

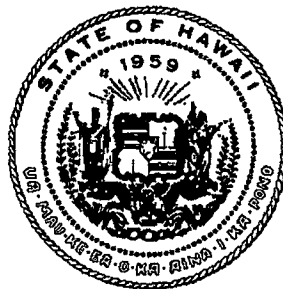
REPORT TO THE TWENTY-FOURTH LEGISLATURE

STATE OF HAWAII

2007

PURSUANT TO ACT 288, SESSION LAWS OF HAWAII 2006

**Relating to Land Acquisition
(Kukui Gardens)**



Prepared by:

HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

BACKGROUND

Kukui Gardens was built in 1971 and consists of 857 rental units on approximately 22 acres of land in central Honolulu, Oahu (see Exhibit A, Location map). The property is in the State Land Use Urban District and zoned A-2 Medium Density Apartment (150-foot height limit). The unit mix is as follows:

No. Units	Bedrooms/Baths	Living Area
175	1/1.0	548 sq. ft.
302	2/1.0	744
53	3/1.0	823
226	3/1.5	906
101	4/2.0	1,037
857		

Rents are approved by HUD and are based on operating costs. As of May 2006, the rent structure was as follows:

No. BR	BMIR rents	Over-income rents
1	\$467	\$547-653
2	589	690-822
3 BR/1 BA	692	811-966
3 BR/1.5 BA	762	893-1,063
4 BR	870	1,019-1,214

Source: CB Richard Ellis

Approximately 2,500 persons reside at Kukui Gardens. Nearly 70 percent of the units are occupied by lower income households which pay the BMIR rents. (Source: CB Richard Ellis and Faith and Action for Community Equity)

Kukui Gardens Corporation (KGC), a private nonprofit entity, developed Kukui Gardens with the assistance of the U.S. Department of Housing and Urban Development (HUD). Under Section 221(d)(3) of the National Housing Act of 1961 (P.L. 87-70, sec.101(a), et seq.), KGC was provided a low interest (3%) mortgage loan for the provision of the affordable rental units (the section has been referred to as the Below-Market Interest Rate or BMIR program). The essential condition of the HUD-insured mortgage is that the property remains as below-market rentals and subject to the affordability income limits as determined by HUD for the duration of the mortgage; that is, until May 1, 2011, when the HUD mortgage will presumably be paid in full, resulting in the extinguishments of all of the HUD restrictions. The loan balance, as of December 2004, was approximately \$3.5 million.

In January 2006, KGC announced that it retained CB Richard Ellis to market the rental property. Proceeds from the sale would be used to finance the philanthropic efforts of the Clarence T.C. Ching Foundation. In April 2006, KGC announced the sale of Kukui

Gardens to Carmel Partners, a private real estate investment firm headquartered in San Francisco, for a reported \$130 million.

ACT 288, SLH 2006

The possible loss of 857 affordable rental units generated vast community concern. In response, the State Legislature passed H.B. 2239, C.D. 1 (enacted as Act 288, Session Laws of Hawaii 2006, effective July 1, 2006) which directed the Hawaii Housing Finance and Development Corporation (HHFDC) or any appropriate entity of the State to immediately initiate negotiations with Kukui Gardens Corporation, or its successor in interest, to either:

- “(1) Make available, without competitive award, public financing resources to extend affordable rents at Kukui Gardens through at least 2016; provided that at least fifty per cent of the rental units at Kukui Gardens are retained at affordable rents to households whose incomes do not exceed eighty per cent of the median family income, of which five per cent of the units are set aside for households whose incomes do not exceed thirty per cent of the median family income; or
- (2) Acquire the property known as Kukui Gardens, tax map key (I) 1-7-26: 07 [sic], and may partner with private for-profit or nonprofit developers for acquisition of the property; provided that eighty per cent of the housing units on the property shall be retained in perpetuity as affordable housing for households at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development.”

If an agreement to either extend affordable rents to at least 2016 or acquire the property is not reached within a reasonable time as determined by the HHFDC or any other appropriate entity of the State, the Act authorized the state agency to exercise its power of eminent domain to acquire the property without being subject to legislative disapproval.

Act 288 also appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 for fiscal year 2006-2007 for the purpose of negotiating with the owner of Kukui Gardens to either extend the period of affordable rents to at least 2016, acquire Kukui Gardens, or to commence the condemnation process. The HHFDC is the expending agency for the purposes of the Act.

The HHFDC or the appropriate entity of the State is required to submit a report to the 2007 State Legislature regarding its efforts to acquire Kukui Gardens and its recommendations for financing the purchase of the property. (See Exhibit B for copy of Act 288)

STATE EFFORTS TO PRESERVE AFFORDABILITY

Initial meetings with representatives of KGC and representatives of the residents were held by Governor Linda Lingle in early and mid-May. Meetings were also held with officials of the HUD Honolulu Office. The State expressed its strong concern over preserving affordability at Kukui Gardens. The State also expressed its strong preference

that the current levels of affordability be preserved in perpetuity. Following these meetings, Governor Lingle in June 2006 wrote Mr. Brian Montgomery, HUD Assistant Secretary for Housing and Federal Housing Commissioner, expressing the State's strong interest in preserving the project affordability and requesting that any HUD review and decision on the sale of Kukui Gardens be done in consultation with the Office of the Governor (Exhibit C). The Governor also designated Mr. Theodore Liu, Director of the Department of Business, Economic Development, and Tourism, as the point of contact. The Attorney General, Governor's Senior Policy Advisor, and Executive Director and staff of the HHFDC have provided support in this effort.

Intent to prepay HUD insured mortgage loan

In July 2006, KGC notified the residents of Kukui Gardens of its intent to prepay the HUD-insured mortgage loan and discharge the existing Regulatory Agreement with HUD. KGC stated that upon prepayment, KGC would enter into a Use Agreement that would continue the current affordability use restrictions on Kukui Gardens until May 1, 2011. Citing the rehabilitation needs of the rental project, KGC indicated that prepayment of the HUD insured loan would remove a barrier to obtaining financing to pay for the repairs. KGC assured residents that rents would not be increased as a result of the prepayment and that future rent increases would be governed by the terms of the Use Agreement or as otherwise approved by HUD. If approved, the below-market rents would remain in effect until May 2011. (Exhibit D)

The existing Regulatory Agreement governs the Kukui Gardens development through the full term of the mortgage loan (until May 1, 2011). The Regulatory Agreement provided consideration for HUD's insurance of KGC's loan at a below-market interest rate. It primarily establishes KGC's duty to impose and maintain various use and low income affordability restrictions. In connection with these restrictions, the Regulatory Agreement provides, among other things, that Owners shall not without the prior written approval of the FHA Commissioner transfer the development to a third party. With KGC's negotiation to sell the rental development to Carmel Partners for a reported \$130 million, the release of the existing Regulatory Agreement would greatly facilitate the sale.

The Governor strongly objected to the prepayment request as HUD's continued regulatory authority over Kukui Gardens until May 1, 2011 would play a decisive factor in determining whether Kukui Gardens remains affordable after May 1, 2011. Citing HUD's own regulations, the Governor stated that HUD cannot accept an offer to prepay the mortgage unless certain criteria are met (*12 U.S.C. §1715z-15*). An important criterion is that the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area. Kukui Gardens addresses the dire need for rental housing for lower income families in the area and, therefore, the Governor urged KGC to honor the terms of its Regulatory Agreement through the bargained for and accepted termination date, and to not seek prepayment. The Governor also urged HUD to deny the prepayment request because allowing prepayment would be illegal and contrary to the interests of the State of Hawaii and its citizens.

In early August 2006, the Governor visited with residents of Kukui Gardens to assure them that the State Administration would not allow any action that takes Kukui Gardens out of the affordable category. The Governor indicated that the State's position on the prepayment request would be based on talks with everyone involved.

In October 2006, the Governor, Attorney General Mark Bennett, Director Liu and HHFDC Executive Director Dan Davidson met with the residents of Kukui Gardens to re-emphasize the State's commitment to keep the 857-unit rental housing development affordable and to share the State's strong opposition to the proposed prepayment. (Exhibit E)

On November 7, 2006, the lender holding the note on Kukui Gardens submitted a request to HUD to terminate the mortgage insurance. According to the local HUD office, as of the date of this report, the Federal Housing Commissioner has not made a determination on the prepayment request.

Discussions with other interested parties

The residents of Kukui Gardens engaged Faith Action for Community Equity (FACE), a faith-based multicultural organization, to assist them in preserving the rental development. FACE retained Devine & Gong (DGI), a real estate finance and development corporation, based in San Francisco, that specializes in the areas of affordable housing and housing subsidized or insured by Federal, state or local governments.

Upon the request of the Kukui Garden Residents Association and FACE, numerous discussions were held with DGI regarding various affordability preservation scenarios.

Upon the request of interested third parties, meetings were held to listen to ideas regarding options for preservation of affordable housing at the Kukui Gardens site. These included redevelopment options. Each such option assumed a significant increase in density. As with all redevelopment options, significant uncertainty exists due to zoning, permitting and infrastructure issues.

It is clear that any solution that preserves the current levels of affordability will require some level of State subsidy.

Negotiations with KGC and Carmel Partners ("Carmel")

The State held numerous face-to-face meetings and telephonic conference calls over the past six months with KGC, Carmel, and FACE.

From the outset, KGC and its advisors requested that the State negotiate directly with Carmel for a solution to preserving affordability.

In late November, it was brought to the attention of the State that Carmel and DGI (on behalf of FACE) were engaged in discussions on a potential "settlement agreement" that included a proposed agreement on preserving affordability levels acceptable to the residents.

It is understood that Carmel and FACE are still in discussions.

No negotiations have resulted in any commitment by the State.

FINANCING RECOMMENDATIONS

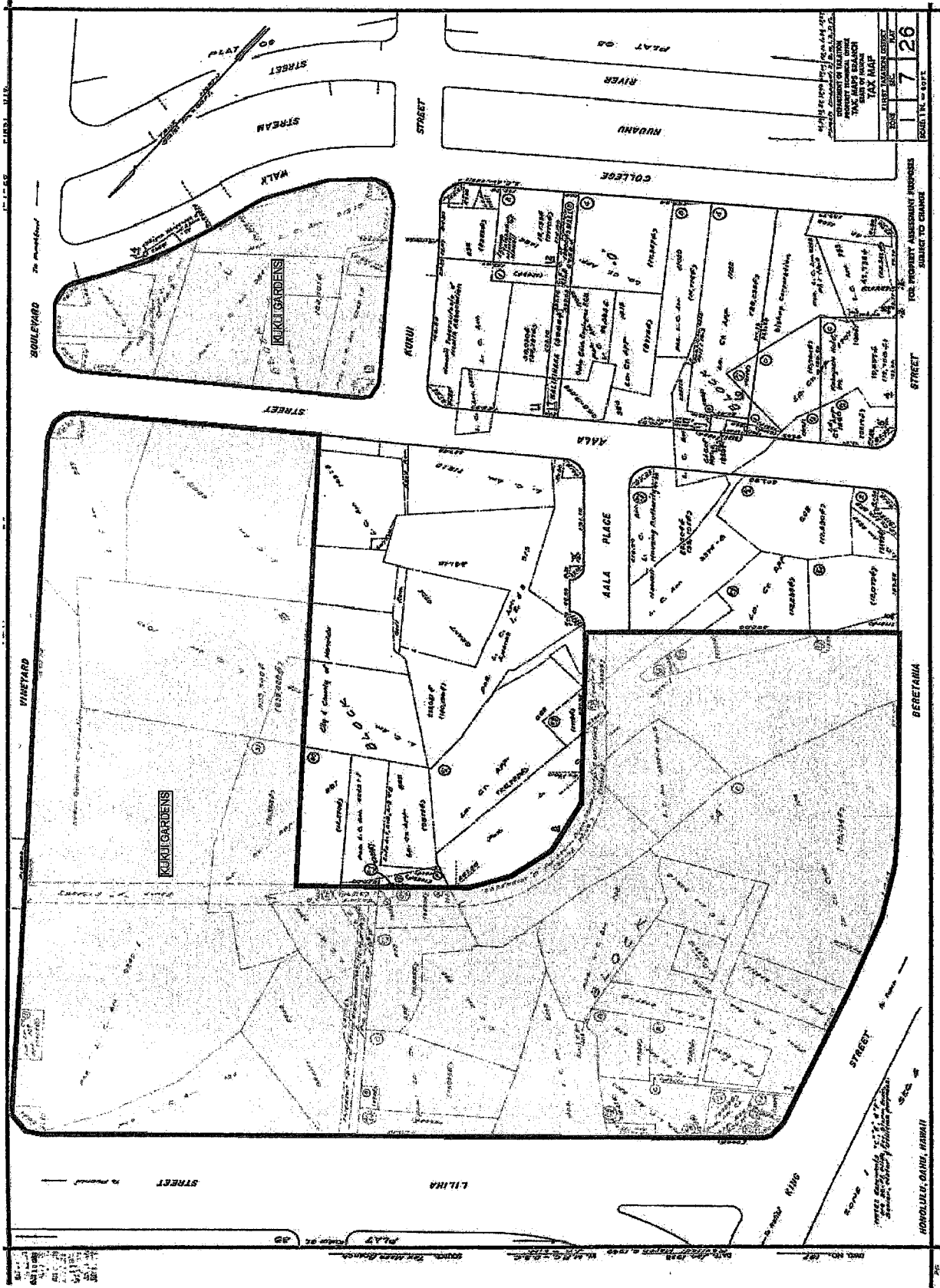
1. Condemnation as required by Act 288 remains an option. Should negotiations not succeed, the State can condemn in accordance with Act 288. It is possible that such a decision may be reached within the period of time when the 2007 Legislature is in session. The HHFDC may make a request for legislative appropriations for the condemnation lawsuit.
2. It is anticipated that any negotiated solution will require use of the State's 4% Low Income Housing Tax Credit (LIHTC) and tax exempt revenue bond financing capacity. The State has sufficient 4% LIHTC availability for use by Kukui Gardens. Depending on the amount of revenue bonds to be issued, an increase in this ceiling may be necessary.
3. Based on extensive analysis, the HHFDC has concluded that any negotiated solution with KGC, Carmel or the residents resulting in preservation of the current levels of affordability at Kukui Gardens will require some level of State financial subsidy. The Kukui Gardens units are in need of repair and rehabilitation. Analysis of all potential solutions indicate that, net of the use of the State's low income housing tax credit and tax exempt revenue bond financing, a "gap" will remain to enable Kukui Gardens to remain an affordable development. The magnitude of the gap will depend on the terms of the transaction and its structure. Should such a solution be offered that is deemed acceptable to the State, the HHFDC will report the same to the Legislature and request an appropriation to fund that "gap".

NEXT STEPS

The State remains strongly committed to preserving Kukui Gardens as an affordable rental property. Any proposal will be treated with the seriousness it deserves. In the meantime, efforts to oppose the requested prepayment will continue, as will negotiations.

Exhibits

- A. Kukui Gardens location map
- B. Act 288, SLH 2006
- C. Letter from Governor Lingle to Mr. Brian Montgomery of HUD, dated June 8, 2006, requesting state consultation and appointment of DBEDT Director Theodore Liu as the State's point of contact
- D. Letter from KGC, dated July 26, 2006, informing Governor Lingle of notice to prepay
- E. Letter from Governor Lingle, dated October 25, 2006, to Lawrence Ching (KGC) and Brian Montgomery (HUD) opposing prepayment



Approved by the Governor

on JUL - 7 2006

ACT 288

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 2239
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO LAND ACQUISITION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In its final report dated January 2006, the
2 joint legislative housing and homeless task force expressed
3 concern that the inventory of affordable housing rental units
4 may be reduced. Affordable rental housing projects built in
5 part with government subsidies have been offered for sale at
6 market prices as a result of the expiration of income and
7 conveyance restrictions encumbering the property. The task
8 force is committed to ensuring that such units remain affordable
9 to persons at certain income levels.

10 In recent months, media reports have announced that several
11 affordable housing projects may be offered for sale, such as the
12 Kukui Gardens affordable rental housing project. Kukui Gardens
13 was built in part with federal funds and its affordability
14 restrictions will expire in five years.

15 The purpose of this Act is to preserve Kukui Gardens as an
16 affordable housing project.

17 SECTION 2. The legislature finds that:

HB2239 CD1 HMS 2006-3791



- 1 (1) Kukui Gardens is a unique affordable housing resource
2 on twenty-two acres in central Honolulu that provides
3 housing for two thousand five hundred working
4 residents and senior citizens in eight hundred fifty-
5 seven low-income housing units, of which over fifty
6 per cent of the units are rented to families with
7 incomes under fifty per cent of the median family
8 income, and over twenty per cent of the units are
9 rented to families with incomes over one hundred ten
10 per cent of the median family income;
- 11 (2) Kukui Gardens supports the character of the
12 neighborhood by being the primary source of workforce
13 housing for all of historic Chinatown;
- 14 (3) The eight hundred fifty-seven affordable rental units
15 in Kukui Gardens are irreplaceable in the current
16 Honolulu housing market;
- 17 (4) Kukui Gardens is currently for sale, and therefore at
18 risk of becoming a market rate rental project or
19 condominium after 2011, when the project's affordable
20 housing commitment period with the United States
21 Department of Housing and Urban Development expires;
22 and

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[Barcode]

1 (5) The residents, surrounding community, and the island
2 of Oahu would benefit from the active intervention of
3 the State in this transaction to ensure that there is
4 no negative impact on current and future residents.

5 The legislature therefore declares that it is in the public
6 interest and is required for public use to acquire Kukui Gardens
7 as an affordable housing project by exercise of the power of
8 eminent domain. The legislature further declares that it is
9 necessary to provide for the public financing of the acquisition
10 of Kukui Gardens by condemnation through the expenditure of
11 general funds, revenue bonds, rental housing trust funds,
12 federal and state low-income housing tax credits, or any other
13 public and private funds at the disposal of the State.

14 SECTION 3. The Hawaii housing finance and development
15 administration or any appropriate entity of the State shall
16 immediately initiate negotiations with Kukui Gardens
17 Corporation, or its successor in interest, to either:

18 (1) Make available, without competitive award, public
19 financing resources to extend affordable rents at
20 Kukui Gardens through at least 2016; provided that at
21 least fifty per cent of the rental units at Kukui
22 Gardens are retained at affordable rents to households

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1 whose incomes do not exceed eighty per cent of the
 2 median family income, of which five per cent of the
 3 units are set aside for households whose incomes do
 4 not exceed thirty per cent of the median family
 5 income; or

6 (2) Acquire the property known as Kukui Gardens, tax map
 7 key (I) 1-7-26: 07, and may partner with private for-
 8 profit or nonprofit developers for acquisition of the
 9 property; provided that eighty per cent of the housing
 10 units on the property shall be retained in perpetuity
 11 as affordable housing for households at or below one
 12 hundred forty per cent of the median family income as
 13 determined by the United States Department of Housing
 14 and Urban Development.

15 The Hawaii housing finance and development administration
 16 or the appropriate entity of the State shall submit a report to
 17 the legislature not later than twenty days prior to the
 18 convening of the regular session of 2007 regarding its efforts
 19 to acquire Kukui Gardens and its recommendations for financing
 20 the purchase of the property.

21 SECTION 4. If an agreement to either extend affordable
 22 rents to at least 2016 or acquire the property is not reached

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1 within a reasonable time as determined by the Hawaii housing
2 finance and development administration or any other appropriate
3 entity of the State, the state agency shall exercise its power
4 of eminent domain to acquire the property. For the purposes of
5 this Act, and notwithstanding any provision of section 201G-16,
6 Hawaii Revised Statutes, to the contrary, condemnation of the
7 Kukui Gardens property shall not be subject to legislative
8 disapproval.

9 SECTION 5. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$200,000 or so much
11 thereof as may be necessary for fiscal year 2006-2007 for the
12 purpose of negotiating with the owner of Kukui Gardens to either
13 extend the period of affordable rents to at least 2016, acquire
14 Kukui Gardens, or to commence the condemnation process.

15 The sum appropriated shall be expended by the Hawaii
16 housing finance and development administration for the purposes
17 of this Act.

18 SECTION 6. This Act shall take effect on July 1, 2006.

HB2239 CD1 HMS 2006-3791
[Barcode]



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 8, 2006

2006 JUN 26 A 10 27

RECEIVED
HONOLULU
OFFICE OF THE GOVERNOR
DEPARTMENT OF HAWAII

Mr. Brian D. Montgomery
Assistant Secretary for Housing -
Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 9100
Washington, D.C. 20410

Dear Assistant Secretary Montgomery:

Subject: Kukui Gardens (Project No. 14055006)

The State of Hawaii has a strong interest in Kukui Gardens, a HUD 221(d) (3) project, in urban Honolulu. How the reported sale of the 857-unit project is carried out could significantly impact Hawaii's rental market. I am, therefore, requesting that any HUD review and decision with regard to the possible transfer of physical assets of Kukui Gardens be done in consultation with my administration.

I have appointed Mr. Theodore Liu, Director of the State of Hawaii's Department of Business, Economic Development, and Tourism, as my point of contact on this matter. He may be contacted at:

Department of Business, Economic Development & Tourism
250 South Hotel Street, 5th Floor
Honolulu, Hawaii 96813
Phone: (808) 586-2355
Email: tliu@dbedt.hawaii.gov

Thank you for your attention to this important matter.

Sincerely,

LINDA LINGLE



Kukui Gardens
Putting You First!

408 North Beretania Street, Honolulu, Hawaii 96817

Office: (808) 532-0030 Fax: (808) 532-0031

Via Certified Mail,
Return Receipt Requested

July 26, 2006

The Honorable Governor Linda Lingle
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Re: Notice of Intent to Prepay
Kukui Gardens
Honolulu, Hawaii
FHA Project No.: 140-55008-NP-LPA

Dear Honorable Governor Lingle:

The undersigned, being the current owner of the Kukui Gardens (the "Project"), hereby submits this letter in order to provide notice of the Owner's intent to prepay the mortgage loan secured by the Project (the "Loan").

The Loan is insured by HUD pursuant to Section 221(d)(3) of the National Housing Act, as amended. The Owner currently anticipates prepaying the Loan.

Pursuant to the HUD Housing Notice 2004-17 (the "Notice"), an owner is required to provide notice to HUD, to the tenants of the Project, and to the chief executive of the state and/or local government having jurisdiction over the Project, prior to prepaying certain types of mortgage loans insured by HUD or terminating HUD mortgage insurance.

Therefore, in accordance with the applicable provisions of the Notice as it applies to such loans, we hereby submit the attached Notice of Intent to Prepay which has been sent to the tenants of the Project, HUD and local government officials.

Sincerely,

Kukui Gardens Corporation

By: 
Lawrence S.L. Ching
Its President

Enclosure



EXECUTIVE CHAMBERS
MAILED

October 25, 2006

LINDA LINGLE
GOVERNOR

Mr. Lawrence S.L. Ching
President
Kukui Gardens Corporation
408 North Beretania Street
Honolulu, Hawaii 96814

Mr. Brian D. Montgomery
Assistant Secretary for Housing --
Federal Housing Commissioner
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 9100
Washington, D.C. 20410

Dear Mr. Ching and Mr. Montgomery:

I am writing in response to Mr. Ching's letter of July 26, 2006, notifying the State of Hawaii of the Kukui Gardens Corporation's intent to prepay the mortgage loan for the Kukui Gardens rental housing development. In this letter, I set forth the official comments and position of the State of Hawaii.

In a nutshell, the position of the State of Hawaii is this: 1) It would be illegal for the U.S. Department of Housing and Urban Development (HUD) to allow the prepayment; 2) Even were it not illegal, it would represent bad public policy for HUD to allow the prepayment; 3) The State of Hawaii objects to the prepayment in the strongest possible terms, both because it would be illegal, and because it would be contrary to the interests of the State of Hawaii and our citizens; and 4) The State of Hawaii will take all actions legally at its disposal to prevent prepayment, if HUD were to indicate that it would allow it.

Section 250(a) of the National Housing Act, codified at 12 U.S.C. § 1715z-15, restricts HUD's ability to approve a prepayment:

"During any period in which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project or permit a termination of an insurance contract pursuant to Section 229 of this Act unless:

Mr. Lawrence S.L. Ching
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October 25, 2006
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1. The Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area . . . (emphasis added).

The Kukui Gardens development does in fact "[meet] a need for rental housing for lower income families in the area" of central Honolulu. Kukui Gardens is a 22-acre development that provides 857 units of affordable housing to thousands of low income, immigrant, disabled, and elderly individuals. The development provides a most vulnerable and needy segment of the population with safe, decent, and affordable housing. Thousands of people currently regard Kukui Gardens as their home. By any standard, Kukui Gardens is a public housing success story. The area in which the development is located is ideal for lower income families due to its close proximity to schools, jobs, neighborhood shopping, medical and social services, and the public bus line. Thus, because of these facts alone, the State of Hawaii believes it would be illegal for HUD to allow the prepayment. The State has provided a detailed legal analysis of this issue to HUD. This ought to end the matter completely. The State of Hawaii respectfully submits that this is a legal issue about which reasonable persons cannot differ. The law is, in our view, absolutely clear. Again, we believe it would be illegal for HUD to allow the prepayment.

We also note that HUD's continued regulatory authority over the next five years will likely play a decisive factor in determining whether Kukui Gardens remains affordable after May 1, 2011.¹ Under the present regulatory agreement, HUD has authority to ensure that any sale and transfer of Kukui Gardens comports with recognized Congressional policy goals.² If prepayment were to take place, HUD would have either no oversight role or, at best, an extremely limited oversight role. HUD's continued oversight through 2011 could make all the difference in preserving Kukui Gardens as affordable housing in the long term.

HUD is the guardian of national affordable housing. See 42 U.S.C. § 1437 (a)(4) ("It is the policy of the United States . . . that our Nation should promote the goal of providing decent and affordable housing for all citizens . . ."). HUD's ability to reject prepayment offers and maintain full regulatory oversight is directly linked to its role and mission. See S. Rep. No. 101-316, 101st Cong. At 234 (1990), reprinted in 1990 U.S.S.C.A.N. 5763, 5996 ("The Secretary

¹ After May 1, 2011, HUD will no longer have regulatory oversight over Kukui Gardens. HUD's continued participation in Kukui Gardens until this date will, however, affect the future of this development.

² For example, HUD acknowledges that:

Congress enacted Section 250 to ensure that HUD's subsidized insured multifamily housing portfolio would remain as a resource for lower income tenants and would not be diminished by owners seeking prepayment of the project's insured mortgage for the purpose of converting the project to either luxury apartments or condominium ownership.

Notice H 06-11.

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could approve such a [prepayment] plan only upon finding that the plan satisfies long-established national housing objectives.").

Moreover, Kukui Gardens Corp.'s Secured Note expressly conditions prepayment on HUD's approval. HUD's authority to approve or reject the offer is governed by general principles of contract and mortgage law:

a mortgagor generally has no right to insist that the mortgagee accept payment prior to the date of maturity in the absence of a prepayment clause. If the mortgage contains such a clause, it will determine when, and under what condition, the mortgagor may pay the mortgage prior to its maturity.

81 ALR 4th 423, 426. Nothing in the Note mandates HUD approval of prepayment under any set of circumstances.

Even if the law allowed for the possibility of prepayment (which in this case it does not), federal statutes and regulations addressing prepayment provide HUD with discretionary authority to reject the prepayment even were it otherwise legally permissible.³ See Appalachian Power Co. v. EPA, 135 F.3d 791, 807 (D.C. Cir. 1998) ("when a statute uses the permissive 'may' rather than the mandatory 'shall,' this choice of language suggests that Congress intends to confer some discretion on the agency."); see also 12 U.S.C. § 4101(a) ("An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing . . ."); Pub. L. 105-276 (1998) ("the owner of the project may prepay, and the mortgagee may accept prepayment of, the mortgage on the project . . ."); 24 C.F.R. 248.103 ("An owner of eligible low income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such project . . .").

HUD's rejection of the prepayment offer merely holds Kukui Gardens Corp. to the terms of its regulatory agreement through the bargained for and accepted termination date. This would enable HUD to directly regulate Kukui Gardens' affordability restrictions through 2011, and prevent Kukui Gardens Corp. from transferring the property in violation of HUD's public policy goals.

HUD's rejection of the prepayment offer would reflect HUD's good faith commitment to preserving affordable housing for those who need it most. Hawaii is an island community with a uniquely limited supply of affordable housing. Kukui Gardens currently provides thousands of low income, immigrant, disabled, and elderly individuals with a decent, affordable place to live. As noted, Kukui Gardens emphatically does "[meet] a need for rental housing for lower income families in the area" of central Honolulu.

³ Since prepayment of the mortgage is conditioned on HUD's approval, HUD (the mortgage insurer) essentially stands in the shoes of the mortgagee (the Ford Foundation).

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We also note that there is a critical shortage of affordable rental housing statewide. The lack of affordable rental inventory is a major factor for Hawaii renters paying more for housing than renters in any other state nationwide according to the U.S. Census Bureau, 2005 American Community Survey. The loss of 857 affordable rental units in Kukui Gardens would exacerbate the housing shortage. According to the City and County of Honolulu's Final Consolidated Plan, "Honolulu has one of the highest priced housing markets in the country, and activity and prices have increased significantly in recent years due to falling mortgage interest rates, housing construction rates that have not kept pace with short-term demand, and an increase in sales of new housing units to non-residents. Affordability remains low for most residents, especially for those families with one income. The higher demand for housing has affected the rental housing market, resulting in lower vacancy rates and higher prices."

The City's Consolidated Plan adds that "Honolulu has a pent-up demand for housing estimated at an average of 32,580 units for the five-year period from 2006-2010. Of this demand, the greatest needs are and will be in the low- and moderate-income households, those making less than 80% of the median income. These income groups exhibit the highest incidence of housing problems including cost burden, substandard units and overcrowding."

Recognizing the public interest in preserving the inventory of affordable rental housing, State lawmakers enacted legislation to preserve Kukui Gardens as affordable housing. In its findings, the Hawaii State Legislature stated that "Kukui Gardens is a unique affordable housing resource on twenty-two acres in central Honolulu that provides housing for two thousand five hundred working residents and senior citizens in eight hundred fifty-seven low-income housing units, of which over fifty per cent of the units are rented to families with incomes under fifty per cent of the median family income . . ." The Legislature also stated that the "eight hundred fifty-seven affordable rental units in Kukui Gardens are irreplaceable in the current Honolulu housing market." Therefore, the Hawaii State Legislature passed Act 288, Session Laws of Hawaii 2006, to preserve Kukui Gardens as an affordable housing project.

I urge Kukui Gardens Corporation to honor the terms of its regulatory agreement through the bargained for and accepted termination date, and to not seek prepayment, or if it already has, to withdraw such a request for prepayment. And if Kukui Gardens Corporation has or does make such a prepayment request, I respectfully urge HUD to reject prepayment both because allowing prepayment would be illegal and because allowing prepayment would represent bad public policy.

Sincerely,



LINDA LINGLE

Mr. Lawrence S.L. Ching
Mr. Brian D. Montgomery
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c: Ms. Cheryl A. Fukunaga, HUD, Hawaii Office
The Honorable Calvin K.Y. Say
The Honorable Robert Bunda
The Honorable Lynn Finnegan
The Honorable Fred Hennings
The Honorable Mufi Hannemann