

Feb. 26, 2018

Senate Ways and Means Committee in favor of SB2293
Senate Chair Donovan Dela Cruz
State Capitol
Honolulu, Hawaii

LATE

Dear Senator Dela Cruz:

I am writing on behalf of The LahainaTown Action Committee to go on record in support of House Bill 2006 to keep the low-income Front Street Apartments in operation.

We are at a pivotal moment in our state's history when many of our residents, our 'ohana, face grave uncertainty about where they can afford to live. The 2017 Maui County Affordable Housing Summit report details that 13,496 affordable housing units will be necessary within the next 10 years to keep pace with the rising costs of living and employment trends. If this need isn't met, what becomes of our neighbors, our friends, our family? Lahaina is already working diligently to fight the rising tide of homelessness in our community, especially in highly visible commercial areas such as Lahaina Town. Preserving the affordability of the Front Street Apartments would be a great step forward in this fight - we all stand to win from this measure.

Lahaina Town is a major economic engine in Hawaii's visitor industry. Each year the more than 60 businesses of the LahainaTown Action Committee work together to put on nearly 30 events along Front Street and its surrounding areas that successfully bring in tens of thousands of patrons who

support the world class restaurants, shops and galleries that make Lahaina so special. We hope you will take our recommendation as seriously as you take our contributions to the economy of this state.

Most of Lahaina is within both the National and State Historic Districts. It was the first capital of the Hawaiian Kingdom. We pride ourselves on being the curators of this historic jewel. We must ask ourselves, what is our kulena in this matter? How will Hawaii's future generations measure our contributions to this important issue? As leaders in our community let's strive to be the great ancestors future generations of Hawaii deserve.

Sincerely,

Sne Patel
President, LahainaTown Action Committee,
(808)-264-9950

TESTIMONY OF THE FRONT STREET AFFORDABLE HOUSING PARTNERS

HEARING DATE/TIME: Wednesday, February 28, 2018
11:00 AM
Conference Room 211

LATE

TO: Committee on Ways and Means

RE: **Testimony in Opposition to SB2293 SD1.**

Dear Chair, Vice-Chair and Committee Members:

My name is William G. Meyer, III. I have been practicing law in Honolulu since 1979. I'm counsel for the Front Street Affordable Housing Partners ("FSAHP"), the leasehold owner and original developer of the property which is the subject of SB2293 SD1 (the "Subject Property"). FSAHP strongly opposes SB2293 for the reasons set forth hereinbelow.

Background. FSAHP developed the Subject Property pursuant to IRC § 42 as an affordable housing project consisting of one hundred forty-two units (the "Project"). The Project features 19 garden apartment style residential structures, a tot lot, a basketball court and open and covered parking spaces. The Project is located on an 8.538-acre site on the block formed by Front, Wainee and Kenui Streets in the highly desirable town of Lahaina on Maui Island.

The Project was financed in part by federal and state tax credits with the vast majority of said tax credits coming from the federal government. The Subject Property involves a leasehold land interest with a long term ground lease (which expires in 2066) with 3900 Corp. as lessor. Minimum ground rent is contractually set through the remainder of the lease with incremental rent increases over time. A percentage rent is also payable in addition to the minimum ground rent. In consideration of receiving said tax credits, the Project and the Subject Property was made subject to significant use restrictions which prevented FSAHP from enjoying the highest and best value use of the Subject Property. In this regard, a Declaration of Land Use Restrictive Covenants (the "Regulatory Agreement") was imposed on the Subject Property (enforceable by the State of Hawaii, Hawaii Housing Finance and Development Corporation ("HHFDC")) which mandated that the Project be operated as an "affordable" apartment rental property reserved for families earning 50% (70 units) and 60% (71 units) or less of the area median income (AMI) as mandated in the US Department of Housing and Urban Development (HUD) for the area (Maui County) (the "Program").

Pursuant to the Program, and in accordance with IRC § 42, because FSAHP did not waive its right to apply for a Qualified Contract¹ in the Regulatory Agreement (or in any other Agreement) FSAHP was eligible to apply for a Qualified Contract after the initial 15 year compliance period. As per IRC § 42, if the allocating agency (HHFDC) cannot find a buyer during a one year period after a request for a Qualified Contract, then the restrictions for the Extended Use Period do not apply. In this case, since the Project is subject to a **15 year** compliance period, plus a **36 year** extended use period, as set forth in the

¹ A "Qualified Contract" is a *bona fide* contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of a building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (as specified in the agreement between the State and the owner) of the sum of: (1) the outstanding indebtedness secured by, or with respect to the building, (2) the adjusted investor equity in the building, plus (3) other capital contributions not reflected in these Amounts; reduced by cash distributions from (or available for distribution) the project. IRC Section 42(h)(6)(F). See Memorandum Re: Genesis of IRC § 42 Right to Qualified Contract Process attached hereto as Exhibit "A".

Regulatory Agreement recorded in the Bureau on August 19, 2002 as Document No. 2002-144948 FSAHP was eligible and applied for a Qualified Contract on or about August 5, 2015. HHFDC accepted the application via communication on September 22, 2015.² As a result, HHFDC had one year (until August 6, 2016) to enter into an arrangement whereby FSAHP’s interest in the Project could be acquired at a price determined by the formula set forth in IRC § 42(h)(6)(F). That calculation yielded a Qualified Contract price of \$15,395,813. When HHFDC did not find a bona fide offer at that price pursuant to the Program, the Regulatory Agreement, and IRC § 42 within the one year window period, FSAHP was, by federal law and Program rules, automatically freed from the restrictive use provisions of the Regulatory Agreement and was entitled to deal with the Property as it sees fit, subject only to a rent holding period of three years for existing tenants. There is approximately 1½ years left on the hold period. When the hold period expires, FSAHP is legally entitled to raise rents to market as FSAHP sees fit. Since August 2016, and as of January 29, 2018, 14 units have turned over and have been leased to non-restricted tenants.

No Tenants Will be Subject to Immediate Rent Increases. As noted above FSAHP may not increase rents above the Program restricted rents (annual increases in accordance with the tax regulations are permitted) for protected tenants for approximately another 1½ years. Thus there is no imminent threat to any protected tenants in the Project.

There Appears To Be Significant Misunderstanding Among Proponents of SB2293 SD1 Regarding the Origin and the Timeline Regarding the Implementation of the Qualified Contract Process. A number of individuals who have submitted testimony in support of the subject bill have maligned FSAHP by wrongfully accusing FSAHP of collaborating with others in 2012 to coerce the IRS into allowing FSAHP, and other similarly situated developers, to variously “bugout” or “dishonor” a 50-year commitment to maintain below market rental rates for their properties. Such claims are untrue. First of all, FSAHP never advocated any change to the Low Income Housing Tax Credit (“LIHTC”) Program. Second, attached hereto as Exhibit “B” is a timeline of the legislative history of the LIHTC Program. To be abundantly clear, the revisions to the program that enacted the additional 15-year use restriction period and simultaneous qualified contract process occurred in 1990 with the Revenue Reconciliation Act of 1989. The misguided testifiers may be confusing a number of Treasury Regulations that were enacted by the IRS in 2012 to clarify aspects of the qualified contract program, such as how the formula works, what “bona fide” means, etc. But it is uncontroverted that the qualified contract process has been available to all projects receiving an allocation of LIHTC after December 31, 1989. The simple reason that the Qualified Contract provision is included in the LIHTC Program and IRS code is to protect affordable housing developers in the case where the extended use period becomes overbearing on the project.

The Cost to the State/County of Maui to Acquire FSAHP’s Interest is Likely to be Between Thirty-Five and Fifty Million Dollars. Because HHFDC did not exercise its rights under the Qualified Contract during the applicable window period, the Qualified Contract price of \$15,395,813 is no longer applicable and any acquisition of FSAHP’s interest must be at the prevailing market value. Depending on the applicable valuation approach to determine the value of the property - Cap Rate, Market Sales or Replacement Cost, the following table shows a range of value that could be expected:

Cap Rate	Value	Value/Unit
4.0%	\$52,679,351	\$370,981
5.0%	\$42,143,480	\$296,785
6.0%	\$35,119,567	\$247,321

The above numbers do not include the value of the fee simple interest in the Subject Property. FSAHP does not want to divest its interest in the Subject Property and therefore will vigorously oppose

² 15 years is the period for which the property owner gets the tax credits. If, after 15 years, the owner doesn’t get back its investment (adjusted for inflation), then the owner is not subject to the extended use restrictions.

any eminent domain proceeding and in any such proceeding will seek to obtain the full market value of FSAHP's interest.

Passage of SB2293 is likely to Result in Costly and Protracted Litigation. When FSAHP entered into the Program it did so with the contractual expectation that if it fully complied with the Program and HHFDC did not exercise its rights under the Qualified Contract that the restrictions imposed on the Subject Property pursuant to the Program would expire and FSAHP could monetize its interest according to prevailing market conditions. FSAHP believes that SB2293 is an inappropriate and constitutionally infirm use of the power of eminent domain which violates FSAHP's expectancy interest and the underlying agreement between the parties. It is simply unreasonable for the state to provide public housing for a select group of residents in a highly desirable location is. Even assuming that an appellate court ultimately determines that the subject use of the eminent domain power is appropriate, the State/County of Maui will be required to pay the market price for FSAHP's interest in the Subject Property which, as noted above, is most likely between 35 and 50 million dollars or more, not including the value of the fee simple land. Such amount would be additional to legal fees incurred through protracted litigation. Given Hawaii's humongous unfunded EUTF liability and underfunded ERS obligations, as well as numerous other financial needs, it is inconceivable that the legislature would be willing to pay as much as \$60,000,000 to maintain 142 low cost rental units (at a cost of over \$422,000 each) in a high real estate value resort area.

SB2293 will have a Significant Chilling Effect upon Developers' Willingness to Enter Into Creative Solutions to Address Hawaii's Affordable Housing Needs. The subject legislation will send a message to potential low cost housing developers that the State of Hawaii cannot be trusted to stand behind contractual arrangements that it has made with affordable housing developers and that the State/County of Maui may simply invoke the power of eminent domain to, in effect, extend the restricted use of the property beyond the bargained for window period. In this regard, the subject legislation, if passed, is likely to exasperate the statewide affordable housing crunch even if it does act to keep the Subject Property in a low rental regime but at a price that is likely to be unaffordable to the State/County of Maui.

There are likely More Affordable Options Available to Address Affordable Housing Needs in the Vicinity of the Subject Property. Attached hereto collectively as Exhibit "C" find three maps which designate parcels of land (noted in red) that are currently owned by HHFDC which could be used more efficiently and economically to build affordable housing units at economies of scale which would be most beneficial to the State of Hawaii and the County of Maui.

Conclusion. For all of the above reasons, FSAHP strongly opposes the subject legislation and respectfully submits that the costs to the State and/or County of Maui to acquire FSAHP's interest in the Subject Property will result in a squandering of public resources with a minimal positive impact upon the availability of affordable housing in West Maui. In addition, the chilling effect that this legislation will have upon future affordable housing projects appears to make the proposed legislation counterproductive to the very goals it seeks to accomplish.

Respectfully Submitted,

/S/ William G. Meyer, III

On behalf of Front Street Affordable Housing Partners

William G. Meyer, III

Exhibit “A”

Memorandum Re: Genesis of IRC Section 42 Right to Qualified Contract Process

INTRODUCTION

Property owners who want to exit the low-income housing tax credit (“LIHTC”) program before the end of an affordable project’s lengthy extended use restriction period may consider using the “qualified contract” process. This process allows an owner, at any time after the 14th year of the project’s initial 15-year compliance period, to request the state housing agency to find a buyer who will continue to operate the building as a LIHTC project. If the housing agency is unable to find a qualified buyer within a 1-year period, the land use restrictions restricting rents terminate (subject to a three-year decontrol period). The owner is then free to operate the building at market rate (again, subject to a three-year decontrol period that caps rents for existing tenants and prohibits eviction except for good cause). The purpose of this memorandum is to explain the genesis of the qualified contract process and how the right to exercise the process was created.

WHAT IS A QUALIFIED CONTRACT AND WHO IS ELIGIBLE?

A qualified contract is a contract to acquire a LIHTC building for a price computed under a formula described in Section 42 of the Internal Revenue Code (“IRC”) and its implementing regulations. See *IRC Section 42(h)(6)(F)*. In other words, a qualified contract is an agreement to: (a) purchase an existing LIHTC building that has completed its initial tax credit compliance period but is still in extended use; and (b) maintain compliance for the duration of the extended use period. This allows the existing ownership to step out of the property while keeping it as affordable housing regulated by IRC Section 42.

All owners of LIHTC properties that (1) have not waived their right to apply for a qualified contract in their regulatory agreement (or other contract) and (2) have received an allocation of LIHTCs after January 1, 1990 that are subject to an additional use period extending the minimum affordability period that the owner must preserve, are eligible to apply for a qualified contract by requesting one from their state housing agency and following applicable agency rules. See *IRC Section 42(h)(6)(D)*.

HOW IS THE RIGHT TO A QUALIFIED CONTRACT CONFERRED?

The main written contract which governs the LIHTC program’s restrictions of a particular property is the recorded regulatory agreement between the owner and the state housing agency known as the “extended low-income housing commitment” in IRC Section 42. While this regulatory agreement preserves the LIHTC program’s restrictions in the long term, it is not required to specify the right of an owner to request a qualified contract. The United States Congress specifically provided for two exceptions that allow for early termination of an extended use period. These two exceptions – foreclosure and the failure to find a qualified buyer – are exhaustive and sufficient to confer rights. See *IRC 42(h)(6)(E)(i)*; H.R. Rep. 101-894 (1990).

The right to request a qualified contract is specifically set forth in IRC Section 42:

The extended use period of any building shall terminate ... (II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building. *IRC Section 42(h)(6)(E)(i)*.

Accordingly, an owner of a tax credit project has the absolute right under federal law to submit a written request to the housing credit agency to find a buyer to acquire the owner's interest in the low-income portion of the building after the 14th year of the compliance period. See *IRC 42(h)(6)(E)(i)(II)*. The right to request a qualified contract is a statutory right, meaning it is a right conferred under a law enacted by a legislature or other governing body, as opposed to judge-made precedent or a contractual right provided in a written contract.

Enacted in 1987, the LIHTC program is one of the most critical and effective federal programs for the production and preservation of affordable rental housing in the United States. Beginning in 1990, federal law required tax credit projects to remain affordable for a minimum of thirty (30) years, for a 15-year initial compliance period and a subsequent 15-year extended use period. However, that same year Congress also ensured that the changes included a qualified contract process which would provide owners an option to leave the LIHTC program after 15 years by asking their state housing agency to find a buyer, at a formula-determined price, who would agree to maintain the property under affordability restrictions.

There are many reasons that an owner may desire or need to opt out of the extended use period, particularly at Year 15, and Congress recognized this by including the right to request a qualified contract. During the first 15 years of a LIHTC property's compliance period, owners must report annual on compliance with LIHTC leasing requirements to both the Internal Revenue Service ("IRS") and state monitoring agency. After 15 years, the obligation to report to the IRS on compliance issues ends and investors are no longer at risk for tax credit recapture. Therefore, some investors look to exit the deal and new ownership entities can't sustain the affordability restrictions. At Year 15 many LIHTC buildings also require substantial new equity or debt to pay for renovation costs that are often substantial. Thus, the exit strategy may be critical to keeping LIHTC properties from becoming distressed.

Exhibit “B”

1987	LIHTC program enacted by the Tax Reform Act on 1986
1989	A task force headed by Sen. George Mitchell (D-Maine) and Sen. John Danforth (R-Mo.) issues a report on the LIHTC program with recommendations to (1) require states to have specific written allocation plans that are subject to a public hearing process; and (2) require that tax credit properties serve low-income families for 30 years.
1990	LIHTC program revised to allow properties subject to a 15-year compliance period to be subject to an additional 15-year use restriction period (but can elect to leave the program early through QC process). This was done by the Revenue Reconciliation Act of 1989 that added the “extended use period” requirement to §42(h)(6) (along with the QC escape value) and became effective with respect to projects that received an allocation of LIHTC after December 31, 1989.
2009	Housing and Economic Recovery Act of 2008 (HERA). HERA included rules specifically designed to address the negative impact previous years' declining median incomes had on rent growth at LIHTC properties. As a result, in 2009, many existing tax credit properties may experience rent growth for the first time in several years. While the program's goal is to maintain affordable rents for low-income families, the ongoing feasibility of LIHTC properties in many markets has surfaced as a significant issue. In some markets, rents have been flat since 2003, and in some instances, net rents have declined due to increasing utility allowances. Striking a balance between affordability for tenants and feasibility for owners was central to the new provisions in HERA relating to median incomes and rent growth.
2012	<p>In May 2012, the IRS finalized and adopted previously issued proposed regulations (Proposed Treas. Reg. §1.42-18) defining the qualified contract formula and many of the terms used therein.</p> <ul style="list-style-type: none"> • A qualified contract must be presented within one year after requested by taxpayer, which request may not be made until after the fourteenth year of the Compliance Period; • Must be a bona fide contract to acquire (within a reasonable time) the non-low-income portion of the project for fair market value and the low-income portion of the project, that is, the applicable fraction of the project specified in the extended use commitment, for the “low-income portion amount”; and • Under the final Regulations, the fair market value of the non-low-income portion of the building should reflect the existing and continuing restrictions on the building set forth in the extended use commitment. The final Regulations provide that the non-low-income portion also includes the fair market value of the land underlying the entire building, both the non-low-income portion and the low-income portion, regardless of whether the building is entirely low-income as well as items of personal property not included in Eligible Basis that will be conveyed pursuant to the qualified contract. Treas. Reg. §1.42-18(b)(3). • The low-income portion amount is an amount not less than the applicable fraction specified in the extended use commitment

multiplied by the sum of:

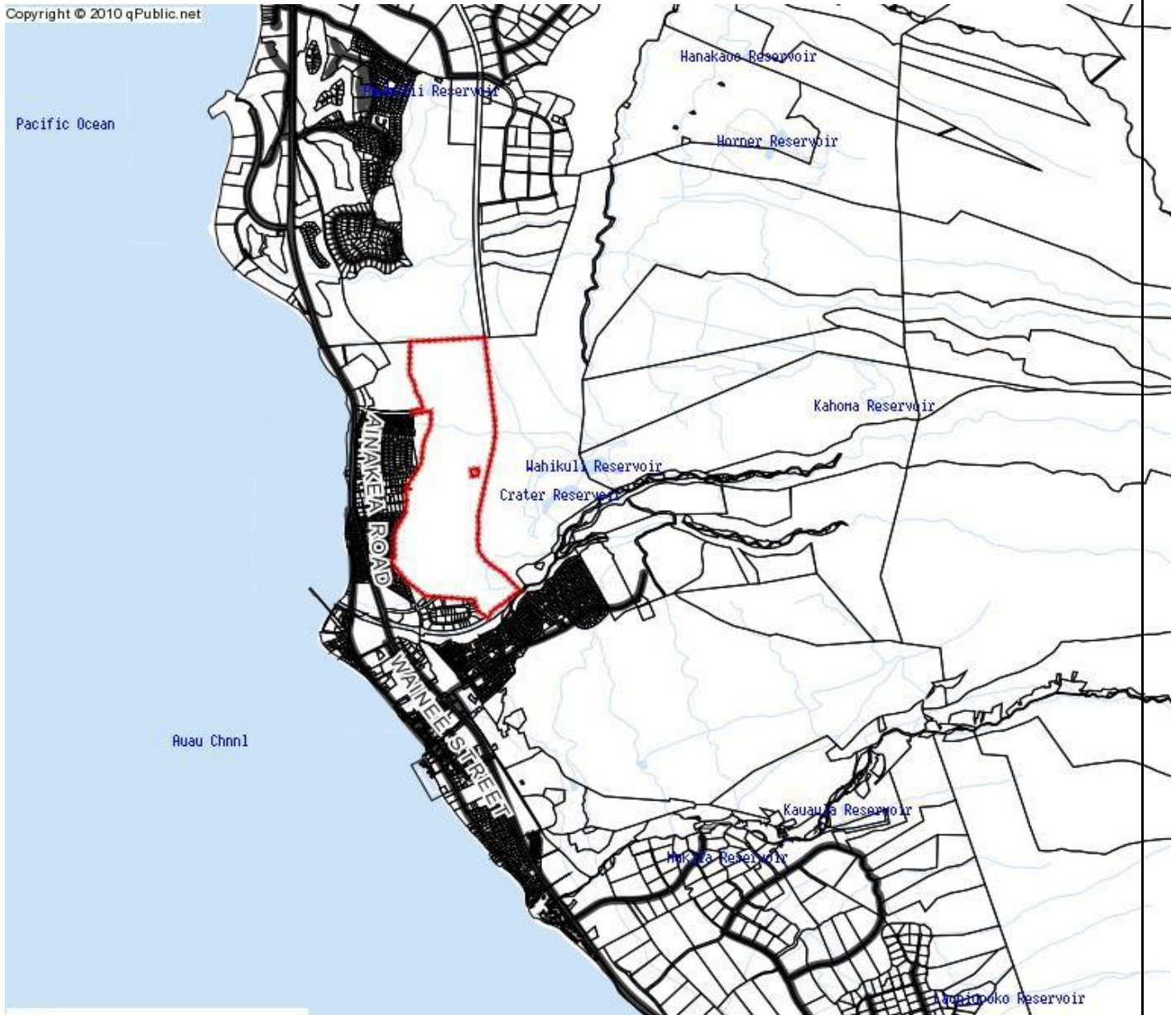
- (i) the “outstanding indebtedness” secured by, or with respect to, the building (defined in Treas. Reg. §1.42-18(c)(3)), 46
 - (ii) the “adjusted investor equity” in the building (as defined in Treas. Reg. §1.42-18(c)(4)),
 - (iii) other capital contributions (as defined in Treas. Reg. §1.42-18(c)(5)) not reflected in i. or ii. above, minus
 - (iv) the amount of cash distributions from (or available for distribution from) the building.
- Note: In response to comments concerned with project reserves distorting the low-income portion of the building, the final Regulations explicitly provide that cash available for distribution includes reserve funds so long as the reserve funds are not legally required by mortgage restrictions, regulatory agreements, or third party contractual agreements to remain with the building following the sale. Treas. Reg. §1.42-18(c)(6)(i)(B).
 - “Outstanding indebtedness” is defined as the remaining stated principal balance of any indebtedness secured by, or with respect to, the building that (i) does not exceed the amount of “qualifying building costs,” (ii) is indebtedness under general principles of Federal income tax law, and (iii) is actually paid to the lender upon the sale of the building or is assumed by the buyer as part of the sale of the building. Treas. Reg. §1.42-18(c)(3). “Qualifying building costs” means costs included in the adjusted basis of depreciable property that qualifies as residential rental property, including costs incurred after the first year of the Credit Period. Treas. Reg. §1.42-18(b)(4).
 - “Adjusted investor equity” means, with respect to any calendar year, the cash invested by owners for qualified building costs. Thus, equity paid for land, credit adjuster payments, tax credit application fees, operating deficits, and legal, syndication and accounting costs. Treas. Reg. §1.42-18(c)(4)(i). Comment: If “outstanding indebtedness” exceeds “qualified building costs,” seemingly “adjusted investor equity” must be zero. Also, to the extent that upward credit adjusters result from increases in qualified building costs, it does seem logical to exclude payment for such adjusters from adjusted investor equity.
 - (i) Adjusted investor equity is increased annually by a cost-of living adjustment based on the Consumer Price Index 47 calculated pursuant to a methodology consistent with inflation adjustments made under section 1(f) of the Code; and
 - (ii) Adjusted investor equity is taken into account only to the extent there existed an obligation to invest as of the commencement of the Credit Period. Query whether there is a sufficient “obligation” to invest if the obligation is contingent upon conditions expected to occur after the commencement of the Credit Period or representations and warranties concerning the project or subject to adjustment

if tax benefits are less than forecasted.

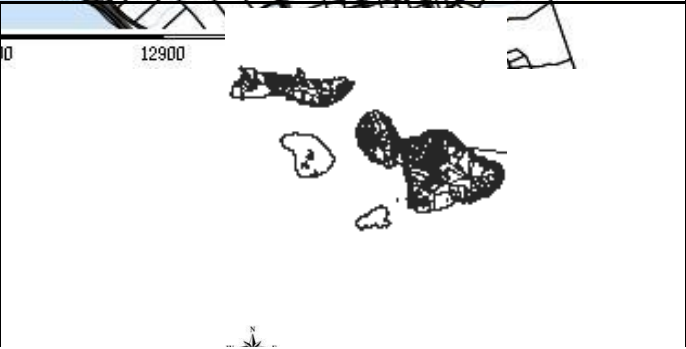
- Comment: The final regulations incorporated many comments received from practitioners. One exception is the inclusion of a fair-market-value cap for the qualified contract price. Many commentators noted that the qualified contract price might exceed the fair market value of a project under certain circumstances. Ultimately, the IRS and the Treasury concluded that they did not have authority to issue a fair-market-value cap for the low-income portion of the qualified contract amount under Section 42(h)(6)(E)(i) of the Code.
- The proposed regulations allowed the state housing agency to adjust the fair market value of the building if, after a reasonable period of time within the one-year offer of sale period, no buyer has made an offer. Proposed Regs. §1.42-18(c)(1). In response to criticisms that this discretionary adjustment would distort property valuations and purchaser demand, the IRS changed this provision to allow the state housing agency and the owner of the project to agree to adjust the fair market value of the non-low-income portion of the building during the one-year offer of sale period. Treas. Reg. §1.42-18(c)(1)(iii). However, if no agreement between state housing agency and the owner is reached, the fair market value of the non-low-income portion of the building determined at the time of the agency's offer of sale of the building to the public will remain unchanged. Moreover, the buyer and the owner, not the agency as provided in the Proposed Regulations, must adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula such as mortgage payments which reduce outstanding indebtedness between the time of the agency's offer of sale to the general public and the building's actual sale closing date. Treas. Reg. §1.42-18(c)(1)(ii).
- Despite concern over potential abuses resulting from the vague definition of "bona fide offer," the final Regulations do not provide a more specific and restrictive definition of the term.

Exhibit "C"

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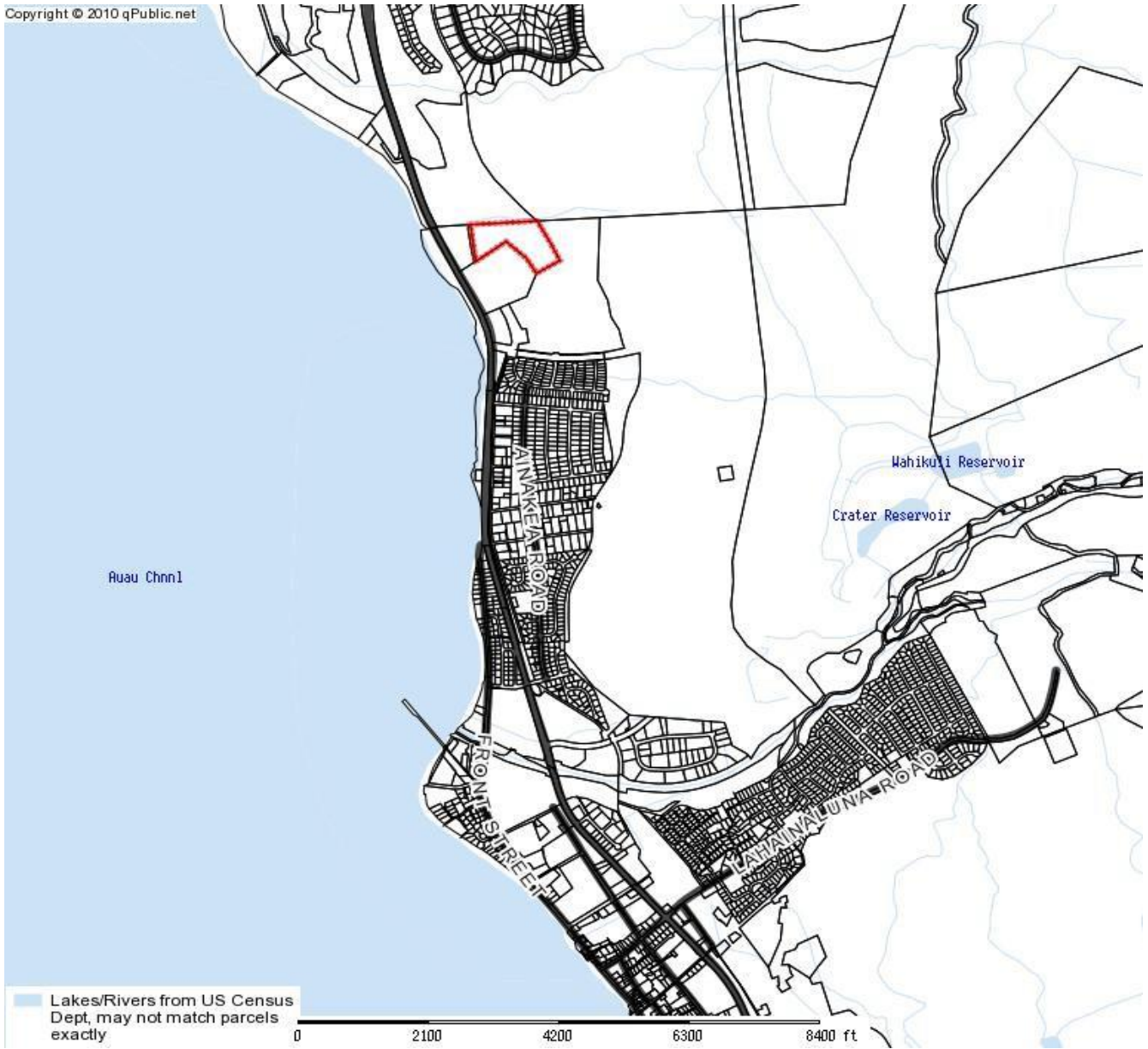


HHFDC Land - Lahaina #1			
Parcel: 450210030000 Acres: 435.77			
Name:	OUSING FINANCE & DEVELOPMENT	Land Value	\$1,124,700.00
Site:	0	Building Value	\$9,400.00
Sale:		Misc Value	\$0.00
Mail:		Just Value	\$0.00
		Assessed Value	\$1,134,100.00
		Exempt Value	\$1,134,100.00
		Taxable Value	\$0.00



The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER MAUI COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---

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Lakes/Rivers from US Census Dept, may not match parcels exactly

HHFDC Land - Lahaina #2

Parcel: 450210180000 Acres: 14.62

Name:	HOUSING FINANCE & DEV CORP	Land Value	\$43,900.00
Site:	0	Building Value	\$0.00
Sale:		Misc Value	\$0.00
Mail:		Just Value	\$0.00
		Assessed Value	\$43,900.00
		Exempt Value	\$43,900.00
		Taxable Value	\$0.00

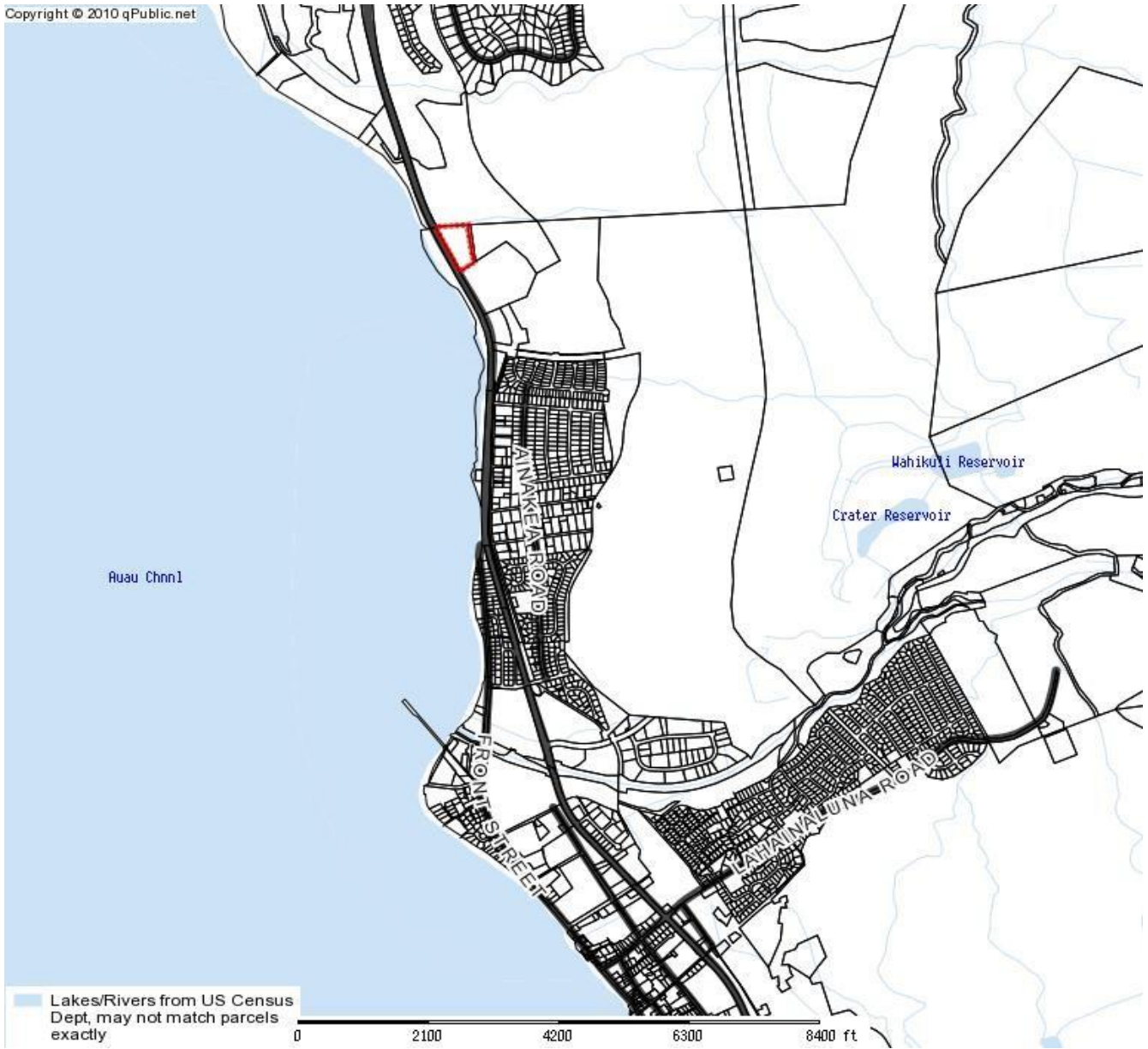


The Maui County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE

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Date printed: 03/25/17 : 15:01:20

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Lakes/Rivers from US Census Dept, may not match parcels exactly

HHFDC Land - Lahaina #3

Parcel: 450210190000 Acres: 5.52

Name:	HOUSING FINANCE & DEV CORP	Land Value	\$16,600.00
Site:	0	Building Value	\$0.00
Sale:		Misc Value	\$0.00
Mail:		Just Value	\$0.00
		Assessed Value	\$16,600.00
		Exempt Value	\$16,600.00
		Taxable Value	\$0.00



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LATE

Feb. 26, 2018

Senate Ways and Means Committee in favor of SB2293
Senate Chair Donovan Dela Cruz
State Capitol
Honolulu, Hawaii

Dear Senator Dela Cruz:

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support the world class restaurants, shops and galleries that make Lahaina so special. We hope you will take our recommendation as seriously as you take our contributions to the economy of this state.

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Sincerely,

Sne Patel
President, LahainaTown Action Committee,
(808)-264-9950

LATE

SB-2293-SD-1

Submitted on: 2/27/2018 10:00:35 PM
Testimony for WAM on 2/28/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Barbeau	Individual	Support	No

Comments:

Imperative that this complex maintain its Affordability Status into 2050 as was originally written by the developers in lieu of tax benefits to their credit. This government must not allow a promise to turn into swindle at the expense of Hawai'i residents. Set this precedent for future agreements to carry through with written contracts. Do not allow 'after the fact' interjections alter what had already been accepted and agreed upon by all parties to have any bearing on this situation which is an obvious attempt to alter the Affordability Status. There is tremendous support from many-membered groups, unions, media, the voting public, etc. as the need for this complex to house the working community is enormous.

LATE

>>Subject: Supporting SB2293

>>

>> Aloha pumehana~

>> My name is Nancy A. Silva & i have resided on W.Maui since 1986. I had lived in a rented home on Front St, Lahaina for 13 yrs. The yr i moved out, i was forced to move 4 times. When i looked @Front St. Apts. in Oct, 2001, the determining factor in my decision to move in was the fact that I was told that the rent would remain affordable for @least 51 yrs. Thus i knew i wouldn't have to continue to move in my senior yrs, especially when affordable rentals were becoming obsolete. I was assured I'd have an affordable, secure, stable home until well into my 97th yr, should i be blessed to live that long.

>> After all these yrs of receiving tax credits, a fed. loophole has allowed FSA to back out of the original agreement, now renting 1 bdrm for \$1700. & giving those of us "grandfathered in" until Aug of 2019 to decide whether we can afford to pay the more than doubled rents, hope to find an affordable rent or move out onto the streets of W. Maui.

>> The prospects are glum as rentals become harder to find & less & less affordable. We are a close-knit community of families, retirees, disabled, workforce & business owners like myself. We are in a conundrum & we desperately need your help! There is a critical need for affordable housing, esp. on W Maui. If state & county together could purchase FSA, it could be kept affordable. Ideally, it should remain affordable in perpetuity for future W.Maui residents. Please help us to find a way to accomplish that.

>> Mahalo nui loa! Sincerely,

>> Nancy A. Silva

LATE

Dear Honorable Legislators:

Thank you for this opportunity to submit written testimony in SUPPORT of SB2293. I am tenant at the Front Street Apartments having moved in 2011. I am a disabled, retired Kupuna of Chinese Hawaiian descent (HAPA) living on a fixed income. Due to Traumatic Brain Injury (TBI), Anterograde Amnesia, Degenerative Disc Disease due to Broken Back and numerous other fractures and health issues, I can no longer work. Although I am an educated woman with a substantial work background I cannot even remember my telephone number without first looking it up due to my disability. I use a cane, walker, and wheelchair in airports.

I am in extreme duress due to the snafu that enabled the developers for the Front Street Apartments (FSA) to squirm out of this 50 year contract! They started renting these units in 2001. In 2012 they finally achieved their goal breaking the contract. They started in 2005-2006 with a movement nationwide with other investors to coerce the IRS, Dept of Treasury into breaking and dishonoring this 50 year contract by doing an Administrative change. Congress was not involved in this process so it begs the question.... When does a Director make a law that affects millions across the US negatively? They never intended on honor that 50 year contract for Affordable Housing here at the Front Street Apartments in Lahaina, Maui, HI 96761. Allegedly, this change was allowed based on financial duress and that allowed them to manipulate the Treasury. I moved in here on 2011.

Egregiously, the management an owners has never told any of us tenants about their breaking this legally binding 50 year contract to expire 2051. If they were honorable they would have told me prior to my moving in here 2011 that in 2012 I would be without a place to live in 2019! They began lobbying the Treasury Department just 5-6 years into their contract and knew it would happen in 2012. I found out on Thanksgiving Day 2016 from another distraught tenant who had heard about it through the grape line. In the past few months FSA's has been installing Cherry Wood Cabinets, Marble Counters, and other opulent upgrades. Of Interest, they just stopped renovating when the Legislature started this year, 2018, and are presently taking a hiatus in order to look good for the Legislature. If they are in financial duress how can they afford to purchase brand new stoves, refrigerator along with opulent upgrades to the market rentals? I cannot even get them to put in a door that does not have huge gaps along the sides so everything including cigarette smoke (illegal), dirt, all debris comes into my apartment.

There is nowhere to go as there is NO affordable housing in Maui. There are NO HUD Rentals available either due to Short-term rentals most of which are illegal! Without HUD I am homeless. My homelessness is guaranteed as I have no alternative plans for housing. I cannot even afford to move! My body and brain are broken and now so is my heart.

I did my due diligence and homework prior to moving into the FSA's. The deck was stacked because the Owners knew it was not ever going to be a 50 year contract. Five years into this contract they started lobbying the Federal Government to break our contract. Yet, I read the contract of 50 years binding until 2051 and that helped me decide where to move and this would have been my forever home until my death. What happened to America when a contract means nothing? This is morally wrong and I suspect illegal. I urge you to strongly support SB2293. Please do not throw me aside like the developers!

Respectfully,

Carmie Spellman, Tenant

Front Street Apartments