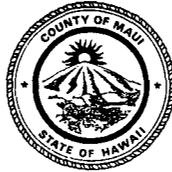


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March 5, 2002

MEMO TO: Ms. Alice L. Lee, Director
Department of Housing and Human Concerns

F R O M: Gregory J. Garneau, Deputy Corporation Counsel

SUBJECT: Chapter 2.94 Affordable Housing Policies for Hotel-
Related Developments.

The following response is submitted to your question as to whether it is permissible under Chapter 2.94 for the developer of a hotel to meet its affordable housing requirement by partnering with a nonprofit entity. Our answer is 'yes' for two reasons. First, the ordinance does not either address, or limit in any way, the process by which the developer meets its affordable housing obligation. By implication, the intent of the drafters of the ordinance must have been to leave the mechanics of the implementation of this requirement up to the developer.

Second, the overall objective of the chapter is to "require developers to construct affordable housing units for addition to the countywide inventory of affordable housing." M.C.C. §2.94.010B. To the extent that the partnering of a developer with a nonprofit organization increases the likelihood of the success of the project (especially in the area of affordable rental housing), then this partnering furthers the intent of Chapter 2.94. So long as the developer builds the number of units required under M.C.C. §2.94.030, whether this is done through a partnership arrangement or solely through its own effort, then the developer should be credited for satisfying the requirement of the ordinance.

In your memorandum to us, you indicated that in this instance Alexander and Baldwin ("A&B") is required to construct thirty-five units to meet its requirements related to a one hundred forty room hotel project near the airport. Preliminary plans include an affordable apartment complex with forty units (more than required) in central Kahului and the likelihood of co-developing the project with a nonprofit. Although the details of the partnering agreement are not worked out, in principle it would be permissible for A&B to

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contract with a nonprofit to meet its affordable housing requirement so long as A&B ensures that the minimum thirty-five units are constructed. The terms of the partnering agreement, including the parties' relative contributions (for example, land, cash, improvements, etc.); are matters to be negotiated by the parties themselves as this would be a private contract. The County would not be a party.

You mentioned in your memorandum that your department would like to work with A&B to develop a County housing division office building on the same Kahului site as well as partner with A&B and the nonprofit to develop the additional five affordable units mentioned above. This portion of the project would involve a separate agreement or agreements with the County as a party and is outside of the requirements of Chapter 2.94.

If you have any questions regarding the foregoing, please contact me.

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Approved for transmittal:



James B. Takayasu
Corporation Counsel