

Shall the Authority Approve a Request for the 1025 Waimanu Street Parcel (Artspace) to be Encumbered as Affordable Housing in Perpetuity?

Staff Report

June 24, 2015

Background: The Authority approved a Development Permit for the Ola Ka ‘Ilima Artspace Lofts project (“Project”) on January 15, 2015 (Exhibit A). On November 25, 2014, the Authority also approved ground lease terms and authorized the Executive Director to enter into a ground lease for the land parcel owned by the Hawaii Community Development Authority (“HCDA”) at 1025 Waimanu Street (Lot 40, Tax Map Key: 2-3-003: 040) for construction of the Project (Exhibit B).

The Project proposes to provide 84 rental units affordable to households earning between 30% and 60% of the Area Median Income (AMI) for 65 years, and with a preference for residents participating in the arts.

EAH Housing, a non-profit corporation will manage the Project. Some of the ground-floor commercial space is reserved for the PA‘I Foundation and will serve as a classroom space for traditional Hawaiian practices.

Discussion: Ola Ka ‘Ilima Lofts, Limited Liability Limited Partnership (“LLLP”) is the entity that will develop the Project. At the time of approval of a Development Permit, the Project was estimated to cost approximately \$39 million. Artspace Projects, Inc. (Artspace) is assembling a financing stack of grants, low-income housing tax credits, and loans for construction of the Project. Through a letter dated June 15, 2015, (Exhibit C) the LLLP is informing the Authority that the City and County of Honolulu (“City”) has appropriated \$7,202,000.00 from the City’s Affordable Housing Fund (“Fund”) for development, construction and maintenance of the Project. However, in order to access the monies from the Fund, the LLLP must demonstrate to the City that the Project will be used for affordable housing in perpetuity. The LLLP is requesting that the HCDA place a covenant on Lot 40 as an affordable housing development lot in perpetuity.

Currently by statute, the HCDA can only offer a 65-year lease. However, it appears that there is no restriction on placing covenants or encumbrances on fee simple property owned by the HCDA. The request from LLLP indicates that at any time if the HCDA or the LLLP defaults on the perpetuity commitment, or wishes to discharge the commitment, all monies from the Fund that were provided for the Project must be returned to the City. Staff believes that the HCDA should not agree to potential future financial commitment. If the City is willing to waive the financial commitment for the HCDA or if the LLLP is willing to provide a financial guarantee to the HCDA in the amount of the total Fund, the HCDA should consider encumbering the property as affordable housing development lot in perpetuity.

Recommendation: Staff recommends that the Authority approve the request for the 1025 Waimanu Street Parcel (Artspace) to be encumbered as affordable housing in perpetuity provided that the City does not impose financial commitment on the HCDA or if the LLLP is willing to provide a financial guarantee to the HCDA in the amount of the total Fund.

Attachments: Exhibit A – Findings of Fact, Conclusion of Law, Decision and Order
 Exhibit B – Approved Ground Lease Terms
 Exhibit C – Letter from Carlsmith Ball LLP, dated June 15, 2015

ORDER
OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Application of)	APPLICATION NO. KAK 14-101
)	
Artspace Projects, Inc.,)	
)	
Applicant)	
)	
)	
for a Development Permit)	
)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

On September 12, 2014, Artspace Projects, Inc. (“Artspace”) submitted an application for a development permit (“Application”) pursuant to Act 61, Session Laws of Hawaii 2014 (“Act 61”), Chapter 206E of the Hawaii Revised Statutes (“HRS”), and Chapters 15-217 and 15-219 of the Hawaii Administrative Rules (“HAR”) for a proposed mixed-use building to contain 84 affordable housing units to be made available to households earning at or below sixty percent (60%) of the Area Median Income (“AMI”), a ground floor commercial space and related improvements, to be located at 1025 Waimanu Street, in a project to be known as Ola Ka ‘Ilima Artspace Lofts (“Project”). The property affected by this Application is located within the Kakaako Community Development District (“KCDD”) and includes the central area of the block bound by Waimanu Street, Kawaiahao Street, Kamakee Street and Cummins Street, further identified as Tax Map Key (“TMK”) No. (1) 2-3-003: 040 (the “Property”).

The Hawaii Community Development Authority (“HCDA” or the “Authority”), having heard and examined the testimony, evidence, and arguments 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

PROCEDURAL HISTORY

1. On September 12, 2014, Artspace submitted its Application for the proposed Development Permit.
2. On October 31, 2014, Artspace submitted a revised Application.
3. On November 3, 2014, the Application was deemed complete by the HCDA.
4. On November 7, 2014, the HCDA posted the Application on the HCDA website.
5. On November 8, 2014, the Notice of Public Hearings was published in the Honolulu Star-Advertiser.
6. The President of the Senate and Speaker of the House of Representatives were notified upon the posting of the hearing notice.
7. Associations of apartment owners of residential buildings in the KCDD adjacent to the Project, surrounding landowners and businesses, the Ala Moana/Kakaako Neighborhood Board, and the Kakaako Improvement Association were notified of the public hearings.
8. Various elected officials and State and County agencies were also notified of the public hearings.

9. Hearing notice was also provided to approximately 366 individuals and organizations that have shown interest in development in Kakaako in the past and who have requested that they be kept informed of development activities in the KCDD.

10. On November 15, 2014, Artspace provided notification by first-class United States mail, postage prepaid, to owners and lessees of record of real property located within a 300-foot radius of the perimeter of the proposed Project 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.

11. The said notification included, without limitation, (1) Project specifications; (2) requests for variance, exemption, or modification of a community development plan or the Authority's community development rules; and (3) procedures for intervention and a contested case hearing.

12. As set forth in the Notice of Public Hearings, the deadline to intervene was November 28, 2014. No motion for intervention was filed.

13. Comments regarding the Project were received from the following agencies:

- Department of Transportation Airports Division, November 28, 2014 correspondence;
- Department of Education ("DOE"), November 19, 2014 correspondence;
- Department of Land and Natural Resources ("DLNR") State Historic Preservation Division ("SHPD"), April 28, 2014 and September 29, 2014;
- Board of Water Supply ("BWS"), September 2, 2014 correspondence,

- Department of Transportation Services (“DTS”), December 8, 2014 correspondence;
- Department of Planning and Permitting (“DPP”), December 12, 2014 correspondence;
- Honolulu Authority for Rapid Transportation (“HART”), December 18, 2014 correspondence;
- BWS, December 18, 2014 correspondence; and
- Hawaii Housing Finance & Development Corporation (“HHFDC”) for Action, reviewed and approved by the HHFDC Executive Director on November 13, 2014.

14. On December 5, 2014, a pre-hearing conference was held at HCDA’s office at 461 Cooke Street, Honolulu, Hawaii 96813.

15. On December 5, 2014, the pre-hearing order was issued by the HCDA Executive Director.

16. On December 8, 2014, an inter-agency meeting was held at HCDA’s office at 461 Cooke Street, Honolulu, Hawaii 96813. No agencies, apart from the HCDA, attended the inter-agency meeting.

17. On December 10, 2014, Artspace submitted its witness list, exhibit list, and exhibits pursuant to the Pre-Hearing Order.

18. On December 17, 2014, a public hearing on the Application was held at HCDA’s office at 461 Cooke Street, Honolulu, Hawaii 96813 in order to allow Artspace to present the Project and to afford the public the opportunity to present testimony on the Project (hereinafter, “December 17, 2014 hearing”).

19. At the December 17, 2014 hearing, the Authority admitted into evidence the following exhibits, including written direct testimony, presented by Artspace:

Exhibit	Exhibit Description
1.	Artspace Ola Ka 'Ilima Lofts PowerPoint Presentation
2.	Resume of Gregory Handberg, Senior Vice President, Properties, Artspace Projects
3.	Resume of Heidi Z. Kurtze, Vice President, Property Development, Artspace Projects
4.	Resume of Cathryn Vandenbrink, Vice President, Properties, Artspace Projects
5.	Resume of Kevin Miyamura AIA, LEED-AP, Design Principal, Urban Works
6.	Resume of Jennifer Poepoe, RA, Project Architect, Urban Works
7.	Resume of Jami S. Hirota, P.E., LEED BD&C, Civil Engineer/Project Manager, Sam O. Hirota, Inc.
8.	Resume of Pete G. Pascua, P.E., Vice President, Wilson Okamoto Corporation
9.	Limited Warranty Deed, 2010-069763 to the HCDA
10.	Artspace Projects, Inc. - Ola Ka 'Ilima Artspace Lofts Act 61 (2014) Analysis Ex. A - Mauka Area Rules Conformance Matrix Ex. B - HAR §15-307-24 Ex. C - HHFDC For Action, 11/13/14 Ex. D - Resume of Kevin R. Carney, EAH Housing Ex. E - SHPD Confirmation Letter, 9/29/14 (includes SHPD determination letter of 4/28/14) Ex. F - Information re PA'I Foundation and Vicky Holt Takamine

Exhibit	Exhibit Description
11.	Affidavit of Gregory Handberg re mailing of notice of hearing Ex. A - Letter and Notice of Public Hearing Ex. B - List of Properties from City and County of Honolulu Real Property Assessment Division Ex. C - Copy of Post Office Receipt for Mailing Ex. D - Master Mailing List with "Return to Sender" Notations
12.	Written Direct Testimony of Kevin Miyamura
13.	Written Direct Testimony of Jami S. Hirota
14.	Written Direct Testimony of Pete G. Pascua
15.	Board of Water Supply Approval Letter Dated August 27, 2012
16.	City and County of Honolulu Sewer Connection Application, Approved on December 1, 2014
17.	State Department of Health Concurrence Letter dated June 24, 2014
18.	Resume of Abbey Mayer, President, Mayer & Associates Consulting, Inc.
19.	Extracted Pages from the Minutes of a Special Meeting of the HCDA, November 25, 2014, Regarding the Artspace Project Lease

20. The Application dated October 31, 2014, which included: (i) Project drawings; (ii) Final Environmental Assessment (letter to the Office of Environmental Quality Control ("OEQC") dated 10/28/14) ("Final EA"); (iii) HRS 201H Application to HHFDC ("201H Application"); (iv) BWS letter dated September 2, 2014; (v) Sewer Connection Application dated July 18, 2012; (vi) Leadership in Energy and Environmental Design ("LEED") v4 for Neighborhood Development Plan Project Checklist; and (vii) Traffic Impact Report ("TIR")

dated June 2013, had previously been submitted to the Authority for processing and all such material was accepted into the record in KAK 14-101 at the December 17, 2014 hearing.

21. Artspace presented the oral testimony of the following 5 witnesses:

	Witness	Position	Description of Testimony
1.	Cathryn Vandenbrink	Vice President, Properties, Artspace Projects, Inc.	General background of Project, company, and Project development.
2.	Vicky Holt Takamine	Executive Director, PA'I Foundation	PA'I Foundation, Hawaiian cultural art and education aspects of the Project.
3.	Kevin Miyamura	Principal, Urban Works, Inc.	Project architecture and conformance with the HCDA Rules.
4.	Jami S. Hirota	Engineer & Project Manager, Sam O. Hirota Inc.	Civil engineering aspects of Project.
5.	Heidi Zimmer Kurtze	Vice President, Property Development, Artspace Projects, Inc.	Project finance and development.

22. In addition to the oral testimony provided by the above witnesses, Artspace also provided written direct testimony of Kevin Miyamura (architecture), Jami S. Hirota (civil engineering), and Pete G. Pascua (traffic engineering), as Artspace Exhibits 12-14, respectively.

23. The HCDA admitted the following witnesses as experts in their designated areas of expertise, as follows: Kevin Miyamura, architecture; Jennifer Poepoe, architecture; Jami Hirota, civil engineering; Pete Pascua, traffic engineering; Heidi Kurtze, project finance; and Kevin Carney, real estate development and property management.

24. For the December 17, 2014 hearing, the HCDA received five public comments in writing in support of the Project and zero public comments in writing in opposition to the Project.

25. At the December 17, 2014 hearing, seven members of the public provided oral comments. Of those, all seven supported the Development Permit; zero opposed.

26. At the December 17, 2014 hearing, the HCDA released its Staff Report entitled Development Permit Request, KAK 14-101: Ola Ka 'Ilima Artspace Lofts. (Hereinafter, the "HCDA Staff Report").

27. On December 20, 2014, the HCDA posted an Amended Notice of Public Hearing, changing the location of the decision-making hearing to 461 Cooke Street, Makai Conference Room, Honolulu, Hawaii 96813.

28. On December 23, 2014, Artspace provided notification of the change in location for the decision-making hearing by providing 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 the proposed Project 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.

29. On January 12, 2015, Artspace filed a Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

30. On January 21, 2015, the Authority held a decision-making hearing at 461 Cooke Street, Makai Conference Room, Honolulu, Hawaii 96813.

PROJECT DESCRIPTION

31. **Site Area.** The Project is located at 1025 Waimanu Street, TMK No. (1) 2-3-003: 040, on Block 33 of the Central Kakaako (“CK”) Zone, NZ.5. The Project site is approximately 30,000 square feet.

32. **Site Control.** The HCDA is the current titleholder for the Project Site.

33. At the Authority Meeting on November 25, 2014, the Authority authorized the HCDA Executive Director to enter into a lease agreement with Artspace.

34. **Neighborhood Zone and Land Use.** The Project is designed for commercial and residential uses, which is consistent with Mauka Area Rules, Figure 1.9 and HAR §15-217-26.

35. **Building.** The Project is proposed to consist of an 8-story structure, 99 feet in height; 6,482 square feet of commercial space; approximately 9,264 square feet of open and recreational space; and 84 affordable rental housing units.

36. The building is designed as an urban block, in conformance with HAR §15-217-54, Figures 1.3, NZ.5, NZ.5-1, and BT-8 Urban Block.

37. The building’s proposed height of 99 feet conforms to the maximum height requirements for Block 33 of the CK neighborhood, as stated in the Mauka Area Rules, HAR §15-217-54, Figures 1.3 and NZ.5.1.

38. The Project, however, does not conform to §15-217-54(c) of the HAR with respect to the twenty-five percent (25%) of the building void created by floor plate ratios (Figure BT.8-1) to be located along the facade and have a minimum depth of 10 feet. The Project seeks an HRS §201H-38 exemption for building massing, as described below.

39. **Building Massing.** The Project will be 8 stories. Floors 1-3 will be 28,906 square feet; floor 4 will be 19,718 square feet (66%); and floors 5-8 will be 16,020 (55%). All floors of the Project conform to Figures BT.8 and BT.8-1 of the Mauka Area Rules.

40. **Frontage.** The Project is consistent with frontage and thoroughfare requirements of §§15-217-25, 15-217-39, and Figures 1.3, NZ.5-B and PZ.5 of the Mauka Area Rules. The Project provides for a pedestrian zone, street trees and landscaping, street lighting and planting strips, as required under HAR §15-215-39.

41. The Project will have shop front along Kawaiahao Street, as allowed under HAR Chapter 15-217, Figure FT-5.

42. The Project conforms to the Mauka Area Rules related to frontage and frontage occupancy.

43. **Open and Recreation Space.** Under the Mauka Area Rules, fifteen percent (15%) of the Project site must be designated as open space. The Project provides approximately 9,264 square feet of open space between the building towers. The Project is consistent with the open and recreation space requirements for an Urban Block building, as provided in HAR Chapter 15-217, Figure BT.8 and §15-217-56.

44. **Green Building.** The Project is consistent with HAR §15-217-59 for green building requirements. The Project intends to meet the base LEED certified rating and conform to the Green Building standard requirement.

45. Among the sustainable design standards with which the Project will comply include storm water quality, heat island effect, and energy.

46. Artspace is not required to certify or submit the Project to the U.S. Green Building Council (“USGBC”) for Project recognition or approval.

47. **Flood Zone.** Section 15-217-61 of the Mauka Area Rules provides standards that apply to all new buildings within an identified Honolulu or Federal Emergency Management Agency (“FEMA”) flood zone and that are required by code to have raised ground floors.

48. The Property is primarily within the Zone X of FEMA’s National Flood Insurance Program Flood Insurance Rate Map, which is an area determined to be outside the 0.2 percent change of a 500-year flood.

49. A very small portion of the Mauka Diamond Head corner of the Property lies within Zone AE, which corresponds to the 100-year floodplain.

50. Nevertheless, the provisions of HAR §15-217-61 are not applicable to the Project.

51. **Parking.** The Project includes a parking structure and loading stall. Although off-street parking is not required under HAR §15-217-63(e)(2), the Project will include 94 parking stalls for mixed residential and commercial use.

52. Parking will be located on the street level and second level, and in the allowed parking zone in accordance with Figures BT-8-C and 1.10-B of the Mauka Area Rules.

53. The parking stalls are currently divided equally between residents and the public to service the commercial and cultural space. This division, however, is flexible and open to change as necessary because there is a zero parking stall requirement under the Mauka Area Rules.

54. The residential parking has a separate gated entry for privacy and security.

55. The Project conforms to the Mauka Area Rules related to parking spaces.

56. Additionally, the Project includes loading space, as required under HAR §§15-217-63(l)(1) and 15-217-63(l)(5).

57. **Parking Access.** The Project is required to have curbs set back at a minimum of 22 feet from adjacent properties. HAR §15-217-63(c)(3). The Project meets this requirement with curbs set back on Waimanu Street at a minimum of 22 feet.

58. **Bicycle Parking.** Short- and long-term bicycle parking is required to be provided within 400 feet of the building entrance pursuant to HAR §15-217-63(m).

59. The Project provides parking for approximately 20 bicycles within 400 feet of the building entrance.

60. Additionally, the Project has the flexibility and is amendable to increasing the current bicycle parking allocation should more space be required.

61. **Landscaping.** The Project will include open and recreational space, automatic irrigation system with rain sensor control, and trees on the Kawaiahao Street at 30-foot spacing.

62. Additionally, a number of trees for the recreation area are being provided on the courtyard level. These will be a mix of drought-tolerant plants, groundcover planting and some turfed play areas. This landscaping conforms to HAR §15-217-56 and Figure 1.7.

63. **Pedestrian Zone Treatment.** Waimanu Street sidewalks are required to have a 6-foot wide throughway; Kawaiahao Street sidewalks require 6-foot wide throughway and 2-foot wide frontage. The Project conforms to these requirements.

64. **Mauka Area Plan.** The Project complies with and advances the goals, policies, and objectives of the Mauka Area Plan.

65. **Mauka District.** The Project will not have a substantial adverse effect on the surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.

HRS CHAPTER 201H EXEMPTIONS

66. Artspace requested certain exemptions from the Mauka Area Rules, pursuant to HRS § 201H-38.

67. HRS §201H-38(a) states: “The corporation may develop on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of housing projects that shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon; provided that:

- (1) The corporation finds the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply authorized under chapter 54;

- (3) The legislative body of the county in which the housing project is to be situated shall have approved the project with or without modifications:
- (A) The legislative body shall approve, approve with modification, or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable

laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and

- (4) The land use commission shall approve, approve with modification, or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4.

If, on the forty-sixth day, the petition is not disapproved, it shall be deemed approved by the commission.”

68. The Mauka Area Rules require that “at least twenty-five per cent of the building void shall be located along the facade and have a minimum depth of ten feet, as measured from the facade towards the rear lot line; provided, however, that this minimum depth from the facade shall be increased by three feet for every ten feet of building height.”

69. Artspace requested an exemption for additional setbacks from the build-to-line in order to maintain structural economy of the housing tower plan layout relative to parking capacity below.

70. The Project proposes a 3-foot setback from the build-to-line to the building envelope, with sun shading treatments within this 3-foot setback, to allow elevation variation and interest per the intent of this section.

71. The Mauka Area Rules require a minimum awning vertical clearance of 16 feet.

72. The Project proposes to provide a minimum vertical clearance of 12 feet to bottom of awnings for greater sun and rain protection of pedestrians and storefront glazing.

73. The Mauka Area Rules places a maximum floor area ratio (“FAR”) of 1.5, which may be increased to 3.5 by the HCDA Executive Director upon a finding that the public infrastructure is adequate to support the Project within the CK neighborhood zone.

74. On November 3, 2014, the HCDA Executive Director made a determination of adequate infrastructure to support a density of 3.5 FAR, which is consistent with the provisions of HAR §15-217-57.

75. The Project proposes a total floor area of 112,672 square feet.

76. The Project’s proposed actual floor area of 112,672 square feet, or 3.7 FAR, exceeds the allocated density of 2.2 FAR as well as the allowable density of 3.5 FAR.

77. Accordingly, Artspace requested an exemption under HRS §201H-38 from the provisions of the HAR §15-217-57.

78. The exemption enables the creation of dedicated commercial and cultural space on the Waimanu and Kawaiahao Streets and the creation of community space for artist tenants on the podium level of the structure.

79. The minimum dimension of at least half of the required loading spaces shall be 12 x 35 feet and have a vertical clearance of at least 14 feet.

80. The Project is required to have one loading space, and requests an exemption to reduce the size of the required loading space to 8’-6” x 19’-0” with a vertical clearance of 9’-0” to allow loading and maneuvering to be located within the building and clear of pedestrian zones, while also providing 46 public parking stalls.

81. HAR §15-217-65 requires a building dedication or in-lieu fee payment for public facilities. This section does not apply to, among others, any development or improvement project undertaken by an eleemosynary (or charitable) organization, development or improvement project for public uses, public project, and workforce housing projects. HAR §15-217-65.

82. Artspace requested an exemption from the dedication requirement and the in-lieu fee payment of Public Facilities Dedication.

83. Artspace requested an exemption from the Application fees and costs related to public hearings, including publishing of hearing notices and the cost of a court reporter, under HAR §15-217-93.

84. Artspace does not seek an exemption from the public notice requirement itself. Rather, Artspace requested an exemption from Application fees and costs associated with the public hearings, including publishing of hearings notices and the cost of court reporter.

85. The costs of publication fees and court reporter fees are each approximately \$2,000.00.

86. As required by the HHFDC, Artspace prepared an Environmental Assessment for the Project which disclosed that it would be requesting exemptions under HRS §201H-38.

87. On November 13, 2014, the HHFDC approved the certification of Artspace as an eligible developer and the Project, including the proposed exemptions from HCDA's Mauka Area Rules, for processing under HRS § 201H-38.

ACT 61 REQUIREMENTS

88. Act 61 became effective July 1, 2014. Act 61 sets forth specific criteria that the HCDA must consider when deciding whether to issue Artspace the requested Application. These specific criteria are discussed in the proceeding paragraphs.

89. The Authority shall consider the extent to which the Project advances the goals, policies, and objectives of the applicable district plan.

a. The Project is within the KCDD, and is subject to the Mauka Area Plan (2011) and the Mauka Area Rules, which were designed to guide the redevelopment of this former warehouse area into a vibrant pedestrian-oriented urban community.

b. The Mauka Area Plan establishes the general redevelopment goals and objectives for the Mauka Area for both public improvements and private development within the approximately 670-acre KCDD, administered by the HCDA.

c. The HCDA's "vision is to ensure that the Kakaako Community Development District becomes the most, sustainable, livable urban community for the State, a place where people can work, live, visit, learn and play."

d. The principles of the Mauka Area Plan are: (1) develop urban village neighborhoods where people can live, work, shop and recreate; (2) create great places, such as venues for performance and entertainment, or quiet places to sit and read; and (3) make the connection, which is to find balance between modes of transportation in addition to vehicular traffic.

e. Urban villages consist of a mix of land uses with a strong residential foundation. Neighborhoods shall include necessary public facilities, including community meeting places, childcare centers, educational and cultural facilities, recreational amenities and a good transportation system.

f. The objectives of the Mauka Area Plan relate to: (1) urban design; (2) parks, open space and views; (3) transportation; (4) reserved housing; (5) historic and cultural resource plan; (6) social and safety plan; (7) relocation plan; (8) public facilities program; and (9) infrastructure and improvement district program.

g. The Project advances the goals, policies and objectives of the Mauka Area Plan.

h. The Project will consist of a mixed-use building containing 84 housing units affordable to households earning at or below sixty percent (60%) of AMI.

i. The Mauka Area Plan states that the HCDA will focus on stimulating production of housing units for buyers that are between 100 and 140 percent of AMI. Therefore, the Project exceeds the desired reserved housing goals of the Mauka Area Plan.

j. The Mauka Area Plan also states HCDA's preference for reserved housing units to remain affordable as long as reasonable.

k. The rental units at the Project will remain affordable for 65 years.

l. In addition to the 84 affordable housing units, the Project includes ground floor commercial space and a two-story structured parking garage. Therefore it provides an excellent example of an urban village, in that it combines residential with commercial uses.

m. The Project also offers space for cultural and educational facilities, as the Project is intended for artist, and will include a community space of approximately 4,546 square feet for the PA'I Arts & Culture Center, and additional 1,936 square feet for other commercial uses. The Project also includes approximately 9,264 square feet of green open space to be used as a courtyard with trees and a playground.

n. The Project will provide a mixed-use development that blends live and work space for artists and their families, non-profit partners, and community events and gatherings.

o. It is located outside of the vantage points and associated view planes for the Mauka Area. Therefore, the Project helps to achieve the objectives of urban design; parks, open space and views; transportation; social and safety plan; and public facilities program.

90. The Authority shall consider the extent to which the Project protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the Mauka Area Rules.

a. The Project largely conforms to the Mauka Area Plan.

b. For example, with respect to HAR §15-217-59 (Green Buildings) the Project was registered under LEED-ND (Neighborhood Design) on August 9, 2012.

c. Targeted credits under this rating system, as well as under LEED-BD+C, are identified to meet an equivalent LEED-BD+C certified rating and comply with Mauka Area Rules.

d. The core of the sustainable strategy is to emphasize on-site renewable energy and optimized energy performance as the most significant credits contributing to best and longest-term cost benefit to the residents and owner.

e. Additionally, the Project plans for a green roof between the two housing bars at the third floor courtyard level to both slow storm water runoff rates, as well as minimizing heat island effect and accommodate resident recreation space in accordance with HAR §15-217-56 (Landscape and recreation space).

f. As the existing conditions at the site are an asphalt parking lot, the pervious surface area will be increased by the addition of this green roof space as a result of the Project.

91. The Authority shall consider the extent to which the Project avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area.

a. The Project has been through an extensive environmental review process that entailed a republication in order to ensure as much public comment as possible was solicited.

b. A Draft Environmental Assessment (“Draft EA”) was published by the OEQC on May 23, 2014, opening the period for public comment. The Draft EA was republished on September 23, 2014, and the Final EA with a Finding of No Significant Impact (“FONSI”) was accepted by the HHFDC in October 2014.

c. The Final EA and a FONSI was published by the OEQC on November 8, 2014. The conclusion of the Final EA is that the development of the Project will not have any substantial adverse effect on the environment.

92. The Authority shall consider the extent to which the Project provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups.

a. The Project is being built expressly to provide homes to those households earning between thirty percent (30%) and sixty percent (60%) of AMI. The rental unit mix is as follows:

Unit Types:	50	1-bedroom unit
	30	2-bedroom units
	4	3-bedroom units
No. of Units:	84	Total Units, inclusive of manager's unit
Target Market:	5 units at 30% AMGI	
	37 units at 50% AMGI	
	41 units at 60% AMGI	
	1 resident manager unit	

b. As stated on page 1 of the City of Honolulu's Consolidated Plan, Honolulu has, "...a pent up demand for housing estimated at 18,013 units for the five-year period from July 1, 2010 – June 30, 2015.

c. Of this demand, the greatest needs are, and will continue to be, low- and moderate-income households, those making less than 80% of median income.”

Sample rents per month (net of utility allowance), as follows:

1-bedroom unit @ 30% AMI	\$437.00
1-bedroom unit @ 50% AMI	\$796.00
1-bedroom unit @ 60% AMI	\$976.00
2-bedroom unit @ 30% AMI	\$516.00
2-bedroom unit @ 50% AMI	\$947.00
2-bedroom unit @ 60% AMI	\$1,163.00
3-bedroom unit @ 30% AMI	\$587.00
3-bedroom unit @ 50% AMI	\$1,085.00
3-bedroom unit @ 60% AMI	\$1,334.00

Artspace has committed to keep these units affordable for 65 years.

d. After construction, EAH Housing will manage the Project.

e. EAH Housing was established in 1968 and is a non-profit corporation founded with the belief that attractive affordable rental housing is the cornerstone to sustainable, living communities.

f. With a staff of over 450, EAH develops low-income housing, manages 111 properties in California and Hawaii, and plays a leadership role in local, regional and national housing advocacy efforts. EAH Housing’s Vice President in Hawaii is Kevin R. Carney. He joined EAH Housing in February 1997 as the first Regional Manager for the Hawaii

office. He is responsible for the overall operations of the Hawaii office, including acquisitions and rehabilitation, new development and property management.

g. Upon completion of the Project, the residential units will be leased to income-qualified households through a leasing program to be administered by Artspace and EAH Housing.

h. The leasing program will provide a preference for households that are participating in the arts.

i. Income qualifications are in compliance with Federal regulations related to housing tax credits, with annual inspections and certification of income.

93. The Authority shall consider the impact of the proposed Project on pedestrian-oriented development, including complete streets design.

a. The Project will support the intent the Mauka Area Plan by adding a pedestrian sidewalk and furnishings zone with street trees located at 30-foot spacing along Kawaiahao Street, a designated thoroughfare.

b. The Project will add a pedestrian sidewalk along Waimanu Street, a designated service street. The ground floor of the Project contains retail space that will be dedicated to support the arts and will activate the frontage along both streets.

94. The Authority shall consider impact of the proposed Project on transit-oriented development (“TOD”), including rail, bus, and other modes of rapid transit.

a. The Project appears to be within a five-minute walk of the Kakaako HART station.

b. As such, the Project aligns with local and State TOD goals to integrate new development within existing communities and to foster vibrant mixed-use communities that increase transit ridership.

c. The Project supports the Mauka Area Plan that aims to direct housing development along transportation corridors in order to achieve urban fill instead of urban sprawl and to reduce regional transportation impacts and costs.

95. The Authority shall consider impact for the proposed Project on community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector.

a. The Project is intended to serve the broader Hawaiian community by developing a traditional Hawaiian cultural center with classroom space and space for teaching and performing hula, music and other traditional practices, as well as 84 units of affordable housing with preference for multi-ethnic artists and their families.

b. The courtyard/garden and community areas will encompass approximately 9,264 square feet and will be available to residents, partnering non-profit organizations, and the surrounding community for rehearsal, exhibitions, performances and events.

c. Approximately 4,546 square feet will be reserved for PA'I Arts & Culture Center, for native Hawaiian dancers, musicians, visual artists, cultural practitioners and others who are interested in experiencing native Hawaiian cultural traditions.

d. The cultural center will combine classroom space and flexible space for teaching and performing hula, music, and other traditional practices. Through distance learning

technology, the cultural center will be networked to audiences and artistic partners both across the islands and around the world. Similar to all Artspace projects, this building will be multi-ethnic, multi-generational, and multi-disciplinary.

96. The Authority shall consider the impact of the proposed Project on the preservation of important natural systems or habitats.

a. The Project site is currently a paved parking lot and does not contain soils of agricultural value.

b. The site is located below the State Department of Health Underground Injection Control line.

c. As such, the underlying aquifer is not considered a drinking water source, and the Project should have no impact on groundwater resources in the State.

d. The Project site was assessed for the presence of sensitive ecological areas, and no such areas were observed on the property. No wetlands are located within the Property, and it is located in Flood Zone X, which denotes an area outside of the 0.2% annual chance of flooding.

e. No sensitive wildlife is present on the Property.

f. Surrounding buildings, including the Pacifica Honolulu project, which is approximately 427 feet in height, limit existing views from the Property. Therefore, construction of the Project will not interfere with existing Mauka/Makai views.

g. In addition, the Project will be constructed consistent with all applicable requirements of the City and County of Honolulu (“City”) and the State of Hawaii with respect to appropriate Best Management Practices (“BMPs”).

h. For example, all storm water runoff from the Project will be reviewed for conformance with City Ordinance 96-34 regarding peak runoff. Both during and after construction, the Project will observe BMPs in accordance with the City’s Rules Relating to Storm Drainage Standards. Dust control BMPs will be incorporated during construction.

i. The Project will improve ocean water quality due to the reduction in pavement surface and installation of a green roof filtration system.

j. Further, the covered parking will should reduce any non-point pollution that is produced and that would potentially have an effect on near-shore waters.

k. Construction of the Project will also be in compliance with the following: (1) BMPs Manual for Construction Sites Nov 2011; (2) Rules Related to Soil Erosion Guidelines, effective June 1, 2013; (3) HAR Title 11, Chapter 54 (11-54) Water Quality Standards.

97. The Authority shall consider the impact of the proposed Project on the maintenance of valued cultural, historical or natural resources.

a. The Project will provide a positive impact on the maintenance of valued cultural, historic, and natural resources, as it will provide desperately needed homes in a dense urban core, thereby enhancing the ability of residents to make use of public transit. By providing homes that offer space for artist to do their work, the Project will also encourage live/work

opportunities, which necessarily have a lighter impact on natural resources because travel time from home to work is reduced/eliminated.

b. An archaeological inventory survey (“AIS”) of the Property was conducted by T. S. Dye & Colleagues, Archaeologists, Inc. dated March 24, 2014.

c. Six backhoe trenches were excavated to coincide with places where the Project building foundations are proposed and have a potential to penetrate the thick application of fill material on the Property. No historic properties were discovered during the AIS. SHPD accepted the AIS by letter dated April 28, 2014.

d. More recently, Alan Downer, Ph.D., SHPD Administrator, sent a letter dated September 29, 2014, confirming that, pursuant to HRS §6E-42 and HAR §13-284-10(3), the historic preservation review process for the property was completed.

e. The Project will have a positive impact on cultural resources.

f. Approximately 4,546 square feet of the Project will be leased to the PA‘I Foundation. PA‘I Foundation, organized in 2001, is a 501(c)(3) organization designed to serve the needs of the native Hawaiian community by developing educational opportunities to inform the public about native Hawaiian culture and Hawaiian practices.

g. According to the 2010 Census, of the 1.36 million people that make up the population of the State of Hawaii, twenty-one percent (21%) or 289,000 are native Hawaiians. PA‘I Foundation also provides educational outreach programs to communities interested in Hawaiian cultural traditions nationally and internationally.

h. The Project will allow the PA'I Foundation to develop a native Hawaiian Cultural Center that showcases native Hawaiian art, and studio space where dancing can be shared along with education of the arts.

i. Local schools can utilize this space during the daytime to advance the schools' offerings in performing arts.

j. The cultural center will not be used exclusively for Hawaiian art and culture, but is intended also to be used as a place for many artistic forms and cultures that will provide for opportunity for the community to engage in varying forms of art.

k. On November 14, 2012, a Project presentation was given to the Oahu Island Burial Council. On April 10, 2013, an update and discussion of the Project was presented to the Oahu Island Burial Council. On December 11, 2013, an informational update on the archaeological field excavation work was presented to the Oahu Island Burial Council.

l. On June 18, 2013, an informational meeting with the descendent families was held. The meeting discussed background information and a description of the Project, details of the Project design, and methodology in handling possible concerns and issues.

98. The Authority shall consider the impact of the proposed Project on the maintenance of other resources relevant to the State's economy.

a. Colliers International ("Colliers") determined that there are 49,218 households in the target market area of the Project with household incomes between thirty percent (30%) and sixty percent (60%) of AMI.

b. Colliers determined that there is a substantial unmet demand for affordable housing.

c. There is a shortage of over 17,000 units in the primary trade area, and nearly 20,000 in the secondary trade area.

d. The average monthly rent for apartments in the Kakaako/Kapiolani area as of the second quarter of 2013, compared to the projected estimated rental rates for the Project is described below:

	1 bedroom	2 bedroom	3 bedroom
Area average	\$1,375.00	\$1,762.00	\$2,660.00
New Projects	\$1,407.00	N/A	N/A
Artspace Ola Ka 'Ilima Lofts	\$437.00 - \$976.00	\$516.00 - \$1,163.00	\$587.00 - \$1,334.00

e. The residential units to be provided within the Project will mean that more of Hawaii's people can live in a safe, well-designed, and centrally located home. Reducing, or even eliminating any need for private transportation. In addition, urban in-fill development is a step Hawaii can take toward food security (by building homes on existing urban land) and reduce energy costs.

99. The Authority shall consider the impact of the proposed Project on the commitment of State funds and resources.

a. Development of the Project involves a commitment of State funds and resources. Below are the public funds currently allocated to the Project:

**City, Ordinance 13-20 (Bill 12, 2013) “Kaka‘ako
Affordable Housing for Artists Project”**

The Honolulu City Council budgeted \$1,101,000.00 to,
“Acquire land, plan, design, construct, and inspect an
affordable live/work space for low-income artists and their
families in the Kaka‘ako area.”

State of Hawaii, H.B. 200, 2013

Ola Ka ‘Ilima Art Center LLC, Oahu

For the 2013-2014 Fiscal Year, \$350,000.00 Grant-in-Aid
(“GIA”) was awarded in 2013.

State of Hawaii, H.B. 1700, 2014

Ola Ka ‘Ilima Art Center LLC, Oahu

For the 2014-2015 Fiscal Year, \$1,500,000.00 GIA was
awarded in 2014.

Low-Income Housing Tax Credits (“LIHTC”)

Ola Ka ‘Ilima Lofts LLLP

The Project received an allocation of up to \$1,425,000.00
of annual Federal and \$712,500.00 of annual state LIHTC.
These tax credits will enable the Project to raise
approximately \$17 million in equity.

Rental Housing Trust Funds

Ola Ka ‘Ilima Lofts LLLP

The Project received a Rental Housing Trust Funds loan in
the amount of \$4.5 million, associated with the rental-
housing component of the Project.

- b. The Project is a very high priority for Artspace as an organization.

Artspace is committing the resources necessary to ensure that the funds are secured in a timely
fashion.

100. The Authority shall consider the impact of the proposed Project on employment opportunities and economic development.

a. The Project will have a positive impact on employment and economic development.

b. The Project budget is approximately \$38,443,401.00, of which approximately \$34.7 million is related to construction-related costs.

c. Development of the Project will create employment opportunities in a wide range of services, including (but not limited to) architectural, engineering, professional services and construction. Specifically, the National Association of Home Builders and the Federal Reserve Bank apply an 8.3 jobs-per-million factor in estimating employment opportunities arising out of construction projects. Applied to this case, the Project is expected to generate at least 288 jobs over the course of construction.

d. The Project will create local jobs. Artspace is committed to local labor and subcontractor markets, as this goes to one of its core values as an organization.

e. Regarding the operational phase of the Project, the Project is designed with the concept to create affordable living and working space, and for community events and gatherings.

f. The purpose and intent of the Project is to provide affordable space in a prominent geographic area that will help to facilitate employment opportunities and economic development for the culture and arts industry. The economic development created by the Project is both direct (providing affordable residential and commercial space that will create

employment opportunities and drive economic development), and indirect (creating space for individuals to live and work, thereby bolstering economic demand for goods and services in that location).

g. The Project is a mixed-use development that includes commercial and residential space, parking and a cultural center. The Project designates approximately 4,546 square feet of ground-level space for a Hawaiian cultural center that is designed to serve the community with space for classrooms and performances. The cultural center provides employment opportunities for artists, teachers, and others involved in native Hawaiian art and culture.

h. Furthermore, the cultural center is intended to act as a platform for economic development in the KCDD related to native Hawaiian arts and culture.

i. In addition to the space set aside for the Hawaiian cultural center, the Project includes approximately 1,936 square feet of commercial space designed to provide affordable and accessible commercial space for other artists. This space will create up to 15 new permanent employment positions and positively influence economic development in the area.

j. The Project itself will also necessarily create employment opportunities and economic development related to its management and maintenance. Project management will generate four direct jobs in the form of onsite positions related to the ongoing, long-term management of the Project.

101. The Authority shall consider the impact of the proposed Project on the maintenance and improvement of the quality of educational programs and services provided by schools.

- a. Ample capacity exists in the State DOE facilities serving the Project area.
- b. Seven public and charter schools serve the area. With the exception to Washington Middle School, which serves the projected enrollment, the 2007-2008 student enrollments for the 4 schools serving the school age population of the Mauka Area is currently under capacity. The Final Supplemental Environmental Impact Statement concluded that in the long-term, the HCDA will coordinate educational needs of the KCDD with the DOE.
- c. The DOE has the authority to establish school impact fee districts. However, with respect to the Project, by letter dated November 19, 2014, the DOE did not make any request for fees or land from this Project.
- d. The Project will positively affect the quality of educational programming and services in the area by offering opportunities to integrate art and culture into educational curriculums and allowing residents to become educators in the community.

102. The Authority shall consider the representations and commitments made by the Applicant in the permit application process.

- a. Artspace is committed to keep these residential rental units and the commercial space affordable for 65 years, which is the term of the ground lease to be entered into between the HCDA and Artspace.

TRAFFIC

103. Pete G. Pascua, P.E., Vice President of Wilson Okamoto Corporation and Director of Traffic and Transportation Engineering Group, prepared a TIR (June 2013) for the purpose of identifying and assessing the potential traffic impacts and necessary mitigation measures resulting from the proposed Project.

104. The Traffic Impact Report (“TIR”) was submitted to the HCDA as part of the Application.

105. The TIR provided several recommendations associated with the Project implementation. These recommendations have been incorporated into the Project design. The recommendations listed in the TIR include

- a. Provide sufficient driveway width to accommodate safe vehicle ingress and egress.
- b. Provide adequate turning radii at all project driveways to avoid or minimize vehicle encroachments to oncoming traffic lanes.
- c. Maintain adequate on-site loading and off-loading service areas and prohibit off-site loading operations.
- d. Provide adequate turn-around area for delivery and refuse vehicles to maneuver on the project site to avoid vehicle reversing maneuvers onto public roadways.
- e. Restrict on-street parking along the project frontage to ensure adequate sight distance for vehicles entering and exiting the project site.

106. The Project results in minimal increase in overall traffic volumes, and is feasible from a traffic operations perspective.

107. The DPP commented in a letter dated December 12, 2014, that a Construction Management Plan should be prepared to address potential impacts from construction.

108. In response to the letter from the DPP, the Project continues to develop a construction mitigation plan, in conjunction with the proper authorities.

109. The DTS commented, in a letter dated December 8, 2014, that it supports workforce housing, and that the Project should encourage walking, biking, and use of transit.

110. The Project encourages walking through the development of pedestrian walkways, use of transit through its close proximity to public transportation, and biking through the availability of bicycle parking on the Property.

INFRASTRUCTURE

111. The existing infrastructure (e.g., water, sewer, electrical, cable, and roads) is sufficient for the Project.

112. The Project structural plan was carefully mapped by Tom Dye & Associates to review locations where drilling of piles would occur. Tom Dye & Associates then conducted a trenching process to match the structural plan. The structural plan was submitted to SHPD, and a concurrence letter was received.

113. The Department of Health Hazard Evaluation and Emergency Response Office reviewed the Project's Environmental Hazard Management Plan and agreed with the protocols described therein.

114. Sufficient electric and cable availability for the Project has been confirmed by Oceanic Time Warner Cable and Hawaiian Electric Company, Inc.

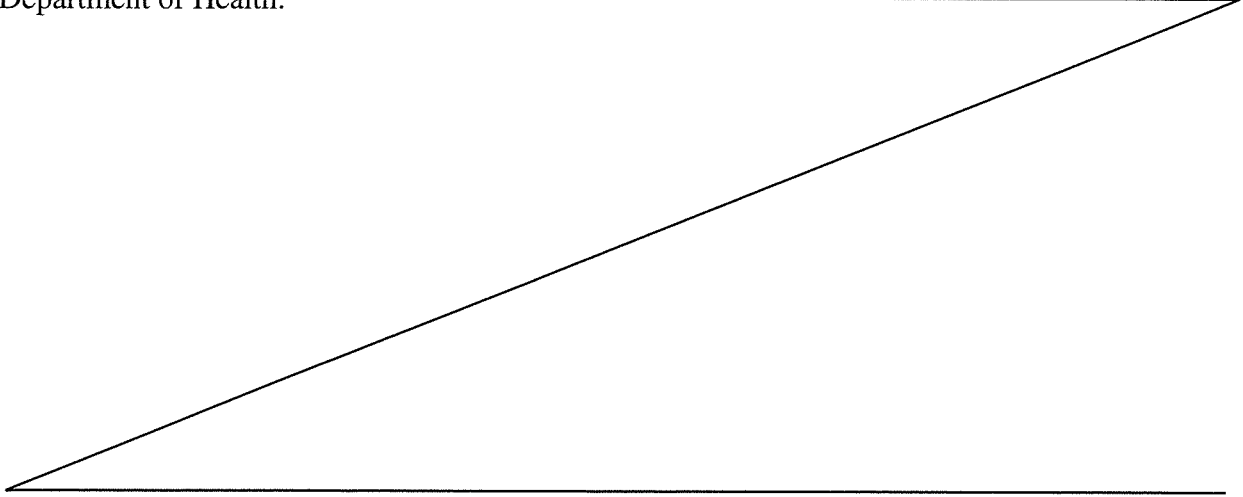
115. Potable-, irrigation-, and fire-protection water service is available from the municipal water system operated by the City's BWS.

116. The Project has adequate water supply, as determined by the BWS, most recently in a letter to the HCDA dated December 19, 2014.

117. Sanitary sewer service is available from the municipal sanitary sewer system operated by the City. The Sewer Connection Application, approved on December 1, 2014, confirmed that the City's sanitary sewer system was adequate to service the Project.

118. Two environmental assessment reports were completed for the Project, titled Phase 1 and Phase 2.

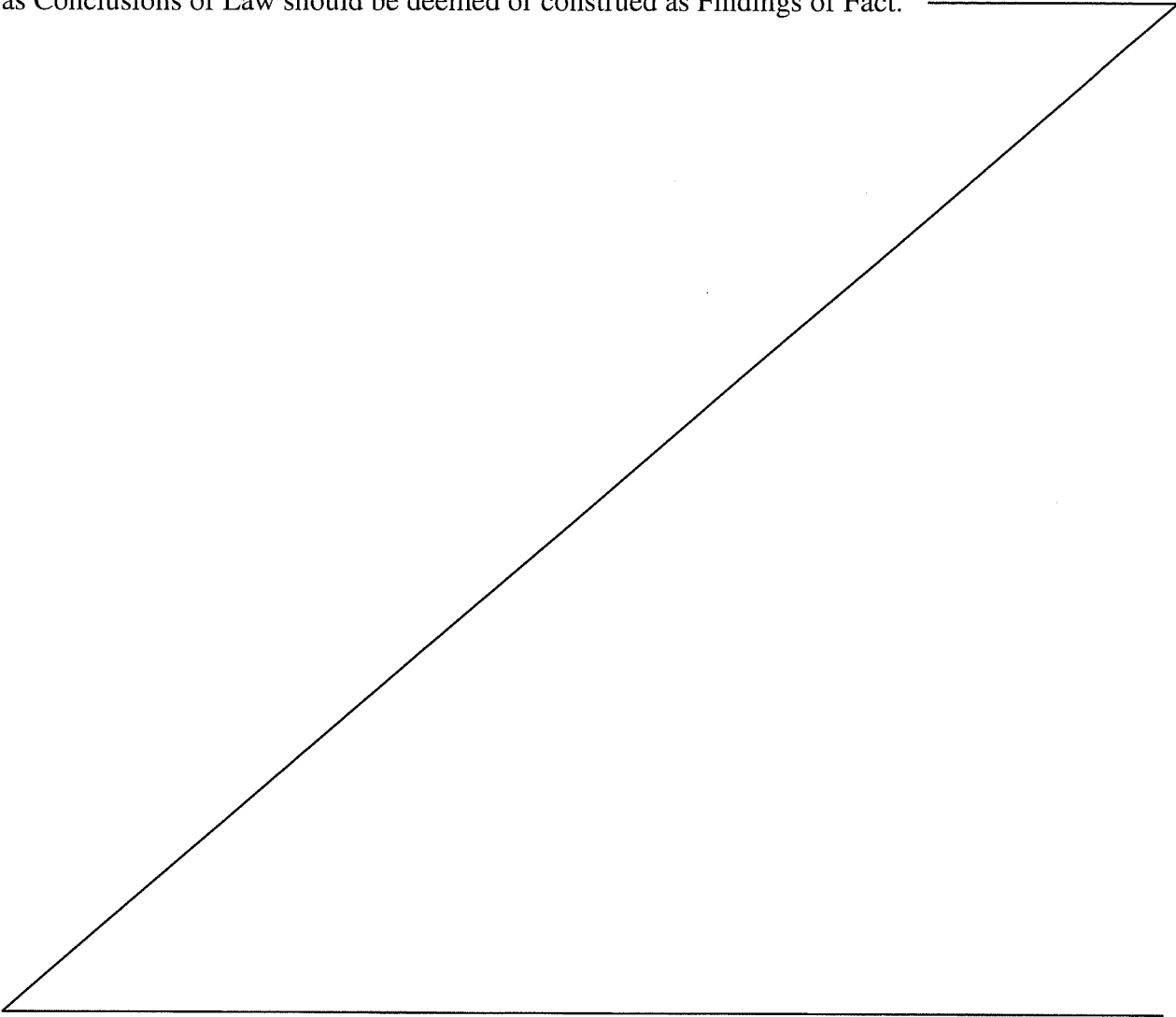
119. The Phase 2 assessment report recommended an environmental plan. The Project has adopted an environmental plan in conformity with the recommendations set forth in the Phase 2 assessment report, which was reviewed and agreed upon by the State of Hawaii Department of Health.



RULINGS ON PROPOSED FINDINGS OF FACT

Any Findings of Fact submitted by Artspace 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.



CONCLUSIONS OF LAW

1. The HCDA has jurisdiction to review, consider, and approve applications for development permits pursuant to Chapter 206E, HRS.

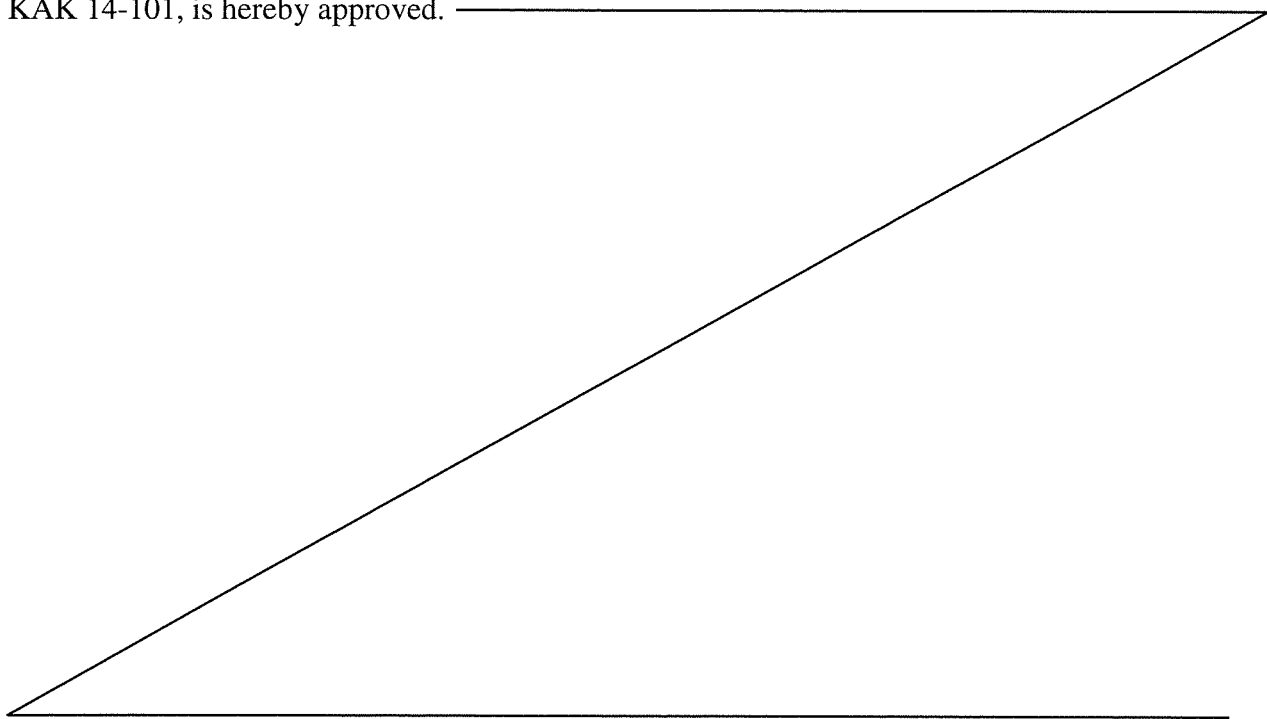
2. Pursuant to the Mauka Area Rules, the Rules applicable to this Application are those contained in HAR Chapter 15-217, adopted on September 14, 2011.

3. Subject to compliance with the requirements of HRS § 201H-38, the Project shall be entitled to the following exemptions from HCDA's Mauka Area Rules: (a) exemption from the requirements under HAR §15-217-54(c) and Figure 1.12-C to allow 3-foot setback from the build-to-line to the building envelope, to maintain structural economy of the housing tower plan layout relative to parking capacity below; (b) exemption from the requirements under HAR Chapter 15-217, Figure 1.13C to allow a minimum vertical clearance of 12 feet to bottom of awnings to provide for greater sun and rain protection of pedestrians and storefront glazing; (c) an exemption from the maximum FAR allowed under HAR §§15-217-57(c) and 15-217-57(d), in order to develop the Project with a FAR of 3.7, which shall enable the creation of dedicated commercial and cultural space on the Waimanu and Kawaiahao Streets and the creation of community space for artist tenants on the podium level of the structure; (d) an exemption from the requirements under HAR §15-217-63(l)(5) to allow loading space dimensions of 8'-6" x 19'-0" with a vertical clearance of 9'-0" to allow loading and maneuvering to be located within the building and clear of pedestrian zones, while also providing 46 public parking stalls; (e) an exemption from HAR §15-217-65 requiring building dedication or in-lieu fee payment for public facilities; and (f) an exemption from HAR §15-217-93 requiring

Application fees and costs related to public hearings, including publishing of hearing notices and the cost of a court reporter (collectively, “HRS § 201H-38 exemptions”).

4. With the exception of the HRS § 201H-38 exemptions noted above, the Project satisfies HAR §15-217-80(d) because it is (1) consistent with the Mauka Area Plan; (2) consistent with the Mauka Area Rules; and (3) compatible with the Mauka District.

5. Upon consideration of all applicable rules and regulations, the evidence and testimony presented by Artspace, the public comments, and all other evidence appearing of record, the HCDA concludes that, with the exception of the HRS § 201H-38 exemptions noted above, the Project has satisfied the requirements of HRS Chapter 206E, Act 61, and the Mauka Area Rules, HAR Chapter 15-217 *et seq.*, and the vision and intent of the applicable Mauka Area Plan for a development permit. The Application for the Ola Ka ‘Ilima Artspace Lofts Project, KAK 14-101, is hereby approved. _____



DECISION AND ORDER

IT IS HEREBY ORDERED that the Application for a Development Permit submitted by Artspace Projects, Inc., pursuant to Chapter 206E of the HRS, and Chapters 15-217 and 15-219 of the HAR, for a proposed mixed-use building to contain 84 affordable housing rental units to be made available to households earning between thirty percent (30%) and sixty percent (60%) of the AMI, ground floor commercial spaces and related improvements, to be located at 1025 Waimanu Street, in a project to be known as Ola Ka 'Ilima Artspace Lofts is APPROVED, subject to the following conditions and exemptions:

1. Floor Area and FAR. The total proposed floor area for the Project shall not exceed 112,672 square feet.
2. Traffic. The Applicant shall incorporate the recommendations made in the completed TIR into the Project's design. The Applicant shall obtain approval from the HCDA Executive Director, pursuant to HAR §15-217-90, prior to removing any of the TIR recommendations from the Project design.
3. Transit Accommodations. The Applicant shall coordinate with the City DTS, the HART and the HCDA to allow those agencies to make provisions for bus, bicycle, and transit accommodations along the Project's street frontages.
4. Transit Accommodations. The Applicant shall submit a parking program which details how proposed parking stalls may be made available for shared use by the public and commercial tenants and guests.

5. Impact Mitigation. The Applicant shall ensure that trash pickup and commercial deliveries at the Project site will be limited to early morning or evening non-peak business and travel times to the extent practicable, and will be managed with concerns for noise, pedestrian inconvenience and safety.

6. Sustainable Design. The Project shall be designed and constructed so as to target Silver LEED rating system, as committed to in the Application. The Applicant shall submit to the HCDA Executive Director documentation from the Project architect demonstrating the Project's LEED conformance.

7. Archaeological and Historical Resources. The Applicant shall comply with all applicable rules governing historic preservation and procedures for inadvertent discoveries pursuant to HAR §13-280 and Chapter 6E, HRS. The Applicant shall comply with all the requirements within the archaeological mitigation documents approved by SHPD.

8. Landscaping. Local street tree species and location shall be subject to final approval of the HCDA Executive Director.

9. Sidewalk Review. The Applicant shall review, and amend as necessary, sidewalk plans for Waimanu Street and Kawaiahao Street to accommodate adequate access for pedestrians and to provide optimal design that best accommodates traffic flow as well as sidewalk connectivity to adjacent parcels, subject to final approval of the HCDA Executive Director.

10. Curb Cut and Driveway Review. The Applicant shall review, and amend as necessary, curb cuts and driveway access to provide the safest possible design that considers

adequate physical distance separation and visual sight distance for pedestrians and vehicles entering, exiting and moving past the Project site.

11. Infrastructure. Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements that are immediately necessary to proceed with the Project; and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program.

a. Improvements Necessary to Proceed with the Project: With regard to infrastructure improvements or requirements that are necessary to proceed with the Project, the Applicant shall be responsible for providing necessary developer improvements.

b. Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program: As part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the District, financed in part through an Improvement District Program.

In this regard, the Project may be subject to assessment for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective Project under the HCDA or other government agencies' improvement programs. If so, the Project will be assessed under the same methods and in the same manner as other properties in the area.

The Applicant shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented, unless otherwise

exempted from such participation as an certified, tax exempt, eleemosynary organization, ground lessee of the HCDA, affordable rental project or otherwise.

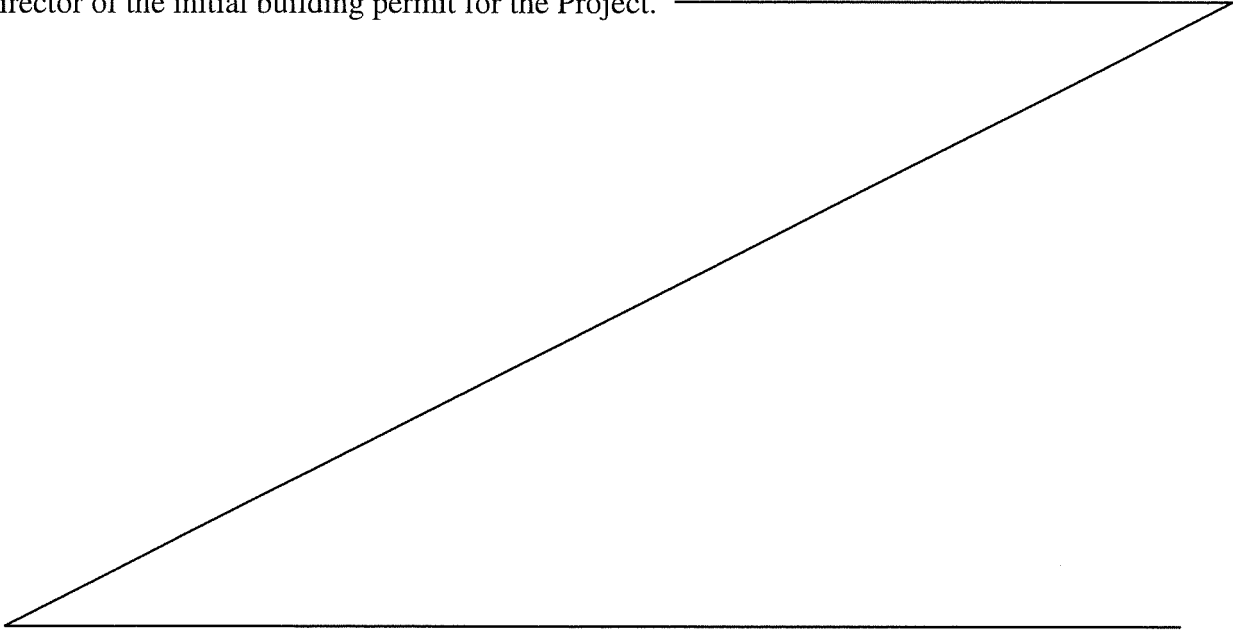
12. Best Practices. The Applicant shall plan, design, implement and maintain the Project site in accordance with the following City and State of Hawaii Requirements and Guidelines, to the extent such Requirements and Guidelines are applicable to the Project:

- a. “Best Management Practices (BMP) Manual for Construction Sites,” November 2011;
- b. “Rules Relating to Soil Erosion Standards and Guidelines,” April 1999;
- c. “Rules Relating to Storm Drainage Standards,” effective June 1, 2013;
- d. The Revised Ordinances of Honolulu (ROH)—for grading, specifically Chapter 14, “Public Works Infrastructure Requirements Including Fees and Services,” 1990 as amended;
- e. HAR, Title 11, Chapter 54 (11-54), “Water Quality Standards”; and,
- f. HAR, Title 11, Chapter 55, “Water Pollution Control”—for construction runoff, specifically Appendix C, National Pollutant Discharge Elimination System (NPDES) “General Permit Authorizing Discharges of Storm Water Associated with Construction Activities” (expires December 5, 2018).

13. HRS §201H-38 Exemptions. Because the HRS § 201H-38 exemptions are integral to the Project, the Project is approved subject to the Applicant’s compliance with the applicable requirements of HRS §201H-38 and so long as there are no substantial modifications to the Project.

14. Compliance with Rules. Except as otherwise noted herein, the Applicant shall comply with all applicable requirements of Subchapter 1 of the Rules (Purpose and Applicability), all applicable requirements of Subchapter 2 of the Rules (Regulating Plan and Neighborhood Zones), all applicable requirements of Subchapter 3 of the Rules (Thoroughfare Plan and Standards), all applicable requirements of Subchapter 4 (Area-Wide Standards) of the Rules, and all applicable requirements of Subchapter 5 (Procedures) of the Rules, and with any other terms and conditions as required by the HCDA Executive Director to implement the purpose and intent of the Rules.

15. Recordation. The Applicant shall record a memorandum of this Decision and Order with the Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. Proof of such recorded memorandum certified by the appropriate agency shall be submitted to the HCDA before approval by the HCDA Executive Director of the initial building permit for the Project.



ADOPTION OF ORDER

The undersigned Kakaako Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 21st day of January, 2015. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawaii, this 21st day of January, 2015.

Hawaii Community Development Authority
(Kakaako Members)



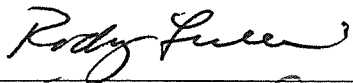
Brian Lee, Chairperson

Absent

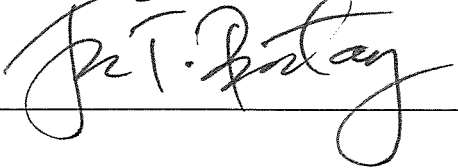
Lois Mitsunaga, Vice Chairperson



Miles Kamimura, Secretary



Rodney Funakoshi, as designated representative
of Director of Department of Business,
Economic Development and Tourism



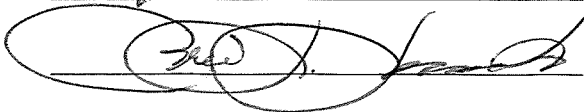
Jade Butay, as designated representative of
Director of Department of Transportation

Abstained

Joseph Earing, as designated representative of
Department of Accounting and General Services




Scott Kami, as designated representative of
Director of Department of Budget and Finance



Brian T. Tamamoto

Vacant

APPROVED AS TO FORM:


Lori N. Tanigawa, Deputy Attorney General

Shall the Authority Authorize the Executive Director to Enter into a Lease Agreement for a Sixty-Five (65) Year Term with Ola Ka Ilima Lofts, LLLP for the Development of a Mixed-Use Affordable Rental Project at 1025 Waimanu Street Further Identified as TMK (1) 2-3-003:040, in Accordance with the Terms and Conditions Recommended by the Hawaii Community Development Authority Staff?

Staff Report

November 25, 2014

Background: In April 2009, the Authority authorized the purchase of a 30,000 s.f. parcel within the Kakaako Community Development District located at 1025 Waimanu Street which is popularly named “Lot 40.” In November 2011, the Authority approved entering into an Exclusive Negotiations Agreement with Artspace Projects, Inc., a non-profit organization whose mission is to create foster, and preserve affordable housing and community space for artists and arts organizations, to allow the entity time to conduct its due diligence and obtain financing for the development of a mixed-use affordable housing project on Lot 40. This Fall, the Hawaii Housing Finance and Development Corporation (“HHFDC”) awarded Ola Ka Ilima Lofts, LLLP (“Ola Ka Ilima”), Low-Income Housing Tax Credits and a Rental Housing Trust Fund Loan to develop the project. Furthermore, on October 28, 2014, the HHFDC issued a Finding of No Significant Impact for the project which was published on November 8, 2014 by the Office of Environmental Quality Control, thereby completing its HRS Chapter 343 Environmental Review process.



Lot 40 - 1025 Waimanu Street

Proposed Course of Action: Ola Ka Ilima seeks to enter into a long-term lease with the HCDA for Lot 40. Its proposed development will include 84 affordable rental units, a community center, art studio rental space, commercial space and parking. Attached hereto as Exhibit A is a Project Fact Sheet. HCDA Staff and Ola Ka Ilima have negotiated the following lease terms and are seeking the Authority’s approval of such terms:



Rendering of the Proposed Development

Lessee: Ola Ka Ilima Lofts, LLLP, a Hawaii Limited Liability Limited Partnership

Premises:	30,000 s.f. parcel located at 1025 Waimanu Street further identified as TMK No. (1) 2-3-003:040
Term:	Sixty-Five (65) years
Base Rent:	\$1 Per Year
Additional Rent:	Residential – Lessee will pay 75% of the project’s residual income from its residential component to the Rental Housing Trust Fund; Lessee will deposit the remaining 25% of the residual income in the project’s residual receipts account; Should the Lessee decide to make a cash distribution from such account for anything other than a bona fide project expense, Lessee will pay the HCDA 50% of the distribution Commercial – Lessee will pay the HCDA 50% of the projects residual income from its commercial component
Rental Payments:	Paid annually with the submittal of the audited financial statements
Lease Provisions:	Standard mortgagee protection provisions which will allow the lender to step in and correct any tenant defaults under the lease

Recommendation: Staff recommends that the Authority authorize the Executive Director to enter into a lease agreement for a sixty-five (65) year term with Ola Ka Ilima Lofts, LLLP for the development of a mixed-use affordable rental project at 1025 Waimanu Street further identified as TMK (1) 2-3-003:040, in accordance with the terms and conditions recommended by the HCDA Staff.

Exhibit A – Project Fact Sheet

Ola Ka `Ilima Artspace Lofts

Address: 1025 Waimanu Street
Honolulu, Hawaii

TMK: (1) 2-3-003: 040

Developer: Artspace Projects, Inc.
Hui Kauhale, Inc.

Type: Mixed Use Affordable Rental Housing Project

Unit Types: 50 1-bedroom units
30 2-bedroom units
4 3-bedroom units

No. of Units: 84 Total Units, inclusive of manager's unit

Parking: Approximately 94 Parking Stalls
Commercial Space: 2 Units at 1,831 s.f. and 4,000 s.f.
Community Room: 1 Unit at 1,275 s.f.

Target Market: 5 units at 30% AMGI
37 units at 50% AMGI
41 units at 60% AMGI
1 resident manager unit
84 Total Units

Sources of Funds

Residential First Mortgage	\$4,400,000
Commercial First Mortgage	\$1,000,000
Unsecured City Housing Funds	\$1,900,000
Secured City Housing Funds	\$1,100,000
State RHTF	\$4,500,000
Federal Home Loan Bank AHP	\$948,000
State GIA	\$1,850,000
Other State/Federal Public Funds	\$1,500,000
Private Sector Capital Campaign	\$4,100,000
General Partner Capital (Reinvested Fee)	\$0
Deferred Developer Fee	\$32,554
LP Equity - State LIHTC	\$3,562,144
LP Equity - LIHTC	\$13,536,146
Total Sources of Funds	\$38,428,844

3. Decision Making: Shall the Authority Authorize the Executive Director to Consent to the Communications Site License Between the Children's Discovery Center and Verizon Wireless?

Mr. Ching explained that Children's Discovery Center (CDC), as a tenant of the Authority, consent must be obtained from the Authority prior to entering into any agreement binding the use of facility at the CDC. He explained the details.

Member Tamamoto asked if a tower would be constructed.

Mr. Ching replied CDC would place a dish on the roof top or on the property although plans had yet to be finalized.

A motion was made by Member Grune and seconded by Member Mitsunaga.

A roll call vote was conducted.

Ayes: Members Grune, Mitsunaga, Kamimura, Seki, Salaveria, Tamamoto and Lee.

Nays: None.

The motion passed 7 to 0 with 2 excused (1 absent, 1 vacant position).

4. Decision Making: Shall the Authority Authorize the Executive Director to Enter into a Lease Agreement for a Sixty-Five (65) Year Term with Ola Ka Ilima Lofts, LLLP for the Development of a Mixed-Use Affordable Rental Project at 1025 Waimanu Street Further Identified as TMK (1) 2-3-003:040, in Accordance with the Terms and Conditions Recommended by the Hawaii Community Development Authority Staff?

Mr. Ching explained that in November 2011, the Authority approved entering into an Exclusive Negotiations Agreement with Artspace Projects, Inc., a non-profit organization whose mission is to create foster, and preserve affordable housing and community space for artists and arts organizations, to allow the entity time to conduct its due diligence and obtain financing for the development of a mixed-use affordable housing project on Lot 40. This Fall, the Hawaii Housing Finance and Development Corporation ("HHFDC") awarded Ola Ka Ilima Lofts, LLLP ("Ola Ka Ilima"), Low-Income Housing Tax Credits and a Rental Housing Trust Fund Loan to develop the project. Furthermore, on October 28, 2014, the HHFDC issued a Finding of No Significant Impact for the project which was published on November 8, 2014 by the Office of Environmental Quality Control, thereby completing its HRS Chapter 343 Environmental Review process.

Chairperson Lee asked how many years has this project been in the making. He also thanked Artspace for their perseverance and the Authority for their support in this affordable housing project.

Mr. Ching stated 3 years.

Public Testimony

- Cathryn Vanderbrink (VP, Artspace) expressed her appreciation for the support of HCDA and staff.

Member Tamamoto asked about Artspace's commitment to this project's targeted market and would there be annual income verification.

Ms. Vanderbrink stated that they are committed to this market via their funding with the Hawaii Housing Finance and Development Corporation which will be enforced for a period of 40 years. She replied that there would be annual income verification.

Chairperson Lee congratulated Artspace and wished them success. He expressed he hopes that the community would see the benefits of this type of project.

A motion was made by Member Tamamoto and seconded by Member Salaveria.

A roll call vote was conducted.

Ayes: Members Tamamoto, Salaveria, Grune, Kamimura, Mitsunaga, Seki and Lee.

Nays: None.

The motion passed 7 to 0 with 2 excused (1 absent, 1 vacant position).

5. Decision Making: Shall the Authority Authorize the Acceptance of a Gift from Unity House in the Amount of \$100,000 For Park Maintenance, Pursuant to HRS §206E-4 (16), Which Authorizes the Authority to Accept a Gift or Grant From Any Public Agency or Source?

Mr. Ching stated that HCDA received an unsolicited \$100,000 donation for the maintenance and beautification of Kolowalu Parks in the Kakaako Community Development District from Unity House (Jim Boersema). He explained currently HCDA pays approximately \$1 million for regular park maintenance, landscaping, janitorial services, and utilities like irrigation and electrical services for all HCDA-owned parks in the Kakaako Community Development District. A cash gift of \$100,000 could help offset that cost.

Member Tamamoto asked if the donation could be used for any park sponsored activities.

Mr. Ching replied that he believed that the moneys were intended for landscaping and maintenance.

A motion was made by Member Salaveria and seconded by Member Grune.

ORIGINAL

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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1001 BISHOP STREET
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HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

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OUR REFERENCE NO.:
067106-1

June 15, 2015

Via Hand Delivery and
Via E-Mail Tony@hcdaweb.org

Via Hand Delivery

Mr. Anthony Ching
Executive Director
Hawaii Community Development Authority
547 Queen St
Honolulu, HI 96813

John Whalen, Chairperson
and Members of the
Hawaii Community Development Authority
547 Queen St
Honolulu, HI 96813

RE: Ola Ka 'Ilima Artspace Lofts, 1025 Waimanu Street, Kakaako
Request for HCDA Covenant to Guarantee Affordability in Perpetuity

Dear Chair Whalen, Mr. Ching and Members of the Authority:

We represent Artspace Projects, Inc. ("**Artspace**"), a non-profit real estate developer specializing in creating, owning and operating affordable spaces for artists and creative businesses, and the applicant under Development Permit No. KAK 14-101 for the development of the Ola Ka 'Ilima Artspace Lofts project ("**Lofts Project**"). We also represent Ola Ka 'Ilima Lofts, Limited Liability Limited Partnership ("**LLLP**"), the entity that will develop the Lofts Project. The Lofts Project is a proposed mixed-use affordable rental housing and commercial project located within the Mauka Area of the Kakaako Community Development District, on land owned by the Hawaii Community Development Authority ("**HCDA**").

The Lofts Project will provide 84 residential rental units, 83 of which will be offered to rent to households earning between 30% to 60% of the area median income ("**AMI**") (1 unit will be set aside for a resident manager). These rental units will create affordable spaces for artists to live and work in Kakaako. There will be 50 one-bedroom units, 30 two-bedroom units and 4 three-bedroom units. Under the current HUD affordable rent guidelines,¹ the monthly rental amounts in Honolulu, inclusive of utilities, are as follows:

¹ The monthly rent levels in the following table represent gross rents, which include the cost of the following utilities: water, sanitary sewage services, electricity and gas (where applicable). These are HHFDC's current AMI rent levels, and are subject to change should AMI increase or decrease in future years.

<u>Percent of Median</u>	<u>one-bedroom</u>	<u>two-bedroom</u>	<u>three-bedroom</u>
30% AMI	\$539	\$647	\$747
50% AMI	\$898	\$1,078	\$1,245
60% AMI	\$1,078	\$1,294	\$1,494

The residential units will be between 792 to 1,483 square feet in size, and designed with high ceilings, large windows, durable surfaces and large doors and hallways to accommodate a variety of creative activities. The oversized doorways and halls will allow for easy ADA conversion of units for senior and disabled residents.

In addition to the homes, the Lofts Project will also include approximately 6,482 square feet of commercial space, approximately 94 parking stalls, and approximately 9,264 square feet of open/community space. The bulk of the commercial space (approximately 4,546 square feet) of the Lofts Project will be anchored by the PA'I Foundation, which will create a native Hawaiian cultural center, with classrooms, space of teaching and performing hula, music and other traditional practices.

The City & County of Honolulu ("C&C") has appropriated from the C&C's Affordable Housing Fund ("**Fund**") \$7,202,000.00 for the development, construction and maintenance of the Lofts Project. The estimated construction costs for the Lofts Project are \$39 million. Therefore, at over 18% of the total construction costs, this is an extremely generous and vital source of funding for the Lofts Project. The addition of \$5 million from the Fund in the 2015/2016 C&C budget represents what in essence will complete the financing package for the Lofts Project, and allow the LLLP to commence construction.

In order to access the monies from the Fund, Artspace/LLLP must demonstrate to the C&C that the Lofts Project will be used for affordable housing **in perpetuity**. HCDA, as the landowner, is the only party that has the authority to make that commitment to the C&C. Therefore, Artspace respectfully requests that HCDA impose an affordability covenant on the HCDA property underlying the Lofts Project, so that the C&C can release the monies from the Fund to be used at the Lofts Project.²

**A. THE CITY CHARTER & THE AFFORDABLE HOUSING FUND
REQUIRE AFFORDABILITY IN PERPETUITY**

The C&C Fund was established under the 2006 General Election Charter Amendment Question No. 3, and codified in Ordinance No. 07-19. In relevant part, the Charter provides as follows:

² The Lofts Project has received various budget allocations from the C&C Fund. The initial allocation of \$1.1M **will lapse on June 30, 2015 if the funds are not encumbered**, i.e., if there is not a formal action taken by HCDA to approve placing a perpetual covenant on the property to maintain affordability.

Moneys in the Affordable Housing Fund shall be used to provide and maintain affordable housing for persons earning less than fifty percent of the median household income in the city for the following purposes: provision and expansion of affordable housing and suitable living environments principally for persons of low and moderate income through land acquisition, development, construction, and maintenance of affordable housing for sale or for rental, provided that the housing remains affordable in perpetuity.

Revised Charter of the City and County of Honolulu, Article XI, Chapter 2, Section 9-204; *see also* Revised Ordinances of Honolulu, Chapter 6, Article 63, Sec. 6-63.2.

Under the Charter there are two criteria that must be met and maintained in order for Fund monies to be used. First, the project must be "principally for persons of low and moderate income," meaning that more than 50% of the project must be for low and moderate income people. Second, the funds must be used for persons earning less than 50% of the median household income in Honolulu (which we understand to mean the AMI), and may be used for common areas in proportion to the occupancy by under-50% AMI households.

Further, we note that the C&C's pending award for the FY 2015/2016 C&C budget comes with the additional limitation that the 84 units within the Project must remain affordable in perpetuity for persons earning less than 50% AMI, that a minimum of 12 of the residential units must be dedicated for Housing First clients, and that \$1,000,000 of the funds may be used toward the Arts and Cultural center for native artists that is planned for the commercial portion of the Project.³ As such, in order to access the Fund, the LLLP will require the Lofts Project to be operated with these additional limitations. Although the LLLP has the ability to impose strict affordability requirements on the Lofts Project during the term of the 65-year ground lease between HCDA and the LLLP, only HCDA has the authority to put the affordability covenant on its fee interest in the property.

To comply with the Charter's requirement that Fund-assisted affordable housing must remain affordable "in perpetuity," HCDA must allow a perpetual covenant to be recorded against the property upon which the Lofts Project will be built, so that affordability restrictions run with the land in perpetuity. That way, once the term of the ground lease is over and the LLLP returns the land, along with the completed Lofts Project (estimated to have construction costs of \$39,000,000) to HCDA, HCDA will need to ensure that any future use continues to comply with the covenant.

It is understood that if HCDA or the LLLP ever defaults on this commitment, or wishes to discharge this commitment to the C&C, all monies from the Fund that were provided for the Lofts Project must be returned to the C&C.

³ This is based upon the language in the C&C's Executive Capital Budget for fiscal year July 1, 2015 to June 30, 2016. *See* Bill 14(2015), CD2, FD1. As of today, this Bill is awaiting signature of the Mayor.

B. THE PERPETUITY REQUIREMENT UNDER THE AFFORDABLE HOUSING FUND CANNOT BE AMENDED WITHOUT A CHARTER AMENDMENT

Without HCDA's cooperation, the perpetuity requirement under the Fund will preclude the use of the Fund at the Lofts Project. Because the perpetuity requirement was established by Charter amendment, amending that language would require another amendment to the City Charter. *See Fasi v. City Council of City and Cnty. of Honolulu*, 72 Haw. 513, 519, 823 P.2d 742, 744 (1992) ("A basic tenet of municipal corporation law is that an ordinance which conflicts with an express provision in a charter is invalid.") The process for amending the City Charter is difficult and time-consuming, and the voters of Honolulu have already spoken to say that the monies in the Fund should be used to support affordable housing in perpetuity.

C. HCDA HAS THE AUTHORITY TO ENCUMBER ITS PROPERTY IN PERPETUITY, PARTICULARLY IF THE ENCUMBRANCE PROMOTES AFFORDABLE HOUSING

We believe that HCDA has the authority to permit land under its jurisdiction to be designated for affordable housing purposes for perpetuity. We recognize that HCDA's authority to enter into ground leases for terms exceeding 65 years is limited by statute (HRS § 206E-31.6 requires HCDA to go to public auction should it wish to lease land for a term greater than 65 years). However, HCDA, as the fee owner of the Project land, has the authority to require the Project to be used as affordable housing in perpetuity.

The Legislature has granted HCDA uniquely broad powers over its lands and in the administration of the agency. HCDA has the power to:

(3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

* * *

(8) Acquire, reacquire, or contract to acquire or reacquire by grant or purchase real, personal, or mixed property or any interest therein; to own, hold, clear, improve, and rehabilitate, and to sell, assign, exchange, transfer, convey, lease, or otherwise dispose of **or encumber the same**;

* * *

(10) By itself, or in partnership with qualified persons, acquire, reacquire, construct, reconstruct, rehabilitate, improve, alter, or repair or provide for the construction, reconstruction, improvement, alteration, or repair of any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of

or encumber any project, and in the case of the sale of any project, accept a purchase money mortgage in connection therewith; and repurchase or otherwise acquire any project that the authority has theretofore sold or otherwise conveyed, transferred, or disposed of;

* * *

(17) Do any and all things necessary **to carry out its purposes** and exercise the powers given and granted in this chapter; and

HRS § 206E-4 (emphasis added).

With respect to subsection (17), HCDA's purpose includes the provision of affordable housing, especially in Kakaako. HCDA has all powers necessary to carry out its purpose of providing and encouraging the development of affordable housing. HCDA's purpose, as expressed in HRS § 206E-1, provides in relevant part:

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.

Specifically with respect to Kakaako, the legislative grant of authority to HCDA, and the creation of the Kakaako Community Development District, expressly contemplated the development of low-income housing. *See* HRS § 206E-31(2) ("[Kakaako] 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.") (emphasis added).

As set forth in HRS § 206E-4(8), HCDA clearly has the power to encumber its land. HCDA also has the authority to encumber any "project", under § 206E-4(10).⁴ Within Kakaako, HCDA is restricted in its ability to sell the fee interest in its land, but even that restriction is eliminated when the sale is of "reserved housing" (reserved housing is housing for households with low and moderate income), further demonstrating the Legislature's intention to empower HCDA to promote affordable housing in Kakaako.

⁴ As defined under HRS § 206E-2, "Project" means "a specific work or improvement, including real and personal properties, or any interest therein, **acquired, owned**, constructed, reconstructed, rehabilitated, or improved by the authority, including a residential project, a redevelopment project, or a commercial project, all as defined herein, or any combination thereof, which combination shall hereinafter be called and known as a "multipurpose project". (emphasis added).

1. **THE LEGISLATURE GRANTED HCDA ADDITIONAL POWERS TO PROMOTE THE DEVELOPMENT OF AFFORDABLE HOUSING**

HRS § 206E-31.5 was enacted in 2006, and placed prohibitions on HCDA's authority to sell or otherwise assign the fee simple interest of its lands in the Kakaako community development district (however, HCDA does have authority to grant fee simple interest to any state or county department of agency). However, there is no prohibition under HRS § 206E-31.5 or elsewhere on HCDA's ability to encumber its lands with an affordability covenant. The affordability covenant required by the C&C is not a transfer of fee ownership of HCDA property and therefore is consistent with the limitations under HRS § 206E-31.5.

The Legislature's intention of maintaining HCDA's authority with respect to affordable housing is further demonstrated by the 2014 amendment to HRS § 206E-31.5, which exempted from the restrictions on fee simple sales "reserved housing" as defined in HRS § 206E-101 ("Reserved housing" means housing designated for residents in the low- or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule.")

In providing the exception for reserved housing, Senate Standing Committee Report No. 3056 (2014) acknowledged that "the Legislature established [HCDA] in 1976 as a public entity to plan new and innovative forms of urban redevelopment and renewal to meet certain community needs, especially the provision of low- and moderate-income housing located in residential and mixed-use areas with sufficient public facilities and services." Although the Lofts Project is not "reserved housing" it is clearly housing for households at a low income, which is a key group that HCDA is mandated to address.

2. **LEGISLATIVE ACTION IN 2012 WAS UNDERTAKEN TO ENHANCE HCDA'S ABILITY TO ATTRACT LONG-TERM INVESTORS IN KAKAAKO**

Even the Legislature's actions in 2012 to grant HCDA the authority to lease land in Kakaako without recourse to public action for terms not to exceed 65 years "upon such terms and conditions as may be approved by the authority" demonstrates the broad powers and authority that have been granted to HCDA. When enacting Act 323 (2012) (now found at HRS § 206E-31.6), the Legislature took note of the following:

Currently, section 206E-14, Hawaii Revised Statutes, allows the authority to sell or lease for a term not exceeding sixty-five years, all or any portion of its real or personal property constituting a redevelopment project if the authority finds that the sale or lease is in conformity with the community development plan. As defined in section 206E-2, Hawaii Revised Statutes, a redevelopment project may only be incidental in its commercial nature. The legislature finds that this limitation adversely impacts the

authority's ability to attract long-term investors and tenants who seek to develop or redevelop primarily commercial projects within the Kakaako community development district. This conflicts with the authority's commitment to implement longer lasting change in the Kakaako community development district.

2012 Haw. Sess. Laws Act 323, § 6.

Thus, the legislation was enacted for the purpose of supporting longer term investors and tenants in the Kakaako area. For the Lofts Project, HCDA, by authorizing the use of its property as affordable housing in perpetuity, will allow the LLLP to receive potentially over \$7.2 million from the C&C that can be used for the development of a mixed-use affordable housing project in Kakaako. An affordability encumbrance on HCDA's fee interest would support the long-term nature of the C&C Fund requirement for funding.

D. THE AFFORDABILITY COVENANT WILL WORK LIKE OTHER FINANCIAL ENCUMBRANCES ON THE PROPERTY

In order to construct and operate the Lofts Project, the LLLP will have loans and will place mortgages on its leasehold interest in the Lofts Project, but the LLLP will not place a mortgage on HCDA's fee interest in the land. In order for the LLLP to receive the monies from the Fund, HCDA, as the fee owner, must commit to the C&C that the property will remain affordable in perpetuity. If, upon reversion of the improved property to HCDA at the end of the LLLP's lease term, HCDA decided to that it wanted to release the Lofts Project from the affordability requirement, it would have to return all Fund monies to the C&C. We understand that there would be no penalty or interest due on the Fund monies. In effect, HCDA would pay the C&C to release the covenant. If HCDA decided to ignore the perpetuity commitment to the C&C and began using the Lofts Project as market housing or in other ways that are inconsistent with the Charter, the C&C would have the right to put a lien on the HCDA project and demand repayment of the monies or seek other legal recourse.⁵

In order to demonstrate to the C&C that compliance with Fund's Charter requirements will be secured by HCDA's commitment to retain the Lofts Project's affordability requirements

⁵ Consistent with the concept of being able to return the C&C funds to release the property from the affordability requirements, the LLLP is exploring the possibility of securing those funds as a loan from the C&C, which funds would be repaid at the end of the lease term with HCDA. Our understanding is that the AHF monies would be repaid at zero interest, with payments beginning sometime during the 65-year term of the ground lease (most likely upon the expiration of the first mortgage for the Project), so that a final payment is made to the C&C at the same time that the ground lease is surrendered to HCDA. It is expected that this loan concept, which has not been utilized by the C&C in the past, would require HCDA to put a mortgage on its fee interest in the land so that the C&C would have adequate security to ensure repayment.

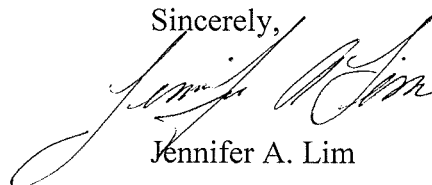
Chairperson Whalen
Mr. Anthony Ching
June 15, 2015
Page 8

in perpetuity as required by the Fund, HCDA must take action prior to June 30, 2015,⁶ to approve imposing an affordability covenant on HCDA's property. Formal action taken by HCDA will demonstrate to the C&C that HCDA will later execute a perpetual covenant, similar to the covenants that will be recorded against the property in connection with the low income housing tax credits that have been awarded by Hawaii Housing Finance and Development Corporation. HCDA is not required to execute a covenant in order for the C&C to deem the Fund monies "encumbered" but the covenant must be executed prior to any funds being released to the LLLP for the construction of the Lofts Project.

E. CONCLUSION

Artspace Projects, Inc. and Ola Ka 'Ilima Lofts, LLLP, respectfully request that HCDA take action to approve the placement of a perpetual affordability covenant against the fee simple interest of the property owned by HCDA at 1025 Waimanu Street. The Affordable Housing Funds appropriated by the City & County of Honolulu are critical to the advancement of the Ola Ka 'Ilima Artspace Lofts project, and at least some portion of those funds are about to lapse as of June 30, 2015, if HCDA does not act. HCDA, by extending the affordability commitments that Artspace is willing to make, such that the affordability commitments run beyond the term of the 65-year ground lease, and agreeing to encumber its fee simple interest in the land, will guarantee that the Lofts Project and this property remain affordable in perpetuity. Such a commitment from HCDA meets HCDA's objective to create permanently affordable housing within the Kakaako area.

We look forward to the opportunity to present this matter to the Authority at the meeting scheduled for June 24, 2015.

Sincerely,

Jennifer A. Lim

JAB/jah

cc: Roy K. Amemiya, Jr., Managing Director
Gary Nakata, Department of Community Services
Greg Handberg, Artspace Projects, Inc./Ola Ka 'Ilima Lofts, LLLP

4824-8671-1844.2.067106-00001

⁶ The Project has received various budget allocations from the AHF. The initial allocation of \$1.1M will lapse on June 30, 2015 if the funds are not encumbered, i.e., if there is not a formal action taken by HCDA to approve placing a perpetual covenant on the property to maintain affordability.