

DECISION AND ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and the records and files herein, HCDA grants the Petition subject to the following terms and conditions:

1. The OMPR Petition is GRANTED with respect to its request for a waiver of HAR § 15-217-55(k)(2) as to the Project, with such waiver retroactive as of and from April 5, 2015.

2. OMPR is assessed the maximum fine permitted under HAR § 15-219-101(a) and shall pay a fine in the amount of \$2,000.00 for failing to correct the violation by the date specified in the Revised NOV.

3. Pursuant to HAR § 15-219-102, OMPR shall reimburse HCDA for its third-party consultant costs incurred in retaining Douglas Engineering Pacific, Inc. to provide consulting services regarding the instant docket in the amount of \$24,000.00.

4. Section VII.D. of the Development Permit is hereby deleted in its entirety and shall be replaced with the following:

D. Comply with all applicable requirements of Subchapter 4 (Area-Wide Standards) of the Mauka Area Rules, except for HAR § 15-217-55(k)(2).

5. OMPR has further agreed to increase its public facilities dedication fee by an additional one million dollars (\$1,000,000.00). In recognition of this increase, Section IV of the Development Permit is hereby deleted in its entirety and shall be replaced with the following:

PUBLIC FACILITIES DEDICATION FEE: Based on the information provided on the Development Permit application, land requirement for

public facilities dedication is determined to be 17,415 square feet. The Applicant's request to pay cash in-lieu fee in place of dedicating land has been approved. The base cash in-lieu fee for public facilities dedication is calculated based on a land value of \$150 per square foot, resulting in a public facilities dedication fee in the amount of \$2,612,250.00 based on the currently projected commercial floor area and market residential floor area. An additional public facilities dedication fee in the amount of \$1,000,000.00 has been agreed with the Applicant to mitigate any and all issues concerning the Project's selected glazing and for the impairment to HCDA's planning and coordination of the KCDD caused by Applicant's unwarranted delay in availing itself of the proper process and procedure to address the issues raised with HAR § 15-217-55(k)(2). This results in a total cash in-lieu fee for public facilities dedication in the amount of \$3,612,250.00. The actual base cash in-lieu fee for public facilities dedication shall be subject to redetermination at the time of substantial completion of construction of the Project on the basis of the final measured commercial and market residential floor area of the development. The mitigation portion of the public facilities dedication fee shall not be subject to any adjustment.

The payment of the public facility dedication fee shall be prior to the issuance of the initial Certificate of Occupancy of the Project and 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 acceptable means to HCDA prior to the issuance of the initial Building Permit.

6. Except as provided herein, all other terms and conditions of the Development Permit shall remain in full force and effect.

7. OMPR agrees to waive its rights under HRS § 206E-5.6(h), specifically that OMPR has thirty (30) days after receipt of a certified copy of this order within which to seek judicial review pursuant to HRS § 91-14.

IT IS SO STIPULATED AND ORDERED.