

Victoria Ward, Limited Consolidated Motion

May 13, 2015

**Draft Order of the Hawaii Community
Development Authority**

ORDER

OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

<p>In re Motion of</p> <p>Victoria Ward, Limited,</p> <p>Applicant,</p> <p>for an Order of Amendment to Development Permit No. KAK 13-036</p>	<p>File No.: PL MASP 13.1.3 Development Permit No. KAK 13-036 [Consolidated with PD Permit Nos. KAK 13-037 and KAK 13-038]</p> <p>FIRST AMENDED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER RE: VICTORIA WARD, LIMITED'S MOTION TO AMEND DEVELOPMENT PERMIT NOS. KAK 13-036, 13-037, AND 13-038 TO ALLOW SALE AND/OR RENTAL OF RESERVED HOUSING UNITS AND TO EXTEND TIME OF EFFECTIVE PERIOD OF PERMIT KAK 13-038</p>
<p>In re Motion of</p> <p>Victoria Ward, Limited,</p> <p>Applicant,</p> <p>for an Order of Amendment to Development Permit No. KAK 13-037</p>	<p>Development Permit No. KAK 13-037</p>
<p>In re Motion of</p> <p>Victoria Ward, Limited,</p> <p>Applicant,</p> <p>for an Order of Amendment to Development Permit No. KAK 13-038 and to Extend Time of Effective Period of Permit KAK 13-038</p>	<p>Development Permit No. KAK 13-038</p>

FIRST AMENDED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER RE: VICTORIA WARD, LIMITED’S MOTION TO AMEND DEVELOPMENT PERMIT NOS. KAK 13-036, 13-037, AND 13-038 TO ALLOW SALE AND/OR RENTAL OF RESERVED HOUSING UNITS AND TO EXTEND TIME OF EFFECTIVE PERIOD OF PERMIT KAK 13-038

On February 23, 2015, Victoria Ward, Limited’s (“VWL”) Motion to Amend Development Permit Nos. KAK 13-036, 13-037, and 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038 (“Motion”) was filed pursuant to Hawaii Administrative Rules (“HAR”) §15-219-32 and §15-22-118(c). Under the Motion, VWL requested: (1) an amendment to Development Permit Nos. KAK 13-036, KAK 13-037, and KAK 13-038 (“Development Permits”) to allow the satisfaction of reserved housing requirements through the sale and/or rental of reserved housing units to be developed as part of Development Permit No. KAK 13-038; and (2) to extend the time of the effective period of Development Permit No. KAK 13-038 to allow construction on the 988 Halekauwila Project (“Project”) to commence after July 17, 2015. The properties affected by the Motion are located within the Mauka Area of the Kakaako Community Development District (“KCDD”).

The Hawaii Community Development Authority (“HCDA” or the “Authority”), having heard and examined the testimony, evidence, and argument of counsel, which were presented during the hearings, along with their respective pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

BACKGROUND

1. On January 14, 2009, the HCDA approved the Nunc Pro Tunc Order Re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit for the Ward Neighborhood Master Plan area ("WNMP Permit"), which is owned and controlled by VWL. [Pet FOF #1]

2. Pursuant to Condition No. 9 of the WNMP Permit, VWL was required to "satisfy its reserved housing requirement for the Master Plan area, which shall be equal to twenty-percent of the total number of residential units proposed for the Master Plan area, as permitted by the Mauka Area Rules." [Pet FOF #2]

3. The WNMP Permit is vested under HAR, Chapter 15-22 Mauka Area Rules ("Vested Rules"), which provided in HAR §15-22-115(a) that "a planned development containing multi-family dwelling units...shall provide at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons...". [Pet FOF #3]

4. On April 18, 2013, VWL submitted its Development Permit Application numbered KAK 13-038 ("KAK 13-038 Application") to the HCDA for Ward Village, Land Block 5, Project 1, also known as 988 Halekauwila, in accordance with the WNMP Permit. Under the KAK 13-038 Application, VWL committed to providing all reserved housing requirements for the Project within the building and noted that the "Project will also satisfy the reserved housing requirements of two concurrent projects on Land Blocks 2 and 3."

[Pet FOF #4]

5. On July 17, 2013, the HCDA approved Development Permit No. KAK 13-038, subject to the terms and conditions contained in the Development Permit. The Development Permit No. KAK 13-038 provides in pertinent part, “the Applicant shall provide 375 units as reserved housing for sale.” [Pet FOF #5, as amended]

6. On April 18, 2013, VWL submitted its Development Permit Application numbered KAK 13-037 to the HCDA for Ward Village, Land Block 3, Project 1, in accordance with the WNMP Permit. On April 19, 2013, VWL submitted its Development Permit Application numbered KAK 13-036 to the HCDA for Ward Village, Land Block 2, Project 1, in accordance with the WNMP Permit. On August 21, 2013, the HCDA approved Development Permit Nos. KAK 13-036 and KAK 13-037 for projects within Land Blocks 2 and 3 of the WNMP Permit area, subject to the terms and conditions contained in the respective Development Permit. [Pet FOF #8, as amended]

7. Pursuant to Development Permit Nos. KAK 13-036 and KAK 13-037, the reserved housing units required are to be fulfilled through the construction of reserved housing units under Development Permit No. KAK 13-038. [Pet FOF #11, as amended]

PROCEDURAL HISTORY

8. On February 23, 2015, VWL submitted its Motion. [Pet FOF #13]

9. On March 7, 2015, when the Motion was considered complete, the HCDA posted the Motion on its website in accordance with Act 61, Session Laws of Hawaii 2014 (“Act 61”). [Pet FOF #14]

10. On March 7, 2015, the Notice of Public Hearings was published pursuant to Act 61. [Pet FOF #15]

11. In accordance with the provisions of Hawaii Revised Statutes (“HRS”) §206E-5.6, the President of the Senate and Speaker of the House of Representatives were notified upon the posting of the hearing notice. Associations of apartment owners of residential buildings in the KCDD adjacent to each of the three projects, surrounding landowners and businesses, the Ala Moana/Kakaako Neighborhood Board, and the Kakaako Improvement Association were notified of the public hearings. Various elected officials and State and County agencies were also notified of the public hearings. Hearing notice was also provided to approximately 393 individuals and organizations that have shown interest in development activities in the KCDD. [Pet FOF #16]

12. On March 7, 2015, pursuant to Act 61, notification by first-class United States mail, postage prepaid, was made to owners and lessees of record of real property located within a 300-foot radius of the perimeter of each of the three of the projects that are associated with the Development Permits identified from the most current list available from the Real Property Assessment Division of the Department of Budget and Fiscal Services of the City and County of Honolulu. **See Victoria Ward, Limited’s Certification Re: Notification To Owners and Lessees of Record of Real Property Located Within a Three Hundred Foot Radius Pursuant to HRS §206E-5.5, filed March 23, 2015.** [Pet FOF #17, as amended]

13. As set forth in the Notice of Public Hearings, the deadline to intervene was March 30, 2015. No motion for intervention was filed. [Pet FOF #18]

14. On April 2, 2015, a pre-hearing conference was held at the HCDA’s office at 547 Queen Street, Honolulu, Hawaii 96813. [Pet FOF #20]

15. On April 2, 2015, the HCDA issued its Pre-Hearing Order, requiring the submission of witness lists, exhibit lists, and exhibits on April 6, 2015. [Pet FOF #21]

16. On April 6, 2015, VWL submitted its witness list, exhibit list, and exhibits pursuant to the Pre-Hearing Order. [Pet FOF #22]

17. On April 6, 2015, the Authority issued additional dates and times for Supplemental Public Comment Sessions to occur on Saturday, April 11, 2015, at 10:00 a.m. and Tuesday, April 14, 2015, at 5:30 p.m. [Pet FOF #23]

18. On April 8, 2015, a public hearing was held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813, in order to allow VWL to present the Motion and to afford the public with the opportunity to present testimony ("April 8, 2015 hearing"). [Pet FOF #24]

19. At the April 8, 2015 hearing, the Authority admitted into evidence the following exhibits: Exhibit 1 – Concord Group Chart; and Exhibit 2 - Slide Presentation. [Pet FOF #25]

20. At the April 8, 2015 hearing, VWL presented the testimony of Race Randle, Vice President of Development for The Howard Hughes Corporation. [Pet FOF #26]

21. For the April 8, 2015 hearing, the HCDA received 8 public comments in writing: 7 in support of granting the Motion and 1 providing comments only. [Pet FOF #27]

22. At the April 8, 2015 hearing, 8 members of the public provided oral comments: 7 in support of granting the Motion and 1 in opposition. [Pet FOF #28]

23. On April 11, 2015 and April 14, 2015, the Supplemental Public Comment Sessions were held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813. [Pet FOF #29]

24. On April 22, 2015, a second public hearing on the Motion was held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813, to afford the public an opportunity to present testimony prior to the Authority engaging in decision making ("April 22, 2015 hearing"). [Pet FOF #30]

25. At the April 22, 2015 hearing, the Authority allowed VWL to present additional evidence pursuant to HAR §15-219-52(c). The Authority admitted into evidence Exhibit 3 – Slide Presentation. [Pet FOF #31]

26. At the April 22, 2015 contested case hearing, VWL presented the testimony of Race Randle, Vice President of Development for The Howard Hughes Corporation, and David Striph, Senior Vice President – Hawaii for The Howard Hughes Corporation. [Pet FOF #32]

27. For the April 22, 2015 hearing, the HCDA received 279 public comments in writing: 278 in support of granting the Motion and 1 in opposition. [Pet FOF #33]

28. At the April 22, 2015 hearing, 14 members of the public provided oral comments: 13 in support of granting the Motion and 1 in opposition. [Pet FOF #34]

29. At the April 22, 2015 hearing, the Chairperson decided to continue the decision making public hearing on the Motion to another date.

30. On May 13, 2015, the continued decision making public hearing was held at HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813 ("May 13, 2015 hearing").

31. At the May 13, 2015 hearing, the Authority solicited additional written and/or oral testimony from members of the public prior to engaging in decision making.

REQUEST FOR EXTENSION TO DEVELOPMENT PERMIT NO. KAK 13-038

32. VWL has submitted the Project's applications for sewer, demolition, foundation, State Historic Preservation Division (SHPD), and National Pollutant Discharge Elimination System (NPDES) permits. The VWL has advanced the Project to nearly meeting the permit deadline. See Exhibits 1-2; April 8, 2015 Testimony. [Pet FOF #47, as amended]

33. VWL has satisfied the requirements set forth in HAR §15-22-118, inasmuch as VWL filed the request for extension at least one hundred (100) days in advance of the July 16, 2015 automatic termination date of Development Permit No. KAK 13-038, and there are no material changes in circumstances which may be cause for denial of the extension. [Pet COL #16, as amended]

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RULINGS ON PROPOSED FINDINGS OF FACT

Any Findings of Fact submitted by VWL not already ruled upon by the HCDA by adoption herein, or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

Any Conclusions of Law herein improperly designated as Findings of Fact should be deemed or construed as Conclusions of Law; any Findings of Fact herein improperly designated as Conclusions of Law should be deemed or construed as Findings of Fact.

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CONCLUSIONS OF LAW

1. The HCDA has jurisdiction to review, consider, and take action on this Motion. See HRS §206E-4 and §206E-5.6. [Pet COL #8, as amended]
2. Pursuant to the WNMP Permit, approved by the HCDA on January 14, 2009, the rules applicable to this Motion are those contained in HAR Chapter 15-22, also referred to herein as the “Vested Rules.” [Pet COL #9]
3. Pursuant to HAR §15-22-184 of the Vested Rules, the “adjusted household income” of a qualified person **purchasing** a reserved housing unit “shall not exceed **one hundred forty** per cent of median income” and a person **renting** a reserved housing unit “shall not exceed **one hundred per cent** of median income.” “Adjusted household income” means “total income, before taxes and personal deductions, received by all members of the eligible borrower’s household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments but not including business deductions.” Accordingly, reserved housing rental units must be provided for those with **lower household incomes** than the reserved housing units offered for sale. [Pet COL #11]
4. Pursuant to HAR §15-22-185.1, a purchaser of a reserved housing unit for sale may be required to come up with a down payment that does not exceed ten percent (10%), whereas a renter of a reserved housing unit does not have the same down payment requirement. A renter’s financial obligation is typically limited to the monthly rental amount, which cannot exceed thirty percent (30%) of the renter’s gross monthly income, along with a security deposit. [Pet COL #12]

5. Reserved housing rental units are regulated for a minimum period of 15 years, HAR §15-22-185.1(c). This means that those rental units must remain committed for renters whose adjusted household incomes are no more than one hundred percent (100%) of the AMI for at least 15 years. Reserved housing units **offered for sale** up to one hundred forty percent (140%) AMI are regulated anywhere from two (2) years to ten (10) years, depending upon affordability, HAR §15-22-186(b). [Pet COL #13, as amended]

6. Pursuant to HAR §15-22-118(a), “[a]ny planned development permit granted under the provisions of this subchapter shall automatically lapse if the initial building permit authorizing construction of the foundation or superstructure of the project shall not have been issued within two years from the date of the permit...”. [Pet COL #14]

7. Under HAR §15-22-118(c), the HCDA “may grant an extension to the effective period of a planned development permit, not to exceed two years, upon the applicant’s request and justification in writing for an extension, provided the request and justification are received by the authority at least one hundred days in advance of the automatic termination date...and there are no material changes in circumstances which may be cause for denial of the extension.” [Pet COL #15]

8. Under the Vested Rules (HAR §15-22-115(a)) and the WNMP Permit, VWL is required to provide twenty percent (20%) of the total number of dwelling units as reserved housing. Under the Vested Rules (HAR §15-22-203(b)(1)(E)), VWL is required to provide the off-site reserved housing for Development Permit Nos. KAK 13-036 and KAK 13-037 “within two years after the development is completed on the development lot from which the reserved housing units were transferred...”. [HCDA COL]

DECISION AND ORDER

IT IS HEREBY ORDERED that the Motion is GRANTED and the Development Permits are hereby amended as set forth herein, provided that the Authority's approval is subject to the following conditions:

1. VWL shall provide 375 units in the Project approved as Development Permit No. KAK 13-038 as reserved housing for rental and/or for sale in accordance with the provisions of HAR Chapter 15-22 Subchapter 7 of the Vested Rules. [Pet D&O #1, as amended]

2. Prior to the HCDA's approval of the building permit for the Project associated with Development Permit No. KAK 13-038, VWL shall prepare and submit to the HCDA Executive Director a program for rental and/or sale of reserved housing for approval, which verifies that such rentals and/or sales are consistent with the provisions of HAR §15-22-183 of the Vested Rules. [Pet D&O #4]

3. The effective period of Development Permit No. KAK 13-038 shall be extended by two (2) years pursuant to HAR §15-22-118, expiring on July 16, 2017. [Pet D&O #5]

4. Except as provided herein, all other provisions and conditions of the Development Permits shall remain in full force and effect. [Pet D&O #6, as amended]

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ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 13th day of May, 2015. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawaii, this 13th day of May, 2015.

Hawaii Community Development Authority
(Kakaako Members)

Beau J. K. Bassett

Jade Butay, Designated Representative of
Director of Department of Transportation

Scott Kami, Designated Representative of
Director of Department of Budget and Finance

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APPROVED AS TO FORM:

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