

# MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

June 17, 2015

## HAND DELIVER

Hawai'i Community Development Authority  
547 Queen Street  
Honolulu, Hawai'i 96813

Attention: John P. Whalen, Chairperson

Re: Docket No. CCED KAK 2015-2 / Symphony Honolulu (DP No. KAK 12-075)  
Petition for Waiver and Suspension of §15-217-55(k)(2) of the Mauka Area Rules

Dear Mr. Whalen:

Reference is made to that certain Petition for Waiver and Suspension of §15-217-55(k)(2) of the Mauka Area Rules, Docket No. CCED KAK 2015-2 (the "**Petition**") filed on behalf of OliverMcMillian Pacific Rim, LLC (the "**Petitioner**") with the Hawaii Community Development Authority on May 28, 2015. We have been requested by the Petition to submit this letter of clarification on its behalf.

Pursuant to §15-217-98 of the Mauka Area Rules, the Petition requested review, consideration, and action by the Board of the Hawaii Community Development Authority (the "**Authority**") to (1) waive or permanently suspend §15-217-55(k)(2) of the Mauka Area Rules (herein, the "**Glass Rule**") as to the Symphony Honolulu Project (Development Permit No. KAK 12-075) and that such waiver or permanent suspension be retroactive from April 5, 2015, and (2) suspend the Glass Rule for the Kaka'ako Community Development District in general pending further review, analysis, and research prior to consideration of an appropriate modification and/or amendment to remove and rectify the conflict and negative impacts of the current Glass Rule on other Mauka Area Rules.

Petitioner has been requested to and is providing this letter in order to clarify that it is requesting two (2) separate actions in its Petition and that a separate procedural process should be applicable to each of the requested actions under the Petition.

The first requested action is a request for waiver or permanent suspension of the Glass Rule as applied to the Symphony Honolulu Project under the Development Permit for Symphony Honolulu and to make the same retroactive to April 5, 2015. Petitioner acknowledges and understands that its request for a waiver or permanent suspension of the Glass Rule per §15-217-98 of the Mauka Area Rules is tantamount to an amendment to the existing Development Permit as approval of this requested action would result in that section of the Mauka Area Rules no longer being applicable to the Development Permit for the Symphony Honolulu Project. As a consequence Petitioner understands and accepts that the procedural process applicable to the first requested action under the Petition is and should be consistent with the procedural process applicable to a request for an amendment or modification of its existing Development Permit.

The second requested action is a request that the Authority suspend the existing Glass Rule for the Kaka'ako Community Development District in general pending consideration of an

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appropriate modification and/or amendment to the Glass Rule to remove the substantial conflict and negative impact of the current Glass Rule on other Mauka Area Rules. Petitioner's viewpoint is that the substantial conflict and unintended consequences created with other Mauka Area Rules by strict application of the current Glass Rule is a Kaka'ako District-wide issue and not one limited to or unique to the Symphony Honolulu Project and that appropriate action should be taken by the Authority to remove and rectify this issue for all projects in Kaka'ako subject to the current version of the Mauka Area Rules. Notwithstanding the foregoing, Petitioner acknowledges and agrees that the procedural process for the Authority to respond to this requested action is separate and distinct from the first requested action by the Authority. It is not a request to modify or amend the Petitioner's Development Permit and should not be handled in that manner. Rather it is a request that in light of the identified and substantial conflict created by trying to meet both the requirements of the existing Glass Rule and other Mauka Area Rules and the unintended and negative consequences which arise therefrom, which have been identified by Petitioner as applied to the Symphony Honolulu Project, that the Authority should initiate the appropriate review, analysis, and research relating to the Glass Rule and based on the results thereof propose a modification or amendment to the Glass Rule to remove the conflicts. Therefore Petitioner feels that it would be appropriate to consider the second requested action as being tantamount to a request for the Authority to initiate a rule-making revision and the applicable rule-making procedural process should be followed by the Authority. Since Petitioner believes strongly that the current Glass Rule is a District-wide problem, Petitioner has proposed that the Authority consider suspending the Glass Rule pending this rule-making process. That is a matter which can be appropriately considered and determined in the context of the Authority's determination of whether or not to initiate the requested rule-making revision to the existing Glass Rule.

Petitioner therefore wishes to clarify and confirm for purposes of the Authority's processing and handling of the Petition that it is Petitioner's view that the two (2) requested actions in the Petition should be bifurcated and handled by means of separate procedural processes consistent with the comments set forth above. Petitioner reiterates its request that the Authority expedite the review, consideration of, and decision making on the first request for a waiver or permanent suspension of the Glass Rule as applied to the Symphony Honolulu Project under the Development Permit for Symphony Honolulu and to make the same retroactive to April 5, 2015.

If you have any questions or require anything further from our client or us regarding the above matter, please do not hesitate to contact the undersigned.

McCORRISTON MILLER MUKAI MacKINNON LLP



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