

MAINTAINING THE AFFORDABILITY OF STATE-SUBSIDIZED HOUSING

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FOREWORD

House Resolution No. 106, H.D. 1, adopted during the 1989 Regular Session by the Fifteenth State Legislature, requested the Legislative Reference Bureau to study the State's affordable housing program. In particular, the Bureau was asked to study mechanisms through which the State could indefinitely maintain the affordability of state-subsidized housing.

This report is a response to the resolution.

The Legislative Reference Bureau thanks the many individuals who assisted in its study and sent responses to the survey. Mr. Joseph Conant, Executive Director, Housing Finance and Development Corporation, and the corporation's staff members graciously gave of their time to answer questions and provide useful background information. The Bureau especially wishes to express its gratitude to Ms. Debra Luning, Mr. Elmer Manley, and Mr. Edward Suzuki of the Housing Finance and Development Corporation and to Mr. Richard Melton of the Affordable Housing Alliance for their technical assistance.

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Chapter 1

INTRODUCTION

Since 1971, the State of Hawaii has provided housing assistance through the sale of homes at below-market prices. After ten years, homeowners are free to sell on the open market. Those homes which are sold are generally not affordable to low- to moderate-income families. Thus, the subsidized homes are removed from the affordable housing pool.

House Resolution No. 106, H.D. 1, adopted by the House of Representatives during the regular session of 1989, directed the Legislative Reference Bureau (Bureau) to analyze alternative mechanisms for maintaining the affordability of subsidized housing.

Organization of the Report

Chapter 1 introduces the study.

Chapter 2 reviews the current housing situation in Hawaii.

Chapter 3 reviews and analyzes the current means of maintaining the affordability of subsidized housing, especially current state policies and procedures relating to resale controls on state subsidized housing.

Chapter 4 reviews and analyzes alternatives proposed in the resolution as well as mechanisms used in other states to maintain the affordability of housing.

Chapter 5 presents findings and recommendations.

Chapter 2

OVERVIEW OF CURRENT SITUATION

Although the need for affordable housing in Hawaii may seem to be so obvious as to be beyond discussion, an examination of available demographic data will shed additional light on the subject. What emerges is a picture of a population which pays more for and lives in more crowded housing.

According to the *1988 State of Hawaii Data Book*,¹ Hawaii ranks forty-ninth in the percentage of owner-occupied housing units. Only 51.7% of households in Hawaii own their own home versus 64.4% nationally. This may be caused in part by the nation's highest median cost of housing. In 1980, the median value of a home in Hawaii was \$118,100 versus only \$47,200 nationwide. In addition, Hawaii's median monthly homeowner cost -- \$463 versus the national average of \$365 or 26.8% higher -- was the second highest in the nation.²

Apart from the dollar cost of housing, there are indications that Hawaii's occupied units are more crowded. On the one hand, Hawaii ranked fiftieth in terms of the median number of rooms per housing unit -- 4.4 rooms versus 5.1 nationally. On the other hand, according to 1987 data, Hawaii ranked second nationally in terms of number of persons per household -- 3.02 persons per household versus 2.64 persons per household nationally. In addition, Hawaii has nearly the lowest percentage of one-person households in the nation.³

Apart from these medians and averages, long-range demographic trends also highlight the need for affordable housing.

Between 1980 and 1988, the number of households increased from 294,052 to 353,000 or by about 59,000. On the other hand, the number of resident housing units increased by about 41,600 from 322,598 to 364,170. In relative terms, the increase in the number of housing units was only 65% of the increase in the number of households.⁴ The increase in the number of households is due to several factors. For example, since the 1940 census, the average household size has decreased from 4.46 persons to the 1980 census average of 3.15 persons.⁵ In addition, larger, more expensive single-family homes have been replaced by apartments or smaller single-family homes. Other factors accounting for the increasing number of smaller households include the increasing proportion of elderly in the population, later marriages, higher divorce rates, and fewer children.

Brief History of Hawaii Housing Authority/ Housing Finance and Development Corporation

In 1934, the Territorial Legislature established the Hawaii Housing Authority.⁶ Although the agency is perhaps best known for its provision of rental housing to low- and moderate-

income households, in 1971, by Act 105, the agency was given additional authority to develop for-sale housing by using expedited permit processing procedures.⁷ In 1987, this housing development function was transferred to the newly created Housing Finance and Development Corporation.⁸

Housing Policies

Policies in the Hawaii State Plan Relating to Housing

The Hawaii State Plan contains three goals which relate to the provision of housing:

- (1) A strong viable economy;
- (2) A beautiful, clean, quiet, and stable physical environment; and
- (3) Physical, social, and economic well-being for individuals and families in Hawaii, that will nourish a sense of community responsibility, of caring and participation in community life.⁹

In addition, the state plan contains two objectives which relate more specifically to housing:

- (1) Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, livable homes located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals; and
- (2) Orderly development of residential areas sensitive to community needs and other land uses.

To provide additional detail, the state plan also sets out eight policies relating particularly to housing. Among the eight, three relate specifically to affordable housing:

- (2) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap group households.
- (3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style and size of housing.
- (4) Promote appropriate improvement, rehabilitation, and maintenance of existing housing and residential areas.¹⁰

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In addition, the state plan prescribes certain priority guidelines which relate to affordable housing.¹¹ Briefly stated, the guidelines are:

- (1) Use otherwise nonessential agricultural or public land;
- (2) Reduce construction and development costs;
- (3) Improve information flow and increase coordination between government agencies and the private sector;
- (4) Create development incentives; and
- (5) Support low interest rate mortgages.

The priority guidelines thus emphasize the creation of or investment in affordable housing rather than the management and preservation of affordable housing as a resource created to benefit the people of Hawaii.

The difference between these two perspectives has important policy implications. If affordable housing is viewed as assistance to families making their first investment in a home of their own, then the risks families incur should lead to the financial rewards of homeownership. If, on the other hand, affordable housing is a public resource to manage and preserve, then the long-term maintenance of the affordability of subsidized housing is an important public policy issue.

Housing Functional Plan

To effectuate the state plan, the Housing Finance and Development Corporation coordinated the drafting of the Housing Functional Plan. The housing plan describes how the policies, objectives, and guidelines of the state plan will be implemented.

Of particular importance to this study is the priority guideline set forth in section 226-106(f), *Hawaii Revised Statutes*, which is to: "create incentives for development which would increase homeownership and rental opportunities for Hawaii's low and moderate income households, gap group households, and residents with special needs." The housing plan proposes to implement this guideline by promoting private developers' use incentives already approved by statute -- for example, the general excise tax exemption, expedited permit procedures, and use of special revolving funds to provide temporary financing.

Land Reform Act

In 1967, the Hawaii Legislature enacted the Land Reform Act.¹² The law permits residential lessees to acquire fee simple title to their subdivision lots. Although the law has been sufficiently controversial to require constitutional validation by the Supreme Court of the United States, it is clear that the law embodies the Hawaii public policy favoring residential ownership in fee simple rather than leasehold.¹³

At present, Hawaii's affordable housing priority guidelines¹⁴ emphasize the creation of or investment in affordable housing rather than management and preservation of affordable housing as a public resource.

Managing and preserving affordable housing as a public resource requires consideration of the allocation, if any, of appreciation in value to the individual homeowner as against the general public. Under present law, the purchaser of a subsidized home is entitled to none of the appreciation in value during the first ten years and to all of the appreciation after expiration of the ten-year buyback period.

ENDNOTES

1. Hawaii, Department of Business and Economic Development, The State of Hawaii Data Book (Honolulu: 1988), Table 734 (Construction, Housing, and Manufacture), p. 651.
2. Ibid.
3. Ibid., Table 724 (Population, Vital Statistics, and Health), p. 641.
4. Hawaii, Department of Business and Economic Development, Housing Unit Estimates for Hawaii, 1970-1989, Statistical Report 213 (Honolulu: October 1989), pp. 1 and 13.
5. Hawaii, Housing Finance and Development Corporation, State Housing Functional Plan Technical Reference Document (Draft 7/31/87), Chapter III, p. 27, citing to Hawaii, Department of Planning and Economic Development, Hawaii State Plan: Socio-cultural Advancement, December 1984, p. 22.
6. 1935 Hawaii Sess. Laws, Act 190, codified as Hawaii Rev. Stat., chapter 356.
7. 1971 Hawaii Sess. Laws, Act 105, codified as Hawaii Rev. Stat., chapter 359G. Chapter 359G was repealed by 1987 Hawaii Sess. Laws, Act 337, which created the Housing Finance and Development Corporation.
8. 1987 Hawaii Sess. Laws, Act 337, codified as Hawaii Rev. Stat., chapter 201E.
9. Hawaii Rev. Stat., §226-4.
10. Hawaii Rev. Stat., §226-19(b).

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11. Hawaii Rev. Stat., §226-106.
12. 1967 Hawaii Sess. Laws, Act 307, codified as Hawaii Rev. Stat., chapter 516.
13. Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984).
14. Hawaii Rev. Stat., §226-106.

Chapter 3

ANALYSIS OF CURRENT MECHANISM

Review of Current Statutes and Rules

Chapter 201E, *Hawaii Revised Statutes*,¹ establishes the Housing Finance and Development Corporation which is empowered to develop housing for sale to state residents. Sections 201E-1 through 201E-40 are general provisions. Sections 201E-50 through 201E-80 relate to financing and describe the various programs. Sections 201E-200 through 201E-238 relate to housing development.

The corporation is led by an eight-member board of directors. Six are public members appointed by the governor; two are appointed at-large but the remaining four must be from the four counties. Two ex-officio voting members are the director of business and economic development or a designated representative and the governor's special assistant for housing. The day-to-day functioning of the corporation is managed by its executive director. The duties and responsibilities of the corporation include developing and maintaining a housing information system, conducting housing research, providing counseling (e.g., to prospective homeowners or government agencies), cooperating with other governmental agencies, developing real property, and administering the federal low-income housing tax credit.

The corporation may float bonds to finance its activities.

Buyback Provisions

Upon the transfer of a dwelling unit to a homeowner, section 201E-221 establishes a ten-year buyback period during which the corporation has the first option to repurchase the unit from the homeowner. The maximum price at which the corporation is permitted to exercise its option is based upon:

- (1) The original cost to the owner; plus
- (2) The cost of any improvements added by the purchaser; plus
- (3) Simple interest on the purchaser's equity (i.e., the down payment, improvements, and one-half of repayments of principal but not interest) at the rate of seven percent per year.

During the ten-year period, the corporation may waive its option. After the ten-year period, the homeowner is free to sell on the open market.

Recent Amendments

The corporation administers the buyback restriction pursuant to administrative rules set forth in chapter 15-73, Hawaii Administrative Rules (Housing Finance and Development Corporation). Subchapter 8, entitled "Repurchase of Dwelling Units Subject to Restrictions," is divided into seven sections. Sections 15-73-81 and -82 describe the purpose and applicability of the subchapter. Subchapter 8 implements the resale restrictions set forth in section 201E-221(a)(1), *Hawaii Revised Statutes*. Section 15-73-82 describes the applicability of the rules as all dwelling units subject to the restriction codified in sections 201E-221 and 201E-222, *Hawaii Revised Statutes*.

Section 15-73-83 describes the circumstances under which the repurchase will be accomplished. The corporation may repurchase the dwelling either free and clear of all liens and encumbrances or subject to an existing mortgage. In the former situation, the owner is required to pay all liens and encumbrances including an existing mortgage. If the transfer is subject to an existing mortgage, then the corporation will pay off the mortgage and deduct the amount of the mortgage from the repurchase price.

Section 15-73-84 describes the elements of the repurchase price. The maximum repurchase price is the total of the following: the original sales price, the cost of any improvements, and interest on the owner's equity. Generally, the interest is calculated at seven percent simple interest. The owner's equity consists of the amount of the down payment, the cost of any improvements added to the home, and one-half of the amount of mortgage payments allocated to principal. In contrast to the buyback restrictions imposed by the state of New Jersey which add to the repurchase price only improvements made with prior approval, Hawaii's rules permit the owner to add the cost of any capital improvements to the resale price.

Section 15-73-85 describes four circumstances under which the corporation may waive its option to repurchase. Subsection (a)(1) permits a waiver of repurchase if an owner wishes to transfer the home to a family member upon the death of the owner. The family member must be a spouse, child, parent, or sibling and must be otherwise eligible to purchase a dwelling unit under the restrictions imposed by chapter 15-73.

Subsection (a)(2) provides for three other circumstances under which the corporation will waive its first option to repurchase. Paragraph (2)(A) permits the corporation (with board approval) to waive repurchase if the owner will not be able to sell the dwelling unit for a substantial profit. If a particular subdivision or condominium project has not been well received by the market, the market price of a dwelling unit may be less than the original price. Under this circumstance, the corporation may waive repurchase and permit the owner to sell the unit at the prevailing market price. Paragraph (2)(B) permits waiver if fiscal management will not allow repurchase of the dwelling unit. This circumstance applies when an owner has added

substantial improvements to the home. Since the cost of the improvements will be added to the repurchase price (which costs may not be reimbursed upon a resale), it may not be feasible for the corporation to resell the home at an affordable price without absorbing a loss. Finally, paragraph (2)(C) allows waiver to permits permanent financing by a mortgage lender. This circumstance was formerly used when the corporation's predecessor sold some homes by way of agreement of sale. Upon expiration of the agreement of sale, the owner was required to pay the balance of the sales price but sometimes encountered difficulty in obtaining a mortgage because of the buyback provision.

Section 15-73-86 describes the particular applications and other forms to be used in repurchases and waivers. Finally section 15-73-87 permits the corporation either to resell or rent a repurchased unit.

Statistical Summary

Waiver

Prior to examination of any records, it was unclear whether the corporation was able to exercise its right of first refusal and to purchase and resell homes during the ten-year buyback period. However, based on a 1985 agency statistical summary of repurchases, waivers, and resales and a review of monthly and annual reports, it can be estimated that during the buyback period, nearly 1,300 homes were offered to the State for repurchase. Approximately 900 were repurchased and resold.

For approximately 380 homes, the State's option to repurchase was waived. Nearly 77 percent, or 293 of the waivers involved just five subdivisions. According to discussions with corporation staff, waivers were granted for various reasons, including the following:

- (1) A sale by the owner would not yield a windfall profit since the market price of the home was less than the buyback option price;
- (2) The amount of improvements added by the homeowner had increased the buyback price to a level that would make resale to an eligible family economically infeasible;
- (3) The homes in the subdivision were the subject of litigation against the agency and it would be inappropriate for the agency to repurchase a particular home in the subdivision;
- (4) A transfer of the title was necessary to comply with a change in marital status (e.g., property settlement incident to dissolution of marriage) or to permit refinancing of a home originally sold on agreement of sale.²

For more details, see the table below³ which displays estimates of the number of units sold, offered, waived and repurchased:

Table 1

**ESTIMATE OF HOMES SOLD,
REPURCHASED, WAIVED AND RESOLD**

	<u>Estimate Sold</u>	<u>Estimate Repurchased</u>	<u>Estimate Waived</u>	<u>Estimate Resold</u>
FY 71-72 to FY 84-85 ⁴	5,286	857	282	786
FY 85-86 ⁵	116	25	41	20
FY 86-87	336	18	42	26
FY 87-88	<u>327</u>	<u>4</u>	<u>16</u>	<u>37</u>
Total	6,092	904	381	869

Source: For units sold during 1971 to 1987: Hawaii, Hawaii Housing Authority, Annual Report: 1986-87, p. 16. For units sold during 1987 to 1988, Hawaii, Housing Finance and Development Corporation, Annual Report: 1987-88, p. 11. Estimates of the number repurchased, waived and resold are based on an unpublished 1985 summary (for the years 1971 to 1984) and review of unpublished monthly reports submitted from 1985 and 1988.

Future Trends

During the period from FY 1971-72 to FY 1984-85, the number of homes offered (those repurchased or waived) averaged 81 per year. Between FY 1985-86 to FY 1987-88, the same statistic trended downward from 66 to 50 to 20. The number of units offered in the next few years should continue to be somewhat lower than the 1971-1985 period. The relatively high number of offers during that period were rooted in the agency's development of condominiums and townhouses which families tend to outgrow. At present the agency principally develops single-family homes which can meet the needs of families on a longer term basis since the homes can be enlarged if necessary.

Expiration

The numbers displayed in the following table represent a rough estimate of the number of homes exceeding the ten-year buyback period each year. The estimate was necessary because it was infeasible to examine the history of each of the more than 6,000 homes sold

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since 1971 and because the corporation does not keep track of changes of ownership after the ten-year buyback. The estimates were derived by taking the number of homes sold each year and adding ten years to determine when the buyback period expires. Based on the table, however, one cannot conclude that any of the homes have been sold or at what price. Thus the table represents an estimate of the maximum number of homes which could have been sold on the open market and which might have yielded a windfall profit to the homeowner. Moreover, despite the widespread presumption, there appear to be no readily available data to suggest that the purchasers of these homes have sold their homes in disproportionate profits.

Table 2
ESTIMATE OF EXPIRATION OF BUYBACK PERIOD

<u>Year</u>	<u>Units</u>
1982	292
1983	333
1984	23
1985	1176
1986	1085
1987	120
1988	70
1989	273
1990	469
1991	241
1992	473
1993	403
1994	130
1995	175
1996	116
1997	336
1998	327

Source: For units sold from 1971 to 1987: Hawaii, Housing Authority, Annual Report: 1986-87, p. 15-16. For units sold during 1987 to 1988: Hawaii, Housing Finance and Development Corporation, Annual Report: 1987-88, p. 11. The number of units sold was estimated by using the number of units developed and subtracting the number of rental units developed. Since projects containing both rental and sales units were not subtracted, the estimated number of units sold is an overestimate.

Extent of Problem Stated in the Resolution

Because of the paucity of the data, it is clear that additional data collection should be considered. However, based on what data are available, as many as 1,297 units could fall out of the stock of affordable houses over the next five years alone.

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If state policy should continue to permit individuals to withdraw homes from the affordable housing stock after ten years, then no further study is warranted.

If, on the other hand, affordable housing is to be the right of all families in Hawaii, then a long term management policy with regard to Hawaii's stock of affordable housing must be considered.

ENDNOTES

1. 1987 Haw. Sess. Laws, Act 337.
2. Interview with Elmer Manley, Sales Manager, Housing Finance and Development Corporation, October 24, 1989.
3. Note: based on examination of the unpublished 1971-1985 summary and unpublished monthly reports, 76.9 percent of the waivers were from just five subdivisions: Kawaihae Village (21), Napili Hau (68), Uluwehi (165), Makaha Meadows (including Makaha Meadows East and Makaha Meadows East II) (23), and Kelaweia Mauka (including I, II, and III) (26) (total 293).

The table is based on hand-tallied data derived from examination of monthly reports submitted by the sales section. Because of the delays inherent in real estate transactions, some transactions may have been inadvertently omitted or double counted. Generally, a repurchase or resale was tallied only when it closed escrow. Although waivers were granted by the Hawaii Housing Authority (the predecessor of the Housing Finance and Development Corporation), the executive director, development administrator, or the project administrator, those differences are not reflected in the table. In addition, the reasons for the waivers also are not reflected in the table.

4. Sold data estimated from annual reports of units repurchased, waived, or resold from 1971 to 1985 summary. The estimate of units sold was derived by taking the total number of units developed for rental and sale and subtracting the number of rental units developed. Projects including both rental and sale units were not subtracted.
5. Sold data taken from annual reports. Figures for units repurchased, waived, and resold were taken from monthly summaries.

Chapter 4

ALTERNATIVES TO THE CURRENT MECHANISM

It is generally recognized that sound public policy requires that resale restrictions be imposed on subsidized housing:

...if a unit has been made available to a lower-income household at a price substantially below the market price, to allow that household immediately to sell the unit at market price would first, provide the household with an unjustified windfall and second, result in the loss of that unit from the pool of housing affordable to lower-income households....¹

Moreover, in terms of housing policy:

...If affordable housing programs are to be directed at long-term goals of increasing supply and providing benefits to the largest number of moderate-income households, resale controls are essential. Without resale controls, the first buyer gains a windfall benefit but subsequent buyers receive little benefit. Because the unit will probably appreciate more rapidly than market-rate units, it is likely to be lost from the moderate-priced housing supply after the first owner sells it. Furthermore, any subsidies from buyers of market rate units and the community at large will be lost in the form of windfall to the first buyer. For reasons of both equity and program effectiveness, resale controls must be required. Without them, only a small fraction of the total number of units in the jurisdiction at any one time will be moderate in cost. With resale controls, the percentage will rise over time toward the percentage required in new developments. (footnote omitted)²

Alternatives Mentioned in the Resolution

Perpetual Leaseholds

As embodied in the Land Reform Act, state policy is to foster the fee simple ownership of residential lots.³ However, H.R. No. 106, H.D. 1, suggests that one possible solution to maintaining the affordability of subsidized housing would be establishment of a state residential leasehold development program. At first glance, the chief advantage to the consumer or homeowner would only be a lower initial sales price for the home. However, the moneys realized by the State from lease payments could be used for additional affordable housing or

lease payments could be reduced to make the units even more affordable. Moreover, transfers to investors or transfers at market level prices would trigger lease rent increases -- thus fostering (but not requiring) owner occupancy and continued affordability.

A perpetual leasehold program would, however, offer significant disadvantages to a homeowner. First, a lessee would have less security of tenure in view of potential increases in lease rent. Moreover, if the lease were truly perpetual, then low or moderate income households would be obliged, in perpetuity, to subsidize housing for other low or moderate income households. Finally, a perpetual lessee would not be able to bequeath the family home to any heir.

Nonetheless, two particular aspects of the leasehold proposal reflect national trends⁴ and deserve additional amplification. First, the proposal takes into account the international demand for homes in Hawaii and attempts to craft a housing program in relation to the global real estate market. Second, the proposal seeks to create a new funding mechanism in support of affordable housing.

Perpetual Buybacks

This section will describe a perpetual buyback program and related policy issues.

A perpetual buyback program would cure some of the problems with a perpetual leasehold program. Under the perpetual buyback program, a homeowner would own the home in fee simple. If the homeowner decided to sell the home, the State would retain a first option to purchase the home. Depending upon how the price is determined, the house may or may not be affordable. If the price determination formula is tied to how much a low or moderate income household can afford (e.g., home price equal to amount of mortgage that a low or moderate income household can qualify for) rather than to an index related to the general cost of living or construction, then the house will remain affordable.

One of the advantages of homeownership is the right to pass title to the family home to one's heirs. If the perpetual leaseback program were to have such a compassionate exemption, then homes may often pass to households which are not of low or moderate income.

From the point of view of state policy, a perpetual buyback program might be considered to be in conflict with the policy established in the Land Reform Act. Moreover, if the repurchase formula did not provide some incentive to the original homeowner to maintain the property, it is possible that extensive repairs might be necessary prior to sale to another low or moderate income household.

State as Mortgage Lender

House Resolution No. 106, H.D. 1, suggests that a possible solution to maintaining the affordability of subsidized housing would be for the State to act as a mortgage lender. Although a detailed technical analysis of the mortgage credit system is beyond the scope of this study, a short explanation may be helpful.⁵

Many adults may recall the tragedy of foreclosure depicted in the silent movies. During that period, a typical home was financed by making a fifty percent down payment, with the balance due in three to five years. In the wake of the stock market crash and the Great Depression, the fragility of that method of housing finance was revealed. In many instances, family breadwinners were out of work and unable to pay the rent. Landlords could not meet the monthly mortgage payments. In both cases, savings are normally withdrawn to cover the shortfall, until all savings have been consumed. Lenders ultimately foreclosed -- that is, seized title and control of the property because the loans had not been repaid. Lenders then had the properties but no cash since the savings had been previously withdrawn. Without cash or financing, lenders could not sell the property. If the property could not be sold, the lenders did not obtain any cash to permit other depositors to withdraw their savings.

To break that cycle, three important changes were made to America's housing finance. Those changes were:

- (1) Insuring the safety of savings deposits;
- (2) Insuring mortgages; and
- (3) Creating a secondary market for mortgages.⁶

These were important changes in the housing finance cycle. Presently, financial institutions accept savings deposits, the safety of which are assured. Using the deposits, the institutions lend money to homeowners. The homeowners sign a mortgage, in which they agree to repay the loan with interest over 15 to 30 years. The lenders obtain mortgage insurance policies. The lenders then sell the mortgages -- that is, the right to receive monthly payments from the homeowner -- for a lump sum. With the lump sum in hand, the lenders can now issue additional loans or return money as savings withdrawals.

With this background, let us turn to the advantages and disadvantages of a potential state role as a mortgage lender. Clearly there is no need for the State to issue ordinary mortgage loans which can be provided by commercial lenders. Thus any state role must be to issue mortgage loans tailored to benefit low and moderate income households. Unfortunately, the necessary changes may mean that the mortgages cannot be sold in the now traditional manner. Although the obvious adverse impact on the State's fiscal resources cannot be precisely estimated, it is clear that for each loan, the state treasury would be depleted in the

present and not replenished except over a long period. (Many states, including Hawaii, have attempted to remedy this problem by issuing bonds to obtain funds for low interest rate mortgages to low and moderate households.) In Hawaii, this program is best known as the "Hula Mae Program". During fiscal year 1987-1988, the program provided 5,094 home loans. The amount of the loans averaged \$69,929. The average monthly income of borrowers was \$2,240.⁷

The chief objective of reduced rate mortgages is to achieve initial affordability for a prospective homeowner. By itself, a reduced rate mortgage does little to maintain the affordability of subsidized housing without the imposition of resale restrictions. In the absence of resale restrictions, state funded mortgages might permit low and moderate income households to compete for market level priced homes. But the imposition of resale restrictions would seem to be a more fiscally sound policy.

Land Trust Programs

This section will describe a state land trust program and related policy issues.

As a concept, the land trust is not new to Hawaii. During the late nineteenth century, the will of the late Bernice Pauahi Bishop established a charitable trust. Now known as the Bishop Estate/Kamehameha Schools, the estate holds title to land in trust to benefit the children of Hawaii. In 1978, the legislature enacted the Land Trust Act.⁸ What is new is not the entity but the use to which it is put: the provision and maintenance of affordable housing for low and moderate income families.

In the past, the land trust has also been used for two other charitable purposes:

- (1) To preserve land in open space for conservation purposes;⁹ and
- (2) To separate and distribute the benefits accruing from land ownership (e.g., fee simple land title versus ownership of buildings or improvements).

It is this latter purpose which permits the land trust to be used for the preservation of affordable housing. Thus it is the purpose to which the land trust is put which distinguishes its use for affordable housing. The legal entity which underlies a land trust is generally a nonprofit corporation, but could also be a charitable trust within the meaning of the Internal Revenue Code, or a land trust established pursuant to chapter 558, *Hawaii Revised Statutes*.

Generally, an affordable housing land trust leases land, or occasionally buildings or other improvements as well, to homeowners. According to Chuck Collins, Director of Technical Assistance, Institute for Community Economics, Greenfield Massachusetts:

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...A Community Land Trust (CLT) is a democratically structured, community based nonprofit corporation....The purpose of the CLT is to acquire land and remove it from the speculative market. The land is made available to individual families, cooperatives, and other organizations through long-term (lifetime) leases, which may be transferred to the leaseholder's heirs if they wish to continue to use the land. All lessees are members of the CLT, and they are represented on the Board....

While leaseholders do not own the land they use they may own their building (as individuals, or as members of cooperative associations). The CLT, however, retains a purchase option -- should the owners decide to sell -- for the amount of the owner's investment of capital and labor, adjusted for appreciation and depreciation. Homeowners are thus guaranteed a fair equity for their investment, and their successors can purchase the homes for a fair price. No sellers benefit from speculative gains and unearned increases in market value, and no buyers are priced out of the market and denied decent housing by such increases....¹⁰

Land trusts appear to be used principally in Massachusetts,¹¹ Connecticut, and Vermont. In Massachusetts, as noted above, land trusts have been used to preserve open space.

In 1987 the Connecticut legislature¹² authorized the issuance of \$1,000,000 in bonds to establish a community housing land bank and land trust fund. The money would be given to nonprofit organizations. The organization would purchase land and keep the fee simple title. The land could then be leased or homes could be developed. Although a low or moderate income household could purchase a dwelling unit, the organization would retain the first option to purchase the unit. The length of the lease term is not prescribed in Connecticut's regulations.¹³ However, an example, provided by the Connecticut Department of Housing, of a ground lease provides that the lease term is 99 years subject to a 99-year extension at the option of the lessee.

Vermont also provides affordable housing by way of land trusts.¹⁴

One advantage of a land trust is its perpetual existence -- it is not subject to elimination due to governmental reorganization as would a government agency.¹⁵ However, the corresponding disadvantage is the need for continuing administration and oversight.

Another advantage of the land trust is its independent ability to garner private support. Some property owners may be more willing to work with a charitable organization than with a

government agency.¹⁶ Another advantage is that, unlike the cooperative, the beneficiaries of the trust cannot rewrite the terms of the trust to permit the affordable units to be sold at market prices.

The chief disadvantage of a land trust, as envisioned by Collins, is that homeowners would not have fee simple title to their house lots. From the point of view of the State, the chief disadvantage would be the absence of fee simple ownership.

On balance, the use of land trusts would appear to be only a partial solution for maintaining the affordability of subsidized housing.

Alternatives Not Mentioned in the Resolution

Survey of Mechanisms Used in Other States

To determine what resale restrictions are used in other jurisdictions, a questionnaire was sent to each of the fifty states, Guam, Puerto Rico, and the District of Columbia. The questionnaire asked jurisdictions to indicate whether they:

- (1) Provide housing assistance to low and moderate income households;
- (2) Sell subsidized homes to low or moderate income households;
- (3) Impose resale restrictions; or
- (4) Impose a buyback period.

Responses to the questionnaire are summarized in the table below. Almost all of the jurisdictions responding provide housing assistance by way of mortgages at reduced interest rates. Among the 36 responses, only six indicated no housing subsidy was provided. The six were Arizona, Idaho, Illinois, Kansas, New Mexico, and Texas.

Four respondents sell homes to low or moderate income households: Alaska, District of Columbia, Massachusetts, and New Jersey.

Alaska does not impose any resale restrictions. (See Table 3.)

According to the responses to the questionnaire, the District of Columbia, Massachusetts, and New Jersey impose resale restrictions for 7, 40 and 20 years, respectively.

Table 3

SUMMARY OF STATE AFFORDABILITY MAINTENANCE POLICIES

State	Housing Assistance	Subsidized homes	Re-sale price controls	Re-sales limited	Buyback Period
AK	yes	yes	no	no	n/a
ARK	yes	no	n/a	n/a	n/a
ARZ	no	no	n/a	n/a	n/a
CA	yes	no	n/a	n/a	n/a
CT	yes	no	n/a	n/a	n/a
DC	yes	yes	yes	yes	7 yrs.
DE	yes	no	n/a	n/a	n/a
FL	yes	no	n/a	n/a	n/a
IA	yes	no	n/a	n/a	n/a
IDA	no	no	n/a	n/a	n/a
IL	no	no	n/a	n/a	n/a
IN	yes	no	n/a	n/a	n/a
KS	no	no	n/a	n/a	n/a
MA	yes	yes	yes	yes	40 yrs.
MD	yes	no	n/a	n/a	n/a
ME	yes	no	n/a	n/a	n/a
MI	yes	no	n/a	n/a	n/a
MN	yes	no	n/a	n/a	n/a
MO	yes	no	n/a	n/a	n/a
MT	yes	no	n/a	n/a	n/a
NC	yes	no	n/a	n/a	n/a
ND	yes	no	n/a	n/a	n/a
NE	yes	no	n/a	n/a	n/a
NH	yes	no	n/a	n/a	n/a
NJ	yes	yes	yes	yes	20 yrs.
NM	no	no	n/a	n/a	n/a
NY	yes	no	n/a	n/a	n/a
OH	yes	no	n/a	n/a	n/a
OR	yes	no	n/a	n/a	n/a
PA	yes	no	n/a	n/a	n/a
SD	yes	no	n/a	n/a	n/a
TN	yes	no	n/a	n/a	n/a
TX	no	no	n/a	n/a	n/a
UT	yes	no	n/a	n/a	n/a
VA	yes	no	n/a	n/a	n/a
WV	yes	no	n/a	n/a	n/a

"N/A" indicates the state does not sell subsidized homes and has no limitations on re-sales or any buyback period.

Source: Legislative Reference Bureau Questionnaire, September 28, 1989.

The Irvine Model

Recognizing that the high cost of housing in Orange County, California was hindering its recruitment of faculty and staff, the University of California, Irvine, responded by creating the Irvine Campus Housing Authority.¹⁷ The authority retains the fee title to land but sells apartments, condominiums, and custom homes to university employees at varying discounts. Each homeowner is generally required to pay lease rent to the authority. In exchange for a lower or no lease rent, a homeowner must give the authority a larger share of the appreciation in value when the unit is sold. In addition, the homeowner is required to offer the unit not to the general public but to the authority and certain classes of employees. Finally, the maximum sale price of a unit is determined by the cost of improvements added and the increase, if any, in a construction cost index.¹⁸

The Massachusetts Model

The State of Massachusetts has established its Homeownership Opportunity Program (HOP).¹⁹ Under HOP, Massachusetts will provide mortgage financing for certain eligible developments. To be eligible, a project must contain at least 25% affordable units for sale to low or moderate income families. (In addition, a project must also include at least 5% of units for rent to low-income households.)

Since the homes will be sold below market rate -- sometimes as much as 15% to 50% below appraised value -- Massachusetts requires that "a long-term public benefit" result from the program.²⁰ To do this, the program requires that:

- (1) Any unit sold for less than 85% of market value must be sold at the same percentage;
- (2) The unit be resold to a low or moderate income family; and
- (3) The restrictions remain in force for 15 years as to family income and for 40 years as to the resale price.²¹

Limited Equity Housing Cooperatives

A limited equity housing cooperative is first of all, a housing cooperative.²² The cooperative consists of a corporation and shareholders. The corporation owns the building (and occasionally the land, also, if the fee title to the land is not held by another entity, such as a community land trust). Each shareholder is entitled to a vote at meetings to manage the affairs of the cooperative and a lease for his or her own unit. A shareholder is also required to pay a monthly assessment for the use of the unit. Because a share of stock is not normally

considered real property.²³ Some complications have arisen in financing acquisition of cooperative apartments. Moreover, when a housing cooperative is described as limited equity, important restrictions have been placed on price increases for individual units.

Under Hawaii law,²⁴ the initial sale price of a share is 7% of the fair market value of the unit which the shareholder will be entitled to lease.²⁵ Upon a sale of a share, the increase in equity will be limited to no more than 10% per year of ownership thereby maintaining affordability for succeeding owners.²⁶ For tax purposes, part of the monthly assessments may be deducted from gross income in the same manner as home mortgage interest.²⁷

The above are the advantages of the limited equity housing cooperative. But a harder look reveals some of the disadvantages:

- (1) Since the corporation must pay the mortgage, any shortfall in receipts must be made up by other shareholders;
- (2) Because of its unique status under the tax laws, financial affairs must be carefully managed;
- (3) Since a share of stock is not realty, traditional mortgage financing is generally unavailable;²⁸
- (4) Since the maximum appreciation on the unit (10% per year)²⁹ is not limited by, or related to, the extent of increases, if any, in median income, units could appreciate beyond the reach of low or moderate income households.³⁰

There are some advantages for developers:

- (1) The financing may be easier as lenders favor homeownership;
- (2) Sales prices can also be higher since owners will have some equity value; and
- (3) Permanent financing is accomplished by the association.³¹

Some of the disadvantages can be addressed through corrective measures.³² A cooperative could establish reserves to provide for temporary shortfalls. Since a shareholder's right to reside in the unit is based on a lease, the shareholder can be evicted more quickly than a homeowner can be foreclosed upon. Both the matter of reserves and management complexity can perhaps be better handled by establishment of a mutual housing association (MHA) which consists of several cooperatives.³³

According to the Connecticut Office of Legislative Research:

MAINTAINING THE AFFORDABILITY OF STATE-SUBSIDIZED HOUSING

...Some MHAs have a centralized structure in which the association owns the buildings housing the cooperatives while each co-op manages itself (integrated structure). The sponsoring organization usually provides support services and training programs to the members.

Other MHAs are coalitions of individual cooperatives and nonprofit developers (federated structure). The sponsoring organization may also provide support services, but members may purchase those services from other sources....³⁴

Nonetheless, the outlook for limited equity housing cooperatives in Hawaii is not especially promising. It appears that only one has been established since the initial passage of the limited equity housing cooperative law. Due to financial difficulties, the cooperative is now merely a rental apartment building rather than a true cooperative.³⁵

Conclusions

Based on the foregoing analyses, it appears that the mechanisms proposed in H.R. No. 106, H.D. 1 -- perpetual leaseholds, perpetual buybacks, the State as mortgage lender, and land trusts, are at best only partial solutions to the problem of maintaining the supply of affordable housing. Based on a survey of other jurisdictions, there appear to be other alternatives which can assist in the preservation of affordable housing. One alternative is lengthening the buyback period to 20 years, as in the practice in New Jersey.³⁶ A second alternative is to limit the resale price. In Massachusetts, the resale price is controlled by continuing the discount from fair market value and by requiring the home to be sold to a low or moderate income family, that is, at a price affordable to a low or moderate income family. A third alternative is the fostering of limited equity housing cooperatives in conjunction with the services and support which can be provided by mutual housing associations.

ENDNOTES

1. Alan Mallach, Inclusionary Housing Programs (New Brunswick, New Jersey: Rutgers, The State University of New Jersey, Center for Urban Policy Research, 1984), p. 141.
2. Ibid., quoting from Seymour I. Schwartz and Robert A. Johnson with Dallas Burtwar, Local Government Initiatives for Affordable Housing: An Evaluation of Inclusionary Housing Programs in California, University of California, Davis, Kellog Public Service Research Program, Institute of Governmental Affairs and Institute of Ecology, Environmental Quality Series No. 35 (Davis, California: University of California, Davis, 1981), pp. 40-41.
3. Hawaii Rev. Stat., chapter 516.

ALTERNATIVES TO THE CURRENT MECHANISM

4. See Scott Chazdon, "Financing Affordable Housing: The Evolving State Role," *The Fiscal Letter*, January/February 1988, pp. 5-6 and Penelope Lemov, "Cities and States are Opening New Doors to Affordable Housing," *Governing*, November 1988, pp 52-58.
5. See McDougall, "Affordable Housing for the 1990's," 20 U. Mich. J. L. Ref. 727 (1987) and Michael E. Stone, "Federal Housing Policy: A Political-economic Analysis," in Jon Pynoos, Robert Schafer, and Chester W. Hartman (eds.), Housing Urban America (Updated 2nd ed.; Hawthorne, New York: Aldine Publishing Company, 1980), pp. 448-458.
6. Michael E. Stone, "Federal Housing Policy: A Political-economic Analysis," in Jon Pynoos, Robert Schafer, and Chester W. Hartman (eds.), Housing Urban America (Updated 2nd ed.; Hawthorne, New York: Aldine Publishing Company, 1980), pp. 455-458.
7. Hawaii, Housing Finance and Development Corporation, Annual Report: 1987-88, p. 7.
8. Hawaii Rev. Stat., chapter 558.
9. See Bergen, Kenneth W. "Partial Development Finances Open Space Preservation in Lincoln, Massachusetts," No. 1 reprinted in Browne, Kingsbury, ed. *Case Studies in Land Conservation*. Boston: New England Natural Resources Center, 1977. (A land trust was used because no annual report is required in Massachusetts.)
10. U.S., Congress, Senate Committee on Banking, Housing and Urban Affairs and House Committee on Banking, Finance and Urban Affairs, A New National Housing Policy: Recommendations of Organizations and Individuals Concerned about Affordable Housing in America, 100th Cong., 1st Sess., 1987, S. Prt. 100-58, pp. 907-909.
11. See generally Kingsbury Browne (ed.), Case Studies in Land Conservation (Boston: New England Natural Resources Center, 1977).
12. Public Act 87-441, effective July 1, 1987.
13. Connecticut, Department of Housing, Community Housing Land Bank/Land Trust Program Regulations, sections 1-13.
14. Vermont, Department of Housing and Community Affairs, Agency of Development and Community Affairs, *Directory of Housing Programs*, June 1989.
15. See, for example, the transformation of the inclusionary housing program in Orange County, California as described by Jerry Tune in "Solutions Sought on Affordable Housing," Honolulu Sunday Star Bulletin - Advertiser, February 5, 1984.
16. For additional examples of this, see Kingsbury Browne (ed.), Case Studies in Land Conservation (Boston: New England Natural Resources Center, 1977).
17. Randolph Harrison, "University Hills: Faculty Housing Made Affordable," Urban Land, January 1988, pp. 6-9.
18. "The Irvine Development -- The Fact Sheet," reprinted in Nicholas Ordway and Larry Cross, An Analysis of Financial Alternatives Affecting the Affordability of Faculty Housing, University of Hawaii, College of Business Administration, Hawaii Real Estate Research and Education Center, Technical Report TR-88-005

MAINTAINING THE AFFORDABILITY OF STATE-SUBSIDIZED HOUSING

(Honolulu: University of Hawaii, College of Business Administration, Hawaii Real Estate Research and Education Center, July 6, 1988), pp.90-93.

19. Massachusetts, Housing Partnership, Homeownership Opportunity Program, Program Guidelines, Revised February 1988.
20. Ibid., p. 16.
21. Ibid., p. 39.
22. Hawaii Rev. Stat., sec. 421H-1(1).
23. Except in California, Minnesota, New Jersey, and Colorado according to Louise A. Howells, "Economic Parity for Low-Income Cooperatives," 17 Urban Lawyer (1985), pp. 31, 34.
24. Hawaii Rev. Stat., chapter 421H.
25. Hawaii Rev. Stat., sec. 421H-1(1).
26. Hawaii Rev. Stat., sec. 421H-2(a)(2).
27. James R. Grow, The Subsidized Housing Handbook (Berkeley: National Housing Law Project, 1982), sec. 3.5.8 citing Internal Revenue Code sections 216 and 277. See also, 1989 U.S. Master Tax Guide (Chicago: Commerce Clearing House, Inc., 1989), p. 301.
28. Ibid., sections 1.4.3.4 and 3.5 and Howells, *supra* note 23.
29. Hawaii Rev. Stat., sec. 421H-2(a)(2).
30. Howells, *supra* note 23, p. 34-5.
31. Ibid., pp. 32-33.
32. Grow, *supra* note 27, sec. 1.4.3.4.
33. John G. Rappa, Limited Equity Cooperative Housing, Connecticut, Office of Legislative Research, Selected Report 85-95 (Hartford, Connecticut: Joint Committee on Legislative Management, Office of Legislative Research, 1985), p.1.
34. Ibid., pp. 1-2.
35. Personal interview with Richard Melton, August 24, 1989.
36. See Appendix C for the text of affordability control regulations proposed in New Jersey.

Chapter 5

SUMMARY, FINDINGS AND RECOMMENDATIONS

Summary

The need for affordable housing can most clearly be seen in one simple comparison: between 1980 and 1988, the increase in the number of housing units made available was on 65% of the increase in the number of households.

Because of its concern for the availability of affordable housing, the Legislature requested the Legislative Reference Bureau study ways to maintain the supply of affordable housing. This study examines the State's current mechanism for providing affordable housing as well as alternative mechanisms mentioned in H.R. No. 106, H.D. 1. In addition, the study also surveyed other jurisdictions to determine their practices and analyzed certain other alternative mechanisms not mentioned in the resolution.

Findings

The Legislative Reference Bureau finds the following:

1. Maintaining the affordability of subsidized housing is a public policy which is clearly necessary. Since state resources are used to develop affordable housing, a long-term public benefit should be derived from the expenditure of those resources. To assure continued affordability, the resale price of the home must be within the means of low- and moderate-income families. To assure that low- and moderate-income families continue to benefit from Hawaii's investment in affordable housing, careful selection of eligible households must continue.

2. Under current law, the Housing Finance and Development Corporation sells homes at below market prices to low- and moderate-income families. In return for below market prices, the homeowners are required to give the corporation a first option to repurchase the home for ten years. During the ten-year buyback period, a homeowner who wishes to sell the home must first offer the home for sale to the corporation. If the corporation chooses to repurchase the home, the homeowner is entitled to a return of seven percent per year on the down payment, any improvements, and one-half of mortgage repayments allocated to principal. Upon the corporation's repurchase of a home, it is sold to an eligible household.

3. Based on a review of agency reports, it appears that the corporation repurchased virtually all the homes offered but waived repurchase of those homes when the owner would not receive an excessive profit, if any.

MAINTAINING THE AFFORDABILITY OF STATE-SUBSIDIZED HOUSING

4. Based on a review of agency reports, it appears that over the next five years, the ten-year buyback period may expire for more than 1,200 homes. Many of those homes will not be sold at prices affordable to low- or moderate-income families.

5. The current buyback period -- ten years -- is somewhat shorter than used in those other states and jurisdictions which impose buyback and resale restrictions.

6. Certain proposed policy alternatives appear to be of limited efficacy. However, the limited equity housing cooperative together with the mutual housing association appear to warrant additional study.

7. Unless exempted from the Land Reform Act, a state-operated residential leasehold program would appear to be subject to condemnation proceedings for the benefit of lessees. Moreover, establishment of a large scale residential leasehold program by the State would appear to undermine the policies established by the Land Reform Act.

Recommendations

1. The buyback period for homes in state projects sold at below market prices should be increased to twenty years. According to a survey of other jurisdictions, buyback or other restrictions are imposed for periods ranging from seven to forty years. Extending Hawaii's buyback period from ten to twenty years would move Hawaii to the national average. This change would require a statutory amendment.

2. The Legislature should appropriate funds for further study by the Housing Finance and Development Corporation of the implementation of a mutual housing association in conjunction with limited equity housing cooperatives. A mutual housing association provides technical services to cooperatives including financial management, training, and other support services. Establishment of a mutual housing association would facilitate the development of cooperatives and help assure continued viability.

HOUSE OF REPRESENTATIVES
FIFTEENTH LEGISLATURE, 1989
STATE OF HAWAII

H.R. NO. 106
H.D. 1

HOUSE RESOLUTION

RELATING TO AFFORDABLE HOUSING.

WHEREAS, affordable housing is a basic human need and human right, and the cost of housing in Hawaii has long been among the highest in the nation, making home ownership for the State's low- and moderate-income families increasingly difficult; and

WHEREAS, the Governor, the Legislature, and the counties have recognized that the basic shelter needs of those earning the median income or less must be addressed as a priority; and

WHEREAS, the State, through the Housing Finance and Development Corporation (HFDC), provides affordable housing to low- and moderate-income families by developing master planned communities where a considerable portion (usually 40%) of the units are set aside as affordable housing, which buyers making under a certain percentage of the county median income are allowed to purchase at a price considerably below the going market price; and

WHEREAS, the State currently administers a buy-back plan intended to maintain the affordability of homes in state-subsidized projects for a given period (usually ten years), under which HFDC has the right to repurchase a unit at a price not to exceed the sum of: (1) the original cost to the purchaser; (2) the cost of any improvements the purchaser adds; and (3) simple interest on the purchaser's equity in the property at the rate of seven percent a year; and

WHEREAS, although the housing units whose construction is subsidized by the State are affordable at the time they are first offered for sale, after the buy-back period has expired, they can then be sold at the prevailing market price, taking them out of the affordable category and, in effect, creating a situation in which the State has subsidized a windfall profit by a private owner-investor; and

WHEREAS, there is a need for the State to consider ways to prevent speculation by these subsidized owner-occupants and to maintain the affordability of subsidized housing indefinitely, and one such method would be a state leasehold plan whereby owner-occupants will be able to buy housing at an affordable price, receive the tax benefits from the mortgage payments, and partake in many other benefits homeowners enjoy over renters as well as making a seven percent annual interest on the equity invested in the property; and

WHEREAS, a state leasehold program in which the State acts as the lender and lessor creates a situation in which all parties are winners since: (1) families and individuals with incomes near the county median income level and below can buy affordable homes, with all of the benefits previously described; (2) HFDC receives the income from the purchases and lease rents, which not only pays for the State's cost of developing a unit, but provides revenue for additional affordable units to be built; and (3) when the purchaser resells the unit to HFDC, it goes back on the market as an affordable home, thus ensuring a continuously expanding, rather than shrinking, supply of affordable homes; and

WHEREAS, safeguards could be built into a state leasehold system, including raising the lease rent for buyers who were not owner-occupants to discourage out-of-state and foreign buyers; and the increase in state revenues from these situations could be used to provide more affordable housing or rental subsidies for elderly and handicapped individuals with fixed or low incomes; now, therefore,

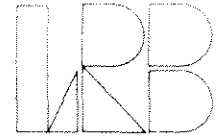
BE IT RESOLVED by the House of Representatives of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989, that the Legislative Reference Bureau study mechanisms through which the State could indefinitely maintain the affordability of state-subsidized housing, including, but not limited to, perpetual leaseholds, perpetual buy-backs, the State as the lender and mortgage holder, and land trust programs; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report its finding and recommendations to the Legislature at least twenty days before the convening of the Regular Session of 1990; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to the Director of the Legislative Reference Bureau.

Appendix B

Samuel B. K. Chang
Director



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
Honolulu, Hawaii 96813
Phone (808) 548-6237

September 26, 1989

4133-A

Dear

The Hawaii State Legislature has asked the Bureau to study mechanisms through which homes originally sold by the State at below-market prices can continue to be affordable. The request for this study reflects the perception that although families and individuals purchase homes at below-market prices, re-sales of those homes (after a ten-year buyback period) occur at market prices. Moreover, there is concern that these re-sales tend to reduce the affordable housing supply.


The study is expected to involve an overview and analysis of subsidized housing sales and re-sales as well as a review of proposed mechanisms including a state land lease program and a perpetual buyback requirement.

To determine policies used in other states, the Bureau would like to request your cooperation in providing information related to this study by filling out the enclosed questionnaire. If at all possible, we would appreciate hearing from you by October 20, 1989.

The researcher working on this study is a contractor named Mr. Stephen Okumura. He may be reached at (808) 946-0920. Messages may also be left for him at this office, (808) 548-6237.

Thank you very much for your cooperation and assistance.

Sincerely yours,


Samuel B. K. Chang
Director

SBKC:ja
Enclosure

AFFORDABLE HOUSING STUDY

Legislative Reference Bureau
State Capitol, Room 004
Honolulu, HI 96813

Please indicate your response to the questions below.

1. Does your jurisdiction have programs to assist low- and moderate-income families to purchase their own homes?

_____ YES _____ NO

Comments: _____

2. Does your jurisdiction sell subsidized homes?

_____ YES _____ NO

Comments: _____

IF YOUR YOUR ANSWER TO QUESTION NO. 2 IS NO, THEN PLEASE SKIP QUESTION NOS. 3-5 AND GO TO QUESTION NO. 6.

3. If your jurisdiction sells subsidized homes, are there controls on re-sale prices?

_____ YES _____ NO

Comments: _____

4. If your jurisdiction sells subsidized homes, are subsequent sales limited to low- and moderate-income households?

_____ YES

_____ NO

Comments: _____

5. If your jurisdiction sells subsidized homes, is there a buyback provision?

_____ YES

_____ NO

Comments: _____

6. If your jurisdiction does not sell subsidized homes, please describe other affordable housing programs, if any.

Comments: _____

7. Please list citations of any statutes authorizing your state's affordable housing programs.

THANK YOU VERY MUCH FOR YOUR HELP.

Appendix C

PROPOSALS

Interested Persons see Inside Front Cover

COMMUNITY AFFAIRS

Also proposed is an expansion of the unweighted special considerations to differentiate between positive and negative influences, and to recognize geographic distribution of funds among counties and the impact of subdivisions and exceptions on applications.

Social Impact

The proposed amendment will have a positive impact on the preservation of New Jersey agriculture and on the affected groups. Bringing regulatory criteria into closer alignment with statutory criteria will enhance the effectiveness of easement purchase decision-making under the Farmland Preservation Program. Citizens of New Jersey will benefit from the program's expanded ability to preserve agricultural lands and protect the benefits it provides.

Economic Impact

The proposed amendment will have a positive economic impact on the citizens of the State and on New Jersey agriculture. Utilization of the proposed improved criteria ensures that viable agricultural lands will be preserved, thereby strengthening New Jersey's agricultural industry and the economic benefits it provides to the State.

Regulatory Flexibility Analysis

The majority of land potentially subject to development easements is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose reporting, recordkeeping or other requirements on such farmland owners. A farmland owner's offer to sell an easement is voluntary, as is his or her acceptance of any State offer.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

2:76-6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application, the application's contribution to the respective project area's ranking relative to other project areas and available funds.

The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

(b) The criteria listed in (c), (d), (e) and (f) below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.

(c) (No change.)

(d) The boundaries and buffers criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

(A)-(D) (No change.)

(E) Streams (perennial) and wetlands:

(F)-(J) (No change.)

(2) (No change.)

ii-iii. (No change.)

(e) The local commitment criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i.-v. (No change.)

vi. Community financial support for the project area.

(f) (No change.)

(g) [The] Factors which determine the degree of imminence of change [criterion (weight 5) is] of the land from productive agriculture to nonagricultural use criterion are as follows:

1.-2. (No change.)

(h) [The] Factors which determine the relative best buy criterion [weight 5] is] are as follows:

1.-2. (No change.)

(i) Special considerations are as follows:

1. [The board and committee shall review the following factors and recognize special considerations which cannot be adequately addressed in the previous criteria.] Factors of positive special consideration by the committee are as follows:

i. A contribution to reduce the committee's percent cost share of the negotiated development easement value;

ii. The first application(s) in the county to receive the committee's preliminary approval which ultimately results in the purchase of the development easement(s); and

iii. Geographical distribution among counties.

2. Factors of positive special consideration by the committee and the board are as follows:

[iii.]i. Historic contributions;

[iv.]ii. Environmental contributions; [and]

[v.]iii. Uniqueness of the agricultural operation[.]; and

iv. Any other considerations which the committee deems appropriate.

3. Items of negative special consideration by the committee and the board are as follows:

i. Any division of the property compromising the applicant's agricultural operation.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT Neighborhood Preservation Balanced Housing Program

Affordability Control Procedures

Proposed New Rules: N.J.A.C. 5:14-4

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1989-398.

Submit comments by September 6, 1989 to:

Michael L. Ticktin, Esq.

Administrative Practice Officer

Department of Community Affairs

CN 802

Trenton, NJ 08625

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 5:14-4, Affordability Controls, for the Neighborhood Preservation Balanced Housing Program is intended to implement the provisions of the Fair Housing Act (P.L. 1985, c.222) which require the Division of Housing and Development to ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by low and moderate income households for at least 20 years following the award of a loan or grant by incorporating contractual guarantees and procedures into the grant or loan agreement. The Division may approve a guarantee for a period of less than 20 years where necessary to ensure project feasibility. The Affordable Housing Management Service has been established within the Division to administer affordability controls for Balanced Housing projects as contained in these rules. This service can be utilized by municipalities receiving Balanced Housing funds at no additional cost to the municipality as a condition of the funding contract. Municipalities may elect to administer a local affordability control program using these rules provided it has been reviewed and approved by the Division.

Social Impact

The provision of clear and concise rules and procedures for the administration of affordability controls for municipalities receiving grants or loans is essential in order to guarantee a continuing supply of low and moderate income housing for residents of the State who do not have adequate opportunities to acquire affordable housing.

Economic Impact

The management of affordability controls as outlined in the proposed new rules shall preserve the supply of affordable housing during the period of controls and ensures that Neighborhood Preservation Balanced Housing grants and loans to municipalities for the development of low and moderate income housing provide maximum economic returns on these investments as intended by the long term controls established pursuant to P.L. 1985, c.222.

Regulatory Flexibility Analysis

The proposed new rules place requirements on municipalities, developers and individual unit owners. Some involved developers may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While certain reporting, record keeping and compliance requirements are imposed on such developers, they are necessary to maintain affordability control in the Neighborhood Preservation Balanced Housing Program. The Program's statutory purpose to provide affordable low and moderate income housing would be hindered by a relaxation of requirements for small business developers. No such differentiation based upon business size is, therefore, provided by these rules.

Full text of the proposal follows:

SUBCHAPTER 4. AFFORDABILITY CONTROLS

5:14-4.1 General provisions

(a) The purpose of the affordability control procedures is to provide the means for ensuring that housing units provided for low and moderate income households through a grant or loan agreement funded by the Neighborhood Preservation Balanced Housing Program, pursuant to N.J.S.A. 52:27D-321, remain affordable to and occupied by income eligible households for 20 years from the date initial restrictions encumber the unit unless a lesser or greater period of time has been approved by the Division of Housing and Development, Department of Community Affairs.

(b) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must provide a plan for assuring that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period. A municipality may adopt its own program subject to Department review and approval or it may contract with the Department to assume this responsibility. This subchapter shall apply in all cases where the municipality has elected to contract with the Department to administer the affordability controls. These rules will be used as a standard for the review and approval of any affordability control program designed and administered by a municipality as it pertains to the Neighborhood Preservation Balanced Housing Program.

(c) If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining part of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:14-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Adjusted rent" means the base rent for a rental unit adjusted by the Index.

"Affordable Housing Agreement" means the written agreement between an owner of an affordable housing unit and the Department that imposes restrictions on units developed with funding from the Neighborhood Preservation Balanced Housing Program to ensure that those housing units remain affordable to households of low and moderate income for a specified period of time.

"Applicant household" means a household that has submitted a Preliminary Application for an eligibility review.

"Assessments" means all taxes, levies, or charges, both public and private, including those charges by any condominium cooperative or homeowner's association as the applicable case may be, imposed upon the affordable housing unit.

"Base price" means the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" means the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Certified household" means any eligible household whose total gross annual income has been verified, whose financial references have been approved and who has received certification as a low or moderate income-eligible household.

"Closing costs" means those costs of a real estate sale that are incurred by the buyer and seller at the time of sale including, but

not limited to, attorney's fees, mortgage points, real estate transfer fee, and applicable real estate broker fees.

"Department" means the Department of Community Affairs.

"Eligible household" means a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate income pursuant to applicable guidelines, and whose name has been placed on a waiting list for affordable housing.

"First purchase money mortgagee" means the holder and/or assigns of the first purchase money mortgage and which must also be an institutional lender or investor, licensed or regulated by a state or the Federal government or an agency thereof.

"Foreclosure" means the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross annual income" means the total amount of a household's income from all sources including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, disability, business income and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" means the person or persons occupying a housing unit.

"Index" means the measured percentage of change in the median income established for a household of four by geographic region using the uncapped median income estimates published periodically by the U.S. Department of Housing and Urban Development and approved for use by the New Jersey Council on Affordable Housing.

"Low income household" means a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using median income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

"Moderate income household" means a household whose gross annual income is equal to more than 50 percent but less than 80 percent of the median gross income established by geographic region and household size using median income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

"Owner" means the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Price differential" means the total amount of the unrestricted sales price that exceeds the maximum restricted resale price as calculated by the Index. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Department at the time a Notice of Intent to Sell has been received from the owner.

"Primary residence" means the unit wherein a certified household maintains continuing residence for no less than nine months each calendar year.

"Purchaser" means a certified household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment lien" means the second mortgage document signed by the owner that is given to the Department as security for the payment of 95 percent of the price differential generated by the first non-exempt sale of an Affordable Housing sales unit at the time of closing and transfer of title of the property after the ending date established in the Affordable Housing Agreement.

"Renter" means a household who has been certified for an Affordable Housing unit for rent subject to the signing of a lease and the payment of any required security deposit.

"Resale price" means the base price as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total monthly housing costs" means the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal,

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interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance. Total monthly housing costs shall also refer to the monthly rental charge for an Affordable Housing rental unit.

5:14-4.3 Affordable Housing Agreement

(a) An Affordable Housing Agreement (hereinafter "the Agreement") shall be signed and recorded with the recording office of the county in which the Balanced Housing unit/unit (with the exception of Neighborhood Rehabilitation owner-occupied single family units and rental units covered by more restrictive Federal regulations) is/are located. The provisions of the Agreement shall constitute restrictive covenants running with the land with respect to the Balanced Housing units described and identified in the Agreement.

1. The Agreement shall set forth the terms, conditions, restrictions, and provisions applicable to the Balanced Housing units. The terms, conditions, restrictions and provisions of the instrument shall bind all purchasers and owners of the Balanced Housing units, their heirs, assigns and all persons claiming by, through or under heirs, assigns and administrators.

2. When a single Agreement is used to govern more than one Balanced Housing unit, the Agreement must contain a description of each unit governed by the Agreement and the ending date imposed on the unit.

3. This Agreement shall be executed by the Department and the owner or the then current title holder of record of the property upon which the Balanced Housing units are to be situated prior to its recording unless the municipality has an alternative affordability plan approved by the Department in which case the Agreement shall be executed by the grantee municipality and the owner.

(b) All deeds of conveyance from all owners to certified purchasers of Balanced Housing units shall include the following clause in a conspicuous place:

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated _____, which was filed in the office of the Clerk of _____ County in Misc. Book _____ at Page _____ on _____ and is also on file with the N.J. Department of Community Affairs."

1. Any master deed that includes a Balanced Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the master deed that differentiates the affordable unit from all other units covered in the master deed.

(c) The Affordable Housing Agreement shall list the following restrictions:

1. The owner of an Affordable Housing sales unit shall not sell the unit at a resale price greater than an established base price plus the allowable percentage of increase as determined by the Index applicable to the household size and the municipality in which the unit is located. The owner of an Affordable Housing rental unit shall not rent the unit at an adjusted rent that is greater than an established base rent plus the allowable percentage of increase as determined by the Index applicable to the household size and the municipality in which the unit is located.

2. The owner shall not sell or rent the Affordable Housing unit to anyone other than a purchaser or renter who has been certified utilizing the income verification procedures established by the Department to determine qualified low and moderate income-eligible households.

3. The owner of an Affordable Housing sales unit shall be obligated to pay 95 percent of the price differential generated at the first non-exempt sale of the Affordable Housing unit to the Department at the time of closing and transfer of title after the termination of affordability controls in accordance with the terms of the repayment lien. For the purposes of this Agreement, price differential shall be the total amount of the unrestricted sales price (which shall be no less than a comparable fair market price established by the Department at the time a Notice of Intent to Sell has been received from the owner) that exceeds the maximum restricted resale price as calculated by the Index.

4. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and restrictions duly promulgated by the Department (N.J.A.C. 5:14) the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by low and moderate income-eligible households throughout the duration of the Agreement.

(d) The Affordable Housing Agreement shall include the following owner responsibilities:

1. Affordable Housing units which have not been previously approved as rental Affordable Housing units shall at all times remain the primary residence of the owner. The owner shall not rent such Affordable Housing unit to any party whether or not that party qualifies as a low or moderate income household without prior written approval from the Department.

2. Affordable Housing units designated as rental units shall at all times remain the primary residence of the renter and shall not be sublet to any party whether or not that party is qualified as a low or moderate income-eligible household without prior written approval from the Department.

3. All home improvements made to an Affordable Housing unit shall be at the owner's expense except that expenditures for any alteration that allows a unit to be resold or rented to a larger household size because of an increase capacity for occupancy shall be considered for a recalculation of base price or base rent. Owners must obtain prior approval for such alteration to qualify for this recalculation.

4. The owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

5. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, whether public and private, assessed against such unit, or any part thereof, as and when the same become due.

6. Owners of Affordable Housing units shall notify the Department in writing 60 days prior to a rental vacancy and 90 days for notification of an intent to sell the property. Owners shall not convey title or lease or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Department.

7. An owner shall request referrals of certified households from the pre-screened established waiting list maintained by the Department.

8. If no referrals are available, the owner may sell, transfer, convey or rent the property to an eligible household not referred by the Department. The proposed purchaser/renter must complete all required Household Eligibility forms and submit gross annual income information for verification to the Department for certification as an eligible sales/rental transaction.

9. At resale of an Affordable Housing sales unit, the owner must personally certify that all items of personal property which are not permanently affixed to the unit and were not included when the unit was originally purchased (for example, refrigerator, freezer, washer, dryer, dishwasher, carpet, drapes) have either been included in the maximum allowable resale price or sold to the purchaser at a reasonable price that has been approved by the Department at the time of signing the agreement to purchase. Such transfer of funds shall also be certified by the purchaser at the time of closing. In no event shall the purchase of personal property be made a condition of the unit resale.

10. The owner shall not permit any lien, other than the first purchase money mortgage, Department approved second mortgages and liens of the Department to attach and remain on the property for more than 60 days.

11. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the owner, in addition to paying any assessments required by the master deed of the condominium or by-laws of an association, shall further fully comply with all of the terms, covenants or conditions of said master deed or by-laws, as well as fully comply with all conditions and restrictions of this Affordable Housing Agreement.

12. The owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and requirements duly promulgated by the Department (N.J.A.C. 5:14-4.3), for determining that a resale transaction is qualified for a certification of exemption or a hardship waiver.

13. The owner shall have responsibility for forwarding copies of all documents filed with the applicable county recording office to the Department after they have been signed, dated and recorded.

14. The owner shall be obligated to pay a service fee at the time of resale or at each new rental occupancy. The service fee for a sales unit shall be \$150.00 to be paid at closing from the seller's receipts. The service fee for a rental unit shall be in the amount of two percent of the vacant unit's current annualized rent to be paid at the time a lease agreement is signed by the owner.

5:14-4.4 Sales units

(a) At initial sale, base prices for sales units shall be determined in accordance with contractual agreements approved by the Department at levels that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality. At initial sale, an Affordable Housing Agreement and a repayment lien shall be signed and recorded with the property deed. The purchaser shall forward a copy of all recorded documents to the Department.

(b) The base price will be indexed according to measured changes in the approved median income guide applicable to the municipality in which the unit is located. An owner who wishes to sell an affordable housing unit shall give written notice to the Department. A resale price shall be calculated using the approved Index and an estimated monthly mortgage payment shall be determined. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(c) A household's estimated monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees when applicable, shall not exceed 28 percent of gross monthly income. Mortgage approval is the responsibility of the household. Certified households whose gross monthly income times 28 percent is not less than the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice. The Department reserves the right to waive this requirement if circumstances necessitate a higher percentage and the household concurs.

(d) A home improvement that increases the unit's size, making it suitable for occupancy by a larger household, may be approved by the Department for a resale price adjustment. The adjusted resale price shall not exceed the equivalent affordability range as determined for the larger household using the applicable median income guide. Additional allowances, unrelated to the maximum allowable resale price, for home improvements deemed necessary for maintaining the standard condition of an affordable housing unit may be approved by the Department.

(e) If no certified household has executed an agreement to purchase within 90 days of the Department's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Department, and a copy to the municipality wherein the unit is located.

(f) For approval of a hardship waiver, an owner must provide documentation to the Department that there has been a good faith effort to sell the unit to a certified household for 90 days and no certified household has signed an agreement to purchase the unit or that economic factors not related to household income, including, but not limited to, interest rates, taxes, or insurance, inhibit the ability of an income-eligible household to obtain a mortgage commitment for the unit.

1. Upon receipt of a request for a hardship waiver, the municipality in which the unit is located shall have first option to purchase the unit at the approved resale price and to hold and rent or convey it to a certified household. The municipality shall have 30 days in which to exercise this option.

(g) The Department shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A hardship waiver in recordable form shall be provided to the purchaser at the time

of closing and filed with the deed and the Affordable Housing Agreement. The hardship waiver only applies to income eligibility restrictions for occupancy and is only valid for the designated resale transaction. It does not affect the resale price restriction. Future resales are subject to all deed restrictions concerning income eligibility and the indexed resale price.

1. If the Department denies a hardship waiver, an owner may file a written request to appeal within 15 days of receipt of the denial to the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625. If a written request has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

(h) The following title transactions shall be deemed exempt and the Department shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;

2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);

3. Transfer of ownership between family members by will or intestate succession;

4. Transfer of ownership through an Executor's deed to a Class A beneficiary; and

5. Transfer of ownership by court order.

(i) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the income index in compliance with the terms of the Affordable Housing Agreement.

1. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(j) The owner shall notify the Department in writing of any proposed transaction that he or she wishes to have qualify as an exempt transaction. The owner shall supply the Department with all necessary documentation to demonstrate that the transaction qualifies as exempt. The Department may request additional documentation as it deems necessary. The Department shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

1. If the Department denies the exemption, the owner may submit a written appeal within 15 days to the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

2. A certificate of exemption shall be filed with the deed and the Affordable Housing Agreement at the time of title transfer.

5:14-4.5 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a substandard unit shall be subject to the following restrictions:

1. If the owner-occupant (hereinafter known as the borrower) transfers title to the property, vacates the unit, or prepays the principal amount within 10 years from the date the unit has been declared in standard condition, the borrower shall pay the Department the original loan amount plus two percent interest calculated as simple interest annually.

2. In the event of the death of the owner-occupant prior to the end of the 10 year restricted period, the loan shall be due and payable at the two percent annual interest rate at the time of death unless the persons inheriting the property are income eligible and personally occupy the rehabilitated property. In this event the loan shall be due and payable under the same terms as above if the persons inheriting the property vacate, transfer title to the property, or pre-pay the loan any time thereafter until the end of the same ten year period.

3. If the property is sold for fair market value and the excess of the sales price over the costs associated with the sale, including the satisfaction of superior liens, is less than the amount owed to the Department, the Department shall waive repayment of all or a portion of the Balanced Housing loan. In this event, the Department shall review the proposed sales contract and may require an appraisal to confirm the sales price as fair market value.

4. After 10 years, the Department shall forgive the loan and cancel the note and mortgage without repayment.

(b) Rental units included in a Neighborhood Rehabilitation Project shall be subject to a 10 year Affordable Housing Agreement that shall limit the occupancy of the rental unit to an eligible low or moderate income household, limit rents to annual increases measured by the Index, and be filed in the office of the county recording officer.

(c) The deferred loan payment term and the 10 year Affordable Housing Agreement shall begin on the date the unit is determined to be in standard condition as verified by a municipal code enforcement officer.

5:14-4.6 Rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Department at ranges that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality.

1. The Department shall generally refer households to units for which the monthly rental charge including an allowance for utilities shall not exceed 30 percent of their gross monthly income.

2. At the time restrictions are initially placed on a rental unit, an Affordable Housing Agreement shall be signed and duly recorded. The owner shall forward copies of the recorded deed and the agreement to the Department for its files.

(b) The landlord shall notify the Department of any impending vacancy in any restricted rental unit no less than 60 days before the unit is to become available.

(c) The Department shall refer a list of certified households who meet income and bedroom size criteria for a vacant unit to a landlord for lease negotiations within 30 days of receipt of this notification. Landlords must select a certified household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household shall be denied a lease for any reason that violates any applicable law.

(d) A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

(e) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable Index. The Department shall notify all landlords of changes in the Index. The landlord shall submit a written request for rent adjustment approval to the Department when a rent adjustment is to be made. The Department shall promptly approve or disapprove all rent adjustment requests.

(f) An owner of a restricted rental unit shall notify the Department in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Department. The property shall be retained as affordable housing at resale subject to the Affordable Housing Agreement.

5:14-4.7 Procedures for establishing eligibility for occupancy

(a) In order to be considered for an Affordable Housing unit, households shall submit a preliminary application to the Department. As completed preliminary applications are received, the Department shall review the applications for income eligibility and family size and in accordance with all applicable laws.

1. When the initial review indicates that an applicant household may be eligible, the name of the head of the household shall be placed on a waiting list. The Department will send a confirmation letter to the applicant.

(b) When the initial review indicates that an applicant household is income-ineligible, the applicant household shall be advised in writ-

ing and the preliminary application shall be denied. If an applicant household receives a determination of ineligibility, the applicant may submit a written request for a redetermination to the Department within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The applicant household shall be required to produce documentation to support the claim at the time of redetermination. Written notice of the redetermination shall be given to the applicant by the Department.

1. If the applicant household receives a second notice of ineligibility, a written appeal may be filed with the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625, within 15 days of receipt of the notice of redetermination. If a written request has not been received within 15 days after the applicant household's receipt of this notice, the determination shall be final and the application shall be considered denied.

(c) As units become available, the Department shall notify eligible households who satisfy the income criteria and occupancy standards for an available unit and schedule them for a certification interview. At the certification interview, the household shall be requested to document all income for the purpose of qualifying for the required mortgage or rent payment. The certification process may also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide verification of income. Verification may include, but is not necessarily limited to, any of the following:

1. A letter from the household member's employer stating an annualized current income figure of four consecutive paystubs dated within 120 days of the interview date;

2. A letter or appropriate reporting form verifying, without limitation, social security, unemployment, disability, pension or other benefits;

3. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant;

4. A copy of IRS Form 1040, 1040A, or 1040EZ, as applicable, and New Jersey State income tax returns for each of the three years prior to the date of interview;

5. Reports that verify income from bank accounts, securities, trust funds or other income-producing properties; or

6. Reports that verify assets that do not earn regular income such as non-income producing real estate and savings with delayed earnings provisions.

(d) Eligible households who are denied certification shall be notified in writing of the denial. This notice shall state the specific reason for the denial. If the eligible household disagrees with this finding it may file a written request for redetermination with the Department within 15 days of receipt of the notice. Eligible households shall be required to produce documentation to support their claim.

1. Eligible households who are again denied certification may file a written appeal with the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625 within 15 days of receipt of the denial. If a written request has not been received within 15 days of the household's receipt of this notice, the determination shall be final and the application considered denied.

(e) Only households approved by the Department as certified households shall have an opportunity to be considered for low and moderate income housing. Households who are certified shall be issued written certification that is valid for 120 days. Certification may be extended by the Department for one additional period of 120 days if a mortgage application has been made and the household has not received approval or denial. Households having received certification which expires shall be returned to the referral list and may be considered for future housing referrals.

(f) To the greatest extent possible, certified households shall be referred to available units using the following accepted standards for occupancy:

1. A maximum of two persons per bedroom;

2. Children of same sex in same bedroom;

3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and

4. Children not in same bedroom with parents.

(g) In no case shall a household be referred to a unit that provides for more than one bedroom in excess of family occupancy requirements.

(h) The Department shall gather information on each assisted household's income, assets and household characteristics from time to time for purposes of program evaluation.

5:14-4.8 Foreclosure

(a) A judgment of foreclosure in favor of or a deed in lieu of foreclosure to an institutional first mortgagee on any owner-occupied restricted unit shall result in a termination of affordability controls, except for the defaulting mortgagor who shall be forever subject to the restrictions with respect to the unit owned by him at the time of default.

1. All resale restrictions shall cease to be effective as of the transfer of title pursuant to foreclosure with regard to the first purchase money mortgagee or a lender in the secondary mortgage market including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, or the Government National Mortgage Association; or an entity acting on their behalf.

2. Affordability controls shall remain in effect in the event of any judgment of foreclosure on a rental unit, other than a rental unit in a one to four family rehabilitated owner-occupied dwelling.

(b) Nothing shall preclude the municipality in which the unit is located from purchasing the unit at the maximum permitted resale price and holding, renting or conveying it to a certified household. The municipality shall have 60 days after the unit is listed for sale in which to exercise this option. Failure of the financial institution to provide notice of a foreclosure action to the Department or the municipality shall not impair the financial institution's rights to recoup loan proceeds and shall create no cause of action against the financial institution.

(c) In the event of a foreclosure sale by a first purchase money mortgagee, any surplus funds exceeding the maximum allowable resale price, as calculated in accordance with the approved index, which remains after the amount required to pay and satisfy the first purchase money mortgage including the costs of foreclosure and any previously approved second mortgages shall be paid to the Department as reimbursement for Neighborhood Preservation Balanced Housing Program Funding invested in the unit. Any remaining funds in excess of outstanding grants or loans shall be returned to the municipality.

5:14-4.9 Violations, defaults and remedies

(a) Upon a violation of any of the provisions of the Affordable Housing Agreement by the owner of a Balanced Housing unit, the Department may give written notice to the owner specifying the nature of the violation and requiring a correction within a reasonable period of time as specified in the notice.

1. The owner shall be obligated to notify the Department that the violation has been corrected within the reasonable time period or that additional time is needed for the correction. The Department will grant additional time for good cause and notify the Owner that additional time has been granted.

2. If the owner does not forward written notification, as required, or correct the violation within the time specified, the Department may declare a default of the Agreement.

3. The interest of any owner may, at the option of the Department, be subject to forfeiture in the event of substantial breach of any of the terms, restrictions and provisions of the Agreement which remains uncured for the period of 60 days after service of the written notice of violation upon the owner by the Department.

4. The notice of violation shall specify the particular infraction and shall advise the owner that his or her right to continued ownership may be subject to forfeiture if such infraction is not cured within 60 days of receipt of the notice.

(b) If an owner makes any misrepresentation in connection with the purchase, rental, or sale of an affordable housing unit pursuant to the Agreement, the Department may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale, lease, or transfer in violation of the

Agreement, or a declaration that a sale or transfer in violation of the Agreement is void, or for any other relief as may be deemed appropriate.

(c) The provisions of this section may be enforced by the Department by court action seeking a judgment which would result in the termination of the owner's equity or other interest in the unit. Any judgment shall be enforceable as if same were a judgment of default of the first money mortgage and shall constitute a lien against the particular Balanced Housing unit.

1. A court judgment of default shall obligate the owner to accept the first offer to purchase from any certified household, who has been referred to the owner by the Department, with such offer to purchase being no more than the maximum permitted resale price of the Balanced Housing unit as permitted by the terms and provisions of the Affordable Housing Agreement.

2. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of the Agreement until such time as title is conveyed to a new owner.

(d) In the event that the Balanced Housing unit is a rental unit, and the owner has leased such unit either for a rental charge in excess of that permitted by the Agreement or to a tenant who has not been certified by the Department, the Department shall have recourse to all legal remedies as stated above, including the recapture of surplus rents paid in excess of the maximum permitted Rental Charge.

5:14-4.10 Length of restrictions

(a) The municipality shall provide contractual guarantees and procedures which will ensure that all units funded with Balanced Housing funds for low and moderate income households, with the exception of Neighborhood Rehabilitation 1-4 unit projects, shall remain affordable to such households from the date the initial restrictions encumber the unit until such time as stated below.

1. Sales units located in those municipalities listed in the Appendix to this subchapter, incorporated herein by reference, shall remain affordable to low and moderate income households for 10 years. At the first non-exempt sales transaction after 10 years, the owner shall be entitled to the maximum allowable resale price as calculated by the index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

2. Sales units located in municipalities not listed in the Appendix shall remain affordable to low and moderate income households for 20 years. At the first non-exempt sales transaction after 20 years, the owner shall be entitled to the maximum allowable resale price as calculated by the Index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

3. Ten years for rental units located in municipalities listed in the Appendix.

4. Twenty years for rental units located in municipalities not listed in the Appendix.

(b) For rental units created or rehabilitated with Balanced Housing funds, affordability controls shall remain in effect after the expiration date until the date on which a rental unit shall become vacant provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income.

(c) The affordability control periods established in (a) above shall begin as follows:

1. For sales units, on the date a certificate of occupancy is issued;

2. For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Department or municipality administering controls; and

3. For single-family housing which is rented, on the date the unit is first occupied.

APPENDIX

Sales and rental units funded in municipalities listed below shall be subject to 10 year affordability controls. Sales and rental units funded in municipalities not listed below shall be subject to 20 year affordability controls.

PROPOSALS

Interested Persons see Inside Front Cover

COMMUNITY AFFAIRS

Atlantic: None
Bergen: Lodi, Garfield
Burlington: Pemberton Tp.
Camden: Camden
Cape May: None
Cumberland: Vineland, Bridgeton
Essex: Belleville, Bloomfield, East Orange, Irvington, Montclair, Newark, Orange
Gloucester: Deptford
Hudson: Bayonne, Hoboken, Jersey City, North Bergen, Union City, Weehawken, West New York
Hunterdon: None
Mercer: Trenton
Middlesex: Carteret, New Brunswick, Perth Amboy
Monmouth: Asbury Park, Keansburg, Long Branch, Neptune
Morris: None
Ocean: Lakewood
Passaic: Passaic, Paterson
Salem: None
Somerset: None
Sussex: None
Union: Elizabeth, Hillside, Plainfield, Roselle
Warren: None

(a)

GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Volunteer Coaches' Safety Orientation and Training Skills Programs

Minimum Standards

Proposed New Rule: N.J.A.C. 5:52

Authorized By: Governor's Council on Physical Fitness and Sports, Ralph A. Dougan, Executive Director.

Authority: N.J.S.A. 2A:62A-6.

Proposal Number: PRN 1989-359.

A public hearing concerning this proposal will be held on August 30, 1989 at 10:00 A.M. at the following address:

Conference Room 2
1st Floor
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey

Persons interested in being heard should contact Ms. Lisa Moody at (609) 633-7115 by August 25, 1989.

Submit written comments by September 6, 1989 to:

Ralph A. Dougan, Executive Director
Governor's Council on Physical Fitness and Sports
CN 005

Trenton, New Jersey 08625-0005

The agency proposal follows:

Summary

P.L. 1988, c.87 effective August 3, 1988, gave immunity to unpaid volunteer athletic coaches, managers and officials from liability for damages in civil actions for acts or omissions arising out of and in the course of the volunteer services or assistance rendered. In order to qualify for this immunity, however, a coach, manager, or official must attend a safety orientation and skills training program that meets minimum standards established by the Governor's Council on Physical Fitness and Sports. Local recreation departments, non-profit organizations and National/State sports training organizations are among the agencies and organizations that may conduct the safety orientation and skills training programs provided the program meets the minimum standards. This proposal sets forth such minimum standards. As required by statute, it has been developed in consultation with the Office of Recreation of the Division of Community Resources of the Department of Community Affairs.

Social Impact

In recent years, the threat of potential tort liability for volunteer coaches, managers and officials has discouraged many people who would otherwise like to participate in nonprofit amateur athletics in any of these capacities from doing so. By establishing the standards for training programs that are a precondition to tort immunity for volunteer coaches, managers and officials, the Governor's Council will make it possible for these people to participate without undue financial risk to themselves, thereby allowing more teams and more competitions to be organized and thus enhancing the physical fitness of the participants. The training programs that follow the standards will also have a positive social impact by better preparing coaches, managers and officials to prevent injuries and deal properly with those that do occur.

Economic Impact

The proposed minimum standards will have a positive economic impact upon those who participate in training programs that meet the standards since it will result in their being relieved of potential tort liability in connection with their volunteer activities. While the programs that comply with the standards may be expected to have the positive effect of reducing the frequency and extent of sports-related injuries, they may negatively impact upon persons who are injured by limiting their ability to recover damages. There will be no further cost to the State nor any undue burden to organizations or individuals in implementing these standards. Although it varies, a nominal cost may be incurred by an organization sponsoring the educational program or the individual coach/manager/official participating in the program. In either case the approximate amounts may vary but in no case is the cost expected to exceed \$50.00 per individual participant and in many cases less.

Regulatory Flexibility Analysis

These standards relate solely to safety orientation and skills training programs for coaches, managers and officials in nonprofit voluntary athletic programs. These courses may be offered by nonprofit sponsors or by sponsors that might qualify as "small businesses" pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In either case, the health, safety and welfare of that segment of the public that participates in nonprofit voluntary athletic programs requires that the minimum standards to be followed by educational programs be the same whether the program has a nonprofit or a for-profit sponsor. The proposed rule imposes no burdensome recording or reporting requirements.

Full text of the proposed new rules follows:

CHAPTER 52

GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

SUBCHAPTER 1. MINIMUM STANDARDS FOR VOLUNTEER COACHES' SAFETY ORIENTATION AND TRAINING SKILLS PROGRAMS

5:52-1.1 Introduction

(a) The minimum standards set forth in this subchapter identify the major topics which must be addressed in volunteer coaching/managing/officiating programs for a safety orientation and training skills program required for civil immunity according to N.J.S.A. 2A:62-6 et seq. The topics must be presented within the context of an educational program that addresses the perspective of the specific population(s) of athletes served (for example, young, senior, disabled, novice and skilled athletes).

(b) In order to be covered by the provisions for civil immunity as prescribed by New Jersey P.L. 1988, c. 87 (N.J.S.A. 2A:62A-6 et seq.), the volunteer athletic coach, manager or official must attend a safety orientation and skills training program of at least a three-hour duration which meets the minimum standards set forth in this subchapter. The programs may be provided by local recreation departments, non-profit organizations and national/state sports training organizations. The standards apply to all volunteer athletic programs in New Jersey regardless of population served.

(c) Any organization providing a safety orientation and skills training program pursuant to these rules, shall issue a certificate of participation to each participant who successfully completes the program.