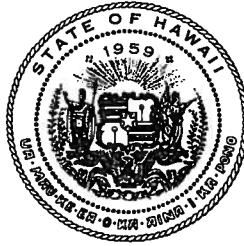


STATE OF HAWAI'I
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917



MARION M. HIGA
State Auditor

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October 7, 2008

To Whom It May Concern:

The 2008 State Legislature transmitted to the Office of the Auditor House Concurrent Resolution No. 125, House Draft 1 titled, "Requesting the Auditor to examine upcoming condominium leasehold expirations and their impact on the availability of replacement and affordable housing for Hawai'i residents."

Our preliminary research has led us to conclude that we would not be able to fulfill the request. Attached is a letter that provides in greater detail the support for our conclusion.

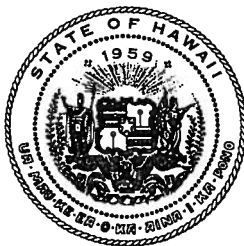
A copy of the letter to the Legislature and governor is attached. Also, a copy has been sent to the Director of Hawai'i Housing Finance and Development Corporation and others and will be made available on our website (www.state.hi.us/auditor/).

Sincerely,

A handwritten signature in cursive script, appearing to read 'Marion M. Higa', is written in black ink.

Marion M. Higa
State Auditor

Enclosure



October 7, 2008

The Honorable Colleen Hanabusa
President of the Senate
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President:

This letter responds to House Concurrent Resolution No. 125, House Draft 1 (HCR 125, HD1), which requests the Office of the Auditor "...to examine upcoming condominium leasehold expirations and their impact on the availability of replacement and affordable housing for Hawai'i residents." Our preliminary research has led us to conclude that the study as requested is problematic and cannot be performed for the following reasons:

- From 1990 until February 2005, a City and County of Honolulu ordinance mandated leasehold to fee conversion for condominiums. Neither the State nor the neighbor island counties passed similar legislation. In fact, neighbor island county staff told us that they do not keep data on condominium leasehold or fee ownership, because this type of ownership does not concern them. Accordingly, the issue raised in this resolution appears to be limited to the City and County of Honolulu.
- We have determined that even with the cooperation of multiple state and county agencies, we could not compile a complete updated inventory of expiring leasehold condominium units and co-operatives in the state.
- Determining what constitutes affordable housing and affordability as it applies to expiring leasehold condominiums and co-operatives in the state requires a definition that should be addressed on a policy level by the Legislature and the executive branch.
- Providing alternatives to expand the affordable housing stock associated with expiring leasehold condominiums ventures into policy-making and should be addressed by the Legislature and the executive branch.

The following is a brief summary of information supporting our conclusions.

As part of our preliminary research to address the provisions of the resolution, we contacted 37 agencies and individuals in the public and private sectors to determine how and where to collect the necessary data and whether this study could be completed within the prescribed timeline. We also collected and reviewed 21 documents pertaining to the proposed study. These included previous studies of condominiums and co-operative projects in Hawai'i as well as a report that

examined a 1990 City and County of Honolulu ordinance for mandatory condominium leasehold-to-fee conversion.

The provisions of HCR 125, HD 1 include a request for the Auditor to "...provide data of the loss of affordable housing stock due to leasehold expirations, including examining the current status of residential leaseholds in condominiums and co-operatives...." First, between 1990 and February 2005, this law applied only on Oahu since the neighbor island counties elected not to enact similar leasehold ordinances. A former administrator of the Honolulu leasehold ordinance told us that the neighbor island counties determined that there were very few owner-occupant condominiums in their areas. Hence, they saw no reason to pass a law similar to the one in Honolulu. Thus, we believe leasehold condominium issues may apply only to the City and County of Honolulu and may not be a statewide concern.

Second, we found that identifying and collecting baseline data regarding condominium leaseholds and co-operatives in Hawai'i would require the cooperation of multiple agencies. There is no single entity that collects up-to-date statistical information regarding leasehold condominium and co-operative projects statewide. To complete the requested study, we determined that this information would include: the number of leasehold condominium and co-operative projects statewide, the expiration years for identified leasehold condominium and co-operative projects, and the number of leasehold units remaining in each of these projects. Agency officials, real estate attorneys, and other real estate professionals we contacted told us it would take months, perhaps years, for our office to identify, gather, and compile the pertinent data needed to address the subject areas described in the resolution.

We also found it would be unlikely that we could determine an accurate number of expiring condominium leasehold projects, leasehold units, and co-operatives in Hawai'i. The State Real Estate Commission said it could provide information regarding the number of leasehold projects and the number of leasehold units based on the registration forms submitted to the commission by developers and condominium associations as required by law. However, the law does not apply to the smaller condominium projects with fewer than five units. The commission said the number of these types of projects that sit on leasehold land is unknown.

The commission also noted that although the law requires condominium associations to register with the commission every two years, the commission does not verify whether the information in the registration forms contains updated information as to how many leasehold units remain in a particular project. As a result, the commission cannot say with any certainty that the number of leasehold units listed in condominium association registration forms is current and accurate.

The collection, compilation, and analysis of the amount of necessary data to conduct the study would demand significant time and resources. We were told by the City and County of Honolulu Real Property Appraisal Office that it could provide raw data on the listings of all condominium projects on O'ahu. This would include leasehold, fee, commercial, and industrial

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condominiums. We were informed, however, that this would involve hundreds of pages of data which would list every condominium occupant on O'ahu. The City and County of Honolulu Real Property Appraisal office also said each neighbor island county tax office has its own separate database. Thus, similar information regarding the other islands would need to come from those counties.

The Bureau of Conveyances said it does not have the capability to conduct an extensive search that identifies the total number of condominium leasehold projects in Hawai'i and the number of leasehold units. The bureau said in order to begin a search process to determine the number of leasehold units, it would require the name of the unit owner or the tax-map key for the project. To determine the expiration years for these leasehold condominium units, the bureau said it would require a review of the lease agreement documents for each individual unit. The lease agreements are kept on file on microfilm at the bureau and would need to be reviewed in person.

Our third concern regards the resolution's assumption that there is a relationship between expiring condominium leasehold projects and co-operatives with affordable housing issues. Designating which units are considered "affordable" in the view of the general public would be subjective. If federal guidelines were used to determine "affordability" of condominium units with an expiring lease, this office would need to solicit and obtain the household income of each leasehold owner-occupant as well as the current price or market comparables of their condominium unit. In addition, this office would need to identify and eliminate from consideration those leasehold units which would not be considered "affordable housing." Examples of such units would include luxury condominium units, condominium units located in hotel zones, and units used as time shares.

Moreover, some of the information, such as the household income of a leasehold condominium owner-occupant, is not available and cannot be compiled. Without this information, the study could not be completed.

In addition, HCR 125, HD 1 requires that the study include consultation with stakeholders such as "...lessors, lessees, large and small fee owners, condominium and co-operative associations, affordable housing specialists, and real estate professionals to provide input and recommendations...." Based on figures from the Department of Commerce and Consumer Affairs, there are more than 1,600 condominium associations and more than 150,000 condominium units across the state. Based on figures provided by two private firms, there are between 400 and 700 condominium/co-op leasehold projects statewide. To consult a representative number of each of the identified parties described in the resolution would be unrealistic.

Even if data collection were attempted, it is likely that the information obtained would be incomplete, unreliable and probably not collected until far beyond the deadline. It is also reasonable to assume that each case involving an expiring condominium project is unique.

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Therefore, we may be required to conduct a heavier sampling, which would add to the amount of time and resources needed to perform this aspect of the study.

House Concurrent Resolution 125, HD 1 also states that the study must explore "...ways to expand the state's affordable housing stock that may be associated with these expiring condominium leases..." The resolution appears to conclude that the upcoming leasehold expirations will impact the State's affordable housing stock without sufficient information to support the conclusion. Lacking the number or prevalence of expiring condominium leases, it would be difficult to determine whether there are in fact affordable housing issues or to suggest options and alternatives to address the housing issues. As previously stated, we contend that our role should focus on fact finding and not policy making, which rests with the Legislature and the Office of the Governor.

Finally, any data collected during the course of a study would be outdated by the time a report would be issued. Therefore, even if it were possible to do so, obtaining a "current status of residential leaseholds in condominiums and co-operatives" would result in only a snapshot of a particular period in time and not a comprehensive picture of the leasehold landscape. In addition, data regarding leasehold co-operatives would need to come from the private-sector as opposed to government agencies which do not track co-operatives. This may lead to questions about the veracity of the information.

We conclude that HCR 125, HD 1, as currently drafted, is problematic given the broad scope of the study, the hours required to collect baseline data from multiple sources and to consult with dozens if not hundreds of stakeholders, and the lack of resources to contract the services of consultants to conduct such detailed and expansive research. In addition, the study has an unclear purpose, especially in light of the fact that the state lacks the statutory authority to mandate conversion of privately held leasehold condominium projects. Further, some necessary information is not available and cannot be obtained.

In conclusion, we respectfully request that the Legislature reconsider HCR 125, HD 1 and suspend its request for a study on condominium lease expirations and their impact on the availability of affordable housing.

Sincerely,



Marion Higa
State Auditor

c: Carol Taniguchi, Senate Clerk