying that we should include some language under provision number 1 to explain what the formula was to get to these numbers?

Mr. Rapozo: I am thinking out loud because...

Mr. Rainforth: And are you also saying that there needs to be maybe a better provision for updating the number?

Mr. Rapozo: Well, I think if you use the formula, then there is no need to go to a CPI. Do you know what I am saying? If at the time you are assessing the... or considering the alternatives and I think it was based on the... the subsidy, what the subsidy would be had that developer built the unit. What would the subsidy be for that income group? Is there a way of writing that, so we wouldn't have to be worried about CPI's or changing the ordinance every time there was a fluctuation in the market which I think... and I am not an economist, but I think we are headed for some changes in the market in the next few years, so...

Mr. Rainforth: Well, in the formula to calculate this, we calculate the building cost per square foot for certain size unit, we input the cost of raw land, we input the cost of subdivision improvements or site improvements and we put in soft cost and we come out to a dollar amount. Everyone of those numbers are subject to change at different rates, okay, they all are, and they are all subject to challenge (life and death).

Mr. Rapozo: Anyway, it is even better to just leave it to the discretion of the Housing Department.

Mr. Rainforth: Well, I think we should have some set numbers here that they can be changed by this CPI periodically and I believe I had language before Gary Mackler tried to make this more readable for everybody... had said that the Housing Agency or the Council should revisit this periodically because we need to

actually go back to the formula to see that the numbers are still valid.

Mr. Rapozo: And that is my concern. If it is in the ordinance and then it is challenged, some developer will say, how in the world you are charging me 174 per unit, the ordinance is three (3) years old and you apply your formula three (3) years from now and, oops, you are right, it should be 144 or it should be... do you see what I am saying because the ordinance is, that is it, and there is no nexus to the number other than what we discussed in 2007. So, again, this is an opportunity to think out loud and that is what I am doing. I don't know the answer, I don't know how to write it because your formula was... although fair which is very difficult to put on paper in a way that anybody could understand.

Ms. Iseri-Carvalho: I think there are pros and cons on both sides of giving an exact number versus not giving an exact number. I think in the past, you know, when we talk about that we wanted-consistency, I think this was to address that... that there would be clarity on the in-lieu fee upfront as opposed to it being negotiated by every developer that comes because each developer can say, depending upon their resources that land is much cheaper for them, but other infrastructure cost are more expensive. I mean we see that with bids all the time when they come in for a project. You know, we basically go to the last number to try to match it out, but they range sometimes from \$50 to \$100,000 difference, you know, for each scope of work. So it is rather troublesome especially with the kind of volatile market that we currently have and, again, I don't know the answer, but I know that there are pros and cons on both sides and it was a problem before us not having any numbers because I remember receiving with Kaua'i Lagoons, their proforma showing... this was their cost for their square footage and then we compared them with the cost from Kalepa Village and then we came up and we said, well, no, that couldn't be right. Your square footage, that is too low, you know, and so we went back and forth and I don't think the Housing Agency wants to be placed in that kind of predicament.

Mr. Rapozo: The other thing... I have always felt that the in lieu fee should be what it would cost the County to build a unit and that is what I always felt. I mean, that is just what it is. You are not going to build 'em, we will, you pay.

Ms. Yukimura: Right.

Mr. Rapozo: Now, I can see if we would somehow utilize the HUD guidelines because those guidelines specifically state what that 80% income can buy and I am not sure what the numbers are right now. And what, and if we take a... not making them pay for the whole unit, but using a percentage of the HUD guidelines or the price of an 80% home at the time of the guidelines or using the current HUD standards, that may be a more flexible way and it would change every time the HUD came out with a new sheet every year whenever they do that. The challenge is to determine what percentage of that price should be borne by the developer. Because we all know that we are... if we get the money, we have the

ability to utilize Federal funding so there are other mechanisms to build homes. So there is an offset that we can provide a subsidy if you will that the developer should not have to pay because we can. Again, thinking out loud. This is all new to me, but I am thinking that there is a standard, a rate sheet that HUD comes out with that we could utilize and that changes on its own. We wouldn't have to change the ordinance... using that as a guideline and we could take a percentage of that and determine that would be the in lieu fee. I don't know, we would have to do a worksheet and see how it works, but...

Ms. Iseri-Carvalho: Are you done? Yes, Councilmember Yukimura?

Ms. Yukimura: Yea, I think what you are talking about Councilmember Rapozo is more what would be used to figure out what the family has to pay, you know, of their household income and that was subtracted in order to figure out this subsidy, right?

Mr. Rainforth: Correct, and maybe what Councilman Rapozo is talking about is that there are sales limits for FHA financing.

Mr. Rapozo: That is what I am thinking.

Ms. Yukimura: Is that a reflection of the cost of construction?

Mr. Rainforth: You know, the Federal government comes (inaudible) with some kind of magic. I believe the limit now is in the neighborhood of \$450,000.

Mr. Rapozo: I am sorry.

Mr. Rainforth: In the neighborhood of \$450,000.

Mr. Rapozo: \$450,000?

Mr. Rainforth: I think it is like four thirty something which is remarkably right about where the market is for a modest home right now on Kaua'i if you are look... if you are looking in the MLS, you can find not the most desirable units for around \$400,000.

Mr. Rapozo: Right.

Ms. Yukimura: But aren't they looking at construction. I mean cost of production rather than market... what the market is, you know, what the market can bear? We are talking about how much it would cost the County to build this unit.

Mr. Rainforth: So in deriving these specific numbers, I had the advantage of having some information about the cost of what it cost to build

Hookena which is multi-family units and the cost of building single family units in the 'Ele'ele subdivision project. So I took those cost for three (3) bedroom units and averaged them and then subtracted what a family could afford to get to these numbers. So I am taking the most current "cost" that I could find now in order to derive these numbers. But you are right, every year the HUD median income changes a little bit and we know that the cost of construction is going to go up and down. I don't think they are going to go down significant... we have too many outside international things... costing... affecting the cost of housing.

Ms. Yukimura: So if I might just suggest... in response to, I think Councilmember Rapozo's legitimate concern about developers reading this ordinance and not getting an accurate amount to do their calculations, we might under 2, just say, Housing Agency to have an annual update every year, so that they know they have to go to the Housing Agency to get that update. You know, under number 2 where it says CPI increase?

Mr. Rainforth: Uh huh.

Ms. Yukimura: You just put another... an additional statement that these figures will be on an update sheet from the County Housing Agency just as a way to direct people who are reading this ordinance that they can...

Ms. Iseri-Carvalho: Find out what that number is.

Ms. Yukimura: That these numbers will...

Ms. Iseri-Carvalho: Will change.

Ms. Yukimura: Yea, that there are updates of these numbers that they have to check out.

Mr. Rainforth: Rather than adjusting them by the CPI.

Ms. Iseri-Carvalho: No, you do that.

Ms. Yukimura: No, you say adjusted by the CPI and then you say, I mean unless you feel like you have to update the subsidy... I mean the...

Ms. Iseri-Carvalho: The formula.

Ms. Yukimura: Yea, the formula from HUD and all that as well as the cost. I mean, there are two (2) basic factors. Cost of construction or production and what the family will pay in order to determine the subsidy.

Mr. Rainforth: Yes, and they can be updated... the income part... the affordability part is simple because simple math using the HUD figures. But the other side of the... the cost factor is we have to wait until some developer is building some units in order to try and get them to volunteer what their cost are, so it is not always easy to get the data, that is why we didn't want to have to try and figure (inaudible)... each project separately because it would be... everyone would be different.

Ms. Yukimura: Yea.

Mr. Rapozo: I think for me it is just the challenge. How do we defend the number and that is all and if we can, that is fine.

Mr. Rainforth: With the worksheet that I have to prepare this and it will... when the numbers become not realistic, then they need to be changed. I think the Housing Agency needs to submit new numbers to the Council to amend this and that is what I was anticipating would be our respons...

Mr. Rapozo: Every three (3) years or so and maybe that should be in there subject to review and updates by the Housing Director with approval of the Council. I don't see how you can you have two (2). I don't think you can have the CPI and your sheet like what was suggested. I don't know.

Ms. Yukimura: Oh, no, the CPI would be used to get to your sheet. Basically, you would just, you know, but if it is three (3) years from this bill, it would have three (3) CPIs by which it was multiplied and it would have a new figure. It would be \$147,000 times CPI in 2007, CPI in 2008, CPI in 2009.

Mr. Rapozo: As long as that accurately reflects the change and the cost in your formula because I am not sure if CPI is the same as construction and land and I just don't know that. So, I mean, we just cannot pick the number because something keeps going up every year that we are going to use it. There has to be a connection and I am not sure the CPI does that with construction. And I don't know if Honolulu CPI is in line with what Kaua'i does. I am not sure we are...

Mr. Rainforth: Kaua'i doesn't have a CPI.

Mr. Rapozo: No, that is my point. I am not sure if their CPI ties to what we are trying to address.

Mr. Rainforth: Well, it is the best we have, so we adopted that.

Mr. Rapozo: And I think the better way is for you to review your numbers and if, in fact, it needs to be relayed back to the Council, so be it.

Mr. Rainforth: And I have already looked at Councilmember Yukimura saying is that the Hous... well, I think she is saying that it should be adjusted annually by the CPI and we need to have the calculations available for the developers to see, not just the change in CPI, but how we got to these numbers and then when it is clear that those numbers are no longer valid, it is our responsibility to have them amended.

Ms. Iseri-Carvalho: Okay, move on. (b), Dedication of land.

Mr. Rapozo: I only have one question Madam Chair and it is the... there is a tie into the value of the land and I am not so sure why we need the value versus the size and the number of units that is required. I am not so sure that... because they may have a suitable piece of land that can accommodate the units, but it may not be equal or of greater value than the assessed in lieu fees. In other words, if some developers are very land rich and maybe their land is not valued as high or for whatever reason, but they have land available to provide the units required. So I am just wondering why we have to have that specific language that requires the land to be of equal or greater value. Because the better property for our use may not be and it may be an incentive for them to give us a piece of land that we could actually use for homes, so I am just wondering.

Ms. Iseri-Carvalho: Oh, okay.

Mr. Rainforth: Are you suggesting that it may be advantageous for the County to receive a land dedication that would... actually smaller in size than the calculation would show?

Mr. Rapozo: No, no, no. Just the value, not the size because the section reads, land dedication shall be suitable to satisfy workforce housing requirements and suitability of dedicated land may include, but not limited to and so forth, but I don't see the connection between the value of the land being equal or of a greater value than the assessed in lieu fees.

Mr. Rainforth: Oh, okay.

Mr. Rapozo: Just that part. In fact, the land may not be... again, it all depends on what the in lieu fee is at the time. That may be a very astronomical figure, but the land that they can give up for us to put on the required amount of units may be worth less. Yea, because the land in lieu... the way it is written right now is we are going to figure out what the in lieu fee would be and let's just say the in lieu fee is \$1 million just because that is what it is. Actually, I figured out with... if we went with 40% and 40 homes they had to build in those categories, the in lieu fees came out to \$4,684,000, so that would be their in lieu fee if they wanted to just pay money.

Mr. Rainforth: How big a project is this?

Mr. Rapozo: The assessment was 40 units, so no incentives, just straight 40 units at the percentages...

Ms. Yukimura: (Inaudible).

Mr. Rapozo: Exactly, and if they went with in lieu fees alone based on the formula, they would owe us \$4.6 million, \$4,684,000 and that is what they would owe us. So as opposed to using that as the benchmark, really, what they have to provide to us is land that is suitable to build 40 units, correct?

Mr. Rainforth: Okay.

Mr. Rapozo: I mean that is what this is saying, right? Suitability (inaudible) land to satisfy the workforce housing requirements. Now, they may have a prime piece of land that could do that, but it may not be assessed at \$4.684 million.

Ms. Iseri-Carvalho: (Inaudible).

Mr. Rapozo: Right now by the language it does, so in other words that land would be perfect suitable for us to develop into homes, would not meet the requirement of the ordinance because it is not valued at the same amount as the in lieu fees.

Mr. Rainforth: Well, I believe that cost of the land per unit would be less than the subsidy required for at least the lower income ones and that calculation may not meet... having land suitable to build 40 units, just provides you with the land.

Mr. Rapozo: Right.

Mr. Rainforth: For them to develop it, the subsidy required by the County to build those 40 units may exceed that \$4 million.

Ms. Yukimura: Right.

Mr. Rainforth: So the County would be behind or losing on that.

Mr. Rapozo: But whether the land is assessed at \$4 million or \$10 million or \$2 million, it is still the same size land that we have to develop and maybe I am reading it wrong Ken and I apologize if I am reading it wrong.

Mr. Rainforth: The size of the land is really immaterial. It is not immaterial, but it is not part of the calculations.

Mr. Rapozo: But it needs to be big enough to put 40...

Mr. Rainforth: Not necessarily. Okay, we use the in lieu fee... we establish an in lieu fee calculations as an alternative. The land dedication on land in lieu should be an equal hit or value to the developer and the way to do that is that the value of the land needs to be equal to the in lieu fee.

Mr. Rapozo: Yea, I guess my concern is, what if the value of the land that they are proposing can only put up 10 units?

Mr. Rainforth: Well, then they need to do... give in lieu fees to make up the balance or build units.

Ms. Yukimura: It doesn't say here that it has to provide for 40 units for the equivalent units that...

Mr. Rapozo: That is what it says. It says land dedication shall be suitable to satisfy the workforce housing requirements.

Ms. Yukimura: Oh, okay.

Mr. Rapozo: So that means for me, that land has to be able to house 40 units and it must be equal or greater than the value of the in lieu fee.

Mr. Rainforth: The intent was... you have to go back to... you have to provide 20% (inaudible)... so you use that in lieu calculation. I guess you did all that?

Mr. Rapozo: I did that, yea. So the biggest one is the 20%... that 80 and below which comes out to almost \$2.5 million. So I just don't want the dollar figure to hold up the opportunity for the County to obtain a parcel of land that is suitable for 40 units and that scenario may not be one that we would come across all the time, but I just use that because the numbers were available. I am thinking, okay... if, in fact, it may be difficult for them to do that because the land that they own may not be worth what the in lieu fee would be. I don't know and this ordinance, we have to remember is not just for now, not for this market, but for markets as we move forward.

Mr. Rainforth: If a developer doesn't have a... own land itself that they could dedicate to the County, they can go buy it or they can build units instead or they can pay the in lieu fee. They have all these options, so I don't understand why the County would accept a lesser amount of land or the value of the land in order... and say that they satisfy the workforce housing requirements. It would be unfair to other developers who were satisfying the workforce housing requirements in other ways. Building the units or providing an in lieu fee or providing land in lieu, they are all supposed to have the same monetary requirement for the developer. If they

build the units, they have to subsidize it because it cost them more to build than the people who can afford and that is where you actually... this in lieu fee calculation is trying to guess what that number is and then the land in lieu is continuing that rationale.

Mr. Rapozo: Then that answers my question if that was the reason for that language. Okay, I was just looking at it as being the opportunity for us to get land to build the 40 units, but if that... then that is fine. Thank you.

Mr. Rainforth: Okay.

Ms. Yukimura: I don't think that should be the criteria that they have to pay the same amount, whatever. It needs to be what is it going to take us if they give us land to build those 40 units that they were supposed to build. That is the criteria and not what cost them, but what it would cost us to do what they were supposed to do. And that is why, you know, suitability of land for me is a little vague, I mean, because when you measure suitability, suitability is partly the size of the parcel and you have to make sure that 40 units can fit on it. But then suitability also in terms of closeness to infrastructure, you know, zoning, General Plan considerations... all of those things have to be taken into account and it gets to be a can of worms to try to really evaluate that. So, to me, to give, you know, how do you measure that in terms of the land? You have to have some pretty good criteria and then what is it... you have to figure out what it is going to cost us to develop in order to know whether they are really satisfying their requirement or not.

Mr. Rainforth: No, we have thought about us... I thought about this a lot and that is probably all I do is think about this.

Ms. Yukimura: You thought about this far more than anyone of us put together... all of us put together.

Mr. Rainforth: And to try and be fair to everybody equally, you know, we tried to design this policy to have equal impact no matter which method they use to satisfy the requirement whether they build the units, pay fees, or provide land or a combination of any combinations is supposed to be equal and fair.

Ms. Yukimura: But not exactly because you are saying... I mean like an ag subdivision which is building a lot of expensive houses by the formulas that you are... I don't think their requirement are going to be the same part because it is either easier or harder than an affordable housing developer that is actually providing houses that are more useful to people whether they are within the range of affordability or not, right? I mean, I don't know if this equality thing is, I guess, as you are saying... illusive concept, but when you use the... if you use the thing about equal impact, you are not starting out with equal developers to start with.

Mr. Rainforth: That is true and we toyed with provisions repeatedly to try and address, you know, there are developers who are building luxury units, second homes for people who don't live here and that is one type of project. It could be a project because of its location and the zoning... only can be developed and utilized by residents, but they have the same assessment. It doesn't seem fair to me, but in trying to create a policy discouraged about having different assessments for... we shouldn't have a policy that cost the resort... the upscale developer more than another developer.

Ms. Yukimura: Maybe this is... to try to be equal is not the right way to go when you are talking... alternative ways to satisfy. I think you... your assessment is where the equality comes in. You know, everybody is 40% and then they get credits, okay, that is laid on everybody. When you are talking about satisfaction alternatives, it is the County... whether the County is getting the same amount from the satisfaction alternative as it would have gotten from the across the board application or a normal application of the assessment. That should be... we shouldn't lose out from a satisfaction alternative.

Mr. Rainforth: I don't think we knew and I don't think the policy does that.

Ms. Yukimura: But I don't see... like we may get land, but it may cost us far more to actua... than it would cost the developer to actually create those 40 units, so then we are not in better position.

Mr. Rainforth: If a developer who has an assessment of 40 units does not build those 40 units and sell them and they utilize the land dedication alternative, we are not looking for a site to build 40 units, we are looking for a site that has got a value of the subsidy that those 40 units represents.

Ms. Yukimura: That is because you are using the...

Mr. Rainforth: It is going to be much, much larger. It is going to be... we have done these calculations and it is a lot of land.

Ms. Yukimura: Okay.

Mr. Rainforth: Much more than 40 units... like 300 units would be the land contributed or land big enough for 300 units.

Ms. Yukimura: If you have the infrastructure to actually get to the result.

Mr. Rainforth: Well, the Housing Agency analyzes sites all the time... that is what we do in a development whether or not any side on this island has a potential to be developed. The language in the provision says that, you know, we are required to look at that and that is what we are doing.

Ms. Iseri-Carvalho: We are going to take a caption break because we are required to at this time. It looks like we are almost finished. I will take a little bit more questions on Article 3 if there are any, but that is all that we will do today. I will start after that with the public testimony because we have had people who have been waiting here a long time, and then we will have this deferred. Alright, thank you and return back at 6:05 p.m.

There being no objections, the Committee recessed at 5:55 p.m.

The meeting was called back to order at 6:11 p.m., and proceeded as follows:

Ms. Iseri-Carvalho: We are currently at page 17. Anymore questions with respect to Section 3.1? No, okay, thank you Ken. Is there anyone from the public that wishes to testify?

There being no objections, the rules were suspended.

Ms. Iseri-Carvalho: Come on Mr. Shigemoto. You waited three (3) hours. You can talk on any section that you want.

TOM SHIGEMOTO, A&B PROPERTIES: For the record, my name is Tom Shigemoto. Thank you and I want to thank the Housing Agency for the hard work. I know they put in a lot. I just want to start off by saying that from what I was able to read, you know, there are some good things that have come out from all of the discussions to date. I like the incentives, the density bonuses, the fact that the commercial and industrial zoning applications are out. And then also the satisfaction alternatives except I reserve comment or reserve comment on the in lieu fee calculations. I think we need to take a look at that and, of course, a lot more of the new provisions that are being inserted. I do have some questions and I guess some comments about on the negative side of the proposals. First of all, you know, I am going to keep on asking for or... I guess asking for the basis for the percentages. It seems like the ordinance is stuck or the bill is stuck on 40%. How is that 40% determined? Why isn't it 25%? Why isn't it 30%? You know, to me, there has to be a nexus or basis for the percentages. Related to that, we've asked... I have asked on different occasions what is the County's housing plan upon which these percentages is based on and to date... whether the County is going to do it, the Housing Agency is going to do it, I don't know, but if it is not going to be done, then come up with something that seems a little bit more fair or reasonable.

Right now, the 40%, to me, is not fair. Again, because we haven't studied the incentives and the density bonus provisions, it is hard to say whether the 40% worked, but it just seemed high and I just ask for a basis for that 40%. The only other comment that I wanted to make was... relates to where you can provide the off-site housing. I know you are tying it to tax district or five (5) miles... Again, I question, would the Kaua'i Lagoons housing at Waipouli qualify if it was under this

criteria?

Ms. Iseri-Carvalho: I don't know how far that is.

Mr. Shigemoto: More than five (5) miles and outside of the tax district, different tax district. Wailua is 4 and Līhu'e is 3, so...

Ms. Iseri-Carvalho: And I think it may not qualify based on that, but based on the suitability and the only thing that was available given the time constraints that they had, that they would probably qualify under that exception.

Mr. Shigemoto: Exception, okay, fine.

Ms. Iseri-Carvalho: The Housing Director would look at and would determine then that was appropriate and would get the same as an on-site project.

Mr. Shigemoto: Okay. Related to that is, you know, I think about developments like on the Northshore like if it is Princeville and they want to, you know, connection with the affordable housing... instead of having affordable housing right there at Princeville, would they be able to say, pay for or purchase a lot that is more than the five (5) miles or in a different tax district to put housing where it is more needed. Okay, so...

Ms. Yukimura: How are you (inaudible) needed... I mean, Princeville needs...

Mr. Shigemoto: Well, again, this goes back to a housing plan. Where is the housing needed on the island.

Ms. Yukimura: And it is not where is it desired, it is where is it needed.

Mr. Shigemoto: Where it is needed, so if the housing is needed in Līhu'e, for example, which is more central to the island and people want to live here, why wouldn't a developer be able to either purchase land close to where the housing is needed or develop housing where it is needed versus having to put it on-site where maybe the housing need isn't as great. But the need, as I said, should be determined by a housing study.

Ms. Yukimura: Well, I think one of the things to look at is how many people have to commute from Kapa'a to Princeville or even Kīlauea to Princeville to work.

Mr. Shigemoto: I am not... well, I am not saying it is not needed there, but as an example, okay. All I am saying is maybe you might run into a situation where housing is needed someplace else rather than on-site.

Ms. Iseri-Carvalho: And that would be, again, under Section 2.6 where the off-site preference... that if there are special circumstances that exist including, but not limited to proximity, economic job centers, bio preference, infrastructure... to accept off-site workforce housing beyond geographic limits, the Housing Agent (inaudible) can determine that it is an on-site project. I mean there is some built in flexibility for that.

Mr. Shigemoto: Okay.

Ms. Iseri-Carvalho: And I mean that was something that we highly recommended to the Housing Agency to come up with something creative that would address that situation.

Mr. Shigemoto: Alright, thank you. That is basically all that I have to say for now.

Ms. Iseri-Carvalho: Okay. Really?

Mr. Shigemoto: We will come back with our recommendation.

Ms. Iseri-Carvalho: Thank you. Hold on, any questions for Mr. Shigemoto? Tim?

Mr. Bynum: Hi Tom.

Mr. Shigemoto: Hi.

Mr. Bynum: Your comments are a lot different than they were when we started, so, you know. I saw in this version... you mentioned the 40%, but as I had mentioned earlier, build integrated, build single family residents could be 20%. Is that... are those incentives impressive to you at all?

Mr. Shigemoto: Well, as I said, I am not going to get into exactly whether the percentages aren't, you know, correct or proper. All I am asking for is... what I am asking is, what are the percentages based on.

Mr. Bynum: Right.

Mr. Shigemoto: How did they come up with the percentages.

Mr. Bynum: I understand that.

Mr. Shigemoto: So if you start at 30% or 20%, that is better yet, but I am not going to say whether that is right or not. I am just asking if the County has a housing plan and what these percentages are based on.

Mr. Bynum: Okay.

Ms. Iseri-Carvalho: Yes, Councilmember Yukimura?

Ms. Yukimura: Well, one of the rationales for the 40% is that if you apply the incentives in some reasonable fashion... if it is not... if it is 20% instead of 40%, you don't have to provide any housing at all?

Ms. Iseri-Carvalho: No, you still would have to provide some.

Mr. Shigemoto: Again, what is more rational?

Ms. Iseri-Carvalho: But then, you know, you could start off at 30 and then give for integration, you know, 5% or 15% and if that number works for you.

Mr. Shigemoto: And that is all that I am saying. I am not saying, I don't know what is good. I mean, I've said before, the 15% that the County was currently using is great, but even that, what is that based on?

Ms. Iseri-Carvalho: We are hoping, Tom, that we get... in Section 1 when we do our policy and what the objectives were that we are trying to achieve and what information we relied on in order to make the nexus between the figures is going to supply that information. Remember we talked about it earlier, the Housing Agency, that they haven't fully developed that Section 1 to explain, you know, the purpose and the information that they relied on in order to have those numbers... the sheet isn't also part of this which I will be able to provide. What actually went into the calculation for the in lieu fee? Things like that and hopefully we will address that the next time we are here.

Mr. Shigemoto: Okay.

Ms. Iseri-Carvalho: But I thought you wanted to know the meat of what we had and...

Mr. Shigemoto: Yea, it is really hard to digest because there is so much to digest and I am surprised that there are so many questions of Ken. In a way it is good that there are so many questions because I think you are probably feeling the same way that I am feeling that, you know, is this policy... is this bill in a form that, you know, is acceptable at this point in time. I can't fully, you know, support it right now. I don't know yet without digesting it and studying it a little bit more. There was one more. I am sorry. One thing I wanted to say and for the people who are watching because, to date, it has been more the large developers and owners that have been here. This provision regarding application at the time of building permit and subdivisions are really, really going to be... going to affect some of the smaller developments that you don't know what is in this bill. So for whoever is watching, please pay attention because no call me, but, you know, it will have an

impact on anybody who is trying to do smaller subdivisions, more than 10 and five (5) building permits on their property. We have to take a look at that. We testified before that we didn't think it was a reasonable requirement, but so be it if that is what the Council wants. Thank you.

Ms. Iseri-Carvalho: Any further questions?

Chair Asing: I have a question. Let me ask the hard one. Can you live with this what you have now? Would developers be able to develop with what we have now? Would it be reasonable?

Mr. Shigemoto: That is a tricky question Mr. Asing, but it depends...

Chair Asing: It is meant to be tricky and it was meant to be straight forward and get some opinion from you if you possibly can answer it.

Mr. Shigemoto: And I am going to have to separate out, you know, how I answer this because if you are looking at companies like Grove Farm and A&B and Princeville who maybe had the land for a long time, 40% is high. As I said, I cannot tell you exactly where the break point is, but 40% is high for us, even us. 40% for somebody who has to purchase property to develop and then provide affordable housing is way, way too high. Whether they go forward with this 40%, I don't know. Again, I have not had the chance to evaluate the incentives and the density bonuses to see if it works financially and that is what would (change tape)... and, again, the verdict is out on Maui. If you have a suit and whether or not, you know, how many more affordable units actually get built, only time would tell. I don't know if this County wants or can afford to wait that long.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: I just want to make it clear that, you know, you say 40%, but when you look at some of the incentives which are just talking about doing a group community. You know, energy efficient houses and integrated communities, the effective rate is actually probably about 25%. So just so people understand it, it really is about... and you have said fairly... I mean, with great fairness that, you know, you have to go and look and see how they interact. I think we all have to do that including, you know, people in the viewing audience in terms of how they really interact, what the actual effective rate is.

Mr. Shigemoto: Right.

Ms. Yukimura: So that people don't... people just know that there are offsets that are quite reasonable and...

Mr. Shigemoto: That is what I mean. We haven't had the time to analyze how it works.

Ms. Yukimura: Yea.

Mr. Shigemoto: Yea.

Ms. Yukimura: And then just one other thing that we don't forget is our goal is to, you know, relieve this really horrible situation that affects employers and families and friends and colleagues in terms of the housing problem and the homeless problems. So hopefully we can really look at how we can solve that.

Ms. Iseri-Carvalho: Councilmember Furfaro?

JAY FURFARO, EX-OFFICIO MEMBER: Thank you Chairwoman and as a non-member of your Committee, I thought the question asked by the Chair. When you do come back and are prepared to answer it, I guess the piece I am looking at is, do you believe... when you answer that and not now, but as we talk about it more, are there enough incentives do you think that it would actually stimulate some building now because the housing need is now. I think that is where Councilwoman Yukimura was coming from. We have short term needs of about 1,100 units from what the survey said. The real question is, with a resolution with no new resort zoning, we will look at revisiting those that have zoning now and are these incentives attractive enough that would stimulate some building for the immediate problem. I guess that is the question that I would like to... because if it doesn't, we find ourselves with the demand and the need, but no stimuli to make anything happen.

Mr. Shigemoto: Right, and that is what we will be taking a look at.

Mr. Furfaro: Very good. Thank you.

Chair Asing: I think more critical to that, though, we may end up with a housing policy that sits on a shelf and provides no housing for the community.

Mr. Furfaro: No, no, and that is my question about those incentives Mr. Chair. The fact of the matter, you could have a policy that does not bring actual construction out to fulfill the requirements, so we have a policy that does not stimulate any housing.

Ms. Iseri-Carvalho: Yes, Councilmember Rapozo?

Mr. Rapozo: Thank you. Tom, your input is very valuable I think along with the other major landowners. There is the old saying, 50% of something is better than 100% of nothing. You know, two (2) studies on my desk right now, one of them says that housing policies create housing. I have one that says that housing policies destroy affordable housing. I don't know, I don't think anybody on this table here knows what the impacts will be of this ordinance because I think it is

well written and I have to say, Ken and his crew (Gary and Barbara) from yesterday... what they came here with yesterday, the draft, and what they brought here today, I don't think they slept. Ken obviously was tired today, so I appreciate the work and the intent is there, but my concern I think is that you have heard from everyone is, you folks are the ones that have to come back and tell us, will it stimulate or not? Will it stimulate growth and it is not just the A&B or the Kukui'ula's or Grove Farms, but is the Chris Jensens that want to come up and do a 25 lot subdivision, 30 lot subdivision, 15 lot, 5 lot... will this induce or encourage CPR's on the smaller landowners. I think those are the kinds of things that I want to hear from you folks, the experts in that industry because, really, it looks really good and I think, you know, in our... the intent to make the right thing, do the right thing, you know, we have found... for me anyway, in the last five (5) years, often times there is some unintended consequences. So we rely a lot on what you folks have to say and I appreciate your honesty, but that is, I think Jay asked... when you come back, if you could really come back and say, you know, will it really help or hurt and that is what we will be waiting for.

Mr. Shigemoto: Sure.

Mr. Rapozo: Thank you.

Ms. Iseri-Carvalho: Okay, any further comments? Again, you know, I echo the sentiments of Councilmember Rapozo that your input is very valuable and we have been trying to work with all of you in trying to hear the concerns that you have and hopefully arrive at some medium point that we both... you know, meaning County Council, the Administration as well as the people who are there to help us develop these affordable housing to a middle ground that we are not going to win everything, but we will all walk away satisfied that it was a good legal document that is in place. You guys have provided numerous opportunities for us to make the necessary changes and we will continue to do that. Again, I appreciate all the help that we have received from yourself and the entire group.

Mr. Shigemoto: No, you know, from the development community, we see that Shaylene and we appreciate that too. You know, and all we want, again, is reasonable and fair treatment in developing this policy, but thank you.

Ms. Iseri-Carvalho: Thank you. Alright, what I will do then... anybody else that wishes to make comments? Hearing none, we will call the meeting back to order.

The meeting was called back to order, and proceeded as follows:

Ms. Iseri-Carvalho: Any further discussion? Hearing none. Before I close this segment of the agenda, I would just like to highlight, again, the schedule. Again, thank you Ken under your excellent leadership with Gary and with Barbara, we have been able to come up with, in my opinion, a very well written document.

There are some changes which I think are minor changes that need to be made, some format changes, but, really, just excellent quality from the beginning to the end. You know, considering all of the input that you've had to deal with from each one of our Councilmembers to the development community, to people of your staff trying to put together a document for all us. Thank you. I appreciate you doing the necessary work and not sleeping, so that you were able to make the deadline today, October 10. I would appreciate that that kind of commitment will be followed by the rest of the Councilmembers. It is anticipated based upon the September 19 memorandum that was sent to all of you. October 17 which is next week will be the deadline date for Councilmembers to submit your amendments. I will have that distributed to the rest of the Councilmembers and take the time to do your research and investigate and make your phone calls, so that on October 24, it is anticipated that we will have discussion of all the amendments and that the Committee will be prepared to make a recommendation to the full Council on whether to accept the document and the proposed amendments. We are anticipating still that on November 7 at the Council meeting, we will be able to vote on Bill No. 2202. Yes, Councilmember Furfaro?

Mr. Furfaro: I just want to make it... I want to clarify something. As you know, I did submit, rather than amendments, just some commentary to you the last time around. Is that still acceptable if it just comes across as concerns or you absolutely want it in a form of an amendment?

Ms. Iseri-Carvalho: Yes, it would have to be the form of the amendment, so that it could get voted out, so the staff would be ready to prepare it to be circulated and voted upon.

Mr. Furfaro: Well, I apologize because the last time I just sent you commentary.

Ms. Iseri-Carvalho: And that was fine. We handed that over to Mr. Rainforth and then how he incorporated... I know that one of the provisions that you addressed was trying to get to the group of 160 or 180. Based on the discussion as Mr. Rainforth has indicated, we are addressing that group with the way that the marketing restrictions are and that is how they decided to address that.

Mr. Furfaro: But I will try and do it in a form of an amendment going forward.

Ms. Iseri-Carvalho: Yes, alright. Thank you.

Mr. Furfaro: Thank you for that clarification.

Ms. Iseri-Carvalho: Yes, Councilmember Yukimura?

Ms. Yukimura: Yes, I have a concern that the actual wording of the bill is not yet set based on what the Housing Agency has said, so when we propose amendments, there may be changes in sections or our references or whatever. Am I mistaken in thinking that?

Ms. Iseri-Carvalho: We talked about the changes that were going to be made by Housing. Housing will make those changes I assume and submit them on October 17 as well.

Ms. Yukimura: So like, you know, on page 28, it Section blank dash 7.1 and if we are going to amend it, how do we...

Ms. Iseri-Carvalho: What you mean? No, that is how they are written. That is a new Article and that is how all of them are.

Ms. Yukimura: Okay, well, then, so the wording won't change, I mean, because we need to have kind of a set wording and set section numbers and everything in order to prepare amendments if you want formal amendments. So I am just... I guess we can...

Mr. Kouchi: I understand what Councilmember Yukimura is saying. I think that in the interim, all anyone of us can do is offer an amendment that amends the current draft that is here. But, again, as Councilmember Yukimura is stating, an amendment may subsequently pass in the Committee meeting next week that changes all section number that then requires you to go back and make technical changes to the amendments that have been submitted in the interim just by numbering.

Ms. Yukimura: Actually, Bill No. 2202... this isn't Bill No. 2202. This is... it would be Draft 1 once it passes and then we would be able to amend it.

Mr. Kouchi: Well, my... and, again, the Chair can answer this. I was of the impression that something similar to this would be asked to move to amend as circulated, so would you want us submitting our amendments based on this Draft 1 or should the amendments reference the bill that is presently being deferred in the Committee.

Ms. Iseri-Carvalho: I think this is...

Ms. Yukimura: This is so different from the (inaudible).

Mr. Kouchi: But that is your question.

Ms. Iseri-Carvalho: And the County Clerk is present. What is the preference of the staff to assure that transition because it is different from the initial proposal of Bill No. 2202.

There being no objections, the rules were suspended.

PETER A. NAKAMURA, COUNTY CLERK: Committee Chair, as long as the bill hasn't been amended, we work off the original bill that is currently on the agenda. This is...

Ms. Iseri-Carvalho: This would be a whole amendment.

Mr. Nakamura: This would be amending the bill in its entirety.

Ms. Iseri-Carvalho: And then if there are amendments on top of this bill, they can do an amendment?

Mr. Nakamura: We would still go back to the original bill because until the Committee votes on actually amending the bill, it doesn't become a draft 1 and we take the amendments off the base bill that hasn't been amended.

Ms. Iseri-Carvalho: Okay, so what I would suggest then is that on October 17, the language of the section... just put the numbers based on this one so far because this is... there is not going to be anything that might be similar in the original bill that you want to change.

Ms. Yukimura: It is hard to propose amendments to the original bill because it has changed so much by this version.

Mr. Nakamura: What we can do Madam Chair is if the Councilmembers want to incorporate the changes that are in here, then we will work off this bill with the new language, but that is more of a technical thing that we can sit down and work with you on.

Ms. Iseri-Carvalho: Okay, so we will have... they will submit the original bill.

Mr. Nakamura: Correct.

Ms. Iseri-Carvalho: With these...

Mr. Nakamura: If you want to incorporate some of the changes that are included in the Housing Agency's proposal, just incorporate it within yours... within the amendments that you are going to be submitting. But this is not the base to work off.

Ms. Yukimura: What that means is we are going to have amendments that are this thick because we are going to have to include this and then our amendments on top of it. It would be better if somehow we could get a draft 1 and

then we would make amendments to draft 1 and then we can only refer to certain sections.

Mr. Nakamura: Madam Chair, that would be your call.

Ms. Iseri-Carvalho: And that might be the easier way because of the difference from the original bill to what its current form is.

Ms. Yukimura: But what I am saying then is we can't really prepare technically prepared amendments until we get a draft 1.

Mr. Kouchi: So we would have to approve the amendment that is circulated, get it approved and then ultimately defer. Any amendments from the Housing Agency or the Administration would then amend the draft 1... any amendments from members would amend draft 1.

Mr. Nakamura: Correct.

Ms. Iseri-Carvalho: We can do that today.

Mr. Rapozo: Let me do that right now. Let me make a motion...

Ms. Yukimura: There is no proposed amendment, written proposed amendment. This is not called an amendment.

Mr. Nakamura: What we will need to do on this one Madam Chair is formulate it into a floor amendment. So I think what maybe we can sit down and talk with you about is, is formulating this as a floor amendment and on the 24th, that would be the first item of business. In the meantime, if Councilmembers want to submit amendments, what we can do is work with the analyst and make sure that we capture...

Ms. Iseri-Carvalho: They coordinate it.

Mr. Nakamura: How they will coordinate it. That would an internal thing that we would work with you on.

Ms. Iseri-Carvalho: So I would utilize this as a base Councilmembers. Utilize this as a base because we will anticipate that this will be introduced as draft 1. And then based on utilizing these numbers, you will turn that in by October 17. The staff will do amendments in the proper format that will be prepared and ready on October 24.

Ms. Yukimura: I think this is highly unorthodox because we don't have an amendment before us. It is always required that we have a written amendment before we propose other amendments.

Ms. Iseri-Carvalho: This is the schedule. This is what is going to happen. Like I just said, look at your amendments...

Ms. Yukimura: Well, I am just trying to follow the Council rules and that is why I am confused.

Mr. Nakamura: I think those are technical things that we can work with on as long as we know... as long as we can understand from Councilmembers like you were saying. If we can understand what their amendments are, we can work with what we have.

Ms. Iseri-Carvalho: Thank you.

Mr. Nakamura: So as long as we understand that, we (inaudible).

Ms. Yukimura: Okay, so that was, you know, different when we had the shoreline amendments or vacation rental. We couldn't even discuss it until we had a written thing in front of us. So, I mean, I am not trying to make problems, I am just trying to say that I think we are not following our rules.

Ms. Iseri-Carvalho: Well, the County Clerk is right there.

Mr. Kouchi: Peter said we need to follow the rules, so we can't amend this...

Ms. Iseri-Carvalho: Because it is not in proper format.

Mr. Kouchi: Submit whatever amendments that you want unless you are actually going to type out your own amendment, what you need to do is get to the staff the substance of your amendment and they will put it in a format. And then at the next Committee meeting...

Ms. Yukimura: Could it be an amendment to an amendment.

Mr. Kouchi: Well, the next Committee meeting we will consider this as an amendment perhaps and then the other amendments and the staff will do their best to try and...

Ms. Iseri-Carvalho: Coordinate all of the various amendments.

Mr. Kouchi: But no matter what happens because depending if one passes or not, there will be some challenges to the staff because there will be potentially just simply renumbering.

Mr. Nakamura: We understand your schedule Madam Chair and we will do our best to work with that.

Ms. Iseri-Carvalho: Thank you. I appreciate that and that would be it. Any questions of the County Clerk? If not, we are still in our meeting. Any further discussion? Okay, if I could get a motion to defer?

The meeting was called back to order, and proceeded as follows:

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Rapozo, and unanimously carried, Bill No. 2202 was deferred.

CA/IGR 2007-8 Communication (9/18/2007) from Shaylene Iseri-Carvalho, Community Assistance/Intergovernmental Relations Committee Chair, requesting that the Administration be present to give a complete status report and overview of the Villas at Puali housing project in Puihi (see also Ordinance No. PM-2005-372).
[This item was deferred until the November 14, 2007 Committee Mtg.]

Ms. Iseri-Carvalho: With respect to this item, I am going to ask for a deferral. The reason is, we have received part of the responses to the questions that went over. We still need to obtain more research material. I will be asking for a deferral of a month with respect to this matter. But before we get into that, I will suspend the rules.

There being no objections, the rules were suspended.

Ms. Iseri-Carvalho: Anyone who wishes to speak on this matter? There being none, we will call the meeting back to order.

The meeting was called back to order, and proceeded as follows:

Mr. Furfaro: Madam Chair, I will be circulating a response regarding the revolving fund on Housing just so that everybody has that.

Ms. Iseri-Carvalho: That information. Thank you.

Mr. Furfaro: They will be your boxes. I have gotten that from the Finance Department.

Ms. Iseri-Carvalho: I appreciate that. Thank you.

Upon motion duly made by Councilmember Kouchi, seconded by Councilmember Rapozo, and unanimously carried, CA/IGR 2007-8 was deferred for one month (until the November 14, 2007 Committee Meeting).

PERSONAL PRIVILEGE:

Mr. Rapozo: This is probably a moment of personal privilege more than anything else, but I was on the website today trying to track down the housing information and I noticed that the Mayor has an opening for Housing Director. So I just wanted to publicly state that I fully recommend Mr. Rainforth and I encourage him to consider that position because he has done a fabulous job. You know, often times, we look farther than we have to, so anyway, I just wanted to make that comment public. Thank you.

Ms. Iseri-Carvalho: Councilmember Yukimura?

Ms. Yukimura: I support that and I just want to thank Mr. Rainforth for some extraordinary work as well as his staff. I think his knowledge and his perspective that spans many years has been so valuable to us. The work that has come forth is really substantive and I think will help us to get to a good housing policy.

Ms. Iseri-Carvalho: Anyone else? Likewise, you know, it has now been three (3) months without a Housing Director that was advocated before us as a necessary position. It is clear that we haven't needed 'em for the last three (3) months because, obviously, Mr. Rainforth and his team has been able to put forth probably one of the most complicated documents that will exist for the next decade. So it is just really impressive how all of that was done without a Housing Director in place and maybe that should be a sign that we don't need to increase the bureaucracy to have a Housing Director when we already have an Executive on Housing that does the job just as well with his leadership team and maybe just allocate the wage for that Housing Director, just give it to Ken and then we can vote on that. But, anyway, thank you again Ken for your extremely hard work and just your ability to have the... I guess the skills that is necessary to get together so many members of the community together to work really well with the Councilmembers, who work well with the County Attorney. It has just been an impressive time for myself and really proud to have been a part of, you know, your work in trying to come up with this housing policy. Remember, we didn't have one... I think we have never had a housing policy enacted, so it would be a first time that we do. So thank you again Ken and look forward to working with you until this bill gets passed and even after that. Thank you Committee members. I ask for your indulgence in complying with these deadlines. It has been now over a year since this matter has been on the agenda or close to a year since it was first introduced on the floor of the Council. This Committee is now adjourned.

There being no further business, the meeting was adjourned at 6:47 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on November 14, 2007:



SHAYLENE ISERI-CARVALHO
Chair, Community Assistance/Intergovernmental Relations Committee



A BILL FOR AN ORDINANCE
TO ESTABLISH A NEW CHAPTER, KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO THE HOUSING POLICY FOR THE COUNTY OF KAUA'I

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Purpose. The purpose of this proposed ordinance is to establish by law a housing policy in furtherance of the goals and objectives identified for the Kaua'i County Housing Agency in Section 2-1.16 of the Kaua'i County Code 1987. The proposal includes housing zoning requirements and codifies procedures used to administer housing development programs.

(a) Need for Affordable Housing. A serious shortage of affordable housing

SECTION 2. The Kaua'i County Code 1987, as amended, is hereby amended by adding a new Chapter, to be appropriately inserted and numbered, as follows:

“CHAPTER ____
HOUSING POLICY FOR THE COUNTY OF KAUA'I

ARTICLE 1. GENERAL PROVISIONS

Sec. __-1.1 Title.

This Chapter shall be known as the Housing Policy for the County of Kaua'i.

Sec. __-1.2 Purpose.

(a) To establish that a portion of residential [developments] and [large] resort[, commercial, and industrial] developments shall provide workforce housing opportunities for Kaua'i residents that are affordable to households earning from eighty percent (80%) and below of the Kaua'i median household income to one hundred [eighty]forty percent ([180]140%) of the Kaua'i median household income. The term “workforce housing” shall hereinafter be used collectively in place of the housing terms “low income,” “affordable,” [“gap group,”] and “employee” housing formerly used to describe income groups related to housing [exactions] requirements and housing programs established for residential and resort developments.

(b) To encourage that a range and variety of workforce housing types and occupancy are made available for, and to establish procedures for qualified residents to benefit from the sale or rental of workforce housing.

(c) To preserve the affordability of workforce housing for the future.

(d) To provide government assistance to expedite workforce housing development through the waiver of certain County fees, through the implementation of a fast track permitting, and exercising housing powers to exempt workforce developments from development standards that do not jeopardize health or safety.

Sec. __-1.3 Definitions.

The following definitions shall apply for the purposes of this chapter.

"CZO" means the Comprehensive Zoning Ordinance of the County of Kaua'i as codified in Chapter 8 of the Kaua'i County Code, 1987, as amended.

"County" means the County of Kaua'i, a political subdivision of the State of Hawai'i.

["County buyback rights" means the reserved rights of the County to repurchase a workforce housing unit which is offered for sale within the restricted sales term, from three (3) to thirty (30) years from the date of sale. See restriction on sale or transfer, and use.]

"County fees" means [any and all] fees payable to the County which arise out of the development and construction of the workforce housing units.

"County permits" means all permits and approvals required and issuable by the County for the development and construction of the workforce housing units.

"Developer" means a land owner or [representative] authorized agent of a land owner [that develops] of real property [and] (1) that seeks any County approval for development or subdivision of real property, or (2) that has applied to the County for a State Land Use district boundary amendment, or a zoning district boundary amendment, or (3) that has previously obtained from the County a State Land Use district boundary amendment or zoning district boundary amendment, but has not yet satisfied an existing housing condition or the County has not yet [agreed to the specific means] executed a housing agreement specifying the means to satisfy all or any portion of an existing housing condition.

"Dwelling, Multiple Family" means a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

"Dwelling, Single Family Attached" means a building consisting of two (2) or more dwelling units designed for occupancy by two (2) or more families living independently of each other where each unit is structurally independent although superficially attached or close enough to appear attached.

"Dwelling, Single Family Detached" means a building consisting of only one (1) dwelling unit designed for or occupied exclusively by one (1) family.

"Dwelling unit" [has the same meaning as contained in the CZO] means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities, within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen. Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens.

"Fast track" means the process adopted by the County to expedite the processing of County permits.

"Gap group" means households earning gross household incomes from one hundred forty (140) to one hundred eighty (180) percent of the Kaua'i Median Household Income (KMHI).

"Household" means [an individual or a family, with or without children] all persons living together in a dwelling unit, whether or not they are related by blood, marriage, or adoption..

"Housing Agency" means the Kaua'i County Housing Agency of the Offices of Community Assistance, County of Kaua'i.

"Housing standards" means the standards mutually agreed upon by the developer and the Housing Agency which shall guide and determine the numbers and types of workforce housing units to be developed.

"HUD" means the United States Department of Housing and Urban Development.

"Immediate family member" means the parents, brothers, sisters, spouses or reciprocal beneficiaries, children, parents-in-law, grandparents, grandchildren of an individual, or a member of an immediate family member through the Hawaiian "Hanai" custom. Reciprocal beneficiary means a relationship of two adults that have selected a life partner in lieu of a spouse pursuant Hawai'i Revised Statutes Sections 572C-4 and 572C-5.

"Income qualified buyer" means a qualified buyer whose income is within the limits of the workforce housing income group that is targeted for the purchase of workforce housing units intended as affordable for that workforce housing income group.

"Income qualified renter" means a qualified renter whose income is within the limits of the workforce housing income group that is targeted to rent the workforce housing units intended as affordable for that workforce housing income group.

"Kaua'i median household income" means the median household income for the County of Kaua'i as determined annually by HUD.

"Limited appreciation leasehold estate" means a leasehold estate administered through the Housing Agency or [the] a Kaua'i community housing land trust where the lease term is ninety-nine (99) years, the sales price to the lessee is the appraised value of the buildings, appreciation is limited to [one percent (1%) per year for the first ten (10) years of the lease and three percent (3%) per year for all remaining years on the sales price of the leasehold estate, plus any capital improvements added by the lessee,] fifty percent (50%) of the difference between the appraised value of the buildings at the time of sale to the lessee and at the time of sale back to the County, the lessee is required to occupy the property as their primary residence, the lease may be transferred to an immediate family member with the approval of the Housing Agency, sub-leasing is prohibited, and sale of the leasehold estate shall only be to the County.

"Limited equity housing cooperative" means a cooperative owned by a non-profit corporation or non-profit housing sponsor, in which the resident-owners own the cooperative as an undivided whole, rather than as individual units, with the

exclusive right to occupy a specific unit within the cooperative, and, where the resident-owner must be bought out of their ownership to separate from the limited equity housing cooperative.

"Market unit" means a dwelling unit authorized to be developed by zoning designation and which is not subject to any buyer or price restrictions.

["Multi-family dwelling unit" means a multiple family dwelling as defined in the CZO.]

"Project" means the lots or parcels and any development thereon, included and approved in an application by a developer for zoning or building permit, subdivision or consolidation, State Land Use District Boundary Amendment, Zoning Amendment or amendment into the Visitor Destination Area.

"Qualified buyer" means the County or a qualified resident who:

(a) Has a gross income and credit history sufficient to qualify for the loan to finance the purchase; and

(b) Is a person:

(1) Who either oneself or together with spouse or household member, does not own a direct or indirect majority interest in fee simple or leasehold lands suitable for dwelling purposes; and

(2) Whose spouse or household member does not own a direct or indirect majority interest in fee simple or leasehold lands suitable for dwelling purposes, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to Hawai'i Revised Statutes Section 580-71.

"Qualified renter" means a qualified resident who demonstrates an ability to pay rent and to be a responsible tenant in conformance to standards employed by the Housing Agency for prospective tenants in County owned rental projects, including, but not limited to, satisfactory reference from a prospective tenant's [pervious] previous landlords and a credit report reflecting responsible payment of rent or repayment of debt.

"Qualified resident" means a person who:

(a) Is a citizen of the United States or a resident alien;

(b) Is at least eighteen (18) years of age;

(c) Is a full-time resident of Kaua'i County; and

(d) Shall physically reside in the workforce housing unit purchased or rented.

"Rental notice" means a notice published in a newspaper of general circulation in the County of Kauai notifying income-qualified buyers of the developer's intent to offer workforce housing units for rent.

"Rental notice date" means the date of publication of the notice of intent to rent workforce housing units.

"Restriction on sale or transfer, debt, and use" means the restriction document [attached to the deed] recorded on all fee-simple housing units sales to qualified buyers that (1) requires an owner to give the County the option to purchase the property at the original sales price, plus the cost of improvements and simple interest at the rate of one percent (1%) per year, [and requires the owner to occupy the property as their primary residence], (2) limits mortgage debt, and (3)

requires owner occupancy for a term of twenty (20) years for sales to residents where income limits are imposed on the buyer, or for a term of ten (10) years for sales to residents without regard to buyer's income. See restriction on sale or transfer, debt, and use under Article 7.

"Sales notice" means a notice published in a newspaper of general circulation in the County of Kaua'i notifying income-qualified buyers of the developer's intent to offer workforce housing units for sale.

"Sales notice date" means the date of publication of the notice of intent to sell workforce housing units.

"Single-family dwelling unit" means a single-family attached dwelling or a single-family detached dwelling as defined in the CZO.

"Workforce for-sale housing price limits" means the price limits for fee simple or leasehold dwelling units established by the Housing Agency by household size and by dwelling unit size.

"Workforce housing" or "workforce unit" or workforce housing unit" means a lot, single-family dwelling unit, or multiple-family dwelling unit that may be rented or sold at cost levels that are affordable to households that earn from eighty percent (80%) and below of the Kaua'i median household income to one hundred [eighty] forty percent [(180%)] (140%) of the Kaua'i median household income.

"Workforce housing income groups" means the [six] four income groups earning from 80% and below of the Kaua'i median household income to [180] 140% of the Kaua'i median household income, as follows:

(a) "80% and below" of the Kaua'i median household income with for-sale price and rent limits at both 60% and 80% of the Kaua'i median household income;

(b) "80% to 100%" of the Kaua'i median household income with for-sale price and rent limits at 100% of the Kaua'i median household income;

(c) "100% to 120%" of the Kaua'i median household income with for sale price and rent limits at 120% of the Kaua'i median household income;

(d) "120 to 140%" of the Kaua'i median household income with for sale price and rent limits at 140% of the Kaua'i median household income[;

(e) "140% to 160%" of the Kaua'i median household income with for sale price and rent limits at 160% of the Kaua'i median household income; and

(f) "160% to 180%" with for sale price and rent limits at 180% of the Kaua'i median household income].

"Workforce housing income limits" means those household income levels that shall be published annually by the Housing Agency to establish the upper limits of workforce income groups by household size and by dwelling unit size.

"Workforce housing rent limits" means the rent price limits for workforce dwelling units established by the Housing Agency by household size and by dwelling unit size.

Sec. __-1.4 Applicability.

The workforce housing requirements of this Chapter shall apply to the following:

- (a) Ordinances enacted by the County Council pursuant to Chapters 7, 8, 10 and 11 of the Kaua'i County Code, as amended, where the resultant overall project density would allow at least five (5) dwelling units, including:
 - (1) New zoning district boundary amendments [that create additional residential uses in any type of zoning district] of lands from any zoning district into Residential, Resort or Open Districts, Project District, or amendment into the Visitor Destination Area;
 - (2) [New zoning district boundary amendments to residential, resort, commercial, industrial, open, or rural districts.]New State Land Use District Boundary Amendments involving lands fifteen (15) acres or less in size from any State Land Use District except the Conservation District, to the State Land Use Agricultural, Rural, or Urban Districts;
- (b) Previous]Previously approved zoning district boundary amendments, and previously approved State Land Use District Boundary Amendments for lands fifteen (15) acres or less in size, the ordinance for which contains affordable housing conditions that have not been satisfied as of the effective date of this ordinance, or that the [County] developer has not yet [agreed on through] executed a housing agreement with the County specifying the means [executed agreement of the specific means] of satisfying the housing conditions, unless the existing ordinance would require the provision of more or a better mix of workforce housing than this Chapter, as determined by the Housing Agency[.]; and
- (c) Other approvals granted by the County Administration:
 - (1) Subdivision or consolidation of land in any Urban State Land Use District in which the overall project density would allow more than (10) residential dwelling units, or in any Rural or Agricultural State Land Use District in which the overall project density would allow five (5) or more residential dwelling units; and
 - (2) Zoning or building permits for residential development on a lot of record in any Agriculture or Open District in which the density of the lot of record would allow five (5) or more residential dwelling units or farm dwelling units on the lot.
 - (3) Zoning or building permits for the development or redevelopment of land or buildings on a lot of record in any Residential, Resort or Commercial District, for the construction of or conversion into more than ten (10) residential dwelling units or time share units, or more than twenty (20) hotel rooms.

Sec. __-1.5 Assessment.

- (a) All State Land Use District Boundary Amendments, Zoning District Boundary Amendments, amendments into the Visitor Destination Area, subdivision, zoning permits and building permits to which this policy is applicable pursuant to Section __-1.4(a) shall be subject to the provisions of this Chapter as applies to residential and hotel development within the project area. Time share units shall be considered as residential units.

- (b) In-lieu fees or land-in-lieu to be dedicated shall be resolved with the Kaua'i County Housing Agency and approved by the County Council prior to or at the time of Zoning Amendment approval, zoning permit approval, any final subdivision approval, or building permit application, whichever occurs first.
- (c) The specific workforce housing requirements for any project as determined by this Chapter shall be resolved with the Housing Agency, and County Council if necessary prior to any final subdivision approval or zoning permit approval, whichever occurs first, or if not applicable, prior to building permit application.
- (d) A workforce housing agreement shall be executed between the developer and Housing Agency, incorporating the requirements for workforce housing pursuant to this Chapter, and shall be recorded on the deed for the property concurrent with final subdivision approval or prior to building permit approval.
- (e) Workforce housing requirements shall be assessed only once per project area, except that additional workforce housing requirements shall apply to new projects on a site whenever increased residential or resort density is granted by the County.

Sec. -1.6 Delivery.

The specific timing in the delivery of workforce housing units shall be stated in the workforce housing agreement. All workforce housing requirements shall be completed before or concurrent with the sale of the project's market units and prior to building permit approval for more than 50% of the market units.

Sec. -[1.5]1.7 Administration.

The Kaua'i County Housing Agency [of the Offices of Community Assistance] of the County of Kaua'i shall administer this ordinance.

Sec. -1.8 Appeal.

TEXT TO BE RESOLVED WITH COUNTY ATTORNEY'S OFFICE PRIOR TO COMMITTEE CONSIDERATION

ARTICLE 2. RESIDENTIAL REQUIREMENTS [AND SATISFACTION]

[Sec. ___-2.1 Residential Developments.

The following workforce housing requirements shall be applicable to residential zoning district boundary amendments or other zoning district boundary amendments that propose residential use that allow the development of five (5) or more units:

- (a) Dedication of Land to County. Developer shall dedicate approximately ten percent (10%) of the developer's project area by title transfer to the County. This dedicated land shall have all necessary infrastructures available to the site for

residential development. The size of land area must be large enough to provide affordable units equal to 10% of total project units at a density no greater than fourteen (14) units per acre. The land shall be County owned and preserved as permanent affordable housing. The land shall be developed into housing affordable primarily for households earning eighty percent (80%) and below the Kaua'i median household income by either the developer, the County, and/or a nonprofit housing organization into rental housing, limited equity cooperative housing, or for-sale leasehold housing. These lands and projects may be managed and/or administered by the Housing Agency or an affordable housing community land trust on behalf of the County.

(b) Workforce Housing Sales. Thirty percent (30%) of the total units shall be for-sale units sold to qualified Kaua'i residents or to the County as follows:

(1) Quality. Workforce housing units for sale shall be comparable to market units in number of bedrooms and bathrooms, however, if the market units are designed as up-scale dwelling units, then the affordable units may be more modest in size, flooring, counter tops, fixtures, appliances, and hardware, provided the quality is comparable in quality to contemporary workforce housing produced by other developers and subject to approval by the Housing Agency.

(2) Economic Integration. The workforce housing units shall be integrated into the project, being mixed alongside market units on the project site.

(3) Leasehold Sales. The developer shall sell the workforce housing units at workforce housing prices, through the County's limited appreciation leasehold estate program to be permanently affordable and part of the Kaua'i community land trust with the fee title transferred to the County for the following income groups:

(A) Five percent (5%) of total units priced to be affordable to households earning up to eighty (80%) of the Kaua'i median household income.

(B) Five percent (5%) of total units priced to be affordable to households earning up to one hundred percent (100%) of the Kaua'i median household income

(C) Five percent (5%) of total units priced to be affordable to households earning up to one hundred twenty percent (120%) of the Kaua'i median household income.

(4) Fee Simple Sales. The developer shall sell the workforce housing units at workforce housing prices, with the County's restriction on sale or transfer, and use for all fee simple sales for the following income groups:

(A) Five percent (5%) of total units priced to be affordable to households earning up to one hundred forty percent (140%) of the Kaua'i median household income.

(B) Five percent (5%) of total units priced to be affordable to households earning up to one hundred sixty percent (160%) of the Kaua'i median household income.

(C) Five percent (5%) of total units priced to be affordable to households

earning up to one hundred eighty percent (180%) of the Kaua'i median household income.

Sec. ___-2.2 Resort, Commercial, and Industrial Developments.

The following workforce housing requirements shall be applicable to resort district boundary amendments that allow fifty (50) or more rooms and shall be applicable to resort, commercial, and industrial zoning district boundary amendments that are estimated to generate one hundred (100) or more new, full-time equivalent jobs:

(a) Dedication of Land to County. Developer shall dedicate approximately ten percent (10%) of the developer's project area by title transfer to the County. This dedicated land shall have all necessary infrastructures available to the site for residential development. The size of land area must be large enough to provide affordable units equal to 10% of total project units at a density no greater than fourteen (14) units per acre. The dedicated land may be off-site, provided all necessary infrastructure is available at the off-site housing location, the location is within a ten (10) mile radius of the project, and the land is adequately zoned or, if not zoned, the land must be located where State land use and County zoning may be obtained by County initiative at the density that is consistent with the County General Plan, or the site is adjacent to existing zoning and the appropriate density will satisfy the ten percent (10%) land dedication requirement. The land shall be County owned and preserved as permanent affordable housing. The land shall be developed into housing affordable primarily for households earning eighty percent (80%) and below the Kaua'i median household income by either the developer, the County, and/or a nonprofit housing organization into rental housing, limited equity cooperative housing, or for-sale leasehold housing. These lands and projects may be managed and/or administered by the Housing Agency or an affordable housing community land trust on behalf of the County.

(b) Workforce Housing Sales. Thirty percent (30%) of the total units shall be for sale units sold to qualified Kaua'i residents or to the County as follows:

(1) Quality Workforce housing units for sale shall be comparable to market units in number of bedrooms and bathrooms; however, if the market units are designed as up-scale dwelling units, then the affordable units may be more modest in size, flooring, counter tops, fixtures, appliances, and hardware, provided the quality is comparable in quality to contemporary workforce housing produced by other developers and subject to approval by the Housing Agency.

(2) Economic Integration. The workforce housing units shall be integrated into the project, being mixed alongside market units on the project site. Where no residential units are produced on-site, the developer may provide the required for sale units off-site at a location within a ten (10) mile radius of the project. Where no market units are produced, the integration of workforce for-sale units is not applicable unless market units are also produced.

(3) Leasehold Sales. The developer shall sell the workforce housing units at workforce housing prices, through the County's limited appreciation

leasehold estate program to be permanently affordable and part of the Kaua'i community land trust with the fee title transferred to the County for the following income groups:

(A) Five percent (5%) of total units priced to be affordable to households earning up to eighty (80%) of the Kaua'i median household income.

(B) Five percent (5%) of total units priced to be affordable to households earning up to one hundred percent (100%) of the Kaua'i median household income

(C) Five percent (5%) of total units priced to be affordable to households earning up to one hundred twenty percent (120%) of the Kaua'i median household income.

(4) Fee Simple Sales. The developer shall sell the workforce housing units at workforce housing prices, with the County's restriction on sale or transfer, and use for all fee simple sales for the following income groups:

(A) Five percent (5%) of total units priced to be affordable to households earning up to one hundred forty percent (140%) of the Kaua'i median household income.

(B) Five percent (5%) of total units priced to be affordable to households earning up to one hundred sixty percent (160%) of the Kaua'i median household income.

(C) Five percent (5%) of total units priced to be affordable to households earning up to one hundred eighty percent (180%) of the Kaua'i median household income.

Sec. __-2.3 Mixed Developments.

Developments that have residential use and resort, commercial, and/or industrial use shall provide workforce housing pursuant to the applicable residential or non-residential requirements pursuant to this chapter.

Sec. __-2.4 Workforce Housing Requirements Tables.

The Housing Agency shall maintain two tables to specify which workforce income groups shall be required where the calculation of the required workforce units by income group produces a fractional number of units:

(a) Small Residential Project Requirements Table. The small residential project requirements table provides the specific workforce housing units required for residential developments of twenty (20) units or less.

(b) Incremental Requirements Table. The calculation of the number of workforce housing units required will produce whole numbers wherever the total project unit count or employee count is an increment of twenty (20). The incremental requirements table provides the specific workforce housing units required between zero (0) and twenty (20) and shall be used whenever the calculation of the workforce housing requirement produces a fractional number of workforce units, except for projects that qualify for the small residential project requirements table.

Sec. ___-2.5 Time of Satisfaction.

Workforce housing requirements shall be satisfied prior to or concurrently with the development of the market residential, resort, commercial, or industrial development. A prorated workforce housing requirement is acceptable for any development that is phased.]

Sec. 2.1 General Requirements.

A forty percent (40%) workforce housing requirement shall be assessed to all development subject to the Workforce Housing Policy. The housing assessment shall be satisfied by the fee-simple sale of workforce housing units at affordable housing prices, which shall be determined by the Housing Agency and stated in a workforce housing agreement:

(a) For a development consisting of five to twenty-five (5-25) units, a developer shall be required to satisfy a workforce housing requirement based upon a project's total number of residential units. Housing units shall be sold and affordable to households earning from eighty percent (80%) to one-hundred forty percent (140%) of Kauai median household income, with the average sales price affordable to households earning one-hundred percent (100%) of median income.

(b) For a development consisting of twenty-six (26) units or more, a developer shall be required to satisfy a workforce housing requirement based upon a project's total number of residential units. Housing units shall be sold and affordable to households earning from eighty percent (80%) to one-hundred forty percent (140%) of Kauai median household income, in accordance with the following income group assessment:

- Twenty percent (20%) of total units priced to be affordable to household earning up to eighty percent (80%) of the Kauai median household income.
- Six percent (6%) of total units priced to be affordable to household earning up to eighty percent (100%) of the Kauai median household income.
- Six percent (6%) of total units priced to be affordable to household earning up to eighty percent (120%) of the Kauai median household income.
- Eight percent (8%) of total units priced to be affordable to household earning up to eighty percent (140%) of the Kauai median household income.

Sec. 2.2 Exemption to General Requirements.

If a developer transfers all or any portion of family-held land to immediate family members, such transfer shall be exempt from workforce housing requirements to the extent the following criteria is met:

(a) The development is ten (10) units or less; and
(b) Title to new units or lots transferred by a Developer are to immediate family members, and

(c) Units or lots transferred to immediate family members are made subject to shared appreciation, such that the County receives a share of net appreciation upon any subsequent sale or transfer of any exempt unit or lot for ten (10) years from the date of transfer to an immediate family member. County's share of net appreciation shall be:

- 100% from the first day the immediate family member holds title to the end of year one (1),
- 90% from year one (1) to year two (2),
- 80% from year two (2) to year three (3),
- 70% from year three (3) to year four (4),
- 60% from year four (4) to year five (5),
- 50% from year five (5) to year six (6),
- 40% from year six (6) to year seven (7),
- 30% from year seven (7) to year eight (8),
- 20% from year eight (8) to year nine (9), and
- 10% from year nine (9) to year ten (10).

Sec. 2.3 Incentives.

A developer, subject to workforce housing requirements in Section 2.1, may request the County approve incentives set forth in this Section. The goal of incentives is to encourage a developer to use incentives in a manner that, to the extent applicable, offset the cost of the workforce housing requirement in Section 2.1. The Housing Agency shall be responsible to make a determination on the applicability of incentives provided in this Section. Any applicable incentive that reduces the workforce housing requirement shall be stated in the workforce housing agreement.

(a) Integration. The incentive is available to a developer that integrates all workforce units with market rate units. If all workforce units are integrated with market units, the workforce housing requirement shall be reduced by twenty-five percent (25%).

(b) Single-Family Units. The incentive for single-family units is available to a developer of multifamily market housing that provides required workforce housing units as single-family detached or single-family attached units, without Condominium Property Regime (CPR) ownership. The Housing Agency may modify the type of workforce units required from multifamily to single-family detached, or multifamily to single-family attached, and shall approve the corresponding reduction to the workforce housing requirement.

(1) Detached Units. If a developer provides all single-family

detached units for sale, the workforce housing requirement shall be reduced by twenty-five percent (25%).

(2) Attached Units. If a developer provides all single-family attached units for sale, the workforce housing requirement shall be reduced by twenty percent (20%).

(c) Building "Green". An incentive is available to a developer that incorporates building green principles into both workforce and market units for energy efficient appliances, solar water heating, recycled or recyclable materials, or natural ventilation and cooling. When building green principles are used, the workforce housing requirement may be reduced by one-half to ten percent (0.5-10.0%). Prior to approving a building green incentive, the Housing Agency will evaluate the added cost of building green features and its potential benefit to occupants of workforce housing units.

Sec. 2.4 Density Bonus.

(a) The County shall make available a density bonus to a developer that integrates all workforce units with market units. The density bonus shall increase the total number of residential units that may be constructed by ten percent (10%) and shall decrease the minimum lot size by ten percent (10%), after evaluating the actual number of residential units and minimum lot sizes allowable under the Comprehensive Zoning Ordinance.

(b) The density bonus shall not be available in the State Land Use Agricultural District or Rural Districts to create lots less than the minimum lot sizes required in those districts.

Sec. 2.5 Workforce Housing Units

(a) Unit Size. Workforce housing units shall accommodate diverse family sizes by including a mix of one, two, three, and four bedroom units. Unit sizes shall address the largest need and preference of Kauai residents for mostly two and three bedroom units. The final workforce unit mix shall be approved by the Housing Agency and stated in a workforce housing agreement.

(b) Quality of Units. Workforce housing units shall be visually compatible with market units. External building materials and finishes shall be the same type and quality. Interior materials and finishes may be more modest than market units as to flooring, counter tops, fixtures, appliances, and hardware, provided the quality is comparable with other contemporary workforce housing and industry standards.

(c) Integration. On-site workforce housing units shall be together and interspersed with the market units of a developer's project, and shall be provided in a configuration approved by the Housing Agency.

Sec. 2.6 Off-Site Workforce Housing.

(a) Location. The location of off-site workforce units for sale shall be within the same real property tax district as a developer's project or within five (5) miles by public road from the development project and approved by the Housing Agency.

(b) Off-Site Preference. Special circumstances may exist, including but not limited to, proximity to economic job centers, buyer preference, infrastructure, to accept off-site workforce housing beyond geographic limits provided in this Section. Should the Housing Agency determine that the off-site location is preferred or equal to the on-site location, incentives to the workforce housing requirement provided in Section 2.4(b)(c) shall be available to a developer. Off-site workforce housing beyond allowable limits shall require approval of the County Council.

Sec. 2.7 Workforce Housing Credits

(a) Housing Size Credit. A developer shall earn one (1) housing credit for each workforce unit provided that is comparable to the unit size of the market unit, based on number of bedrooms and baths. With approval of the Housing Agency, the workforce unit may be modified to sizes differing from market unit. Any decrease or increase to the housing credit earned shall be calculated according to the following Housing Size Credit Schedule:

		Market Units			
		Bed/Bath	1/1	2/1.5	3/2
Workforce e	1/1	1.00	0.94	0.86	0.78
	2/1.5	1.06	1.00	0.92	0.83
	3/2	1.16	1.09	1.00	.90
	4/2.5	1.28	1.21	1.11	1.00

(b) Lot Size Credit. With approval of the Housing Agency, a workforce lot may be modified to sizes differing from market lots. Any decrease or increase to the lot size credit earned shall be calculated according to the following Lot Size Credit Schedule:

		Market Lots		
		Small Lots <4,500 SqFt	Standard Lot 4,500 -9,999 SqFt	Large Lot >10,000 SqFt
Workforce Lots	Small Lots <4,500 SqFt	1.00	0.88	0.76
	Standard Lot 4,500 -9,999 SqFt	1.12	1.00	0.88
	Large Lot >10,000 SqFt	1.24	1.12	1.00

ARTICLE 3. SATISFACTION ALTERNATIVES

[Sec. ___-3.1 Satisfaction Alternatives.

The alternatives listed below to satisfy workforce housing requirements are available to a developer by obtaining approval from the County Council:

(a) Rental Units. Rental units may be substituted in place of for-sale units provided the units are made available to the same workforce income target group they are being substituted for, are at a cost that is consistent with the workforce housing income guidelines, and the rental units remain available and at the applicable affordable cost for a period of at least forty (40) years. The developer may donate the ownership of the rental units to the County, subject to approval of the County Council.

(b) Residential Off-Site. For-sale housing units required by residential developers may be made available off-site, provided the units are made available to income groups one step lower than otherwise required. The location of the off-site workforce housing shall be within a ten (10) mile radius of the project.

(c) In-Lieu Fee. An in-lieu fee may be paid in place of any workforce land donation or for-sale housing units required. The in-lieu fee for each required unit shall be calculated as follows:

(1) Determine the median sales price for a single family or condominium unit, as applicable, in the County tax district of the project for the previous calendar year.

(2) Determine the applicable income group workforce housing price limit for a single family or condominium unit.

(3) The per unit in-lieu fee is the difference between the median sales price and the workforce sales price, not to exceed two hundred fifty thousand dollars (\$250,000.00) per unit.

(d) Land In-Lieu. Land in-lieu may be donated for any workforce for-sale housing units required. The value of the land in-lieu shall be equal to or greater than the in-lieu fee calculation contained herein. The value of the land shall be determined by appraisal by a real estate appraiser licensed

in the State of Hawai'i and retained by the developer.

(e) Units In-Lieu of Land Donation. Projects that generate a land donation requirement of two (2) acres or less may produce rental or for-sale housing units affordable to households earning up to sixty percent (60%) of the Kaua'i median household income in-lieu of donating land to the County.]

Sec. 3.1 Satisfaction Alternatives

A developer may request use of alternatives to satisfy all or a portion of the workforce housing requirements provided in Section 2.1. The alternatives listed below to satisfy workforce housing requirements are available to a developer by obtaining approval of the County Council.

(a) Payment of In-Lieu Fees. In-lieu fees may be paid for all or a portion of the required number of workforce units per the In-Lieu Fee Schedule. In-lieu fees shall be allocated among households earning from eighty percent (80%) to one-hundred forty percent (140%) of Kauai median household income, in accordance with the following income group assessment:

- Twenty percent (20%) of total units priced to be affordable to household earning up to eighty percent (80%) of the Kauai median household income.
- Six percent (6%) of total units priced to be affordable to household earning up to eighty percent (100%) of the Kauai median household income.
- Six percent (6%) of total units priced to be affordable to household earning up to eighty percent (120%) of the Kauai median household income.
- Eight percent (8%) of total units priced to be affordable to household earning up to eighty percent (140%) of the Kauai median household income.

(1) Calculation of In-Lieu Fee. The calculation of in-lieu fees paid in-lieu of required workforce units shall be assessed according to the following In-Lieu Fee Schedule:

<u>Income Group</u>	<u>Requirement</u>	<u>In-Lieu Fee</u>
<u>80%</u>	<u>Unit Sales</u>	<u>\$174,000</u>
<u>100%</u>	<u>Unit Sales</u>	<u>\$120,000</u>
<u>120%</u>	<u>Unit Sales</u>	<u>\$66,000</u>
<u>140%</u>	<u>Unit Sales</u>	<u>\$11,000</u>

(2) In-lieu fees may be subject to annual adjustment, based on the consumer price index for Honolulu for all urban consumers.

(b) Dedication of Land. Land in-lieu may be dedicated to the County for

all or a portion of the required number of workforce units by transfer of fee-simple title and at no cost. The value of land to be dedicated shall be equal to or greater than the assessed in-lieu fees. Land dedication shall be suitable to satisfy workforce housing requirements, and suitability of dedicated land may include, but not be limited to, size, configuration, physical characteristics, environmental constraints, off-site infrastructure, zoning, access, location, and other relevant criteria as required by the Housing Agency.

(1) The location of off-site land dedication shall be within the same real property tax district as a developer's project or within five (5) miles by public road from the development project.

(2) The value of land for dedication shall be determined by appraisal by a real estate appraiser licensed in the State of Hawai'i. The real estate appraiser shall be retained by the County. The cost of such appraisal shall be paid by a developer prior to the Housing Agency's acceptance and approval of the appraisal.

(c) Rental Units. Rental units may be substituted in place of for sale units provided the rental units are made available to the same workforce housing income groups, are restricted to rents consistent with the workforce housing guidelines, and remain affordable for a minimum period of forty (40) years.

ARTICLE 4. INCOME, SALES PRICE AND RENT LIMITS

Sec. ___-4.1 Income Limits.

(a) Kaua'i Median Household Income and HUD Low Income Limits. HUD provides the County with the Kaua'i median household income amount each year. In addition, HUD provides income limits, by household size, for extremely low income households that earn thirty percent (30%) of the median household income, very low income households that earn fifty percent (50%) of the median household income, households that earn sixty percent (60%) of the median household income, and low income households that earn eighty percent (80%) of the median household income.

(b) Workforce Housing Income Limits. The Housing Agency interpolates income limits for income groups above HUD's low income groups with the HUD median household income for Kaua'i as the base and the methodology utilized by HUD to calculate limits by household size. The Housing Agency rounds each income limit upwards to the nearest fifty dollars (\$50.00). Within thirty days from the date that HUD issues the Kaua'i median household income for the year, the Housing Agency will have available that year's workforce housing income limits by household size from a household of one (1) to a household of eight (8).

Sec. ___-4.2 For-Sale Price Limits.

(a) For-Sale Affordability Criteria. The Housing Agency calculates for-sale dwelling unit price limits by household size and by income group by formula

including the following factors:

- (1) Thirty percent (30%) of gross income is available for housing cost.
- (2) The estimated amounts for real property tax and home owners insurance consistent with industry standards.
- (3) If sale is a condominium or requires association or maintenance fees, the estimated cost for association or maintenance fees consistent with industry standards.
- (4) A fully amortized thirty (30) year fixed interest rate mortgage loan.
- (5) A loan interest rate consistent with prevailing mortgage interest rates for conventional owner-occupant first mortgage loans rounded upwards to the nearest quarter percent (0.25%).
- (6) A down payment amount equal to five percent (5%) of the sale price.
- (7) Sales prices are rounded to the nearest one hundred dollars (\$100.00).

(b) Workforce For-Sale Housing Price Limits. Within thirty days from the date that HUD issues the Kaua'i median household income for the year, the Housing Agency will have available that year's workforce for-sale housing price limits. The workforce for-sale housing price limits will include the prices for the applicable HUD low income groups and the affordable and gap-group income groups by household size from a household of one (1) to a household of eight (8). The Housing Agency may revise the workforce for-sale housing price limits throughout the year as the prevailing first mortgage interest rates change.

Sec. ___-4.3 Rental Limits.

(a) The Housing Agency calculates rental rate limits by household size and by income group by methodology utilized to administer HUD's rent subsidy program as follows:

- (1) Thirty percent (30%) of gross income is available for housing cost.
- (2) Reduce the amount available for housing cost by subtracting the applicable utility allowance, prepared annually by the Housing Agency.
- (3) The net amount is the maximum rent allowable.
- (4) The net rent amounts are not rounded.

(b) Workforce Housing Rent Limits. Within thirty (30) days from the date that HUD issues the Kaua'i median household income for the year, the Housing Agency will have available that year's workforce housing rent limits. The workforce housing rent limits will include the rent for the applicable HUD low income groups and the affordable and gap-group income groups by household size from a household of one (1) to a household of eight (8).

ARTICLE 5. HOUSING ELIGIBILITY & SELECTION

Sec. ___-5.1 Kaua'i Resident Home-Buyer List.

(a) Purpose and Objectives. The Housing Agency shall establish a long term program, known as the Kaua'i Resident Home-Buyer List Program (Home-Buyer List), where Kaua'i residents may be placed on a list to be the first potential buyers of housing units or properties either developed directly by or for the County or privately developed to satisfy a County housing requirement. The Home-Buyer List

is intended to:

(1) establish a permanent list of individuals who want to be resident buyers that keep their position on the list for buyer selection for all available applicable properties,

(2) prepare residents for the home buying process through home-ownership education,

(3) assist residents to become mortgage-ready so they will be able to buy a home, and

(4) to keep residents aware of upcoming projects and opportunities to buy a home.

(b) Eligibility. Any individual shall be added to the Home-Buyer List who:

(1) is either a citizen of the United States of America or a resident alien who physically resides on the Island of Kaua'i, State of Hawai'i, and

(2) is at least eighteen (18) years old, and

(3) by oneself or together with a spouse does not own a majority interest in any real estate suitable for residential purposes, and

(4) has completed a course of home-ownership education, approved by the Kaua'i County Housing Agency, that must consist of at least eight (8) hours of classroom instruction, including consultation to determine mortgage-ready status.

(c) Home-Buyer Number.

(1) The number assigned to an eligible individual under the Home-Buyer List program shall be known as their "Home-Buyer Number".

(2) Once an individual provides the necessary documentation to establish current Kaua'i residency and documents completion of the home ownership education and mortgage-ready consultation requirement, that individual shall be given a Home-Buyer Number that is the next number on the Home-Buyer List on a first-come, first served basis, as determined by the Housing Agency's date and time stamp imprinted on a copy of the individual's home-ownership education certificate.

(3) Each individual that qualifies for the Home-Buyer List shall be assigned a Home-Buyer Number. For married couples where each spouse qualifies for the Home-Buyer List, the same Home-Buyer Number is assigned to each individual spouse.

(4) For individuals that have previously registered with the Housing Agency under the Home-Buyer Priority List program and have provided evidence of their home ownership education and counseling, a public lottery was held to establish the numerical sequence of the first names for the Home-Buyer List.

(5) A Home-Buyer Number is permanent and will not change.

(d) Removal from the Home-Buyer List. An eligible individual and their assigned Home-Buyer Number shall remain on the Home-Buyer List until one of the following three (3) events occur, wherein the individual's name and Home-Buyer Number are retired from the list:

(1) the individual becomes the majority owner, either by oneself or together with one's spouse, of real property suitable for residential purposes,

or

(2) the individual no longer resides or is no longer domiciled on the Island of Kaua'i, or

(3) the individual is deceased.

(e) Reinstatement. For an individual that was formerly on the Home-Buyer List and was removed because the individual became a majority owner of residential property, or no longer resided on the Island of Kaua'i, that individual may become eligible for the Home-Buyer List program upon once again qualifying for eligibility pursuant to the criteria listed above under Eligibility. Upon re-qualification, the individual shall be assigned the next available Home-Buyer Number on the Home-Buyer List. The individual shall not be entitled for their former Home-Buyer Number.

(f) Dormant Home-Buyer List Individuals. It is the responsibility of each individual on the Home-Buyer List to keep the Kaua'i County Housing Agency informed of the individual's current mailing address and telephone numbers. If mail from the Housing Agency is returned undeliverable and the individual's phone numbers are no longer in service, the Housing Agency shall deem that individual "dormant" until such time that the individual re-establishes contact with the Housing Agency. When re-establishing contact with the Housing Agency, the individual shall be required to document that they continued to be a Kaua'i resident during the dormant period.

(g) Mortgage-Ready Eligibility. To be offered the opportunity to be the first potential buyers under the Home-Buyer List program, the eligible individual must be designated "Mortgage-Ready". To be designated Mortgage-Ready, the individual or the individual's household shall be determined capable to purchase a fee simple residential property selling for a minimum of two hundred fifty thousand dollars (\$250,000.00) or a leasehold residential property selling for a minimum of one hundred seventy-five thousand dollars (\$175,000/00), as determined by the Housing Agency, utilizing underwriting criteria for loans typically available for affordable housing, favorable credit history, and necessary cash requirements. All individuals added to the Home-Buyer List shall provide documentation of their finances and credit to enable the Housing Agency to determine an individual or an individual's household ability to purchase a home before being placed on the Mortgage-Ready Home-Buyer List and periodically, thereafter, to remain on the Mortgage-Ready Home-Buyer List.

(1) Mortgage-Ready Home-Buyer List. An individual or individual's household deemed Mortgage-Ready shall be placed on the Mortgage-Ready Home-Buyer List in the order of their Home-Buyer Number.

(2) Not Mortgage-Ready Individuals. An individual deemed by the Housing Agency not Mortgage-Ready shall be encouraged by the Housing Agency to continue to obtain ongoing counseling by their home-ownership education provider to become Mortgage-Ready. An individual may request that their name be moved to the Mortgage-Ready Home-Buyer List by the Housing Agency's reevaluation of their ability to purchase a home at any time, but not more often than every 90 days. An individual may formally make written appeal for reevaluation of their ability to purchase to the

County of Kaua'i Director of Finance, in a form and manner as determined by the Director of Finance.

(h) Home-Buyer Policy Income Limits. There are no income limit restrictions for placement on the Home-Buyer List. However, income limits are utilized for the initial offerings of most housing units or properties sold by the County or privately sold by a developer satisfying a County housing requirement. Over income individuals on the Home-Buyer List would be eligible to purchase only after all income eligible potential buyers have had an opportunity to buy.

(i) Compliance to Project Requirements. The status of being an individual on the Home-Buyer List does not supersede buyer eligibility criteria for housing units or properties made available by the County or privately developed that require specific criteria for buyer eligibility. Home-Buyer List applicants must comply with any income restrictions relevant to any applicable dwelling unit or source of financing. For all stages of the restricted marketing for workforce housing units, the order of purchase opportunity for individuals who are buyer qualified and on the Mortgage-Ready Home-Buyer List shall have the first opportunity to buy applicable housing units or properties before individuals who are not on the Mortgage Ready Home-Buyer List.

(j) Sales Selection. For any housing units or properties subject to this policy, the seller shall first make the offer to sell any dwelling units or land parcels then available for purchase to the individual on the Mortgage-Ready Home-Buyer List with the lowest Home-Buyer Number. Next, the seller must make the offer to the individual with the next to the lowest Mortgage-Ready Home-Buyer Number, then to the individual with the third lowest Mortgage-Ready Home-Buyer Number and continue this sequence until all dwelling units or land parcels are sold. If the seller has any properties available after offering them to all individuals on the Mortgage-Ready Home-Buyer List, then the seller shall make the properties available to eligible buyers not on the Home-Buyer List. This first opportunity to purchase shall conform to the Compliance to Project Requirements provision above.

(k) Multiple Opportunities to Buy. Any individual on the Home-Buyer List that declines an offer to buy an offered housing unit or property, or fails to complete the purchase after accepting an offer to buy, shall remain on the Mortgage-Ready Home-Buyer List and retain their Home-Buyer Number without penalty or restriction and be eligible for the next property or project subject to this policy.

Sec. ___[-5.1] ___-5.2 For-Sale Housing.

(a) General Provisions.

(1) Qualified Buyers. All County housing programs, including workforce housing requirements, which assist residents to become fee simple or leasehold homeowners, are restricted to qualified buyers, as defined herein, except where sales may become market sales pursuant to Section 6.1(f).

(2) Application. Each program or project shall establish interested households for that program or project by requiring the interested household to submit a written application provided or approved by the Housing Agency and any other documents required by the Housing Agency to establish

eligibility.

(3) Eligibility. The Housing Agency shall review all purchase applications to determine eligibility pursuant to the specific program or project eligibility criteria established for that program or project.

(A) Income qualification shall be determined on gross annual income and based on documentation provided by the housing applicant, including the three (3) most current pay stubs and the two (2) most current year's federal income tax returns from all employed adults in the applicant's household.

(B) Kaua'i residency shall be determined on documentation provided by the applicant that indicates the applicant has a resident address on the Island of Kaua'i.

(C) Not owning real estate suitable for residential purposes shall be determined primarily from documentation provided by the housing applicant.

(4) Selection. The selection list or lists shall be utilized by the developer to determine the numerical order to offer to sell workforce housing units to qualified buyers. Selection lists shall be established as follows:

(A) All applicable housing units shall first be offered to individuals on the Mortgage-Ready Kaua'i Resident Home-Buyer List, in the order of their Home-Buyer Number and who otherwise qualify pursuant to any project specific qualifying criteria, before any housing units are offered for sale to qualified buyers not on the Mortgage-Ready Home-Buyer List.

(B) After all individuals on the Mortgage-Ready Home-Buyer List have had an opportunity to purchase, a [A] public lottery shall be conducted for any project that [has] anticipates more applicants than the number of housing units that remain available [through that project] to establish a selection list. If the number of housing units available is equal to or greater than the number of anticipated applicants, selection may be established by a first-come, first-served basis.

[(B)] (C) The decision to utilize either the lottery or the first-come, first-served process shall be determined by the developer prior to the sales notice date.

[(C)] (D) A lottery that has multiple preferences shall include all applicants in a single lottery. The selection list will be produced by applying applicant preferences and lottery numbers to sort all applicants into a selection list that has:

(i) The qualified buyer applicant with the lowest selection number (first) being a household that has the highest and the most preferences available and has the lowest lottery number, and

(ii) The qualified buyer applicant with the highest selection number (last) being a household that has no preferences and the highest lottery number.

[D)] (E) In a project that utilizes the first-come, first-served method, the developer shall utilize sorting method as utilized with a lottery, but substitute the date and time of receipt of a completed application in place of a lottery number to establish the numerical order.

(E)] (F) Projects that are developed in phases shall phase their respective restricted marketing periods and phase their respective application and selection processes.

(b) Priorities & Preferences for Sales by Lottery. After all applicable housing units in a project have first been first offered for sale to all residents on Mortgage-Ready Home-Buyer List, a development using a lottery to determine sales sequence for other buyers shall sort the lottery list by giving applicants priority as follows:

(1) First Priority - Homeownership Education. The first opportunity to purchase a workforce for-sale housing unit after Home-Buyer List residents have had the opportunity to purchase shall be given to income qualified buyers that have completed a qualified homeownership education course, as determined by the Housing Agency, consisting of at least eight (8) hours of classroom education, plus credit and mortgage ready counseling. To receive the homeownership education priority, a qualified buyer shall register with the Housing Agency and provide the Housing Agency with a copy of their homeownership education class graduation certificate. The Housing Agency shall determine which providers of homeownership education have the curriculum that qualifies graduates for the homeownership priority.

(2) Second Priority - Project Employee Preferences. Fifty percent (50%) of the total workforce housing units built by the developer [required] for projects that generate workforce housing requirements of twenty (20) housing units or more shall be sold with a preference to employees of the developer and employees within the development area of the project as determined by the Housing Agency.

(3) Third Priority – Geographical Preferences. At the discretion of the County Council, one or more geographical preference may be imposed on the required workforce housing units giving preference to qualified residents that live in a specified geographical area surrounding or adjacent to the project or that are employed within a specific geographical area surrounding or adjacent to the project.

(4) A project that is assisted with government financing may disregard any priority or preference provided by this ordinance that violates federal fair housing law.

(c) Immediate Family Member of Developer. A developer is exempt from the workforce housing requirements where the intent of the development is to transfer family-held land to immediate family members, provided:

(1) The land has been continuously owned by a Kaua'i resident, or an immediate family member of the owner, for at least twenty-five (25) years,

(2) The project is twelve (12) units or less, and

(3) Title to the new units shall be transferred only to the developer's immediate family members.]

Sec. ___[-5.2] -5.3 Rental Housing.

(a) General Provisions.

(1) Qualified Renter. All County or workforce rental projects are restricted to qualified renters, as defined herein.

(2) Application. Each project shall establish interested households for that project by requiring the interested household to submit a written application provided by the project's management entity and any other documents required to establish eligibility.

(3) Eligibility. The project's management entity shall review all applications to determine eligibility pursuant to the specific project eligibility criteria established for that project. Eligibility records shall be maintained on-site for at least three (3) years and made available on-site to the County, or its representatives, to monitor upon request.

(4) Initial Occupancy Selection.

(A) A public lottery shall be conducted for any project that has more applicants than the number of housing units available in that project to establish the initial occupancy selection list. If the number of housing units available is equal to or greater than the number of applicants, selection may be established by a first-come, first-served basis.

(B) The decision to utilize either the lottery or the first-come, first-served process shall be determined by the developer prior to the sales notice date.

(C) A lottery that has multiple preferences shall include all applicants in a single lottery. The selection list will be produced by applying applicant preferences and lottery numbers to sort all applicants into a selection list that has:

(i) The qualified buyer applicant with the lowest selection number (first) being a household that has the highest and the most preferences available and has the lowest lottery number, and

(ii) The qualified buyer applicant with the highest selection number (last) being a household that has no preferences and the highest lottery number.

(D) In a project that utilizes the first-come, first-served method, the developer shall utilize the date and time of receipt of a completed application to establish the chronological order and establish a separate list for each preference available to produce multiple selection lists by preference type.

(E) Projects that are developed in phases shall phase their respective restricted marketing periods and phase their respective application and selection processes.

(5) Waiting List. All County and workforce rental projects shall maintain a waiting list or lists of interested tenants[, by] for each bedroom size. The only preference applied after the initial occupancy of the project is

the project employee preference. The project may decline to accept additional names to it's a bedroom size waiting list when the waiting list [is in] has an excess of twenty-five (25) prospective tenants[, by bedroom size].

(b) Priorities & Preferences.

(1) First Priority - Project Employee Preferences. Fifty percent (50%) of the total workforce housing units built by the developer [required] for projects that generate workforce housing requirements of twenty (20) housing units or more shall be rented with a preference to employees of the developer and employees within the development area of the project as determined by the Housing Agency.

(2) Second Priority – Geographical Preferences. At the discretion of the County Council, one or more geographical preference may be imposed on the required workforce housing units giving preference to qualified residents that live in a specified geographical area surrounding or adjacent to the project or that are employed within a specific geographical area surrounding or adjacent to the project.

(3) A project that is assisted with government financing may disregard any priority or preference provided by this ordinance that violates federal fair housing law.

ARTICLE 6. RESTRICTED MARKETING PERIODS

Sec. ___-6.1 Restricted Sales Marketing Period.

The restricted sales marketing period provides the County the opportunity to purchase any workforce housing units at any time, the developer with an opportunity for buyer solicitation before committing to construction of the project, and a stepped process giving residents an opportunity to buy.

(a) County Purchase. The County may purchase workforce housing units at any time that they are available for purchase before any eligible buyer for the same workforce housing price that the developer is required to sell an intended income group. The County shall then resell the housing unit under the County's leasehold program or rent the housing unit.

(b) Potential Buyer's List. Approximately six (6) months before the start of site construction (clearing and grubbing, demolition, mass grading, installation of utilities, drainage improvements and roads, or subdivision improvements), the developer may notify by mail all residents on the County's Mortgage-Ready Home-Buyer List and notify by newspaper and radio all other Kaua'i residents of the intent to sell the workforce housing units, with a description of all workforce housing units to be offered for sale, and the specific income qualifying criteria and sales prices for each workforce housing unit in the project being offered, for the purpose of establishing a list of potential buyers for the workforce housing units, without executing purchase documents or collecting any fee or deposit.

(c) Home-Buyer List Sales. Approximately nine (9) months before construction of the workforce housing units is complete, but no earlier than the start of vertical building construction, the developer shall offer the workforce housing units exclusively for sale to income-qualified residents on the County's

Mortgage-Ready Home-Buyer List in the sequential order of their Home-Buyer Number.

[(a)] (d) Public Notice of Workforce Unit Sales. Approximately seven (7) months before completion of the workforce housing units, [The] the sales notice of the intent to sell the workforce housing units shall be published by the developer in a newspaper of general circulation in the County. The notice of intent to sell shall [be published no earlier than six (6) months prior to the estimated completion date of the units being sold] invite prospective buyers who are not on the County's Mortgage-Ready Home-Buyer List the opportunity to purchase units after those residents on the County's List have first had an opportunity to purchase.

[(b)] (e) Target Income Group Sales. [For the first ninety (90) days following the sales notice date, the workforce housing units shall be offered] Approximately six (6) month before construction of the workforce housing units is complete, the developer shall establish the selection sequence for sales to applicants not on the County's List, by either the public lottery or first-come, first served methods, adjusted by preferences applicable to the project, notify prospective buyers of their selection number, and initiate sales exclusively to income-qualified buyers in order of the selection list.

[(c)] (f) Higher Income Group Sales. [For the period of time from ninety-one (91) to one hundred eighty (180) days after the sales notice date,] Approximately three (3) months before construction of the workforce housing units is complete, the developer shall [be offered] offer remaining unsold units to income-qualified buyers whose incomes are up to the next higher workforce housing income group, first, to residents on the County's Mortgage-Ready Home-Buyer List and, second, to residents on the developer's selection list.

[(f)] (g) Developer Sales Status at Construction Completion. Forty-five (45) days before completion of construction of the workforce housing units, the developer shall provide in writing a notice to the Housing Agency providing the number and prices of any unsold units. The County may elect to purchase any unsold and enact appropriation legislation for the purchase funds.

[(d)] (h) Resident Sales Without Income Restriction. [For the period of time from one hundred eighty-one (181) to two hundred seventy (270) days after the sales notice date,] At completion of construction of the workforce housing units, as evidenced by the issuance of final building inspection for single family dwellings or certificate of occupancy for multifamily dwelling, the developer shall [be offered] offer remaining unsold units [without income restrictions not only to the income qualified buyers, but also] to qualified buyers without income restriction, first, to residents on the County's Mortgage-Ready Home-Buyer List and, second, to residents on the developer's selection list for a period of sixty (60) days.

[(e)] (i) Resident Sales Without Income or Property Restrictions. [For the period of time from two hundred seventy-one (271) to three hundred sixty (360) days after the sales notice date, the] Sixty-one (61) days after the completion of construction of the workforce housing units, the developer shall [be offered] offer remaining unsold units [without income restrictions or other residential property ownership not only to the income-qualified buyers, qualified buyers, but also] to qualified residents without income restrictions and without other residential

property ownership restriction, first, to residents on the County's Mortgage-Ready Home-Buyer List and, second, to residents on the developer's selection list for a period of sixty (60) days.

[(f) Three hundred sixty-one (361) days after the sales notice date the developer shall provide in writing a final notice to the County to purchase any unsold units. The County shall have sixty (60) days to present the final offer to the County Council for the County's response. If the County agrees to purchase any unsold units, an additional ninety (90) days shall be provided to enact appropriation legislation for the purchase funds.

(1) Any limited equity leasehold estate workforce housing units priced to be affordable to households earning from eighty percent (80%) to one hundred twenty percent (120%) of the Kaua'i median household income that remain unsold, shall be purchased by the County for its community housing land trust, subject to the approval of the County Council and appropriation of funds.

(2) Any fee simple workforce housing units priced to be affordable to households earning from one hundred forty percent (140%) to one hundred eighty percent (180%) of the Kaua'i median household income that remain may be purchased by the County for its community housing land trust, subject to the approval of the County Council and appropriation of funds.]

[(g)] (j) Unrestricted Market Sales. Any workforce housing units that remain unsold [after the expiration of the restricted sales period and after the County has had its final opportunity to purchase any unsold units may be sold by] one hundred twenty (120) days after completion of construction of the workforce housing units, the developer may sell as market units at market prices without regard to the workforce housing unit restrictions (including price restrictions, income restrictions, and resale restrictions, mortgage debt restrictions, and owner-occupancy restrictions) contained herein, and in such case the developer shall receive credit for [such units sold, provided that the net proceeds calculated as the difference between the restricted workforce housing price and the market price shall be paid to the County for deposit in the County's Housing Revolving Fund] all units built to satisfy its workforce housing requirements.

[(h)] (k) Award of Workforce Housing Credit. The developer shall receive the workforce housing credit at the time of recordation of a sale during the restricted sales period or recordation of a sale to the County. [For any] The developer shall receive workforce housing credit for workforce housing units that remained unsold [after] during the restricted sales period[, the developer shall receive the workforce housing credit at the time the developer pays the County the net proceeds received from the market sale] one (1) day after the end of the restricted marketing period.

Sec. __-6.2 Restricted Rental Marketing Period.

(a) The rental notice of the intent to rent the workforce housing units shall be published in a newspaper of general circulation in the County.

(b) For the sixty (60) days following the rental notice date, the workforce housing units shall be offered exclusively to income-qualified renters.

(c) Any workforce housing units that have not been rented after the sixty (60)

day restricted rental period may be rented to qualified renters.

(d) The property manager of the workforce housing units shall maintain a list of potentially income-eligible rental applicants and shall fill any workforce housing unit upon its vacancy with the next income-qualified renter on the property manager's waiting list.

(e) The developer and the Housing Agency shall enter into a regulatory agreement for each project containing workforce housing unit rentals to establish which units are subject to restricted income qualified occupancy and workforce rental rates.

(f) The developer shall receive credit for each workforce housing unit upon initial occupancy during the restricted rental period. For any workforce housing unit that is not rented during the restricted rental period, the developer shall receive the workforce housing unit credit at the time the restricted rental period expires.

ARTICLE 7. RESTRICTION ON SALE OR TRANSFER, DEBT, AND USE

The current "Restriction on Sale or Transfer, and Use" is codified in Subsection 2-1.16(f), (g), and (h), Kaua'i County Code. That restriction shall be rescinded at the time the following provisions of this section are amended to include the entire language to be used by the County to enforce the restrictions.

Sec. ___-7.1 Applicability.

The County shall implement a buy-back, mortgage debt, and occupancy provision that shall be known as the "Restrictions on Sale or Transfer, Debt, and Use." These restrictions shall apply to the sale or transfer of any real property, apply to amount of mortgage indebtedness of any real property, and apply to the use of any real property acquired, financed, developed, constructed, or sold by the County pursuant to this ordinance or Section 2-1.16, Kaua'i County Code 1987, or to privately developed real property that is sold to satisfy a housing requirement and which are sold on the condition that the purchaser accepts the restrictions on the sale or transfer, debt, and use in the real property purchased.

Sec. ___-7.2 Duration of Restrictions.

The restrictions on sale or transfer, and use shall apply for a period of time and the period of time shall not be increased beyond the date of closing (date of recordation by the State of the title transfer) of the purchase without the mutual consent of the owner and the Housing Agency. The subsequent sale of any real property repurchased by the County pursuant to the restrictions on sale or transfer, debt, and use shall incorporate the restrictions on sale or transfer, debt, and use and the restriction shall apply for the same period of time [consistent with the income groups listed below and to the income group that the resale price is affordable]. The periods of time that the restrictions on sale or transfer, debt, and use shall apply are as follows:

[Income Group

Buyback Term

60%	30 years
80%	25 years
100%	20 years
120%	15 years
140%	10 years
160%	7 years
180%	5 years
200%	3 years]

(a) 20 years for all units sold during all sales periods that are restricted by the buyer's income, or

(b) 10 years for units sold during the sales period that is not restricted by the buyer's income, or

(c) Not applicable for units sold after the restricted sales period as open market sales.

Sec. ___-7.3 Restrictions Constitute A Lien.

The County's interest created by the provisions of the restrictions on sale or transfer, debt, and use shall [constitute] be recorded as a lien on the real property and shall be superior to any mortgage created after the purchase [with] of a workforce unit without the prior written consent of the County and the subordination of the County's lien by the Director of Finance.

Sec. ___-7.4 County Repurchase Right.

For the term of the restrictions beginning from the purchase of a dwelling unit, or from the date of occupancy of a dwelling unit built on a vacant lot purchased as a vacant lot, whether ownership of the dwelling unit or vacant lot is from an original or subsequent purchase, and whether by lease, assignment of lease, deed, or agreement of sale, if the owner wishes to sell or to transfer title to the real property or the lease, the County shall have the first option to purchase the real property or lease at a price which shall not exceed the sum of:

(a) The original cost to the owner;

(b) The cost of any capital improvements added by the owner, provided that for a vacant lot owner, the cost of a dwelling unit constructed by an owner-builder, including a participant in a County sponsored self-help housing project, shall be the initial building assessment value determined by the County's Real Property Tax Division, Department of Finance, or the total documented cost of construction, whichever is greater; and

(c) Simple interest on the original cost to the owner and the cost of capital improvements added to the property by the owner at the rate of one percent (1%) a year.

Sec. ___-7.5 Restriction on Additional Debt.

For the term of the restrictions beginning from the purchase of a dwelling unit, or from the date of occupancy of a dwelling unit built on a vacant lot purchased as a vacant lot, whether ownership of the dwelling unit or vacant lot is

from an original or subsequent purchase, and whether by lease, assignment of lease, deed, or agreement of sale, if the owner wishes to make additional mortgage loans on the property during the term of the restrictions without the written authorization of the Executive on Housing. The only additional mortgage loans that may be approved during the restriction period are loans whose proceeds will be used for capital improvements to the dwelling unit, to build a dwelling unit, or catastrophic medical expenses incurred by a member of the owner's household. Additional mortgage loans shall only be authorized when the total of all mortgage debt to market value is a ratio that does not exceed eighty percent (80%).

Sec. ___[-7.5] -7.6 Occupancy Requirement.

Real property purchased from the County through the Housing Agency or real property privately developed and sold to satisfy a housing requirement shall be occupied by the owner at all times during the applicable restriction period, except in a hardship circumstance where a temporary occupancy waiver of no more than one (1) year may be provided by the Housing Agency, or occupancy is temporarily suspended as a result of a natural disaster that renders the dwelling unit non-habitable.

Sec. ___[-7.6] -7.7 Workforce Housing.

The restrictions on sale or transfer, debt, and use shall apply to all workforce housing sold in fee simple to income-qualified buyers, qualified buyers, and qualified residents.

ARTICLE 8. [COMMUNITY HOUSING LAND TRUST] DEVELOPMENT, MANAGEMENT AND FINANCE OF HOUSING UNITS

Sec. ___ -8.1 Kaua'i County Housing Agency.

(a) Production Methods. The County, through its Kaua'i County Housing Agency, may produce workforce housing units by:

(1) Develop Housing Units. Develop workforce housing units, either alone or in partnership with other governmental agencies and with for-profit and non-profit organizations.

(2) Housing Project Sponsor or Lender. Sponsor the development or provide interim or permanent mortgage financing of workforce housing units, and

(3) Regulate Compliance. Regulate compliance from developments subject to this ordinance to satisfy workforce housing requirements.

(b) Production Types. The County may produce single family detached, single family attached, or multi-family workforce housing units as:

(1) Fee Simple Housing Sales. Sell workforce housing units to eligible residents at affordable prices, provided affordability is preserved through the County's "Restriction on Sale or Transfer, Debt, and Use;" or

(2) Limited Appreciation Leasehold Sales. Provide homeownership opportunities through the sale of limited appreciation leasehold estates with

a term of ninety-nine (99) years; with the sales price to the lessee equal to the appraised market value of the property's building improvements; with appreciation limited to one-half of the difference between the original sales price to the lessee and the appraised market value of the building improvements at the time of sale back to the County; or

(3) Limited Equity Cooperative Housing. Assist with the development of limited equity cooperative housing projects, where the project limits equity ownership, limits equity appreciation, and maintains the affordability of its housing units, while providing some benefits to homeownership; or

(4) Rental Housing. Provide rental workforce housing units with emphasis on lower income affordability.

(c) Real Estate Purchase. The County may purchase real estate for the following purposes:

(1) Market Real Estate. Purchase unimproved land or existing dwelling units in the open market with documentation to the seller that the proposed purchase is not the action of eminent domain. Unimproved land may developed immediately as workforce housing or held for future workforce housing development;

(2) For-Sale Workforce Housing. Purchase any amount of workforce housing units in a project before, during, or at the end of the restricted marketing period at the same price as offered to income-qualified buyers and re-sell the housing units to income-qualified buyers as limited appreciation leasehold estates or rent to eligible tenants; or

(3) Buybacks. Purchased any housing unit subject to the County's buyback rights pursuant to the restrictions on sale or transfer, debt, and use and re-sell the housing units as limited appreciation leasehold estates.

(d) Mortgage Lending. The County may provide low-cost mortgage loans with its federal resources to assist low-income individuals purchase a housing unit, rehabilitate an existing housing unit, or provide long term financing for limited equity housing cooperatives and rental projects.

(e) Property Management. The County may provide property management services for projects that it owns or controls, directly or indirectly through contract, for limited equity housing cooperatives and rental projects.

(f) Home-Buyer Education and Counseling. The County may provide homeownership education and counseling, directly or indirectly through contract, to Kaua'i residents who wish to become home owners.

(g) Home-Buyer List. The County may maintain a list of residents who wish to purchase a home on Kaua'i to keep them informed of upcoming projects and establish a preference for purchase.

Sec. ___[-8.1] -8.2 Kaua'i Community Housing Land Trust.

The County shall establish a Kaua'i community housing land trust that shall manage rental units and limited equity housing cooperatives, administer limited appreciation leasehold estate sales, and develop new rental, cooperative, and leasehold housing units. The community housing land trust shall be responsible to maintain the housing units under its control perpetually affordable for residents of

Kaua'i. The fee simple title of County owned or required units that become part of the community housing land trust shall remain with the County with a lease in favor of the community housing land trust. Management of the community housing land trust shall be provided by the County government or a Hawai'i nonprofit corporation. Ownership or management of the community housing land trust shall not be transferred to a foundation or trust.

[Sec. ___-8.2] (a) Purchase. [(a) Workforce For-Sale Housing. The County may purchase any or all workforce housing units before, during, or at the end of the restricted marketing period at the same price as offered to income-qualified buyers and re-sell the housing units to income-qualified buyers as leasehold estates to become part of the community housing land trust.

(b) The County or the] The community housing land trust may purchase any land or dwelling units to become part of the community housing land trust.

[Sec. ___-8.3] (b) Rental Units. Existing County-owned rental projects [shall] may become part of the community housing land trust. Additional rental projects may become part of the community housing land trust through donation or purchase.

[Sec. ___-8.4] (c) Limited Equity Cooperative Housing. Any cooperative housing project that limits equity accumulation and maintains the affordability of its housing units may become part of the community housing land trust.

[Sec. ___-8.5] (d) Limited Appreciation Leasehold Estate Sales. Homeownership opportunities shall be provided by [the County and] the community housing land trust through the sale of limited appreciation leasehold estates [with a term of ninety-nine (99) years. Appreciation is limited to one percent (1%) per year for the first ten (10) years of the lease and three percent (3%) per year for all remaining years on the sales price of the leasehold estate, plus any capital improvements added by the lessee. The leasehold estate may be transferred to an immediate family member with the approval of the Housing Agency. Sub-leasing is prohibited and sale of the leasehold estate shall only be to the County].

[Sec. ___-8.6 Buybacks.

All dwelling units repurchased by the County through its buyback rights pursuant to the restrictions on sale or transfer, and use shall be resold as leasehold estates and become part of the community housing land trust.]

[Sec. ___-8.7] (e) Administration.

[(a)] (1) Housing Agency. The initial administration of the community housing land trust shall be performed by the Housing Agency.

[(b)] (2) County Board. On or before the community housing land trust is responsible for two-hundred fifty (250) rental units and/or fifty (50) cooperative and leaseholds sales, the administration of the community housing land trust shall become the responsibility of a seven (7) member

board of directors composed of the following:

- (1) (A) Administrative head of the Housing Agency,
- (2) (B) County Planning Director or Deputy Planning Director,
- (3) (C) An appointed department head selected by the Mayor,
- (4) (D) A lending institution official selected by the Mayor,
- (5) (E) A real estate broker or escrow officer selected by the Mayor,
- (6) (F) A representative of a homeownership education organization or a representative of a nonprofit housing developer selected by the Mayor, and
- (7) (G) A community housing land trust resident selected by the Mayor. A community housing land trust resident shall be a renter, shareholder, or lessee residing in any community housing land trust rental project, limited equity cooperative, or leasehold estate.

(c) (3) Nonprofit or Semi-Autonomous Organization. On or before the community housing land trust is responsible for five-hundred (500) rental units and/or one-hundred (100) cooperative and leaseholds sales, and at such time that the community housing land trust becomes financially sustainable, a Kaua'i community housing land trust nonprofit corporation [shall] may be created or the County may establish the a semi-autonomous community housing land trust as organization to administer and manage the community housing land trust.

Sec 8.3 Housing Unit Financing.

The County shall create and the Housing Agency shall administer the following fund accounts:

(a) Development Funds.

(1) Unrestricted Account. There shall be an account for the purpose of providing equity for the development of workforce housing that is unrestricted as to geographical location or low income qualification.

(2) Geographical Restricted Accounts. The shall be a separate account for each geographical area where in-lieu fees have been collected for the purpose of providing equity for the development of workforce housing.

(b) Buyback and Leasehold Accounts. There shall be an account for the purpose of providing the funds:

(1) For the County to exercise its repurchase option pursuant to the Restriction on Sale or Transfer, Debt, and Use (buyback), where funds will revolve or partially revolve.

(2) For the County to purchase buyback or workforce units that are then resold as leasehold estates for less than the cost to the County.

(c) HUD and Program Income Funds. The County shall have accounts to provide equity for rental projects, low cost mortgage loans, and project development interim construction loans from its annual funding from the Community Planning and Development Division of the United States Department of Housing and Urban Development and program income funds administered by the County.

ARTICLE 9. GOVERNMENT ASSISTANCE FOR WORKFORCE HOUSING

Sec. ___-9.1 Waiver of County Fees.

To the extent permitted by law, the Housing Agency may recommend to the Wastewater Division to waive the payment of some or all fees related to the development and construction of the workforce housing units for wastewater capacity assessment fee, pursuant to Section 25-12.3(a)(b), Kaua'i County Code 1987, and may [recommend] verify eligibility to the Planning Department to waive the payment of the environmental impact assessment fee, pursuant Section 11A-2.1(4), Kaua'i County Code 1987.

Sec. ___-9.2 Fast Track Permitting.

Upon proclamation by the Mayor that a crisis in the availability of workforce housing could be best addressed by giving qualified workforce housing projects a priority in the County permitting process and upon adoption of a resolution by the County Council acknowledging the necessity to expedite permit processing for workforces housing projects, the County may institute a priority permitting policy for a specified period of time. The priority permitting policy for workforce housing projects may be extended as necessary upon proclamation by the Mayor and resolution by the County Council. Provided a project [contains] includes workforce housing units in a number equal to or greater than fifty-one percent (51%) of the total housing units within a project site and to the extent permitted by law, the County will expedite the review and issuance of all County permits necessary for the development of [workforce and market] housing units within the project site, including but not limited to: all subdivision applications, civil construction plan permits, [building permits,] and other plans and permits associated with the development of the project site. Building permits will only be expedited for workforce housing units. The County agrees to use its reasonable best efforts to avoid unnecessary processing delays for these developments, and to assist the developer in expediting such processing. The County shall use its best efforts to initiate a fast track process and expedite administrative review for all of the County permits by requiring each County office, agency, department, or authority responsible for the review and approval of the County permits to review such permits as a first priority. The County, through its Mayor, shall authorize the applicable department heads to expedite the County permits pursuant to the County's fast track process. Provided, however, that any request for discretionary approvals, including Planning Commission or County Council approvals, that may be necessary shall be determined pursuant to the established procedures for such approvals. The Housing Agency shall develop administrative rules to administer this fast track permitting process.

Sec. ___-9.3 Section [201G] 201H Exemption Projects.

The County's exemption authority, [as contained in H.R.S. 201G-118,] pursuant to Chapter 201H-38, Hawai'i Revised Statutes, may be utilized to expedite

requests to amend zoning and for zoning permit application, subdivision applications, and building permit application, as well as, to consider reduced development standards for any project that is one-hundred percent (100%) workforce housing [with at least fifty-one percent (51%) affordable housing].

ARTICLE 10. EFFECT ON DEVELOPMENTS AT PERMITTING AND EXISTING REQUIREMENTS

[Sec. ___-10.1 Effect on Unsatisfied Housing Conditions.

Any affordable housing condition or portion thereof in any prior zoning district boundary amendment which has not been fully satisfied as of the effective date of this ordinance shall be reassessed pursuant to this ordinance, unless the County has previously agreed as to the specific means of satisfying the requirements. If the County has not previously agreed to the specific means to satisfy all or any portion of an existing housing condition, then all unsatisfied housing requirements shall apply to this ordinance.”]

Sec. -10.1 Effect on Developments at Permitting.

Any project subject to workforce housing requirements pursuant to this ordinance, but not yet assessed a workforce housing requirement, and that does not have County permit or subdivision approval, shall comply to the applicable workforce housing requirements in this ordinance prior to obtaining permit or subdivision approval, with the exception of the following:

(a) A building permit application submitted prior to the effective date of this ordinance is exempt from workforce housing requirements for a period not to exceed one (1) year from the date of application, or

(b) A subdivision granted tentative subdivision approval submitted prior to the effective date of this ordinance is exempt from workforce housing requirements for a period not to exceed three (3) years from the date of tentative subdivision approval.

Sec. ___[-10.1] -10.2 Effect on [Unsatisfied] Existing Housing Conditions.

Any affordable housing condition or portion thereof in any ordinance for a prior zoning district boundary amendment, or for a State Land Use District Boundary Amendment involving lands fifteen acres or less in size, which has not been fully satisfied as of the effective date of this ordinance shall be reassessed pursuant to this ordinance, unless:

(a) [the] The County has previously agreed as to the specific means of satisfying the requirements through an executed affordable agreement, or

(b) The Housing Agency determines that the existing housing condition will provide more workforce housing than required by this ordinance. [If the County has not previously agreed to the specific means to satisfy all or any portion of an existing housing condition, then all unsatisfied housing requirements shall apply to this ordinance.]

Sec. 10.3 Affordable or Workforce Housing Developments.

Any affordable or workforce housing development developed by or for a government entity, and non-profit housing developer, or a community housing land trust that is providing workforce housing units in excess of those required in this ordinance, as determined by the Housing Agency, is exempt from the requirements of this ordinance.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 4. The Clerk of the County of Kaua'i is directed to insert the effective date of this ordinance in any section of the Kaua'i County Code 1987 which requires reference to this date.

SECTION 5. This ordinance shall take effect upon its approval.

Introduced By: /s/ SHAYLENE ISERI-CARVALHO
(By Request)

DATE OF INTRODUCTION:

October 10, 2007
Līhu'e, Kaua'i, Hawai'i