DAVID Y. IGE
GOVERNOR

DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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IN REPLY REFER TO:

Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON HOUSING
April 21, 2022 at 10:00 a.m.
State Capitol, Room 225

In consideration of
H.C.R. 108
URGING THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION TO COMBAT HOSTILE AND HARMFUL ACTIONS BY PROFIT-DRIVEN INVESTORS AND AGGREGATORS PARTICIPATING IN THE STATE'S LOW-INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM.

HHFDC ***offers comments*** on H.C.R. 108. HHFDC can appreciate the concern related to aggregators and preserving the affordability of a project.

However, the termination of the extended use period is no longer an issue in Hawaii. In 2015, HHFDC amended its Qualified Action Plan (QAP) to address the long-term affordability issue. The current point system discourages applicants from electing the qualified contract (QC) provision allowed under the Internal Revenue Code (IRC). Any applicant that does not waive their right to a QC loses 20 points, the highest scoring item on the criteria list, thereby losing its chances for LIHTC allocation.

Although the QAP cannot address issues in existing partnership agreements, HHFDC will be convening a forum to meet with LIHTC developers to better understand the aggregator issue and discuss appropriate solutions.

Thank you for the opportunity to testify.

MUTUAL HOUSING
ASSOCIATION OF HAWAI'I

Palolo Homes

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April 20, 2022

The Honorable Stanley Chang, Chair
and the Members of the Committee on Housing
Hawai`i State Capitol
415 South Beretania Street
Honolulu, Hawai`i 96813

Dear Chair Chang and Committee Members:

Subject: House Resolution - Relating to HHFDC

**The Mutual Housing Association of Hawai`i, Inc. ("Mutual Housing") supports House Concurrent Resolution 108 with reservations**, which urges the Hawai`i Housing Finance and Development Corporation ("HHFDC") to amend the 2022/2023 Qualified Allocation Plan ("QAP") for the State's Low-Income Housing Tax Credit ("LIHTC") program. This change is to qualify and confirm non-profit developers' ability to exercise their contracted right of first refusal or purchase options in order to combat hostile actions by profit-driven investors and aggregators.

Mutual Housing is a local non-profit that has been serving low-income families in Hawai'i since 1994. We currently own and manage 983 affordable rental apartments targeting low-income families. As an active developer of low-income rentals, we experienced first-hand the threats from unscrupulous investors who continue to prey upon low-income housing projects throughout the country.

Mutual Housing privatized the former State-owned public housing project, Pālolo Homes in 2002. Over the years, we have kept the rents extremely affordable to 306 households where over 96% of them earn less than 50% of HUD median incomes. In addition to safe and affordable shelter, Mutual Housing has been providing the community with a robust array of supportive services such as after-school tutoring, food bank distributions, health and nutrition screening and classes, and other enrichment programs for our youth and adults. Pālolo Homes has been operating successfully for 20 years and was lauded by former HUD Secretary Shaun Donovan as a national model for the successful privatization of public housing.

To finance the major renovations of Pālolo Homes in 2002, Mutual Housing utilized LIHTC and secured an investor to purchase the credits to bring equity into the project. The single investor for Pālolo Homes was **Verizon Capital Corporation** who funded the project through a syndicator. Mutual Housing contracted with Verizon, similar to other non-profit developers, to acquire the project interests at year 15 when LIHTC compliance requirements expired. IRS laws have specific provisions to facilitate non-profit developers' acquisition of their LIHTC projects using either a purchase option or right of first refusal at the expiration of the LIHTC compliance period. Purchase is typically for a nominal amount, since the LIHTC investors (Verizon, in our case) would have received all of their agreed upon financial benefits through 10 years of LIHTC tax incentives and other deductions.

Contrary to our long-held expectation, Verizon and their advisors, **Oceanside Capital Advisors**, refused to honor our purchase option and right of first refusal. Instead, they demanded a windfall payment which was initially stated to be **in excess of $80 million.** We asked Verizon to meet and resolve this matter, but they abruptly assigned their Partnership interests to Oceanside who proposed actions that would extort money from the property (and ultimately the State).

Oceanside's first action was to demand that we triple or quadruple the rents of our families under the premise that Hawaii's Section 8 subsidies would cover the draconian increases. With the increase in revenues, Oceanside expected $50 million for themselves and offered Mutual Housing a few million dollars for renovations. When we flatly refused, explaining that raising all of the rents would force the half of the 306 families without Section 8 subsidies off the property, they reacted by making false claims about us, attempting to remove Mutual Housing from the Partnership, and threatening to sue our volunteer board members and me for $30 million.

It is unknown whether Oceanside truly expected $50 or $80 million. Their actions do follow a playbook by unscrupulous investors and groups known as aggregators that have used strong-arm tactics for huge payouts from non-profits trying to hold onto their properties and who cannot afford protracted and exorbitant lawsuits. Over the past few years, dozens of non-profits have settled for millions of dollars, only to have this go unpublicized due to non-disclosure commitments in the settlement agreements.

For clarification, our local newspaper recently published an editorial from a for-profit Hawai`i developer on this subject who does not support this resolution. Contrary to his belief, the Pālolo Homes case and many other cases around the country were not the result of poorly written contracts, and the issue was not addressed by technical changes to the QAP involving "*qualified contracts*" back in 2015. Mutual Housing executed contracts that clearly specified the mechanisms for the transfer of Pālolo Homes to our non-profit at the end of the 15-year term. The tactic used by Verizon and Oceanside was to fabricate reasons to attack us and stand upon their deep financial resources to coerce Mutual Housing to pay them off in millions of dollars, or we would face exorbitant expenditures of time, energy, and money to defend ourselves. These unscrupulous and greedy business partners manufactured ways not to abide by the original intent of the agreement and the partnership.

We do share our fellow developer's concerns that HHFDC's 2023 funding cycle not be impacted by changes to the QAP as is proposed in the Resolution. We believe that the important message created by HCR 108 can be expressed without negatively impacting any current or future affordable housing developments before HHFDC by delaying changes to the QAP after the 2023 financing round.

Mutual Housing will not be the last non-profit to face such attacks, as Hawai'i's high land values and rents make it a great target for aggregators. Draft language had been shared with HHFDC for Hawai'i's QAP that would discourage aggregators by highlighting the true intent of the program which is to acknowledge the intent of tax credit laws and not to further enrich investors.

Thank you for the opportunity to share our perspectives and for your support of local non-profit housing developers. We hope that through the efforts of the Hawai\`i State Legislature, a strong message will be broadcast to bad players that Hawai\`i is not an easy place to victimize non-profits and to dwindle down state coffers.

Mahalo nui loa,

David M. Nakamura
Executive Director

EAH

A NONPROFIT HOUSING CORPORATION

April 19, 2022

Hawaii State Legislature
Senate Committee on Housing
Attn: Chair Senator Stanley Chang and Vice Chair Dru Mamo Kanuha

Subject: **Testimony in Opposition HCR 108 Relating to LIHTC Program, Hearing April 21, 2022, at 10am, State Capitol, Room 225**

Aloha Chair Chang, Vice Chair Kanuha, and Members of the Senate Committee on Housing, I am Kevin Carney, Vice President for EAH Housing hereby submitting testimony in opposition to HCR 108 pertaining to the State's Low Income Housing Tax Credit Program.

HCR 108 is well intended to protect the Program from the predatory practices of aggregators, particularly as applied to the qualified contract provision as provided for in the Internal Revenue Code which allows for conversion to market after 15 years – to which EAH is vehemently opposed.

However, we believe HHFDC's current Qualified Application Plan essentially makes the likelihood of receiving funding for a qualified contract and the interest of an aggregator impossible. The reasons for this are as follows:

1. The competition for funding is fierce. It is constantly oversubscribed.
2. Awards are based on a point system and in order to be competitive the applicant must reject the qualified contract provision thereby earning 20 points.
3. The Regulatory Agreement ensuring affordability which runs with the land and is typically 50 years and longer.

Without the above rejection of the qualified contract the applicant will not be competitive enough to receive the applied for funding. Even with the rejection the Program remains highly competitive. We therefore believe that HCR 108 should be deferred. Thank you for the opportunity to share our thoughts on this issue.

Sincerely,

Kevin R. Carney

Kevin R. Carney, RB-16444, NAHP-E
Vice President, Special Projects, Hawaii

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STANFORD CARR DEVELOPMENT, LLC

April 19, 2022

The Honorable Stanley Chang, Chair
The Honorable Dru Mamo Kanuha, Vice Chair
and Members of the Senate Committee on Housing

Re: Testimony in Opposition – HCR 108 Related to the State's Low-Income Housing Tax Credit Program
Hearing: April 21, 2022 at 10:00 a.m.
State Capitol, Senate Conference Room 225 and Videoconference

Dear Chair Chang, Vice Chair Kanuha, and Members of the Committee on Housing:

Stanford Carr Development submits testimony in **opposition** to HCR 108 related to the State's Low-Income Housing Tax Credit (LIHTC) program.

The opposition is based on an inaccurate depiction of a typical LIHTC deal which, to my knowledge, 100% of the time includes the execution of a regulatory agreement with the Hawaii Housing Finance and Development Corporation (HHFDC) for a period of at least 55 years or 40 years beyond the 15-year LIHTC compliance period. The agreement is recorded on title and limits rents to the published rates consistent with the Area Median Income of the households upon initial lease-up.

As I noted in the enclosed Island Voices column, HHFDC addressed the issue with the 2015 changes to the Qualified Application Plan and through the use of regulatory agreements. Therefore, your committee is urged to avoid further regulation and to table this resolution.

Thank you for the opportunity to offer testimony on this policy.

Respectfully,

Stanford S. Carr

Enclosure

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Star Advertiser
Tuesday, April 19, 2022 | Today's Paper | 82°

EDITORIAL | ISLAND VOICES

Column: Don't add burdens to state's affordable housing tax credits

By Stanford Carr • April 14, 2022

While our colleagues at Palolo Valley Homes remain justifiably frustrated by the experience with "aggregator" investors ("Hawaii lawmakers look at preventing investor schemes on affordable housing projects," Star-Advertiser, April 4), the legislative efforts of House Resolution 104 and House Concurrent Resolution 108 to fend off such investors address a point-in-time issue, not an issue related to current affordable housing tax credit transactions.

The Low-Income Housing Tax Credit (LIHTC) Program as defined by the Internal Revenue Code requires a 15-year compliance period and an additional 15-year extended-use period during which rents are regulated as affordable to households at 60% of area median income. The crux of the issue is the fact the Internal Revenue Code also provides owners with the right to terminate the extended-use period under certain circum- stances — which Oceanside attempted to utilize.

Omitted from the Star-Advertiser's April 4 story is the fact that the Hawaii Housing Finance and Development Corp. (HHFDC) policy document for the LIHTC Program, known as the Qualified Application Plan, was amended in 2015 and addresses this issue.

Therefore, the termination of the extended-use period is a nonissue today.

HHFDC awards 20 additional points to LIHTC applicants that waive the right to terminate the extended- use period. In the competitive LIHTC process, any developer refusing to waive the right to terminate the extended- use period is unlikely to receive a tax credit allocation.

When awarded an allocation, HHFDC requires the additional extended-use period ranging from 55 to 62 years to be locked in and recorded in a regulatory agreement with the state Bureau of Conveyances as an encumbrance on the property's title. So even if a predatory investor somehow took over the controlling interest on the project, that entity would still be required to keep rents at affordable rates through the extension period.

While the 2015 changes made to the Qualified Application Plan process curbed the concern about aggregators, there will always be predatory investors who will try to reap financial gain by attempting to use their veto power or rights against the wishes of a general partner. But as with any other government program, it is nearly impossible to legislate against all bad actors who try to abuse the system.

In the scenario where the investor attempted to block the nonprofit's negotiated right to acquire the project by buying out the tax credit investor, the right is a business term that is negotiated up front and not a point that the Qualified Application Plan can address. Accordingly, any regulatory amendments will lack authority to revise existing limited partnership agreements between the nonprofit and the tax credit investor.

Additional state regulation is unnecessary for the already overregulated process of affordable rental. Rather than burdening HHFDC with amendments to policy documents and potentially delaying next year's tax credit application process, we would suggest that developments dated prior to 2015 reach out to HHFDC for guidance on how to ensure that their affordable rental projects continue to meet the needs of our community.

HCR-108
Submitted on: 4/19/2022 5:00:41 AM
Testimony for HOU on 4/21/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Carlston Chang	Individual	Support	Written Testimony Only

Comments:

I support HCR108. As a student at a mainland college, I hope one day to retun back home to the islands with the opportunity to live in my own place. For-profit investors and others taking advantage of affordable housing loopholes cheat our kama'aina. The intentions of affordable housing tax-credits are clear and should be re-inforced through legislative action this session.

HCR-108
Submitted on: 4/19/2022 3:16:45 PM
Testimony for HOU on 4/21/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Zijun Liu	Individual	Support	Written Testimony Only

Comments:

I am in support of this bill because I see the harm that profit- driven investors can cause. One example is the slowing down of the process in creating affordable housing. The Housing Tax Credit program is used to provide funding to non-profit and private entities to construct affordable units. Profit-driven entities are not trustworthy in creating affordable housing, as it goes against their motive for profit. I have seen families struggle to find a home, one of the most essential and important aspects of the human lifestyle.

HCR-108
Submitted on: 4/19/2022 8:43:27 PM
Testimony for HOU on 4/21/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Megan Okuma	Individual	Support	Written Testimony Only

Comments:

Aloha,

I am writing in support of HCR108 which urges the Hawaii Housing Finance and Development Corporation to combat hostile and harmful actions by profit-driven investors and aggregators participating in the State's low-income housing tax credit program. Affordable housing is an incredibly important issue for many. As a young adult who has grown up on Oahu and feels privileged to call Hawaii my home, I worry about how I might afford to live in Hawaii in the future. Everyone deserves to have a roof over their head, but the reality does not reflect that. Advocating for affordable housing and the regulation of profit-driven investors' harmful participation the low-income tax credit program is not only important for future generations of local people, but for those currently struggling to access proper housing. Therefore, I support HCR108.

Mahalo for your consideration,

Megan O.