

Decision Making: Shall the Authority Ratify the Administrative Amendment of the Prior Executive Director Amending the Planned Development Agreement for 404 Piikoi Project (PD 2-84)?

Staff Report
May 4, 2016

Background: The Development Permit, PD 2-84 ("Permit") for 404 Piikoi Project ("Project"), was issued by the Hawaii Community Development Authority ("HCDA") on November 7, 1984 and subsequently amended several times. Kewalo Development LLC ("Kewalo Development") was the developer of the final phase ("Phase IV") of the Project which included a for sale market residential unit tower and a separate mid-rise reserved housing building ("RH Project") on a separate parcel along Kona Street. On March 19, 2014, the HCDA approved the assignment and transfer of the Permit's remaining reserved housing obligations from Kewalo Development LLC to SCD Piikoi, LLC, a Hawaii limited liability company ("Carr"), on certain terms and conditions more particularly set forth in the Permit. A copy of the March 19, 2014 Permit amendment is provided as Exhibit-A. Subsequently the Planned Development Agreement ("Agreement") for the Project was amended on April 10, 2014, a copy of which is provided as Exhibit-B. On January 7, 2015 the Authority approved further amendment of the Agreement, a copy of which is provided as Exhibit-C.

Discussion: The January 7, 2015 amendment provides among other things that:

(1) Carr shall develop on the Land an affordable rental project, currently planned to consist of approximately 128 apartment units, to be rented to persons earning not more than 60% of the area median income. These requirements shall remain in place for a 60-year period, commencing from the issuance of the certificate of occupancy for the RH Project.

(2) Kewalo Development shall immediately place into an irrevocable escrow account at Title Guaranty Escrow Services of Hawaii ("Escrow") the following: (a) \$1,900,000 in cash, less \$217,800 previously released to Carr to pay for design and other pre-development costs for the RH Project (the "Cash Deposit"), (b) a standard Limited Warranty Deed conveying the Land to Carr (the "Carr Deed"), and (c) a standard Limited Warranty Deed conveying the Land to HCDA (the "HCDA Deed").

(3) By January 7, 2016, Carr shall obtain both an award of low-income housing tax credits (LIFTC) and a rental housing trust fund (RHRF) allocation from Hawaii Housing Finance and Development Corporation for the RH Project (the "HHFDC Awards"). If Carr fails to secure the HHFDC Awards by such date, then HCDA shall instruct Escrow to record the HCDA Deed and to release the balance of the Cash Deposit to HCDA, and all of Carr's rights to the Land and to develop the RH Project shall be deemed terminated.

(4) Assuming Carr succeeds in securing the HHFDC Awards within the approved period of time, then within 12 months from the date the last of the HHFDC Awards is awarded to Carr, or within such longer period of time as may be from time to time approved by HCDA,

Carr shall close all of the financing required for the development of the RH Project (the "Financing Requirements").

(a) If Carr satisfies the Financing Requirement within such approved period of time, then HCDA shall instruct Escrow to record the Carr Deed concurrently with the closing of such financing and to release the balance of the Cash Deposit to Carr.

(b) If Carr fails to satisfy the Financing Requirement within such approved period of time, or should at any time before then abandon the RH Project, then: (i) HCDA shall instruct Escrow to record the HCDA Deed and release the balance of the Cash Deposit to HCDA, (ii) Carr shall promptly assign and deliver to HCDA all work product (plans, studies, reports, permits, etc.) pertaining to the development of the RH Project, and (iii) All of Carr's rights to Land and to develop the RH Project shall be deemed terminated.

On June 24, 2015, Hale Kewalo, LP ("Kewalo"), Carr's development entity for RH Project, submitted a request to HHFDC for approvals from certain exemptions from statutes, ordinances, and rules for the RH Project pursuant to Section 201H-38, Hawaii Revised Statutes ("201H Exemptions"). On August 19, 2015, Kewalo also submitted a consolidated application for (a) Tax-exempt issuance of \$31,500,000 from the HMMF Bond Program; (b) \$1,880,416 in annual Federal LIHTC and \$940,208 in annual State LIHTC from the non-volume cap pool (4% LIHTC); and (c) A Rental Housing Revolving Fund (RHRF) project award loan of \$10,600,000.

On October 15, 2015 HHFDC approved the RH Project as eligible for 201H Exemption. A copy of HHFDC approval is provided as Exhibit-D. Subsequently on November 4, 2015 the City Council approved the 201H Exemption for the RH Project. A copy of the City Council resolution is provided as Exhibit-E.

On March 10, 2016 HHFDC approved Kewalo's application for LIHTC and RHRF. A copy of the HHFDC approval is provided as Exhibit-F.

Since Carr had already submitted the application for LIHTC and RHRF to the HHFDC, as well as obtained 201H Exemption from HHFDC and the City Council the Agreement was administratively amended on November 24, 2015 to allow Carr until January 7, 2017 to secure the HHFDC Award. A copy of the Administrative Amendment by the previous Executive Director is provided as Exhibit-G. The fact that Carr obtained HHFDC Award after the date specified in the January 7, 2015 Agreement and that the January 7, 2015 Agreement was administratively amended staff believes that the Authority should review the January 7, 2015 Agreement as well as the November 24, 2015 Administrative Amendment and take necessary actions to allow Carr to proceed with the RH Project. The March 19, 2014 Permit amendment requires further amendment to incorporate the 201H Exemptions from the Mauka Area Rules for the RH Project. Pursuant to the provisions of Section 206E-5.6 HRS, three separate public hearings are necessary to amend the Permit and staff will be scheduling the public hearing in the near future. Staff believes that Carr has diligently pursued the development of the RH Project and the delay in obtaining HHFDC Award was not directly caused by any delinquency on

part of Carr. Staff believes that it is reasonable to ratify the November 24, 2015 Administrative Amendment and make a determination that Carr has substantially met the HHFDC Award requirement in the January 7, 2015 Agreement and allow for the development of the RH Project to move forward.

Recommendation: Staff recommends that the Authority Ratify the Administrative Amendment of the Prior Executive Director Amending the Planned Development Agreement for 404 Piikoi Project (PD 2-84) and make a determination that Carr has substantially met the requirement for HHFDC Award.