

DEPARTMENT OF HAWAIIAN HOME LANDS  
STATE OF HAWAII

AUGUST 22, 2019

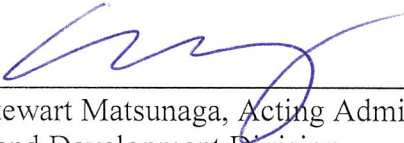
ADDENDUM NO. 1 TO  
REQUEST FOR PROPOSALS  
No. RFP-20-HHL-003

SEALED OFFERS  
FOR  
REDEVELOPMENT OF THE 820 ISENBERG STREET PROPERTY  
LOCATION: HONOLULU, OAHU, HAWAII

**NOTICE TO ALL PROSPECTIVE OFFERORS**

This addendum is hereby made a part of the Request for Proposals documents for REDEVELOPMENT OF THE 820 ISENBERG STREET PROPERTY, HONOLULU, OAHU, HAWAII, and it shall amend the said Request for Proposals documents as detailed within this Addendum document.

APPROVED:

  
\_\_\_\_\_  
Stewart Matsunaga, Acting Administrator  
Land Development Division

Date: August 22, 2019

Please detach, execute, and return immediately, the receipt below, by mail to the Department of Hawaiian Home Lands, P. O. Box 1879, Honolulu, HI 96805; by facsimile to 620-9299, or by e-mail to darrell.h.ing@hawaii.gov.

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Receipt of Addendum No. 1 for RFP-20-HHL-003, REDEVELOPMENT OF THE 820 ISENBERG STREET PROPERTY, is hereby acknowledged.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Firm \_\_\_\_\_

Date \_\_\_\_\_

ADDENDUM NO. 1 TO RFP-20-HHL-003  
SEALED OFFERS  
FOR  
REDEVELOPMENT OF THE 820 ISENBERG STREET PROPERTY

**AMENDMENTS TO THE RFP**

(None)

**PRE-SUBMITTAL MEETING**

The following documents from the Pre-Submittal Meeting are attached.

Handout

Sign-in sheets

Responses to questions received prior to the Pre-Submittal Meeting

Responses to questions asked at the Pre-Submittal Meeting

**REQUESTS FOR CLARIFICATION**

Questions received after the Pre-Submittal Meeting

1. We would be using Low Income Housing Tax Credits, State Rental Housing Revolving Funds and other sources to finance the project. All the sources we use require us to abide by Federal Fair Housing Law. Before going any further we need to know where we can find the references that exempt DHHL from Federal Fair Housing.

The attached letter from HUD confirms that “the Fair Housing Act does not prohibit the Hawaiian Homes Commission from imposing those conditions contained in the Hawaiian Homes Commission Act, 1920.”

2. In regards to the potential of securing project based Section 8, could you please explain exactly how this would work?

Project based Section 8 funds would be granted by DHHL from our NAHASDA appropriations.

**ATTACHMENTS**

Documents from the Pre-Submittal Meeting

HUD letter to DHHL (August 6, 1999) regarding Fair Housing Act

DHHL Affordable Housing Credits Policy

# **REDEVELOPMENT OF THE 820 ISENBERG STREET PROPERTY**

**RFP-20-HHL-003**

## **Pre-Proposal Conference**

**9:00 a.m., Thursday, August 15, 2019**

### **Scope of Work:**

Demolition of the existing structure; design, construction, financing, ownership, management, operation, and maintenance of a multi-family residential rental facility with potential for ground floor commercial or other uses.

### **Project Goals**

Medium term rentals targeting DHHL beneficiaries below 100% of AMI  
Other potential uses: kupuna; student/faculty housing

### **Site Information**

Former Bowl-o-Drome (+/- 1.9 acres)  
Design to City & County BMX-3 Mixed Use zoning standards  
Hazardous materials  
Historic items

### **Development Process**

Enter into DA and ground lease for 65 years (maximum)  
Environmental Impact Statement  
Environmental Assessment (NEPA)  
National Historic Preservation Act, Chapter 106 Consultation

### **General Requirements**

General Excise Tax exempt  
Subject to Department of Labor and Industrial Relations and Davis Bacon prevailing wages and salaries  
Section 103D-310 HRS – DHHL shall verify through Hawaii Compliance Express  
Chapter 103B HRS – Employment of State Residents on Construction Projects  
Proposal Security required – at least five percent (5%) of the estimated cost of construction

### **Scoring Criteria**

Offeror's qualifications, experience, financial strength, creativity, and track record in multi-family rental development projects of a similar nature	20
Proposed development budget	20
Proposed operating budget, including rental rates	20
Conceptual designs	15
Proposed means of financing	15
Green building program	5
Proposed operating program	5
Unusual or unacceptable terms and conditions (potential penalty of up to 10 points).	

**TOTAL POSSIBLE POINTS 100**

**Deadlines**

Final deadline for written inquiries – September 27, 2019

Respond to questions/ Issue addenda – October 4, 2019

Intent to Submit Offer – October 8, 2019

Offer submittal – October 18, 2019, 2:00 pm

Deliver to Hale Kalanianaʻole, 91-5420 Kapolei Parkway

Responses to inquiries received through August 12, 2019

**Additional Questions**

Site Inspection: following pre-proposal conference

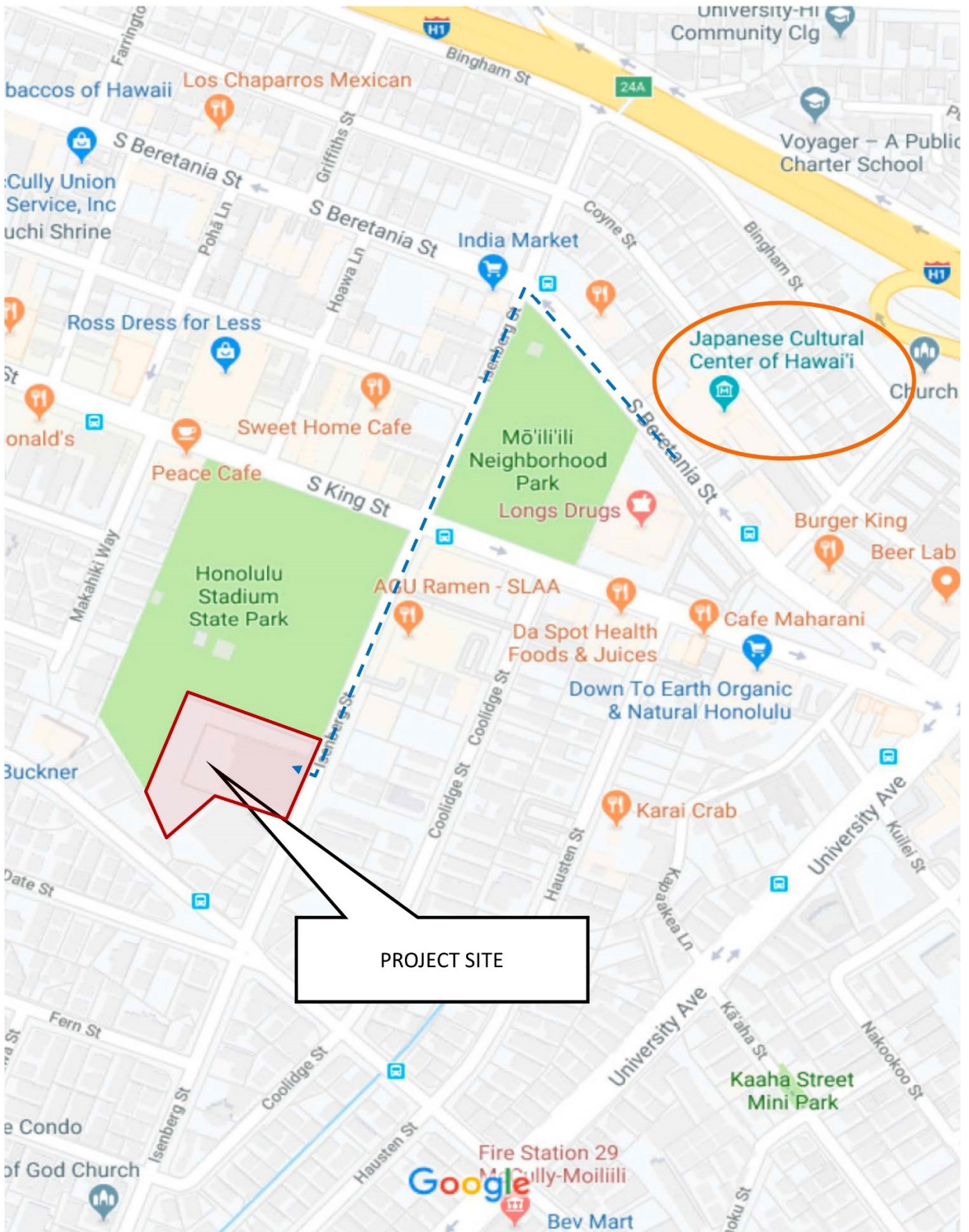
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**DHHL Contacts**

RFP: Darrell Ing  
Telephone: 620-9276  
Fax: 620-9299  
e-mail: [darrell.h.ing@hawaii.gov](mailto:darrell.h.ing@hawaii.gov)

Site Inspection: Allen Yanos  
Telephone: 620-9460  
Fax: 620-9479  
e-mail: [allen.g.yanos@hawaii.gov](mailto:allen.g.yanos@hawaii.gov)

Mailing Address: P.O. Box 1879  
Honolulu, HI 96805





**820 Isenberg Street Redevelopment  
 RFP Pre-Proposal Conference**

August 15, 2019



Name	Organization/Agency/Company	Phone	E-mail
Randy Hiu	Ikaika Ohana	808-829-1426	rhiu@ikaikaohana.org
Kevin Carney	EAH Housing	523-8826	Kevin.Carney@eahhousing.org
Karen Arakawa	Pacific Housing Assistance Corp	523-5281	karakawa@pacific-housing.org
Questor Lau	Michaels Develop	691-9446	QLau@fuo.com
JIM MURPHY	HONOLULU HABITAT	538-7373	jmurphy@honoluluhabitat.org
B. Puni Kekauoha	Kula no na Po'e HI	808-358-6738	puniKekauoha@pocel.com
Ashlee Matsui	SAND GROUP	9453325	ashlee.m@sand.com
Andre Wong	HDCC	735-3211	awong@hdcc.com
Brett Hill	BHCI	282-9020	brett@bhc808.com
Jennifer Yang	PDR productions	388 8489	podare3@gmail.com

## 820 Isenberg Street Redevelopment RFP Pre-Proposal Conference

August 15, 2019

Name	Organization/Agency/Company	Phone	E-mail
RICK MELCHOR	CLOSE CONSTRUCTION, INC.	808-234-4579	rick@closeconstruction.com
PERCIVAL LIBERTO JR	CLOSE CONSTRUCTION, INC.	808-492-3332	perci@closeconstruction.com
Audrey Araya	Pacific Housing Assistance Corp.	808 523-5681 x690	aaraya@pacific-housing.org
E. YOSI EGUCHI	BRETT HALL MANAGEMENT	213 200 7322	YOSI@BHE808.COM
Herb Wong	Hawai Dredging	808 735-7432	hwong@hlee.com
Steven Young	Law Office of Steven Young	808-944-1554	steve@lawhawaii.com
LANCE WILHELM	THE WILHELM GROUP	(808) 479 5116	lwilhelm@TW@Hawaii.com
PAUL MIGLIORATO	PRP		pmigliorato@prp-hawaii.com
Renee Shiori Tajima	Gentry	3126205	reneest@gentryhawaii.com
John Shaw	Gentry	456-0056	jshaws@gentryhawaii.com



**820 Isenberg Street Redevelopment  
RFP Pre-Proposal Conference**

August 15, 2019

Name	Organization/Agency/Company	Phone	E-mail
Mika Fujita	Wilsmo Okamoto Corp	946 2277	m.fujita@wilsmo-okamoto.com
Zac Higgins	Seal Pros LLC	258-6028	zhiggins@sealproshawaii.com
Cameron Higgins	217 CAPITAL LLC	258-2870	cameron.higgins88@gmail.com
BEN LEE	Clifford planning ARCH	391 6634	ben.lee@cliffordplanning.com
Andrew Kamikawa	Gentry Hamer	599-8360	andrewk@gentryhawaii.com
Dean Hirabayashi	American Savings Bank	539-7898	dhirabayashi@asbhawaii.com
CHRISTIAN O'CONNOR	Coastal Rim Properties	371-5314	coconnor@coastalrim.com
Kanekawala Lindsey	Mark Development	735 9099	maxl@mdihawaii.com
Roy Catalani	Layton Construction	286 1392	rcatalani@laytonconstruction.com
Karin Wilcock	WRNS Studio	415-812-9145	kwilcock@wrnsstudio.com



## 820 Isenberg Street Redevelopment

### RFP Pre-Proposal Conference

August 15, 2019

Name	Organization/Agency/Company	Phone	E-mail
<i>John Hoja</i>	<i>Adrian Zentoy</i>	<i>721-8584</i>	
Evan Anderson	VOYAGER PUBLIC CHARTER SCHOOL	389-0270	eanderson@voyagerpcs.com
MELODIE AOUJA	DEMOCRATIC PARTY OF HAWAII	(808) 258-8889	LEGISLATIVEPROMOTIONS@GMAIL.COM
Kim Freitas	AHHL	(808) 548-1147	Kkf Freitas @ Outlook . Com .

**820 Isenberg Street Redevelopment  
 RFP Pre-Proposal Conference**

August 15, 2019



Name	Organization/Agency/Company	Phone	E-mail
Sheryl Nojima	Gray Hong Nojima & Assoc.	521-0306	snojima@grayhongnojima.com
Ben Edger	The Michaels Organization	808-691-9446	bedger@tmo.com
Michael Parker	Layton Construction	808.216.6718	mparker@laytonconstruction.com
Dr. Adrienne Dillard	Kula no na Po'e Hawaii	521-8997	kula.papa@kulae@gmail.com
Keli Watson	1144 Bishop #907	282-5991	okeli9@gmail.com
William G. Liu	Akamai Remediation & Maint. Inc.	342 9621	info@akamairemediation.com
Diane Palome	Lunelilo Home	345-1000 x225	diane@lunelilo.org
GRANT CHIANG	LOWNEY ARCHITECTURE	808-226-0873	grant@lowneyarch.com
Tim Hoge	ALOHA STORAGE	375 9424	HA MAHALO@HOTMAIL.COM
GRETCHEN TOMAS	CLIFFORD PLANNING & ARCHITECTURE	(808) 537-1200	Gretchen.Tomas@cliffordplanning.com



**820 Isenberg Street Redevelopment**  
**RFP Pre-Proposal Conference**

August 15, 2019

Name	Organization/Agency/Company	Phone	E-mail
LiZ Char	Housing Partners LLC	808.223.2222	housingpartners@gmail.com
Kent Walther	Tradewind Capital Group	808.564-8192	kwalth@tradewindcap.com
Kyle Watase	Mark Development Inc.	808.735.9099	kylew@mdihawaii.com
ROCHELLE NAGATA-WU	WRMS studio	808.356.5822	rnagatawu@wrmsstudio.com
KALOA ROBINSON	STANFORD CAMP DEVELOPMENT	808.441.2241	kaloa@stanfordcamp.com
Jeremy Dow	Coffman Engineers	808.321.5442	Jeremy.Dow@coffman.com
Wei FANG	crizer	808.397.0960	weidwefang@gmail.com
Alex Bla	GLOBAL I	(808) 371-8000	ALEX_BLA@HOTMAIL.COM



- RFP states Development Agreement for 65-year land lease.
  - Is land to be lease at \$1 per year? **Yes, ground lease rent will be nominal.**
  - Can lease be extended to 75 years if required for financing? **No. If required by financing plan, please so note in Section H. on Offer Form OF-2.**
- RFP indicates developer participation in EIS approval process.
  - Who will be responsible for preparation and ultimate submittal? **Developer shall prepare the EIS. DHHL shall be the proposing agency.**
- RFP enumerates target demographic specific to eligible native Hawaiians being defined as individuals having at least 50% Hawaiian blood quantum and his/her qualified successors but also denotes providing independent living facilities for kupuna, student or faculty housing as well as homeless beneficiaries.
  - Do all residents need to satisfy blood quantum requirements? **No, only the renter needs to meet the blood quantum requirement.**
  - If yes, can this requirement be waived should developer be unable to fill available units? **No.**
- RFP indicates proposal security deposit / bid bond pin an amount equal to at least 5% of estimated construction cost.
  - What is the purpose of this security since no MOA has yet been negotiated or signed? **This is required by HRS §103D-323.**
- RFP references AG 103D General Conditions and DHHL General Conditions.
  - Which controls in event of conflict between the two documents? **DHHL Construction General Conditions**

RFP-20-HHL-003

REDEVELOPMENT OF THE 820 ISENBERG STREET PROPERTY

Responses to questions received at the Pre-Submittal Meeting

August 15th, 2019, 9-10:30 AM - Japanese Cultural Center

**Q1:** Please provide the citation that requires a bid bond.

**Response:** Bid security is required by Hawaii Revised Statutes Section 103D-323.

**Q2:** The BMX3 zoning code was discussed in the presentation, but can proposers also use the 201H guidelines for setbacks, heights, etc.? 201H projects often use those to get better units, space, etc.

**Response:** Proposals are free to consider use of the 201H process. RFP Attachment 3, Offer Form OF-2, Part H Conditions / Exceptions, as well as other sections of your proposal, may be used to describe how the 201H process will be utilized. Also, as mentioned during the presentation, there is an opportunity to build considerably more than 276 units on the site. Maximizing the density with taller buildings, smaller units, innovative/automated parking solutions, pre-fab/modular construction, etc., is encouraged. CCH has indicated recently that a sewer connection application for 500 multi-family units would likely be approved for the site.

**Q3:** Budget – Development expenses is 20% of the score. Why is this important to DHHL?

**Response:** DHHL is looking for a thorough, well-thought-out plan that considers all possible costs and ascribes a reasonable cost estimate to each cost item. The highest score in this category will not necessarily be the lowest cost/development budget; the score will be based on the quality of the cost estimate and its relationship to the financing plan and project feasibility.

**Q4:** Who will be scoring the proposals?

**Response:** There will be a selection committee of four from the Department.

**Q5:** Voyager Public Charter School - Considering the recent project in Kakaako that included residential mixed use with an educational facility – is there any opportunity to work in conjunction with a school? [the speaker] is available to meet with anyone interested in developing a partnership.

**Response:** DHHL is open to suggestions and creative partnerships that could benefit keiki, and any other ideas that would enhance the project. A school, services for the elderly, a homeless component, etc., will be welcomed.

**Q6:** Papakōlea Hawaiian Homes Association representatives are present and want to share priorities. The project is in the ahupua'a of Papakōlea. There is a desire from this Homestead Association for kupuna daycare, they are advocates for the project, and want to keep interests of the nearest Hawaiian community at the forefront of minds in the RFP process. There are several representatives present who are open to talk story with attendees so that this process keeps their

interests in mind. Another project of this type receives \$1M per year so there is potential for profitability. [The speaker] will leave her business card on the table.

**Q7:** Do Fair Housing Rules apply? Where can developers find the language excepting DHHL from this federal mandate?

**Response:** The Federal Office of Fair Housing and Equal Opportunity has determined that “the Fair Housing Act does not prohibit the Hawaiian Homes Commission from imposing those conditions contained in the Hawaiian Homes Commission Act, 1920.” Other requirements such as compliance with Americans with Disability Act do apply to the project.

**Q8:** Could Section 8 be made available for the project developer? Is that project-based or tenant-based section 8?

**Response:** Yes, Section 8 project-based vouchers (PVB) for project development could be utilized with DHHL NAHASDA funds. Section 8 tenant-based housing choice vouchers (HCV) issued by another agency may be accepted.

**Q9:** Is the 65-year ground lease in your charter? Are optional lease extensions allowed?

**Response:** HAR, Section 10-4-1 refers to disposition of lands in accordance with HRS Chapter 171. HRS 171-36 limits lease terms to 65 years. HAR 10-4-3 allows for a one-time lease extension of up to twenty years under certain conditions.

**Q10:** How do affordable housing credits tie in?

**Response:** (1) DHHL has a bank of affordable housing credits some of which could be made available to the developer. (2) The project would generate additional affordable housing credits that the developer could apply toward another project it develops or take to market and sell to other developers to provide equity for this project. The DHHL Affordable Housing Credits policy shall be attached to Addendum no. 1.

**Q11:** Would the city commit to affordable credits?

**Response:** Section 46-15.1 (b) requires the counties to issue credits to DHHL for each affordable housing unit produced. DHHL shall follow up with the City and County of Honolulu on this matter.

**Q12:** Can developer work with consultants previously engaged by DHHL to complete environmental studies?

**Response:** Yes, but not until selection process is complete.

**Q13:** How does tenant selection work?

**Response:** Due to privacy laws, DHHL will make initial mailout to applicants on the Oahu Island-wide Waitlist and refer interested beneficiaries to the developer certifying that they are



qualified with respect to blood quantum. DHHL will also verify blood quantum of rental applicants who are not on the wait list. Further eligibility, such as AMI and verification of ability to pay rent shall be the responsibility of the developer/operator.

**Q14:** Has DHHL confirmed there are enough potential tenants?

**Response:** There are 10k beneficiaries on the waitlist and DHHL feels confident that there will be an adequate number of potential tenants. Beneficiaries who are not on the Waitlist may also be eligible to rent a unit in the project.

**Q15:** Has DHHL discussed how to bridge the gap of lease-up time delays? i.e., 6 months to lease up?

**Response:** No. Although DHHL is confident that lease-up will move quickly (as noted above in Q14), the Department encourages proposers, as requested in Offer Form OF-2, Part A Development Program, to provide a marketing plan that addresses this and other leasing issues.

**Q16:** Will native Hawaiians be given first priority/preference in commercial leasing?

**Response:** DHHL cannot make that a requirement. The commercial component of the development is meant to provide revenues to help offset residential rents or operating expenses, as well as contribute to a more lively urban fabric. This should be discussed in Offer Form OF-2, Part A Development Program.

**Q17:** Is Sandwich Isles communications required?

**Response:** Yes, at this time; but this is subject to change.



U. S. Department of Housing and Urban Development  
Washington, D. C. 20410-5000

OFFICE OF THE ASSISTANT SECRETARY  
FOR PUBLIC AND INDIAN HOUSING

AUG - 6 1999

Ray Soon  
Chairman  
Hawaiian Homes Commission  
P.O. Box 1879  
Honolulu, HI 96805

Dear Mr. Soon:

This is in response to your recent request asking for an opinion by the Department about the applicability of the Fair Housing Act and related non-discrimination laws to a project, known as the "Village 6 Rent to Own Program," that will utilize low-income housing tax credits, and limit admission and occupancy of the dwelling units developed to "Native Hawaiians," as that term is defined in the Hawaiian Homes Commission Act.

Enclosed please find a memorandum, issued by the Office of Fair Housing and Equal Opportunity, that pertains to this issue. It was forwarded to my office by Harry L. Carey, HUD Assistant General Counsel, Office of Litigation and Fair Housing Enforcement.

I trust that this memorandum will satisfy the requirements of the Board of Directors of the Housing and Community Development Corporation of Hawaii. Should you have any further questions on this matter, please do not hesitate to contact me.

Sincerely yours,

Jacqueline Johnson  
Deputy Assistant Secretary  
for Native American Programs

Enclosure



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON D.C. 20410-0500

OFFICE OF THE GENERAL COUNSEL

August 6, 1999

NOTE FOR: ~~Edward V. Fagan~~, Office of Native American Programs, PI  
FROM: ~~Harry L. Carey~~, Assistant General Counsel, Office of  
Litigation and Fair Housing Enforcement, CRE  
SUBJECT: Applicability of the Fair Housing Act to Hawaiian  
Homelands

This note is in response to your question regarding the applicability of the Fair Housing Act to the Hawaiian Homelands. When the location of a project on Hawaiian Homelands is authorized, HUD's position has been that the Fair Housing Act does not override restrictions applicable to the Hawaiian Homelands. Please see the attached 1984 memorandum from Charles Farbstein, Assistant General Counsel for Equal Opportunity.



June 12, 1984

MEMORANDUM FOR: James F. Lischer, Assistant General Counsel  
for Legislation, GLL

LS! Harry L. Carey for

FROM: Charles M. Farbstein, Assistant General Counsel  
for Equal Opportunity, GME

SUBJECT: Applicability of the Fair Housing Act to  
Hawaiian Homelands and Indian Reservations

This is in response to your memorandum of May 22, 1984 regarding the development of regulations to implement the Secretary's authority under new Sections 247 and 248 of the National Housing Act relating to the insurance of mortgages on Hawaiian Homelands and Indian Reservations. You indicate that both the Department of Hawaiian Homelands and many Indian tribes would restrict resale and rental to Hawaiians and Native Indians, respectively, and ask whether such restrictions may lawfully be imposed in light of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq. (the Fair Housing Act). It is our conclusion that the Fair Housing Act does not prohibit the Hawaiian Homes Commission from imposing those restrictions contained in the Hawaiian Homes Commission Act, 1920. We also conclude that the Fair Housing Act does not apply to dwellings on Indian reservations.

#### I. Hawaiian Homelands

The new Section 247 of the National Housing Act (NHA), 12 U.S.C. 1715a-12, authorizes the Secretary to insure a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in the NHA relating to marketability of title, if the mortgage is executed by a native Hawaiian on property located within the Hawaiian Homelands and certain other conditions are met. New Section 247 defines the term "native Hawaiian" to mean "any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before January 1, 1778." You ask specifically whether the Fair Housing Act prohibits the Department of Hawaiian Homelands from restricting the resale or rental of insured dwellings to native Hawaiians.

The Hawaiian Homes Commission Act, 1920, 42 Stat. 108; 48 U.S.C. note prec. 491, established the Hawaiian Homes Commission, designated certain lands as "available lands" and placed these lands under the control of the Commission to be used in accordance with the provisions of the Hawaiian Homes Commission Act. Id. sec. 204. The Act forbids the sale of the

Hawaiian Homelands and authorizes the Commission to lease the Homelands only to "native Hawaiians," defined in the same manner as the term is defined in new Section 247(c)(1).

The Admission Act, 73 Stat. 4, which made the Territory of Hawaii a state, imposed the following as a condition upon statehood: "As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, . . . subject to amendment or repeal only with the consent of the United States . . . Id. Sec. 4 (emphasis supplied). Section 2 of the Hawaiian State Constitution accepts this compact and Section 3 adopts the Hawaiian Homes Commission Act, 1920, as a part of its Constitution.

The application of the Fair Housing Act to the Hawaiian Homelands would render the racial lease restrictions of the Hawaiian Homes Commission Act void. There is no evidence that Congress, in enacting Title VIII of the Civil Rights Act of 1968, intended to amend or repeal the Hawaiian Homes Commission Act, 1920. On the contrary, the reference in new Section 247 to the Hawaiian Homes Commission Act and the requirement therein that mortgage insurance within Hawaiian Homelands be available only to "native Hawaiians," defined in the same way as in the Hawaiian Homes Commission Act, is strong evidence that Congress considers that Act and all of the racially based restrictions contained therein to be still in effect. The legislative history of new Section 247 provides additional support for this conclusion and also indicates that Congress considered the marketability problem raised by the restrictions on alienation in the Hawaiian Homes Commission Act to be the only legal obstacle preventing individuals on Hawaiian Homelands from securing FHA insured mortgages:

On July 9, 1921, Congress passed the Hawaiian Homes Commission Act. Under this legislation, approximately 200,000 acres of land were set aside to be used by native Hawaiians for homestead purposes. One of the provisions of this act makes it impossible to alienate such land, now or in the future. It affords immunity from attachment, levy or sale upon court process for land settled under the Hawaiian Homes Commission Act. It is this provision that prevents these homeowners from acquiring FHA-insured mortgages.

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It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status. See Oliphant v. Suquamish Indian Tribe, 435 U.S. 191.

United States v. Wheeler, 435 U.S. 313, 323 (1978). Furthermore, when Congress exercises its power to limit the sovereignty of Indian tribes it does so expressly. For example, Congress has set forth separately those criminal offenses which extend to Indian reservations. See 18 U.S.C. 1151-1165. (Chapter 53 -- "Indians").

There is no evidence that Congress intended that Title VIII of the Civil Rights Act of 1968 apply to Indian reservations. Title VIII makes no reference to Indian tribes or reservations. In addition, Title II of the same Act, 25 U.S.C. 1301 et seq. (the Indian Civil Rights Act), expressly imposes on tribal governments "a list of specific restraints consisting almost entirely of language copied verbatim from the Constitution, mainly from the Bill of Rights." Note, The Indian Bill of Rights and the Constitutional Status of Tribal Governments, 82 Harv. L. Rev. 1343, 1345 (1969). The absence of any mention of Indian tribes or reservations in Title VIII, when considered in light of the tribes' inherent powers of limited sovereignty and the fact that Congress expressly dealt with Indian civil rights in Title II of the same Act, leads us to conclude that Title VIII does not apply to Indian reservations.

cc:  
GME, Chron- & RF 5218  
Carey  
Enzel  
Farbstein  
GM Bloomberg 10244  
File/Index No. 9.925

CGF	Legal Opinions	10236
GML	Bossard	10252
GLR	Campion	10276

GME:Denzel:jcm:6/12/84



HAWAIIAN HOME LANDS  
HAWAIIAN HOMES COMMISSION  
DEPARTMENT OF HAWAIIAN HOME LANDS  
P.O. Box 1879 - Honolulu, Hawaii 96805

## Department of Hawaiian Home Lands Affordable Housing Credits Policy

*Department of Hawaiian Home Lands Affordable Housing Credits Policy,  
Third Amendment, as approved by the Hawaiian Homes Commission on Dec. 13, 2011.*

### I. **Background**

The Department of Hawaiian Home Lands (Department) has become one of the largest developers of affordable housing throughout the state of Hawaii. The Department's homestead projects are often developed in phases and increments due to the size of, and financing required for, such projects. The Hawaiian Homes Commission Act of 1920, as amended (HHCA), authorizes the Department to enter into project developer agreements to develop available lands for homestead projects. Developer-financed projects allow the Department to award and deliver homesteads to beneficiaries at an accelerated rate. The Department will utilize affordable housing credits to attract more affordable homestead development opportunities.

### II. **Purpose**

The following policies have been established to provide guidelines for determining the value of credits, clarifying terms and conditions under which affordable housing credits will be applied and subsequently transferred to other entities pursuant to Act 141, Session Laws of Hawai'i (SLH) 2009, which will be codified into the Hawaii Revised Statutes (HRS) under section 46-15.1 (b). Act 141 is effective from July 1, 2009, until June 30, 2015.

Under Act 141, counties are directed to issue credits on a one-for one basis to DHHL for existing and future projects. Under the law, the credits are transferable and can be applied anywhere within the same county in which the credits were earned.

### III. **Effective Date**

These Policies shall take effect immediately upon approval and authorization by the Hawaiian Homes Commission.

### IV. **Definitions**

- A. "Credits" are affordable housing credits.
- B. "Homestead projects" are projects undertaken by the Department, where a "project" is as defined in HHCA §220.5(g).
- C. "Existing projects" are projects that were on-going at the time Act 141 became effective on July 1, 2009, and shall include:
  - 1. All contiguous phases and increments of construction within the project;
  - 2. All infrastructure construction for the benefit of the housing units within the project; and
  - 3. All types of house construction for which the Department has provided on-site infrastructure in an effort to make the house construction affordable.
- D. "Affordable housing credits" are credits issued by the various counties that may be applied toward the respective county's affordable or residential workforce housing requirements for a development.



**HAWAIIAN HOME LANDS**  
HAWAIIAN HOMES COMMISSION  
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. Box 1879 - Honolulu, Hawaii 96805

- E. "First Option" is defined as developer may have the opportunity to meet the terms set forth by the Department before the credits are made available to others.

**V. Authority Granted to the Chairman; Ratification by the Commission**

The Commission authorizes the Chairman of the Hawaiian Homes Commission (also the Director of the Department) to implement these policies and further authorizes the Chairman to enter into negotiations with public and private entities in furtherance of these policy objectives. The Commission authorizes the Chairman to deposit AHC cash payments in to the Hawaiian Homes Trust Fund (T-901-I) and to transfer into any other fund for public purposes deemed by the Commission to further the purposes of the Hawaiian Homes Commission Act. Five percent (5%), unless otherwise determined by the Commission, of cash deposits shall be transferred for the purposes stated in VI.E. Agreements are subject to ratification by the Hawaiian Homes Commission and the Department will provide the Commission with periodic reports.

**VI. Policies**

The following policies establish fair and transparent methods by which the Department will request affordable housing credits from the counties and by which the Department will award and transfer such credits to other entities.

**A. Requests to Counties for Affordable Housing Credits**

The Department shall request affordable housing credits for the completed phases and/or increments (as of the date of enactment of Act 141) of existing projects and projects planned, designed or in construction during the effective period of Act 141.

**B. Award and Transfer of Affordable Housing Credits**

Activities Eligible for Requests for Affordable Housing Credits:

1. Development of Housing Units for the Department. A developer who assumes the risk of financing, designing, marketing, and constructing the housing units within a project may, at the option of the Chairman, be afforded the first option to negotiate with the Department for award and transfer to such developer affordable housing credits on a one-for-one basis for each housing unit.
2. Conveyance of Unimproved Land Suitable for Residential Homestead Purposes. A landowner who conveys to the Department at least one hundred (100) contiguous acres of land which is suitable for residential homestead purposes may be afforded the first option to negotiate with the Department for award and transfer to the landowner affordable housing credits, provided that the land area conveyed can be designed and subdivided to provide at least 1.5 times more lots than the amount of credits requested, with the number of lots determined according to the corresponding minimum lot size for each respective county as follows:
  - i. Kauai..... 10,000.0 sq. ft.;
  - ii. Oahu .....5,000.0 sq. ft.;
  - iii. Maui .....7,500.0 sq. ft.;
  - iv. Hawaii .....7,500.0 sq. ft.,





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provided that if the respective county's sewer system is not available to service the future lots, the minimum lot size shall be 10,000 sq. ft.

3. Conveyance of Fully Improved Lots. A landowner who conveys to the Department at least twenty-five (25) fully improved lots; provided that such lots have received final subdivision approval by the county, and the lots are free and clear of all liens, impact fees, and utility fees, may be afforded the first option to negotiate with the Department for award and transfer to the landowner affordable housing credits on a one-for-one basis for each lot which meets the corresponding minimum lot size for each respective county as follows:

- v. Kauai..... 10,000.0 sq. ft.;
- vi. Oahu .....5,000.0 sq. ft.;
- vii. Maui ..... 7,500.0 sq. ft.;
- viii. Hawaii ..... 7,500.0 sq. ft.,

C. Consideration for Award and Transfer of Affordable Housing Credits

1. Valuation of credits: The value of the credits shall be determined on a project-by-project basis.

The valuation of credits is affected by the economic cycle, housing demand, developer's inventories, county requirements for affordable or workforce units, county 'fee in lieu' formula's, availability of credits from other sources, availability of future credits and other factors such as the adjusted median income levels for the area.

The negotiations with the developer for a specific project may include shared risks for financing, marketing, cost fluctuations, infrastructure construction, land acquisition and development and buyer capacity.

2. Commission May Establish Additional Factors. The Commission may establish additional factors that may be considered in adjusting the consideration to be received by the Department for the award and transfer of affordable housing credits.

D. Public Auction of Department Credits.

1. Any and all affordable housing credits may be disposed of by public auction through competitive sealed proposals to obtain the best offer.
2. Notwithstanding the above provisions of this section, the Department may hold Department credits in a reserve to be used for consideration as well as awards for land conveyances and other activities that will generate affordable housing units for the Department. Such credits held in reserve shall not be subject to disposition by public auction.

E. Community Benefits

Five percent (5%) of the cash payments, unless otherwise determined by the Commission, deposited by the Department for affordable housing credits



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shall be transferred for purposes of supporting activities relating to educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated. Under Act 141, the credits are transferable and can be applied anywhere within the same county in which the credits were earned, this same rule will apply to the 'Community Benefits' payments.

F. Conditions of Awards and Transfers of Affordable Housing Credits

Any agreement between the Department and a third party to transfer affordable housing credits shall be subject to the Department receiving the necessary number of credits from the respective county. Developer shall be solely responsible to execute agreements with the respective county on the applicability and use of such credits.