

REQUEST FOR LEGAL SERVICES

Date: January 23, 2019

From:

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: , Esq.

Subject: _____

Background Data: _____

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY

★

☐ OTHER:

Requestor's signature _____	Contact Person _____ (Telephone Extension:)
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☐ ROUTINE (WITHIN 15 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)

☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____

REASON: _____

↓ FOR CORPORATION COUNSEL'S RESPONSE ↓

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

RECEIVED AT GET MEETING ON 1-23-19

GET-1(2) submitted by Autumn Ness 1-23-2019

2.96.090 - Applicant selection process - ownership units.

A. Wait List Procedure.

1. The developer, its partner, or its management company shall establish wait lists of interested applicants by development.
2. Prior to initiating the wait list, the developer, its partner, or its management company shall publish in at least five issues of a newspaper of general circulation within the County, a public notice that shall contain all information that is relevant to the establishment of the wait list. The public shall also be informed in a like manner, of any decision that would substantially affect the maintenance and use of the wait list.
3. Selection for purchase shall be made by a lottery administered by the developer, its partner, or its management company and overseen by the department, subject to the applicant meeting the eligibility criteria established in subsection (B).

B. Eligibility criteria. In order to be eligible for a residential workforce housing unit, an applicant must meet the following criteria:

1. Be a citizen of the United States or a permanent resident alien who is a resident of the County.
2. Be eighteen years of age or older.
3. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred forty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Initial determination for compliance with the maximum gross annual family income provision shall be made by the developer, its partner, or its management company for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received.
4. Have assets that do not exceed one hundred forty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property.
5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.

~~6. Pre-qualify for a loan with the applicant's choice of lender.~~



KAMALANI

LIVE TOGETHER. GROW TOGETHER.

RESIDENTIAL WORKFORCE HOUSING SALES APPLICATION PACKAGE

Tools for Buyers

RECEIVED AT HHT MEETING ON 11/03/16
Committee Chair

WHERE TO TURN IN YOUR COMPLETED SALES APPLICATION PACKAGE + REQUIRED DOCUMENTS

Completed applications and required documents may be sent by certified mail OR dropped off at:

Kamalani Project Broker
KW Island Living
285 West Kaahumanu Ave., #201
Kahului, HI 96732

Hours of Operation
7 days a week
10:00 a.m. to 4:00 p.m.

For assistance with completion of the application package, appointments may be made with the Project Broker, KW Island Living, by calling (808) 856-4045 or email info@kamaniliving.com.

RESIDENTIAL WORKFORCE HOUSING ELIGIBILITY CHECKLIST

- ☐ I am a citizen of the United States or a permanent resident alien who is a resident of the County of Maui.
- ☐ I am a resident of Maui County since I am (at least one):
 - ☐ Currently employed in the County;
 - ☐ Retired from employment in the County, having worked in the County immediately prior to retirement;
 - ☐ A full-time student residing in the County;
 - ☐ A disabled person residing in the County who was employed in the County prior to becoming disabled;
 - ☐ The parent or guardian of a disabled person residing in the County;
 - ☐ A spouse or dependent of any such employee, retired person, student, or disabled person residing in the County; OR
 - ☐ In the event of the death of the employee, retired person, student, or disabled person, the spouse or dependent of any such person residing in the County.
- ☐ I am eighteen years of age or older.
- ☐ I have a gross annual family income which does not exceed 140% of the County's AMI as established by HUD for the island of Maui (excluding Hana). *See Attachment A for AMI for Maui County.*
- ☐ My assets do not exceed 140% of the County's AMI. Exclusions of certain assets apply, refer to Page 6 in the Kamalani Sales Application Package. *See Attachment A for AMI for Maui County.*
- ☐ I do not own 50% or more interest in any real estate suitable for dwelling and have not owned any within three years from the date of this application, or if I do, the only interest I own is in another affordable or RWH unit.
- ☐ I have a Loan Prequalification Letter from a Developer-approved lender that is dated *no more than 120 days* prior from the date of this application.
- ☐ I have completed a Developer-approved homebuyer education program and received a certificate of completion from (select one):
 - ☐ Hale Mahaolu homebuyer education program;
 - ☐ Framework® homebuyer education online course (sign-up via kamalaniliving.com);
 - ☐ Other comparable homebuyer education program pre-approved by the Developer.

SALES APPLICATION REQUIRED DOCUMENTS CHECKLIST

- ☐ Completed Residential Workforce Housing Sales Application Package executed by all prospective buyers
- ☐ Completed and notarized* Affidavit of Eligibility to Purchase a Residential Workforce Housing Unit in Kamalani executed by all prospective buyers
- ☐ Loan Prequalification Letter from a Developer-approved lender

The following documents will be used to determine Residential Workforce Housing eligibility by the lender:

- Completed Uniform Residential Loan Application
- Current pay stubs (for past month) and/or copies of other income sources
- 2015 W-2 Statement/State and Federal Income Tax Returns
- 2013 & 2014 State and Federal Income Tax Returns
- Current Bank Statements or Brokerage Account Statements

Developer meeting RWH

Applicants must meet eligibility requirements set forth in the County of Maui's RWH Ordinance. In order to make the process as seamless and convenient as possible for buyers, these lenders have been trained on the County's RWH Ordinance, and their prequalification letter will include a determination of the buyer's eligibility for RWH.

Please note that, while a prequalification letter must be obtained from one of these lenders, the actual loan for home purchase may come from any lender of the buyer's choice. Applicants are free to seek a mortgage loan from the lenders listed or any other lender they choose.

- ☐ If a Maui resident, documents confirming Maui residency
 - ☐ One of the following: (a) 2015 Resident State of Hawaii tax return, (b) confirmation of current registration to vote in Hawaii, or (c) confirmation of current employment in Maui;
 - AND
 - ☐ One of the following: (a) valid Hawaii driver's license or (b) valid State of Hawaii identification card.
- ☐ Certificate of completion for a Developer-approved homebuyer education program
Please note: Each prospective buyer that will be owners and named on the deed of any RWH Unit must be named on the certificate.

*Developer-approved lenders will be able to assist with notarizing the Affidavit.

Kaiaulu

ANGLE FAMILY HOMES FOR MAUI RESIDENTS



HOMES
\$395,000

Located within the world-renowned Ka'anapali Resort, Kaiaulu offers convenient access to all the amenities of resort living, including beaches, restaurants, shopping, golf and more. Visit our website or contact our Island Sotheby's International Realty office to get more details on Kaiaulu's floor plans, prices and availability.

WORKFORCE HOUSING PUBLIC NOTICE

As pursuant to Maui County Workforce Housing Ordinance 2.96, buyers are subject to eligibility requirements, selection process & income requirements.

- Eligibility criteria.

In order to be eligible for a residential workforce housing unit, an applicant must meet the following criteria:

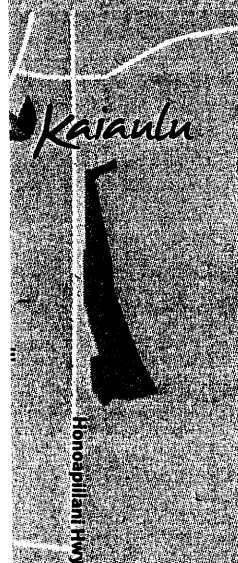
1. Be a citizen of the United States or a permanent resident alien who is a resident of the County of Maui.
2. Be eighteen years of age or older.
3. Have a gross annual family income (not to include the income of minors) which does not exceed one hundred forty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Initial determination for compliance with the maximum gross annual family income provision shall be made by the developer, its partner, or its management company for the initial sale of residential workforce housing units, on the basis of the information provided on the ownership application. The ownership application will be completed when a specific unit is being considered. Final determination for compliance with the maximum gross annual family income provision shall be made by the prospective lender at the time the applicant's income verification data is received.
4. Have assets that do not exceed one hundred forty percent of the County's area median income as established by HUD, or as adjusted by the department, for Hana, Lanai, and Molokai. Assets shall include all cash, securities, stocks, bonds and real property. Real property shall be valued at fair market value less liabilities on such real property.
5. For a period of three years before the submittal of the ownership application, have not had an interest of fifty percent or more in real property in fee or leasehold in the United States, where the unit or land is deemed suitable for dwelling purposes, unless the applicant is selling an affordable unit and purchasing a different affordable unit that is more appropriate for the applicant's family size.
6. Pre-qualify for a loan with the Developer's lender Home Street Bank.

- when only one option

- Notification of Change. Each applicant shall be responsible for notifying the developer, its partner, or its management company in writing of any changes in mailing address, telephone number, fax number, and/or e-mail address. If an applicant fails to properly notify the developer, its partner, or its management company of such changes and the developer, its partner, or its management company is unable to contact the applicant, the developer, its partner, or its management company shall remove the applicant's name from the wait list.

- Selection priority.

1. Residents on the wait list shall receive first priority for the available units.
2. The developer, its partner, or its management company may do a mass mailing of housing applications to applicants on the wait list.
3. The residential workforce housing units must be offered to residents in the order in which their names were drawn in the lottery, provided that there is a unit available in the income group for which they qualify.



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STATE / IN BRIEF

The Associated Press

Murder-suicide confirmed on Kauai

HANAMAULU, Kauai — Kauai police said that a man shot and killed his ex-wife before killing himself.

Police said that an autopsy performed Monday confirms Janese Singh died of multiple gunshot wounds. An autopsy confirmed that her ex-husband, Juanito Singh, died of a single, self-inflicted gunshot wound.

Police arrived at an apartment at Kalepa Village in Hanamaulu on Saturday and found Juanito Singh

dead. Janese Singh was taken to Wilcox Hospital, where she later died.

Police said that the couple's children are in Child Protective Services custody.

11 possible Oahu jail sites announced

HONOLULU — There are 11 possible sites for rebuilding what is now Hawaii's most crowded jail.

The state Department of Public Safety on Monday announced officials are eyeing sites in Kalihi, Aiea, Kalaheo, Mililani and Waiawa.

Officials say Oahu Community Correctional Center needs to be rebuilt because it is old and obsolete.

The department says officials will look at the 11 sites and come up with a short list that will go through an environmental review process.

Ex-officer charged with beating man

KAILUA-KONA — A former Big Island police officer has been indicted on charges related to the alleged beating of a man at an Ocean View market in 2014.

The first-degree assault case against Michael Dubberstein will

be heard in Kona Circuit Court.

An indictment filed last week alleges he "intentionally or knowingly caused serious bodily injury" to James Gonzales in February 2014.

Deputy Prosecutor Rick Damerville said Gonzales suffered head injuries, a dislocated shoulder and broken ribs. Gonzales died in 2015 at age 65 for reasons unrelated to the alleged assault.

A police spokeswoman said Dubberstein was with the department for more than 24 years. He worked as a patrol officer in the Kona and Kau districts before leaving the department in June 2013.

Housing

Continued from Page A3

Wong said he had reviewed the workforce housing ordinance and the Kamalani workforce housing agreement between the developer and the county Department of Housing and Human Concerns.

Wong said: "Based on my review of the agreement and the code I did not find anything that would lead me to conclude that the agreement or the materials were in contravention to (the code), which reads 'pre-qualify for a loan with the applicant's choice of lender.'"

After being questioned by Cochran, Wong asked her to show him documents that show the problem because "I couldn't find what you're referencing at all."

Cochran had copies of Kamalani marketing documents shown to Wong on the council floor.

Later, he said he agreed with Cochran that "there are areas in here that may cause confusion . . . but I maintain my position that in reviewing these materials there is language in here . . . that is not in contravention to the code."

He read verbatim: "Developer reserves the right to require that the applicants obtain a pre-qualification letter from a list of developer-approved lenders; provided, however, (this is very, very significant be-

cause it's consistent with the code) the applicant may obtain the loan for the purchase from the applicant's lender of choice."

Wong said that if such issues are raised, then "I think in fairness you need to raise it in its complete context and not carve out areas that are negatively shed on this project."

He asked anyone who believes they've been "maltreated" by the loan pre-qualification process to contact his office.

Cochran said that the problem is with obtaining the pre-qualification letter, not with obtaining mortgage financing later.

"If you do not pass 'go,' you do not continue on," she said. "That is where the restrictiveness and the hardship has occurred for people."

After Crivello, Victorino and Baisa questioned raising issues relating to Kamalani when that project wasn't on the committee's agenda, Cochran agreed to back off. But she pledged to continue pursuing the matter.

"This matter is not over," she said. "We will figure out when the proper time and place is to hash this out and get to the bottom of it."

Earlier in the meeting, A&B Vice President Grant Chun apologized for "any confusion that our practices or our lan-

guage might have caused in the marketplace."

A&B's online marketing for Kamalani no longer has its former developer-approved lender language.

Chun told committee members that A&B had "made some changes to make it clear that we want to appeal to as many buyers as we possibly can."

"An applicant is indeed at liberty to pre-qualify with any lender of his or her choice," he said. "That's our practice."

Victorino said he thought the ordinance may need to be amended to require pre-qualification from a "qualified lender," or someone trained and equipped to know about the county's workforce housing ordinance.

"There are some foreclosures that are occurring right now," he said, referring to overzealous lenders who give homebuyers mortgages they can't afford. "The end product is the person who ends up holding the bag, who cannot pay, who cannot fulfill the obligation. Their credit is destroyed, not the lender," he said. "That has happened. It happens all too often."

■ Brian Perry can be reached at bper@maui.news.com.

Resort

Continued from Page A1

Wailea 670, which is currently called Honua'ula, according to its website.

"The Ritz-Carlton is one of Maui's iconic properties, and it's a welcome addition to our hotel investment portfolio," said Managing Director Nolan Hecht of Square Mile Capital Management on behalf of SMW Hospitality. "It also represents our entry into Hawaii in spectacular fashion, alongside

ter; a 4,844-square-foot retail arcade; priority access to two championship golf courses, The Bay Course and The Plantation Course; and instruction at Kapalua Golf Academy, according to the news release.

The property also features 32,000 square feet of meeting space in addition to restaurants

The resort was closed for part of 2007 for major renovations that included turning some of the rooms into condominiums. It reopened as the dark economic clouds of the Great Recession began. The stock market collapsed, and Gencom defaulted on its Lehman loan with the debt

Sullivan

1, 2016

WA, formerly natural causes in Portland and Hazel Alice Sullivan July 17, years until his

au residents, their daughter, many years on the into her 80s, loved

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w Dorothy Davis, mid, Nancy King, Laura Lee, g Davis, Hans, Fred (Bobby) sisters and husband, father, Davis

sunday, November ring of ashes near in at Hansen, v, more details

Kaiaulu

THE MAUI NEWS — Sunday, November 20, 2016 — A3

W. Maui project vetted buyers through developer's lender

By BRIAN PERRY
City Editor

Another workforce housing project has had prospective affordable homebuyers pre-qualify for home loans through a developer-approved lender — despite the Maui County Code calling for such vetting to be done by the applicant's choice of lender.

Online marketing materials for the 33-home Kaiaulu Maui project in Kaanapali say that home applicants must, among other things, "pre-qualify for a loan with the developer's approved lender, HomeStreet Bank."

The project is being devel-

oped by Aina Lani Pacific LLC. Its president, Howard Kihune Jr., released a statement Friday after being asked about the conflict between the wording of the county's workforce housing ordinance and Kaiaulu's eligibility criteria for prospective homebuyers.

"Aina Lani Pacific did not disqualify any potential buyers regardless of their lender pre-qualification," Kihune said via email. "HomeStreet Bank is the developer's preferred lender because they have a tremendous amount of experience with workforce housing, and its buyer criteria here on Maui."

All 33 homes had been sold as of Friday, he said. Thirty-two of the 33 buyers are from West Maui.

Buyers will be closing their homes in 2017, and "have their choice of lender to close their purchase," Kihune said. "A majority of applicants used HomeStreet to pre-qualify. We also have a wait list of qualified buyers for the project."

Project home prices start at \$395,000 for below-moderate-income buyers and rise to \$649,000 for above-moderate-income buyers, he said. Ten of the 33 homes are priced for below-moderate-income buyers. 17 moderate and

above-moderate.

The issue of whether developers are strictly complying with the county's workforce housing ordinance's pre-qualification provision surfaced this month with questions from Maui County Council Member Elle Cochran of West Maui. She raised the issue in connection with two A&B Properties workforce housing projects — Nov. 3 during a meeting of the council's Housing, Human Services and Transportation Committee and Wednesday during a Land Use Committee meeting.

Cochran cited marketing materials for A&B Properties'

Kamalani subdivision in north Kihei that called for pre-qualification by developer-approved lenders, instead of the prospective homebuyer's choice of lender as provided for by the ordinance.

On Thursday, A&B Properties Vice President Grant Chun said there had been a "misunderstanding" about the wording of the Kamalani marketing materials, and that home applicants could choose their own lenders for loan pre-qualification.

The project's marketing material would be revised to clear up the problem, he said.

As of Saturday, the developer-approved lender language

had been removed from Kamalani's online marketing materials.

Buyers still need to obtain a loan pre-qualification letter, but the developer's website no longer says that the "developer reserves the right to require the applicant obtain the pre-qualification letter from a list of developer-approved lenders."

On Friday, Cochran said she was continuing to look into developer compliance with the county's workforce housing ordinance and was waiting to "get a direct answer from corporation counsel," the county's

See VETTING on Page A6

State DOI to review waste rule

The Maui News

The state Department of Health will be holding a public information meeting Tuesday on its proposal to update rules regulating businesses that gen-

Point not that
People may or
may not have
been "turned
away"

hazwaste. Copies of the rules proposed to be repealed and adopted can be mailed at a cost of 5 cents per page and postage. Call (808) 586-4226 to request copies.

Point is that
Process Flawed
w/ Misrepresenting
options to Barr.
of the law.



#1

A&B reports qualification challenges in sales of affordable units at Kamalani

Local News

Oct 28, 2016

Lee Imada

Managing Editor

leelimada@mauinews.com

Alexander & Baldwin's president and chief executive officer said Thursday that the company has been "*surprised by the slow pace of sales*" of affordable units at its Kamalani community in north Kihei.

Chris Benjamin said during a conference call to discuss third-quarter financial results with investors, that "it is not due to lack of interest." There were 300 interested buyers, identified through homebuyer education courses.

A&B put up 43 units for sale — but less than half, 21 units, are currently under contract, he said.

"It has been difficult for buyers to meet the strict county affordable housing criteria," Benjamin said, adding that A&B is working with the county on the issues.

Blaming
county

County Department of Housing and Human Concerns Director Carol Reimann said Thursday evening that she's under the impression that the problem in qualification lies more with financial issues than governmental regulation.

She noted that many of those who have qualified for an affordable unit are paying more monthly on rent than a prospective mortgage for a unit at Kamalani.

"People are having difficulties qualifying for a mortgage and coming up with the down payment," she said.

USDA / FHA ! Buyers / Direct lending

Since the Great Recession that began in 2007, credit has been more difficult to acquire. "The financial world is different today than it was years ago when practically anyone could get a mortgage and all kinds of credit cards."

Under stricter federal regulation, "there is a lot more scrutiny and oversight on lending," she said. For example, those families on the lower qualifying end may not qualify for a mortgage due to a blemish on their credit report or a loan on a vehicle. The median income for a family of four on Maui is \$81,500 annually, she said.