

Victoria Ward, Limited Consolidated Motion

July 22, 2015

**Second Proposed Findings of Fact,
Conclusions of Law, and Decision and
Order Granting in Part and Denying in
Part Victoria Ward, Limited's Motion
to Amend Development Permit Nos.**

**KAK 13-036, 13-037, and 13-038 to
Allow Sale and/or Rental of Reserved
Housing Units and to Extend Time of
Effective Period of Permit KAK 13-038**

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SECOND PROPOSED ORDER

OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY

OF THE STATE OF HAWAII

In re Motion of

Victoria Ward, Limited,

Applicant,

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

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

SECOND PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING IN PART AND DENYING IN PART VICTORIA WARD, LIMITED'S MOTION TO AMEND DEVELOPMENT PERMIT NOS. KAK 13-036, 13-037, AND 13-038 TO ALLOW SALE AND/OR RENTAL OF RESERVED HOUSING UNITS AND TO EXTEND TIME OF EFFECTIVE PERIOD OF PERMIT KAK 13-038

In re Motion of

Victoria Ward, Limited,

Applicant,

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

PD Permit No. KAK 13-037

In re Motion of

Victoria Ward, Limited,

Applicant,

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

PD Permit No. KAK 13-038

I do hereby certify that this is a full, true, and correct copy of the original on file in this office.



Secretary, Hawaii Community
Development Authority

SECOND PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER GRANTING IN PART AND DENYING IN PART VICTORIA WARD, LIMITED'S MOTION TO AMEND DEVELOPMENT PERMIT NOS. KAK 13-036, 13-037, AND 13-038 TO ALLOW SALE AND/OR RENTAL OF RESERVED HOUSING UNITS AND TO EXTEND TIME OF EFFECTIVE PERIOD OF PERMIT KAK 13-038

On February 23, 2015, Victoria Ward, Limited ("VWL") filed a Motion to Amend Development Permit Nos. KAK 13-036, 13-037, and 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038 ("Motion"), pursuant to Hawaii Administrative Rules ("HAR") §§ 15-219-32 and 15-22-118(c). In the Motion, VWL requested: (1) an amendment to Planned Development Permit Nos. KAK 13-036, KAK 13-037, and KAK 13-038 (collectively, the "Development Permits") to allow the satisfaction of reserved housing requirements through the sale and/or rental of reserved housing units to be developed as part of Development Permit No. KAK 13-038; and (2) a two-year extension of the effective period of Development Permit No. KAK 13-038 to allow construction on the 988 Halekauwila Project ("Halekauwila Project").

The Hawaii Community Development Authority ("HCDA" or the "Authority"), having heard and examined the testimony, evidence, and argument of counsel, which were presented during the hearings, and having taken judicial notice of the records and files of the respective dockets for the Master Plan Permit (PL MASP 13.1.3) and Development Permits, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

Any Findings of Fact submitted by VWL not ruled upon by the Authority by adoption herein or rejected by clearly contrary findings of fact are hereby denied and rejected.

BACKGROUND

1. On January 14, 2009, the Authority approved the Nunc Pro Tunc Order Re:

Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit for the Ward Neighborhood Master Plan area (“WNMP Permit”), which is owned and controlled by VWL. See WNMP Permit.

2. The properties subject to the WNMP Permit are located within the Mauka Area of the Kakaako Community Development District (“KCDD”). See WNMP Permit.

3. Finding of Fact No. 74 of the WNMP Permit provides in pertinent part:

Under the Master Plan, Petitioner has proposed to meet the 20% reserved housing requirement by providing the units on- or off-site within Kakaako, or elsewhere as permitted. While the current requirement is to build reserved housing for families whose incomes are no more than 140% of the annual median household income, Petitioner has offered to provide 10% (or one-tenth) of the units that will fulfill the reserved housing requirement for families at 100% of the annual median household income.

See WNMP Permit.

4. Finding of Fact No. 75 of the WNMP Permit provides, “[t]he reserved housing unit mix, as well as the provision for delivery of the reserved housing, need not be determined at the master planning stage; instead, these issues are more appropriately determined at the project development stage.” See WNMP Permit.

5. Pursuant to Condition No. 9 of the WNMP Permit, VWL was required to “satisfy its reserved housing requirement for the Master Plan area, which shall be equal to twenty-percent of the total number of residential units proposed for the Master Plan area, as permitted by the Mauka Area Rules.” See WNMP Permit.

6. At no time did VWL appeal from or otherwise object to the terms and conditions of the WNMP Permit.

7. The WNMP Permit and all planned development permits obtained thereunder are vested under HAR Chapter 15-22, Mauka Area Rules of the KCDD (hereinafter, “Vested Rules”). See WNMP Permit.

8. On April 18, 2013, VWL submitted its Development Permit Application numbered KAK 13-038 (“KAK 13-038 Application”) for the Halekauwila Project, located at 988 Halekauwila on Land Block 5, Project 1 under the WNMP Permit. See KAK 13-038 Application.

9. In the KAK 13-038 Application, VWL requested that the Authority approve, among other things, VWL’s proposal to provide a total of 375 units as reserved housing in the Halekauwila Project, 106 units of which would be used to satisfy the Halekauwila Project’s reserved housing requirement. See KAK 13-038 Application, Exhibit C-5, p. 1.

10. In the KAK 13-038 Application, VWL noted that the remaining 269 reserved housing units are intended to satisfy the reserved housing requirements generated by other WNMP projects, including VWL’s anticipated projects on Land Blocks 2 and 3. See KAK 13-038 Application, Exhibit A-2, p. 4 and Exhibit C-5, pp. 6-7.

11. VWL did not request the ability to provide 375 reserved housing units for “rental and/or sale” in the Halekauwila Project. See KAK 13-038 Application.

12. In the KAK 13-038 Application, VWL represented that sales of the units in the Halekauwila Project were expected to commence in the second half of 2013. See KAK 13-038 Application, Exhibit C-1, p. 1.

13. On July 17, 2013, the Authority adopted the HCDA Staff Report, Findings, and Recommendation (“Staff Report”) and approved Development Permit No. KAK 13-038, subject

to certain terms and conditions (hereinafter, “988 Halekauwila Permit”). See 988 Halekauwila Permit.

14. The Staff Report, which was incorporated in the 988 Halekauwila Permit, provides in relevant part:

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

See 988 Halekauwila Permit.

15. The 988 Halekauwila Permit further provides:

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

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

In accordance with the provisions of §15-22-183 of the Vested Rules, the Applicant or its designated representative is permitted to be responsible for advertising, qualifying, and selecting

prospective reserved housing buyers subject to Subchapter 7 of the Vested Rules.

Within ninety (90) days from the date of this Development Permit, the Applicant shall prepare and submit to the HCDA Executive Director a program for sale of reserved housing for approval. Such sale of reserved housing shall be consistent with the provisions of §15-22-183 of the Vested Rules.

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

(Emphasis added).

16. At no time did VWL appeal from or otherwise object to the terms and conditions of the 988 Halekauwila Permit.

17. On April 18, 2013, VWL submitted its Development Permit Application numbered KAK 13-037 (“KAK 13-037 Application”) to the HCDA for Land Block 3, Project 1 (“Land Block 3 Project”) under the WNMP Permit. See KAK 13-037 Application.

18. In the KAK 13-037 Application, VWL noted that it intended to satisfy the reserved housing requirement generated by the Land Block 3 Project by providing an estimated 80 units as reserved housing in the Halekauwila Project. See KAK 13-037 Application, Exhibit A-2, p. 5.

19. On April 19, 2013, VWL submitted its Development Permit Application numbered KAK 13-036 (“KAK 13-036 Application”) for its Land Block 2, Project 1 (“Land Block 2 Project”) under the WNMP Permit. See KAK 13-036 Application.

20. In the KAK 13-036 Application, VWL noted that it intended to satisfy the reserved housing requirement generated by the Land Block 2 Project by providing an estimated 45 units as reserved housing in the Halekauwila Project. See KAK 13-036 Application, p. 5.

21. On August 21, 2013, the HCDA approved Development Permit No. KAK 13-037, subject to certain terms and conditions (hereinafter, "Land Block 3 Permit"). See Land Block 3 Permit.

22. The Land Block 3 Permit requires the provision of "eighty (80) units as reserved housing for sale." See Land Block 3 Permit.

23. The Land Block 3 Permit further provides:

Within ninety (90) days from the date of this Development Permit, the Applicant shall prepare and submit to the HCDA Executive Director a program for sale of reserved housing for approval. Such sale of reserved housing shall be consistent with the provisions of §15-22-183 of the Vested Rules.

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

See Land Block 3 Permit.

24. At no time did VWL appeal from or otherwise object to the terms and conditions of the Land Block 3 Permit.

25. On August 21, 2013, the HCDA approved Development Permit No. KAK 13-036, subject to certain terms and conditions (hereinafter, "Land Block 2 Permit"). See Land Block 2 Permit.

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

27. The Land Block 2 Permit further provides in pertinent part:

Within ninety (90) days from the date of this Development Permit, the Applicant shall prepare and submit to the HCDA Executive Director a program for sale of reserved housing for approval. Such sale of reserved housing shall be consistent with the provisions of §15-22-183 of the Vested Rules.

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

See Land Block 2 Permit.

28. At no time did VWL appeal from or otherwise object to the terms and conditions of the Land Block 2 Permit.

29. On October 16, 2013, VWL submitted to HCDA a program for the sale of reserved housing units for its review and approval.

30. As of this date, the Authority is not aware of any violations of the terms and conditions of the Development Permits.

PROCEDURAL HISTORY

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

32. On March 7, 2015, the HCDA posted the Motion on its website.

33. On March 7, 2015, the Notice of Public Hearings was published in the Star-Advertiser.

34. The President of the Senate and Speaker of the House of Representatives were notified upon the posting of the hearing notice. Associations of apartment owners of residential buildings in the KCDD adjacent to each of the three projects, surrounding landowners and businesses, the Ala Moana/Kakaako Neighborhood Board, and the Kakaako Improvement Association were notified of the public hearings. Various elected officials and State and County agencies were also notified of the public hearings. Hearing notice was also provided to approximately 393 individuals and organizations that have shown interest in development activities in the KCDD.

35. On March 7, 2015, VWL sent a notification by first class United States mail, postage prepaid, to the owners and lessees of record of real property located within a 300-foot radius of the perimeter of each of the three of the projects that are associated with the Development Permits identified from the most current list available from the Real Property Assessment Division of the Department of Budget and Fiscal Services in the City and County of Honolulu. See Victoria Ward, Limited's Certification Re: Notification To Owners and Lessees of Record of Real Property Located Within a Three Hundred Foot Radius Pursuant to HRS 206E-5.5, filed March 23, 2015.

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

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

38. On April 2, 2015, a Pre-Hearing Order was issued, requiring the submission of witness lists, exhibits lists, and exhibits by no later than April 6, 2015.

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

40. On April 6, 2015, the Authority posted notice on its website that the Supplemental Public Comment Sessions would occur on Saturday, April 11, 2015 at 10:00 a.m. and Tuesday, April 14, 2015 at 5:30 p.m.

41. On April 8, 2015, a public hearing was held at the HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813, to allow VWL to present the Motion and to afford the public with the opportunity to present written or oral testimony on the Motion ("April 8, 2015 hearing").

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

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

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

45. At the April 8, 2015 hearing, 8 members of the public provided oral testimony: 7 in support of granting the Motion and 1 in opposition.

46. On April 9, 2015, VWL filed its Proposed Findings of Fact, Conclusions of Law, and Decision and Order re: Victoria Ward, Limited's Motion to Amend Development Permit Nos. KAK 13-036, 13-037, 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038.

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

48. On April 22, 2015, a second public hearing on the Motion was held at HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813, to afford the public an opportunity to present written or oral testimony on the Motion prior to the Authority engaging in decision-making ("April 22, 2015 hearing").

49. At the April 22, 2015 hearing, VWL requested and was granted leave by the Authority to present additional evidence pursuant to HAR § 15-219-52(c). The Authority admitted into evidence Exhibit 3 – Slide Presentation.

50. At the April 22, 2015 hearing, VWL presented the testimony of Race Randle, Vice President of Development for The Howard Hughes Corporation, and David Striph, Senior Vice President – Hawaii for The Howard Hughes Corporation.

51. For the April 22, 2015 hearing, HCDA received 279 written public testimonies: 278 in support of granting the Motion and 1 in opposition.

52. At the April 22, 2015 hearing, 14 members of the public provided oral testimony: 13 in support of granting the Motion and 1 in opposition.

53. At the request of VWL to continue decision-making, the Authority continued decision-making on the Motion to May 13, 2015.

54. On April 29, 2015, VWL filed its First Amended Proposed Findings of Fact, Conclusions of Law, and Decision and Order re: Victoria Ward, Limited's Motion to Amend Development Permit Nos. KAK 13-036, 13-037, 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038.

55. On May 13, 2015, the Authority convened the continued decision-making hearing on the Motion ("May 13, 2015 hearing").

56. For the May 13, 2015 hearing, HCDA received 5 written public testimonies: 2 in support of granting the Motion, 1 in opposition, and 2 providing comments only.

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

58. At the May 13, 2015 hearing, the Authority continued decision-making on the Motion to May 27, 2015 (“May 27, 2015 hearing”).

59. On May 20, 2015, VWL filed its Second Amended Proposed Findings of Fact, Conclusions of Law, and Decision and Order re: Victoria Ward, Limited’s Motion to Amend Development Permit Nos. KAK 13-036, 13-037, 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038.

60. For the May 27, 2015 hearing, HCDA received 13 written public testimonies: 7 in support of granting the Motion, 5 in opposition, and 1 providing comments only.

61. At the May 27, 2015 hearing, 14 members of the public provided oral testimony: 13 in support of granting the Motion and 1 in opposition.

62. At the May 27, 2015 hearing, the Authority unanimously voted to adopt Proposed Findings of Fact, Conclusions of Law, and Decision and Order Granting in Part and Denying in Part Victoria Ward, Limited’s Motion to Amend Development Permit Nos. KAK 13-036, 13-037, and 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038 (“Proposed Order”).

63. Under the Proposed Order, the Authority granted VWL’s request for a two-year extension of 988 Halekauwila Permit, subject to certain conditions, but denied VWL’s request to satisfy its reserved housing requirement under the Development Permits with the provision of rental reserved housing in addition to for-sale reserved housing.

64. Condition 1A of the Proposed Order provided, “Prior to VWL obtaining its superstructure permit for the Halekauwila Project, VWL shall submit to the HCDA Executive Director for his review and written approval its proposed program for administering its for-sale reserved housing units in the Halekauwila Project” (hereinafter, “Condition 1A”).

65. Condition 1B of the Proposed Order provided, “Prior to VWL obtaining a Certificate of Occupancy for its Land Block 3 Project or Land Block 2 Project, whichever occurs later, VWL shall obtain a Certificate of Occupancy for the 375 reserved housing units in the Halekauwila Project” (hereinafter, “Condition 1B”).

66. On June 10, 2015, VWL submitted its Exceptions to the Proposed Order (hereinafter, “Exceptions”).

67. On June 16, 2015, VWL requested leave to file a third amended proposed order to address Conditions 1A and 1B, and a continuance of the final decision-making hearing previously scheduled for June 24, 2015 (“VWL’s Request for Leave”).

68. On June 17, 2015, the Authority granted VWL’s Request for Leave, provided VWL filed its third amended proposed order by no later than noon on June 19, 2015.

69. On June 19, 2015, VWL filed its Third Amended Proposed Findings of Fact, Conclusions of Law, and Decision and Order Re: Victoria Ward, Limited’s Motion to Amend Development Permit Nos. KAK 13-036, 13-037, and 13-038 to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038 (“Third Amended Proposed Order”).

70. At the June 24, 2015 hearing, VWL submitted a document which amended paragraph 1 in the Decision and Order section in VWL’s Third Amended Proposed Order (hereinafter, “June 24, 2015 VWL Document”).

71. At the June 24, 2015 hearing, the Authority solicited additional written and/or oral testimony from members of the public.

72. At the June 24, 2015 hearing, the Authority voted to adopt a second proposed findings of fact, conclusions of law, and decision and order, which granted in part and denied in part the Motion, subject to certain terms and conditions.

CONCLUSIONS OF LAW

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.

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

2. As set forth in HRS § 206E-1:

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

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

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

The legislature finds that a new and comprehensive authority for

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

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

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

4. Pursuant to HRS § 206E-32, the Legislature designated the KCDD.

5. The Legislature authorized and empowered HCDA to develop a community development plan for the KCDD, including but not limited to, community development rules.

See HRS § 206E-5.

6. HRS § 206E-7(a) provides in relevant part that HCDA:

shall establish community development rules under chapter 91 on health, safety, building, planning, zoning, and land use which, upon final adoption of a community development plan, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of the land and construction thereon.

7. The Legislature identified development guidance policies generally governing the KCDD, including but not limited to:

Residential development may require a mixture of densities, building types, and configurations in accordance with appropriate urban design guidelines; integration both vertically and horizontally of residents of varying incomes, ages, and family groups; and an increased supply of housing for residents of low-or-moderate-income may be required as a condition of redevelopment in residential use.

See HRS § 206E-33(8).

8. HCDA has the authority and jurisdiction to review, consider, and take action on this Motion. See HRS §§ 206E-4, 206E-5, 206E-5.6, 206E-7, and 206E-33.

REQUEST FOR RENTAL AND/OR SALE OF RESERVED HOUSING

9. HAR § 15-22-111(a) of the Vested Rules provides:

The authority may grant a planned development permit for a development within any of the three mixed-use zones which it finds meets the requirements of this chapter. The authority may impose conditions and requirements upon a planned development permit as it finds are reasonable and necessary to carry out the purpose and requirements of this subchapter.

10. HAR § 15-22-86 of the Vested Rules provides in pertinent part:

In reaching its determination on an application for a planned development or base zone development permit, the authority or executive director, as the case may be, shall consider the following:

- (1) The nature of the proposed site and development, including its size and shape, and the proposed size, shape, and height, arrangement and design of structures;
- ...
- (7) The appropriateness of the proposed mixtures of uses, and the adequacy of the provisions for the construction of affordable housing units;
- (8) The staging program and schedule of development;
- ...
- (19) Any other matter on relating to the development or its impact on affected properties or public facilities.

11. HAR § 15-22-115(a) of the Vested Rules provides:

Every applicant for a planned development containing multi-family dwelling units on a development lot of at least 20,000 square feet shall provide at least twenty per cent of the total number of dwelling units in the development for sale or rental to qualified persons **as determined by the authority.**

Emphasis added.

12. Pursuant to HAR § 15-22-115(a), the Authority has the discretion to determine how an applicant for a planned development permit satisfies its reserved housing requirement, to wit, whether the reserved housing is to be offered for rental, for-sale, or a combination of both.

13. After having duly considered the KAK 13-038 Application and all proceedings thereto, the Authority already determined that VWL could satisfy its reserved housing requirement by providing reserved housing units for-sale. See 988 Halekauwila Permit.

14. The Authority further determined that VWL's provision of additional for-sale reserved housing units in the Halekauwila Project would generate a credit which VWL could use to satisfy its reserved housing requirement for other planned development projects. See 988 Halekauwila Permit.

15. After having duly considered the KAK 13-037 Application and all proceedings thereto, the Authority already determined that VWL could satisfy its reserved housing requirement generated by the Land Block 3 Project by providing reserved housing units for-sale. See Land Block 3 Permit.

16. At the time the Authority approved the Land Block 3 Permit, the Authority relied upon VWL's representation that it intended to satisfy its reserved housing requirement by providing reserved housing units in the Halekauwila Project. See Land Block 3 Permit.

17. After having duly considered the KAK 13-036 Application and all proceedings thereto, the Authority already determined that VWL could satisfy its reserved housing requirement generated by the Land Block 2 Project by providing reserved housing units for-sale. See Land Block 2 Permit.

18. At the time the Authority approved the Land Block 2 Permit, the Authority relied upon VWL's representation that it intended satisfy its reserved housing requirement by providing reserved housing units in the Halekauwila Project. See Land Block 2 Permit.

19. Accordingly, the Authority already determined that VWL could satisfy its reserved housing requirements for the Development Permits by the provision of for-sale reserved housing units in the Halekauwila Project. See Development Permits.

20. VWL now seeks the ability to satisfy its reserved housing requirements for the Development Permits with the provision of rental reserved housing units regulated for a 15-year term in addition to for-sale reserved housing units. See Motion.

21. The Authority, however, is not convinced that VWL's proposal to provide rental reserved housing regulated for a 15-year term is an adequate substitute for the for-sale reserved housing that the Authority already approved.

22. Although VWL's proposal to provide reserved housing rental units for a 15-year regulated term in the Halekauwila Project would help provide temporary relief to the lack of suitable affordable housing in the KCDD, for-sale reserved housing units offer a longer-term solution as well as the opportunity for home ownership.

23. In addition, should purchasers of the for-sale reserved housing units sell their units, the sale will result in a shared equity payment to the Authority pursuant to HAR § 15-22-187 which the Authority can use to develop additional low- or moderate income housing.

24. VWL contends that reserved housing rental units regulated for a 15-year term benefit more families than for-sale reserved housing units, but there is no evidence that the statistics cited by VWL in its estimate of a 4-year turn over rate for rental reserved housing units is an accurate reflection of the actual turn over rate for reserved housing unit renters who qualify under the Vested Rules.

25. In terms of VWL's ability to provide reserved housing units at the Halekauwila Project, VWL confirmed that the project costs and subsidy from its market rate projects are virtually the same whether the reserved housing units constructed are rental or for-sale. See Exhibit 2.

26. Denying VWL's proposal to provide reserved housing rental units for a 15-year regulated term in the Halekauwila Project does not affect VWL's current ability to provide for-sale reserved housing units as contemplated in the Development Permits.

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

27. Pursuant to HAR §15-22-118(a),

any planned development permit granted under the provisions of this subchapter shall automatically lapse if the initial building permit authorizing construction of the foundation or superstructure of the project shall not have been issued within two years from the date of the permit[.]

28. Under HAR §15-22-118(c), the Authority:

may grant an extension to the effective period of a planned development permit, not to exceed two years, upon the applicant's request and justification in writing for an extension, provided the request and justification are received by the authority at least one hundred days in advance of the automatic termination date...and there are no material changes in circumstances which may be cause for denial of the extension.

29. VWL's request for extension of the 988 Halekauwila Permit was timely filed because the Authority received it at least one hundred (100) days in advance of the July 15, 2015 automatic termination.

30. One of the factors which contributed to the need for an extension to the 988 Halekauwila Permit was VWL's coordination with the Honolulu Authority for Rapid Transportation ("HART") regarding the rail guideway, which is intended to pass over a portion of the Project site. See Exhibit 2; April 8, 2015 Testimony.

31. There appear to be no material changes in circumstances of the Project which may be cause for denial of the requested extension.

32. Accordingly, VWL satisfied the requirements of HAR § 15-22-118(c).

TIMING OF DELIVERY OF RESERVED HOUSING

33. HAR § 15-22-203 provides in pertinent part:

(b) As part of a master plan approval, the authority may grant exceptions to the applicable rules set forth in subsection (a) above. Said exceptions shall be applicable to any development permit processed within the effective date of the master plan approval, and shall be limited to the following:

- (1) The floor area of land uses, including reserved housing units, required by the base zone or planned development provisions of this chapter may be transferred from one development lot to one or more development lots within the master planned area, provided that:
 - (A) The development lots are under the same ownership;
 - (B) The maximum floor area ratio (FAR) for any lot to which floor area has been transferred shall not be increased by more than twenty-five per cent of the FAR otherwise allowed for the size of the development lot;
 - (C) Development on any lot involved in the transfer shall not exceed its maximum allowable tower footprint and height;
 - (D) The FAR remaining on a development lot from which floor area has been transferred shall not be less than 1.5, unless the development lot is developed in conjunction

- with development on the lot to which the floor area has been transferred;
- (E) Development on the development lot to which reserved housing units are transferred shall commence within two years after the development is completed on the development lot from which the reserved housing units were transferred, unless the first development project on any of the development lots involved in the transfer contains fifty per cent of the reserved housing units required for development of all lots involved in the transfer, provided the allocation of unit types for the reserved housing units shall constitute a proportionate representation of all the nonreserved unit types to be provided with regard to factors of square footage and number of bedrooms;
 - (F) The authority shall obtain written assurance from the landowner that the requirements of this section will be satisfied and such assurance shall be binding upon the landowner and the landowner's heirs or successors in interest and shall be filed as a covenant running with the land in the bureau of conveyances or in the office of the assistant registrar of the land court; and
 - (G) Failure to satisfy the requirements of this subsection shall be cause for denial of any development permit for the lots involved in the transfer.

(c) In granting any of the exceptions provided in this section, the authority may impose standards and conditions in addition to or in place of the standards and conditions specified in this section as it finds are reasonable and necessary to carry out the purpose and requirements of this chapter and the mauka area plan.

34. Pursuant to HAR § 15-22-203(b)(1), the Authority may permit the transfer of reserved housing units from one development lot to another development lot within the master planned area as part of a master plan approval.

35. Pursuant to HAR § 15-22-203(c), the Authority has the discretion to impose standards and conditions "in place of the standards and conditions specified in [HAR § 15-22-203]," which includes, but is not limited to, HAR § 15-22-203(b)(1)(E).

36. At the time the WNMP Permit was approved, the exact number, location, and type of reserved housing units to be developed within the master planned area was unknown

inasmuch as VWL's mixed-used development was dependent upon the changing market and social conditions. See WNMP Permit, FOF No. 46; see also Exceptions p. 19.

37. Accordingly, the WNMP Permit acknowledged that, "[t]he reserved housing unit mix, as well as the provision for delivery of the reserved housing, need not be determined at the master planning stage; instead, these issues are more appropriately determined at the project development stage." See WNMP Permit, FOF No. 75.

38. Pursuant to HAR § 15-22-203(c), the Authority has the discretion to defer its determination regarding the reserved housing unit mix, as well as the provision for delivery of reserved housing to the project development stage.

39. Both the Land Block 2 and 3 Permits expressly provide that:

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

See Land Block 2 and 3 Permits.

40. Thus, VWL is obligated to provide financial assurances acceptable to the Authority prior to the approval of the initial Building Permit for both the Land Block 2 Project and Land Block 3 Project. See Land Block 2 and 3 Permits.

41. VWL is further obligated to deliver the reserved housing generated by the respective Land Block 2 and 3 Projects "prior to the issuance of the initial Certificate of Occupancy" for each respective project. See Land Block 2 and 3 Permits.

42. If VWL had an objection to the timing of delivery of reserved housing as specified in the Land Block 2 and 3 Permits issued on August 21, 2013, VWL could have sought timely review of such permits, but failed to do so.

JUNE 24, 2015 VWL DOCUMENT

43. VWL did not obtain leave to submit the June 24, 2015 VWL Document.

44. Pursuant to HAR § 15-219-7, the Authority may strike any papers which have not been filed in compliance with the applicable rules or orders.

45. Because VWL did not obtain leave to submit the June 24, 2015 VWL Document, the Authority strikes such document as defective pursuant to HAR § 15-219-7.

DECISION AND ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and the records and files herein, the Authority GRANTS IN PART and DENIES IN PART the Motion as follows:

1. VWL's request for a two-year extension of the 988 Halekauwila Permit is GRANTED, provided that:
 - a. Prior to VWL obtaining its superstructure permit for the Halekauwila Project, VWL shall submit to the HCDA Executive Director for his review and written approval any updates, if applicable, to its proposed program for administering its for-sale reserved housing units in the Halekauwila Project; and
 - b. Prior to VWL obtaining a Certificate of Occupancy for its Land Block 3 Project or Land Block 2 Project, whichever occurs first, VWL shall furnish to HCDA copies of the following: (i) an executed construction

contract between VWL and a licensed general contractor for the construction of the for-sale reserved housing units required under the Development Permits (“RH Construction Contract”); (ii) a notice to proceed issued by VWL to such contractor for the RH Construction Contract; (iii) a performance bond for the RH Construction Contract from a surety licensed to do business in the State of Hawaii; and (iv) a payment bond from a surety licensed to do business in the State of Hawaii for 100% of the RH Construction Contract amount.

2. The effective period of Development Permit No. KAK 13-038 shall be extended for a period of two (2) years expiring on July 16, 2017.
3. The Motion is DENIED in remaining part.
4. Except as provided herein, all other provisions and conditions of the Development Permits shall remain in full force and effect.

IT IS SO ORDERED.

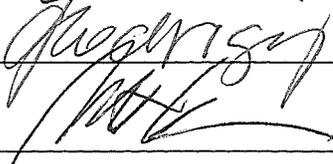
ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 24th day of June, 2015. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

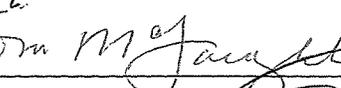


Hawaii Community Development Authority
(Kakaako Members)

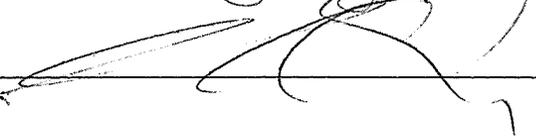
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David Rodriguez



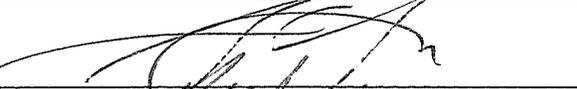
Scott Kami



Tom McLaughlin



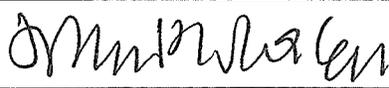
William Oh



Jason Okuhama



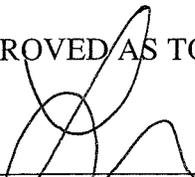
Steven Scott, Vice Chair



Mary Pat Waterhouse

John Whalen, Chairperson

APPROVED AS TO FORM:



Lori N. Tanigawa, Deputy Attorney General