

Victoria Ward, Limited Consolidated Motion

May 27, 2015

**Second 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**

RECEIVED

2015 MAY 20 PM 3 00

HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

WATANABE ING LLP
A Limited Liability Partnership

J. DOUGLAS ING #1538-0
EMI L.M. KAIMULOA #7794-0
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, HI 96813
Telephone No. (808)544-8300

Attorneys for VICTORIA WARD, LIMITED

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

In re Motion of

VICTORIA WARD, LIMITED,

Applicant,

For an Order of Amendment to Development
Permit No. KAK 13-036

File No.: PL MASP 13.1.3
PD Permit No. KAK 13-036
[Consolidated with PD Permit Nos.
KAK 13-037 and KAK 13-038]

SECOND 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

In re Motion of

VICTORIA WARD, LIMITED,

Applicant,

For an Order of Amendment to Development
Permit No. KAK 13-037

PD Permit No. KAK 13-037

[caption continued on next page]

In re Motion of

PD Permit No. KAK 13-038

VICTORIA WARD, LIMITED,

Applicant,

For an Order of Amendment to Development
Permit No. KAK 13-038 and to Extend Time
of Effective Period of Permit KAK 13-038

498983

**SECOND 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.

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."

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...."

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."

5. On July 17, 2013, the HCDA approved the Project, adopting HCDA's Staff Report Findings, and Recommendations. The Staff Report at page 13 provided in relevant part as follows:

Staff finds that the Project consists of 424 residential units and therefore the reserved housing requirement for the Project is to provide 106 residential units as reserved housing units. The Applicant is proposing to set aside 375 residential units as reserved housing units in the Project. The Project will generate a reserved housing credit of 269 units for the Applicant that could be utilized to fulfill the reserved housing requirements for other planned developments proposed by the Applicant within the KCDD.

6. VWL was required to provide 375 units in the Project as reserved housing:

III. RESERVED HOUSING: The Applicant shall comply with the provisions of the Reserved Housing subsection in the Chapter 22, Kakaako Mauka Area Rules ("Vested Rules"). The Project consists of 424 residential units. **Twenty percent (20%)** of the total residential units, which translates to a total of 106 units, shall be required to meet the reserved housing provisions of the Vested Rules. **The Applicant shall provide 375 units as reserved housing for sale.** A credit of 269 reserved housing units in excess of the required 106 reserved housing units for the Project is hereby acknowledged. The Applicant shall have the right to utilize excess reserved housing credit to fulfill reserved housing requirements for other planned development projects containing multi-family dwelling units.

Reserved housing shall be designated for residents in the low-income or moderate-income ranges who meet eligibility requirements. The regulated term for reserved housing units for sale shall be established based on unit affordability as set forth in §15-22-186(b) of the Vested Rules and shall begin on the date of issuance of Certificate of Occupancy.

In accordance with the provisions of §15-22-183 of the Vested Rules, the Applicant or its designated representative is permitted to be responsible for advertising, qualifying, and selecting prospective reserved housing buyers subject to Subchapter 7 of the Vested Rules.

Within ninety (90) days from the date of this Development Permit, the Applicant shall prepare and submit to the HCDA Executive

Director a program for sale of reserved housing for approval. Such sale of reserved housing shall be consistent with the provisions of §15-22-183 of the Vested Rules.

Delivery of reserved housing shall be required prior to the issuance of the initial Certificate of Occupancy for the Project and shall be secured by the Applicant with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, or other financial instruments acceptable to the Authority prior to approval of the initial Building Permit by the Authority.

7. VWL complied with Development Permit No. KAK 13-038 by submitting a program for sale of reserved housing units to the HCDA for review and approval.

8. On August 21, 2013, the HCDA approved Development Permit No. KAK 13-036 (“Land Block 2, Project 1 Permit”) and Development Permit No. KAK 13-037 (“Land Block 3, Project 1 Permit”) (collectively, “Land Block 2 and 3 Permits”) for projects within Land Blocks 2 and 3 of the Master Plan Permit area.

9. The Land Block 2, Project 1 Permit requires the provision of “forty-five (45) units as reserved housing for sale.”

10. The Land Block 3, Project 1 Permit requires the provision of “eighty (80) units as reserved housing for sale.”

11. The reserved housing units required for the Land Block 2 and 3 Permits are to be fulfilled through construction of reserved housing units under Development Permit No. KAK 13-038.

12. As of this date, VWL is in compliance with all of the conditions under the Development Permits.

PROCEDURAL HISTORY

13. On February 23, 2015, VWL submitted its Motion.

14. 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”).

15. On March 7, 2015, the Notice of Public Hearings was published pursuant to Act 61.

16. 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.

17. 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 county in which the project is located. 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.

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

19. No comments were received from any government agencies.

20. On April 2, 2015, a pre-hearing conference was held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813.

21. On April 2, 2015, the HCDA issued its Pre-Hearing Order, requiring the submission of witness lists, exhibits lists, and exhibits on April 6, 2015.

22. On April 6, 2015, VWL submitted its witness list, exhibit list, and exhibits pursuant to the Pre-Hearing Order.

23. 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.

24. On April 8, 2015, the contested case hearing on the Motion was held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813.

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

26. At the April 8, 2015 hearing, VWL presented the testimony of Race Randle, Vice President of Development for The Howard Hughes Corporation.

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

28. 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.

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

30. On April 22, 2015, another contested case hearing on the Motion was held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813.

31. At the April 22, 2015 hearing, the Authority re-opened the contested case hearing record to allow the presentation of additional evidence pursuant to HAR §15-219-52(c). The Authority admitted into evidence Exhibit 3 – Slide Presentation.

32. 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.

33. 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.

34. 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.

35. At the April 22, 2015 hearing, the HCDA Chairperson continued decision-making to May 13, 2015.

36. On May 13, 2015, the Authority held its continued decision-making hearing on the Motion at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813.

37. For the May 13, 2015 hearing, the HCDA received 2 public comments in writing: 1 in support of granting the Motion and 1 in opposition.

38. At the May 13, 2015 hearing, 8 members of the public provided oral comments: 7 in support of granting the Motion and 1 in opposition.

39. The Authority continued decision-making to May 27, 2015.

REQUEST FOR RENTAL AND/OR SALE OF RESERVED HOUSING

40. There are significant benefits to VWL's proposal to fulfill its reserved housing requirements through rental units versus units for sale.

41. According to the State of Hawaii Department of Business, Economic Development and Tourism, approximately 3,500 new housing units are needed annually just on Oahu. The Project contributes to the availability of affordable housing options in the urban core. See Exhibits 1-2; April 8, 2015 Testimony.

42. There is a significant need for affordable rental units. Approximately 74,128 Hawaii families qualify for reserved housing rental units versus 9,330 Hawaii families that qualify for reserved housing units for sale. See Exhibits 1-2; April 8, 2015 Testimony.

43. Under VWL's proposal, reserved housing units can be delivered sooner than reserved housing units for sale, the latter of which requires meeting pre-sale levels. See Exhibits 1-3; April 8, 2015 and April 22, 2015 Testimony.

44. Under VWL's proposal, reserved housing rental units would be regulated for a longer period – 15 years – as opposed to units for sale, which would be regulated for only a 2-5 year period for units between 100-140% AMI. See Exhibits 1-3; April 8, 2015 and April 22, 2015 Testimony.

45. Under VWL's proposal, reserved housing rental units will be provided to Hawaii residents at lower income levels than units for sale. See Exhibits 1-3; April 8, 2015 and April 22, 2015 Testimony.

46. Under VWL's proposal, Hawaii residents who may not be able to provide a down payment several years prior to occupancy may be able to rent a unit in the urban core with no down payment requirement. See Exhibits 1-3; April 8, 2015 and April 22, 2015 Testimony.

47. Under VWL's proposal, there is a significantly lower monthly cost for reserved housing rental units versus sale units. The annual rent subsidies for reserved housing rental units are anticipated to be approximately \$3.3 million per year, or \$54 million over the 15-year

regulated period. This lower monthly cost will provide Hawaii residents with the opportunity to save toward a down payment for a future home purchase. See Exhibits 1-3; April 8, 2015 and April 22, 2015 Testimony.

48. Under VWL’s proposal, approximately 1,688 Hawaii families may be served by a reserved housing rental project regulated for 15 years versus 125 Hawaii families who may purchase reserved housing units. See Exhibits 1-3; April 8, 2015 and April 22, 2015 Testimony.

49. A 15-year regulated period for rental reserved housing units is consistent with the provisions of HCDA’s revised rules set forth in HAR Chapter 15-218 and is also consistent with the regulated terms for other reserved housing rental projects approved by the HCDA, including the projects within the Kamehameha Schools’ Master Plan area known as 680 Ala Moana, Keauhou Lane, and Block A. See Exhibits 1-3; April 8, 2015 Testimony. Applying different rules to the WNMP area than applied to other similarly-situated permit holders, without appropriate notice and rule amendments, is not consistent with the Authority’s statutory and constitutional duties to apply laws equally, and without arbitrariness or discrimination.

50. If reserved housing rental units are approved with a regulated term greater than 15 years, VWL will not be able to provide 375 rental reserved housing units, but will instead re-evaluate the Project with 125 for-sale units.

51. Approving the Motion and the 15-year regulated period for reserved rental housing units is consistent with the HCDA’s report issued March 1, 2015 entitled Let’s All Be A Part of the Solution (“POTS report”). The POTS report summarized the work of an Authority-appointed committee in analyzing and recommending changes to the reserved housing program. While the POTS report recommended “several amendments to our rules so that we can be more effective in placing Hawaii’s working families in home they can afford” it also noted that HCDA

“policies cannot be so strict and rigid that they serve as a disincentive to developers, and cause developers to build elsewhere on the mainland.”

52. The POTS report noted the distinct role of HCDA in reaching the “target demographic...of people making between 81-140% AMI” as opposed to the “other government agencies [which] are already tasked with helping secure housing for the other income groups.” For example, the POTS report cited to the Hawaii Housing Finance & Development Corporation (“HHFDC”), which targets those making 60% AMI and below, the Hawaii Public Housing Authority, which targets those making 60% AMI to less than 30% AMI, and the Institute for Human Services, which provides temporary homeless shelter and services.

53. According to the POTS report, “nobody else will build these [reserved housing rental] units” because the “revenue from these projects don’t cover the cost to build and maintain the units” and “only government or private developers given subsidy of cash and tax credits build these units.” The POTS report estimated that “at least \$100,000 in gap funding is necessary to build each low income housing rental unit.”

54. Importantly, the POTS report contained a recommendation to increase the regulated period of rental units, but the recommendation was expressly to amend the rules first: “HCDA to **amend its rules** to specify that the regulated period for its Reserved Housing Rental Units is increased from 15 to 30 years.” The POTS report was not intended to be implemented in piecemeal fashion. It contained recommendations to completely overhaul the reserved housing program, including recommendations to amend rules to “establish incentives for developers to provide larger units,” to lower the AMI to between 80-120%, to extend the buy-back period for sale units, and to work with ERS to establish an investment pool for buy backs,

among many other things. Proceeding with a regulated term greater than 15 years prior to the proper implementation of the recommendations in the POTS report is premature.

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

55. Several factors contributed to the need for an extension to Development Permit No. KAK 13-038 including coordination with the Honolulu Authority for Rapid Transportation (“HART”) for the adjacent rail guideway, accommodations for a 22,000 square foot space for a neighborhood retailer intending to lease the ground floor of the building, and the due diligence and financing related to VWL’s proposal for a rental reserved housing project versus a for sale project. See Exhibits 1-2; April 8, 2015 Testimony.

56. To date, VWL has invested more than \$4.5 million in the Project. VWL has expended substantial resources in submitting the Project’s applications for sewer, demolition, foundation, State Historic Preservation Division, and National Pollutant Discharge Elimination System permits. There is substantial and uncontested evidence that VWL is committed to completing the Project and fulfilling its reserved housing requirements under the Vested Rules. See Exhibits 1-2; April 8, 2015 Testimony.

57. An extension to Development Permit No. KAK 13-038 would allow VWL to bring to market a diversity of housing options and a product type that is in great demand in Honolulu.

RULINGS ON PROPOSED FINDINGS OF FACT

Any findings of fact submitted by VWL not already ruled upon by 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.

CONCLUSIONS OF LAW

1. The HCDA is an agency created by statute to implement the purpose of HRS Chapter 206E. See HRS §206E-3(a).

2. As an agency created by statute, the HCDA must act within the bounds of its legislatively mandated purposes. See *Pilaa 400, LLC v. Board of Land and Natural Resources*, 132 Hawaii 247, 263, 320 P.3d 912, 928 (2014).

3. The legislatively-mandated purpose of HRS Chapter 206E, as set forth in HRS §206E-1, is the redevelopment of designated areas in the State that are substantially undeveloped and in need of renewal and improvement:

The legislature finds that many areas of the State are substantially undeveloped, blighted, or economically depressed, and are or are potentially in need of renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability.

The legislature further finds that there exists within the State vast, unmet community development needs. These include, but are not limited to, a lack of suitable affordable housing; insufficient commercial and industrial facilities for rent; residential areas which do not have facilities necessary for basic liveability, such as parks and open space; and areas which are planned for extensive land allocation to one, rather than mixed uses.

It is further determined that the lack of planning and coordination in such areas has given rise to these community development needs and that existing laws and public and private mechanisms have either proven incapable or inadequate to facilitate timely redevelopment and renewal.

The legislature finds that a new and comprehensive authority for community development must be created to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development. The purpose of this chapter is to establish such a mechanism in the Hawaii community development authority, a public entity which shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition. For such areas designated as community development districts, the legislature believes that the planning and implementation program of the Hawaii community development authority will result in communities which serve the highest needs and aspirations of Hawaii's people.

The legislature finds that the creation of the Hawaii community development authority, the establishment of community development districts, and the issuance of bonds pursuant to this chapter to finance public facilities serve the public interest and are matters of statewide concern.

4. Pursuant to HRS §206E-5, the Legislature “may designate an area as a community development district if it determines that there is a need for replanning, or redevelopment of that area.”

5. The Legislature determined that the Kakaako area was in need of redevelopment and created the KCDD as set forth in HRS §206E-32.

6. In fact, in HRS §206E-31, the Legislature expressly outlined the need for the redevelopment of Kakaako:

The legislature finds that:

(1) The Kakaako district is centrally located in Honolulu proper, in close proximity to the central business district, the government center, commercial, industrial and market facilities, major existing and contemplated transportation routes and recreational and service areas;

(2) Due to its present function as a service and light industrial area, the district is relatively underdeveloped and has especially in view of its proximity to the urban core where the pressure for all land uses is strong the potential for increased growth and development that can alleviate community needs such as low-income housing, parks and open space, and commercial and industrial facilities;

(3) The district, if not redeveloped or renewed, has the potential to become a blighted and deteriorated area. Due to its present economic importance to the State in terms of industry and subsequent employment, there is a need to preserve and enhance its value and potential;

(4) Kakaako has a potential, if properly developed and improved, to become a planned new community in consonance with surrounding urban areas.

In coordinating community development in the Kakaako district, the authority shall plan a mixed-use district whereby industrial, commercial, residential, and public uses may coexist compatibly within the same area.

The authority shall plan for the above uses, but shall also respect and support the present function of Kakaako as a major economic center, providing significant employment in such areas as light industrial, wholesaling, service, and commercial activity.

7. Accordingly, the statutory mandate requires that the Authority fulfill its fiduciary obligations and duties in compliance with the Legislature's stated purposes of re-developing the KCDD. This statutory mandate includes the redevelopment of the KCDD, which includes low-income housing as one component, but not the only component, in a mixed-use district that is also in the urban core and economic center of Honolulu. In other words, the mission and vision of the Mauka Area Plan and Vested Rules are not limited solely to providing affordable or reserved housing.

8. Consistent with its statutory mandates, the HCDA has jurisdiction to approve this Motion to allow the rental and/or sale of reserved housing units and to extend the effective period of Development Permit No. KAK 13-038 pursuant to HRS Chapter 6E and HAR Chapter 15-22.

9. 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.”

10. One of the purposes of a master plan under HAR Chapter 15-22 (“Vested Rules”) is “to derive public benefits, such as affordable housing, ... which are generally provided by government and would not otherwise be required from private developers.” HAR §15-22-200(b). 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.

11. 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.

12. 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.

13. 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** between one hundred percent (100%) and one hundred forty percent (140%) AMI are regulated anywhere from 2 years to 5 years, depending upon affordability. HAR §15-22-186(b). Accordingly, there are significant benefits to the community of providing both rental and sale options for reserved housing units, which include ensuring the diversity of housing options in the urban core.

14. 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...”

15. 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.”

16. 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 15,

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.

17. 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 commence development of 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....”

18. Upon consideration of all applicable rules and regulations, the evidence and testimony presented by VWL, the public comments, and all other evidence appearing of record, the Authority concludes that the Motion should be, and is hereby, GRANTED, pursuant to the Vested Rules.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Motion is GRANTED and the Development Permits are hereby amended as set forth herein and 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 the Vested Rules (HAR Chapter 15-22).
2. Development Permit Nos. KAK 13-036, KAK 13-037, and KAK 13-038 shall be amended to allow the provision of reserved housing requirements through the sale and/or rental of reserved housing units.

3. The regulated term for reserved housing units for rental shall be fifteen (15) years as set forth in HAR §15-22-185.1(c) and shall begin on the date of issuance of Certificate of Occupancy of the Project at 988 Halekauwila.

4. The regulated term for reserved housing units for sale shall be established based on unit affordability as set forth in HAR §15-22-186(b) and shall begin on the date of issuance of Certificate of Occupancy of the Project at 988 Halekauwila.

5. 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.

6. 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.

7. Except as provided herein, all other provisions and conditions of the Development Permits shall remain in full force and effect.

ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 27th 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 27th 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

Tom McLaughlin

William Oh

Jason Okuhama

Steven Scott

Mary Pat Waterhouse

John Whalen

APPROVED AS TO FORM:

Lori N. Tanigawa, Deputy Attorney General