



IMANAKA KUDO & FUJIMOTO

HAWAII CONDO FAX

A Faxletter on Condominium Development Issues in Hawaii

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The weather may be getting chilly, even on Hawaii's sun-soaked shores, but this holiday season has been heating up in terms of development-related legislation in the counties of Maui and Kauai. While all of Hawaii has been breathing easier after a new smoking law took effect on November 16, developers may have a new cause for concern under that law. Finally, we take note of a recent statement from our Real Estate Commission regarding condominium hotels.

County of Maui

Maui's County Council passed **ORDINANCE 3418** on December 5, 2006, adding new Chapter 2.96 to the Maui County Code, and requiring developers to set aside or make provisions for affordable housing upon initiating new projects. Developers of projects that create five (5) or more new lots/units, increase the number of units in a hotel, or result in the conversion of at least one (1) hotel unit will be required to enter into residential workforce housing agreements upon final subdivision or building permit approval.

The requirements of the agreements include, but are not limited to, a set-aside of up to 50% of the total number of project units for income-qualified residents. Developers may also satisfy this requirement by instead selling or renting dwelling units within the community plan area, conveying units to a qualified housing provider, or paying an in-lieu fee or donating land.

If a developer has already been granted preliminary subdivision approval or has submitted building permit applications prior to the effective date of December 5, 2006, however, it will not be subject to the ordinance. Developments already subject to affordable housing conditions or those that are listed in the ordinance may also be similarly exempt.

The full text of this ordinance can be viewed at:

http://www.mauicounty.gov/files/ordinance/Ord3418_dyqutyojp.pdf

Also pending in Maui are **BILLS 66 AND 67** and a related **Budget Amendment** measure, that seek to amend Sections of the Maui County Code and prior Ordinance 3390 to provide for a new traffic impact fee schedule for developments in the Kihei-Makena and West Maui regions. Bills 66 and 67 passed first reading on November 17, 2006 and, along with the Budget Amendment measure, are expected to be further addressed later this month.

Finally, a **Hotel District Zoning Amendment** measure in Maui seeks to amend the Maui County Code to remove the so-called 'stacking of uses' in the hotel district. In particular, Section 19.14.020 will be revised to provide that there will no longer be a permitted use in the hotel district for "[a]ny use permitted in residential and apartment districts." The implication is that permitted uses will only be those specifically authorized in the hotel district. The Maui County Council has not yet scheduled a meeting to review this measure.

County of Kauai

On the heels of Maui's affordable housing ordinance, a **Housing Policy** measure in Kauai seeks to amend the Kauai County Code to require developers of primarily residential, resort, commercial and industrial zoned projects to provide workforce housing opportunities for qualified households.

Zoning district boundary amendments to residential districts (or those amendments that propose residential uses) that allow five (5) or more units, to resort districts that will allow fifty (50) or more rooms, and to resort, commercial and industrial districts that may generate one hundred (100) or more jobs, will require the developer to dedicate ten percent (10%) of the project area to Kauai county and sell thirty percent (30%) of the total units to qualified residents or the county.

Developers may also satisfy this requirement by substituting comparable affordable rental units, dedicating land and/or

developing units within ten (10) miles of the project, or donating land, units, or an in-lieu fee.

Unlike the Maui ordinance, this measure does not contain any specific exemptions from the affordability requirements. This measure passed first reading on October 25, 2006 and has been referred to the Planning Committee.

2006-07 Legislative Topics

Although the 2006 Legislative Session has passed, developers should still be aware that **ACT 295** will continue to have an impact on project operations. Act 295, which is better known as Hawaii's new smoking law, prohibits smoking in all fully or partially enclosed public areas and places of employment, as well as within twenty (20) feet of any point of entry to such areas. Smoking is specifically prohibited in the common areas of condominiums and other residential facilities; hotels also face new restrictions with respect to designation of smoking rooms. Owners' associations may consider updating their employee policies accordingly, as there have been significant changes regarding smoking in places of employment. The impact of Act 295 here, however, is that it allows the owner, manager, operator, or person in control of a facility to be held liable for violations of the law, for which the penalty can include the suspension or revocation of permits or licenses.

Act 295 can be viewed as codified at Chapter 328J of the Hawaii Revised Statutes.

Real Estate Commission Update

The Real Estate Commission has informally expressed its opinion that use of a condominium hotel operator requires the project declaration and bylaws to contain certain language authorizing transient lodgings. Developers considering hotel operations in a condominium project need to be mindful that the Real Estate Commission will be keeping an eye out for this language in reviewing the registration for condominium hotel operators.

We hope that you have found this issue of our Condo Faxletter to be both informative and enjoyable. Please check back with us when the 2007 Legislative session begins in January for current news and updates on pending legislation. From all of us here at Imanaka Kudo & Fujimoto, have a wonderful and safe holiday season!



Umia ka hanu.

Hold the breath.

Be patient. Don't give up too easily.

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