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VA Aloha, LLC

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

In re the Petition of

VA Aloha, LLC for Waivers of Certain Provisions of the Kalaeloa Community Development District Rules Pursuant to Hawaii Administrative Rules § 15-219-98.

VA ALOHA, LLC'S PETITION FOR WAIVERS OF CERTAIN PROVISIONS OF THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT RULES PURSUANT TO HAWAII ADMINISTRATIVE RULES § 15-219-98; DECLARATION OF COUNSEL; EXHIBITS 1 - 4

VA ALOHA, LLC'S PETITION FOR WAIVERS OF CERTAIN PROVISIONS OF THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT RULES PURSUANT TO HAWAII ADMINISTRATIVE RULES § 15-219-98

COMES NOW Petitioner VA Aloha, LLC ("VA Aloha"), by and through its attorneys, WATANABE ING LLP, and pursuant to Hawaii Administrative Rules ("HAR") § 15-219-98, hereby submits this petition to waive certain provisions of the Kalaeloa Community Development District ("KCDD") Administrative Rules (HAR Title 15, Subtitle 4, Chapter 215) (the "KCDD Rules").

I. INTRODUCTION.

As discussed in detail below, VA Aloha seeks waivers of five provisions of the KCDD Rules (and related figures) in order to accommodate certain design requirements and preferences specified by the U.S. Department of Veterans Affairs (“VA”) for the development of a new, state-of-the-art VA Multi-Specialty Outpatient Clinic (“VA Clinic”) in the KCDD, which is the subject of VA Aloha’s development permit application (“Application”) to the Hawaii Community Development Authority (“HCDA” or “Authority”).

On June 1, 2021, HCDA accepted the Application for consideration as Application No. KAL 21-006, and the Application is incorporated herein by reference. VA Aloha requests a hearing on this Petition following the presentation hearing on its Application pursuant to Hawaii Revised Statutes § 206E-5.6(e).

Hunt Communities Hawaii, LLC (“Hunt”) is the fee owner of the parcel upon which VA Aloha will develop the VA Clinic.¹ The VA selected Hunt as the build-to-suit lessor for the VA Clinic in satisfaction of the VA’s various requirements, preferences, and design specifications as set forth in a Solicitation for Offers VA-101-16-R-0027 dated April 2017 (as amended) (the “SFO”), which describes the VA’s specific space and other design needs for this long-planned facility. *See* SFO (and amendments) (with highlighted sections referenced), attached hereto as Exhibit 1.

The SFO included: 1) conceptual plans as a guideline for offerors to follow in developing their own plans in response to the SFO; and 2) a point rating system for the VA to select an offeror that most closely met the VA’s requirements, preferences, and design specifications. In making the award selection, the VA prioritized offerors that most closely met

¹ Hunt is also the sole member of VA Aloha, and Hunt will convey the fee interest in the parcel to VA Aloha upon final subdivision approval.

the requirements, preferences, and design specifications in the SFO, and those that were in the best alignment with the VA's conceptual plans.

Among numerous design requirements and preferences, the SFO included the following relevant provisions:

- “Space shall be located in a quality new building, constructed of sound and substantial construction, and shall be in compliance with all of the Government’s minimum requirements set forth in this Solicitation for Offers. . . . Space must be adjoining[.]” SFO at § 1.1, Amount and Type of Space (emphasis added).
- The SFO site criteria mandated that the site “be able to accommodate the proposed building and provide the required amount of appropriately located parking”. SFO at § 1.12, Site Criteria.
- “The space offered shall be of shape and dimensions that will accommodate the space program and interior functional requirements of VA Multi-Specialty Outpatient Clinic[.]” SFO at § 1.3.2 (emphases added).
- “The conceptual floor plan (PART VIII) provided in this solicitation shall be used as the basis for the planning and functional layout of the facility.” SFO at § 7.1.1, Space Planning and Functional Layout; Conceptual Plans by Leo A. Daly (emphasis added).
- The SFO required the offeror to “[d]evelop sufficient new parking so that the total number of facility spaces will be the greater of 528 spaces, or as required by local codes.” SFO at § 5.2.9, Parking Facilities (emphasis added).
- The SFO noted that offerors would be evaluated, among numerous other technical factors, on the “quality of site development,” including the offeror’s “site plan composition and elements, ingress and egress, and physical security.” SFO at § 2.2.2.A.(2).
- Physical security standards, including a 25-foot standoff distance, is referenced in Section 4.2.4 of the SFO.²
- The SFO originally provided that “Access roads shall be configured to prevent vehicles from attaining speeds in excess of 25 mph. Avoid any straight-line vehicular approaches to the facility.” SFO at § 4.2.4.B.(2).³

² Although the VA subsequently amended the security provisions of Section 4.2.4., Hunt’s proposed design maintains the VA’s original security standards to better protect the health and safety of building occupants.

- The SFO originally required a public entrance design that would limit public access to “a single entrance”; provide “access from drop-off to lobby to prevent a straight line of travel”; a security screening vestibule; and numerous security safeguards and measures. *See* SFO at § 4.2.4.C.⁴
- “VA will evaluate the Offeror’s development of the site to accommodate VA’s conceptual building footprint including the required setbacks; [and] delivery of parking spaces in excess of the required minimum number of spaces, the ingresses and egresses to and from the main (public), emergency, and staff entrances[.]” SFO at § 2.2.2, Technical Evaluation.
- The VA adopted various model codes and standards for the construction of new structures, including the International Energy Conservation Code, 2015 Edition (“IECC 2015”). SFO at § 4.2.1.⁵

Accordingly, to position the proposed project as the best candidate to be selected by the VA because it would most closely meet the specific and important needs of the VA and its clients, Hunt, in its detailed project design submittal, did not propose deviations from the SFO or deviations from the VA’s conceptual plans for the clinic’s spaces, departments, building entrances, physical security protocols, major circulation routes, building footprint, and gross floor area (as well as the SFO provisions noted above).

The VA notified Hunt of the acceptance of Hunt’s offer in a letter dated March 30, 2021 after the U.S. House of Representatives formally approved the project.

Given the foregoing, the proposed project design accepted by the VA requires waivers from the strict application of certain KCDD Rules relating to frontage / setbacks of structures, large lot developments, parking lots and the visible light transmission of windows, and VA

³ *See* Note 2, *supra*.

⁴ *See* Note 2, *supra*.

⁵ On May 20, 2020, the City and County of Honolulu also adopted the IECC 2015 with amendments. *See* https://energy.hawaii.gov/wp-content/uploads/2020/07/HonoluluCounty_EnergyCode.pdf.

Aloha therefore seeks waivers of the following provisions of the KCDD Rules to facilitate the development of the VA Clinic in Kalaeloa:

1. **HAR § 15-215-41(a) (Building Placement) / Figure 1.3 (Development Standards Summary) and Figure 1.8 (Building Placement and Encroachment)**: a waiver of this rule (and the related specifications in the figures) will permit the VA Clinic to have less than the required 50 percent minimum building frontage occupancy at the build to line to accommodate the VA's specifications for the VA Clinic, including the VA's original requirement for a 25-foot security stand-off distance.
2. **HAR § 15-215-62 (Large Lot Development)**: A waiver of this rule will permit the clinic to have its principal entrance as proposed by the VA, and not "off of a new or existing thoroughfare or passageway" as specified by the KCDD Rules, and will also permit the VA Clinic to have a continuous building form along Franklin D. Roosevelt Avenue without a mid-block pedestrian passageway and courtyard every three hundred feet in order to accommodate the VA's requirement that the clinic space must be "adjoining," as well as to accommodate the shape, dimensions and conceptual floor plans for the VA Clinic.
3. **HAR § 15-215-47(i)(6) (Parking and Loading - High Albedo Concrete)**: a waiver of this rule will permit the use of asphalt in the surface parking lot in lieu of the specified high albedo concrete, which will assist in implementing the VA's requirement of providing over two times the number of parking spaces (528 parking spaces) than required by the KCDD Rules.
4. **HAR § 15-215-47(j) (Parking and Loading - Landscaping)**: a waiver of this rule will permit additional flexibility in the size and placement of shade trees (in lieu of the specified large shade trees every forty-five feet along the entire length of every other row) in the parking lot. This waiver will assist in accommodating the VA's requirement for the extensive parking at the clinic.⁶
5. **HAR § 15-215-43(h)(2) (Architectural Standards - Windows)**: a waiver of this rule will permit a visible light transmission level of windows in the clinic to be less than the required seventy percent. This waiver is necessary to meet the solar heat gain coefficient requirements of IECC 2015 table C402.4 for Climate Zone 1 / Hawaii.⁷

⁶ VA Aloha's consultants are continuing to review this issue to determine if appropriate "large" trees can be reasonably accommodated in the project design pursuant to the strict requirements of the rule; however, out of an abundance of caution, VA Aloha is requesting this waiver to the tree size and placement requirements of HAR § 15-215-47(j). VA Aloha respectfully reserves the right to amend or withdraw this waiver request based on its further review of this issue.

⁷ Although VA Aloha's consultants are also continuing to review this issue, out of an abundance of caution, VA Aloha is requesting this waiver to the VLT requirement of HAR § 15-215-43(h)(2). VA

As discussed in detail below, and consistent with the criteria of HAR § 15-219-98(e), granting these waivers will not endanger (and will in fact promote) the health, safety and welfare of the KCDD by providing a facility that will better serve the needs of veterans in Kalaeloa and throughout the west side of Oahu, as well as provide significant public and economic benefits to the district. A waiver of the strict application of these rules is in the overall best interests of the KCDD.

II. NAME, ADDRESS, AND TELEPHONE NUMBER OF PETITIONER AND PETITIONER’S LEGAL COUNSEL.

A. Name, address, and telephone number of the Petitioner.

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B. Name, address, and telephone number of the Petitioner’s legal counsel.

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III. THE SPECIFIC PROVISIONS OF KCDD RULES FOR WHICH THE PETITIONER SEEKS WAIVERS.

A. Building placement and encroachment.

HAR § 15-215-41(a) (Building Placement) provides that: “[f]acades shall be built parallel to the build to line with a minimum frontage occupancy as provided in Figure 1.8 (building placement and encroachments)[.]” In turn, Figure 1.8 of the KCDD Rules illustrates the requirement (set forth in Figure 1.3 for the T3 (General Urban) transect) of a 50 percent

Aloha respectfully reserves the right to amend or withdraw this waiver request based on its further review of this issue.

minimum frontage occupancy at the build to line, and a front yard setback of 5-15 feet. *See* Excerpts of KCDD Rules, attached hereto as Exhibit 2.

B. Large lot development.

HAR § 15-215-62 (Large Lot Development) provides that:

- (a) Purpose. This section establishes the standards for developing large lots, dividing them into smaller pedestrian-oriented blocks, and achieving an interconnected block network with walkable block lengths. The standards for large lot projects ensure that these projects promote walkability, pedestrian-orientation, and sustainability of urban and built form. Buildings should include massing and articulation that reflects a human scale, rather than large, monolithic, and repetitive building fabric.
- (b) Applicability. The following standards shall apply to projects on large lots.
- (c) Thoroughfare network:
 - (1) Large lots shall be divided to create pedestrian-oriented blocks;
 - (2) New thoroughfares shall connect with existing thoroughfares;
 - (3) New passageways that are introduced shall be a minimum of fifteen feet wide between building elevations;
 - (4) New passageways that are introduced shall be un-gated and shall be publically [sic]-accessible;
 - (5) Each new block shall have an alley for service and parking access; and
 - (6) Cul-de-sacs and dead-end streets are not permitted, unless they allow for future connections.
- (d) New buildings:
 - (1) New buildings are permitted as indicated by the building types allocated to each transect;
 - (2) New buildings shall have their principle [sic] entrance off of a new or existing thoroughfare or passageway;
 - (3) New buildings with civic or institutional uses shall be located in central locations, and be recognizable and accessible to the public;
 - (4) Buildings shall incorporate mid-block pedestrian passageways and courtyards at least every three hundred feet. Where passageways are utilized, they shall connect through the block, across existing alleys if necessary, to other passageways, to mid-block crossings, or thoroughfares for greater street grid connectivity;
 - (5) When a building includes a courtyard, the courtyard shall have a minimum dimension of forty feet deep and thirty-five feet wide along the street side;
 - (6) The required mid-block pedestrian passageway or courtyard shall not abut an alley; and
 - (7) For large lots that abut other lots not subject to a permit application, an alley of at least twenty-six feet in width must be provided at the edge of the lot that is adjacent to the other lots to ensure access by vehicles and access to light and air of the other lots. An alternative proposal may be considered as long as it meets the intent of providing light, room, and air to neighboring lots.

1. Principal entrance.

As noted, HAR § 15-215-62(d)(2) (Large Lot Development) provides that, “[n]ew buildings shall have their principle [sic] entrance off of a new or existing thoroughfare or passageway.” *See* Exhibit 2.

2. Mid-block pedestrian passageways.

As noted, HAR § 15-215-62(d)(4) (Large Lot Development) provides that:

Buildings shall incorporate mid-block pedestrian passageways and courtyards at least every three hundred feet. Where passageways are utilized, they shall connect through the block, across existing alleys if necessary, to other passageways, to midblock crossings, or thoroughfares for greater street grid connectivity.

See Exhibit 2.

C. Parking and loading.

1. High albedo concrete.

HAR § 15-215-47(i)(6) requires the use of high albedo concrete instead of asphalt in surface parking lots. *See* Exhibit 2.

2. Landscaping for parking lots.

HAR § 15-215-47(j)(2) provides that for landscaping for surface parking lots located at grade:

Every other row of parking shall include a landscaped median for the entire length of a bay. The entire length shall be planted with large shade trees at least every forty five feet. Where a tree planting island occurs the entire length of a bay, there shall be a minimum of one planting island every fifteen spaces and a minimum of one large shade tree every fifteen spaces in a tree planting island[.]

See Exhibit 2.

D. Architectural Standards - Windows.

HAR § 15-215-43(h)(2) requires that: “Visible light transmission level of windows on the ground floor shall be seventy per cent or greater and on all other floors the visible light transmission level shall be fifty per cent or greater.” *See* Exhibit 2.

IV. THE EFFECT OF THE STRICT APPLICATION OF THE PROVISIONS OF THE KCDD RULES FOR WHICH THE PETITIONER SEEKS WAIVERS.

A. Building placement and encroachment.

As illustrated in the proposed VA Clinic conceptual site plan (attached hereto as Exhibit 3), given the size and orientation of the parcel and the proposed clinic, a strict application of the minimum frontage occupancy and setback requirements of HAR § 15-215-41(a) (and related figures) would require an alteration of the VA’s preferred shape, dimensions and/or orientation of the clinic building as provided in the SFO, and would also preclude the implementation of the VA’s original requirement of a 25-foot standoff distance (which Hunt chose to maintain to enhance the safety of the facility for building occupants). *Compare* Exhibit 3 (conceptual site plan) with SFO Leo A. Daly Concept Design Plans, attached hereto as Exhibit 4.

B. Large lot development.

1. Principal entrance.

A strict application of the rule requiring new buildings to have their principal entrance “off of a new or existing thoroughfare or passageway” would not be compatible with the SFO’s original provisions and the Leo A. Daly conceptual plans, which illustrate the VA’s preference to have a single, centrally-located main entry for patients to facilitate ease of access to other areas of the clinic, and provide a centralized point of security for the facility, which enables the security office to monitor the central entry and dispatch security from this central location. An entry for the VA clinic immediately “off of a new or existing thoroughfare or passageway,”

would not be conducive to implementing the VA's patient flow and security preferences for the facility.

2. Mid-block pedestrian passageways.

As illustrated in the VA Clinic's conceptual site plan, given the size and orientation of the parcel and the clinic, a strict application of the mid-block pedestrian passageway requirement every three hundred feet would require an alteration to the VA's preferred dimensions for the clinic. This would also alter the layout and interior functional requirements for the facility because a pedestrian passageway would be required through the functional areas of the clinic along Franklin D. Roosevelt Avenue. *See Exhibit 3 (conceptual site plan; floor plan with functional areas).*

Requiring a pedestrian passageway through the clinic would: 1) separate areas of this medical facility; 2) would not be consistent with the VA's original preference to provide a single and centrally-located point of patient entry to ensure security and patient access; 3) would not be consistent with the VA requirement of "adjoining" space; and 4) would not be consistent with the SFO's conceptual floor plan, which envisioned a contiguous clinic layout to accommodate the required space program and interior functional requirements. *See Exhibit 4.*

C. Parking and loading.

1. High albedo concrete.

HAR § 15-215-47(i)(6) requires the use of high albedo concrete instead of asphalt in surface parking lots. In turn, HAR § 15-215-47(e)(1) requires one off-street parking stall per 450 square feet of floor area for clinics, which would ordinarily result in 253 required parking spaces for the VA Clinic.

The VA SFO, however, requires that the offeror “[d]evelop sufficient new parking so that the total number of facility spaces will be the greater of 528 spaces, or as required by local codes.” *See* Exhibit 1 at § 5.2.9 (Parking Facilities) (Emphasis added).⁸ Accordingly, pursuant to this VA requirement, 528 parking spaces (or over two times number of spaces required by HAR § 15-215-47(e)(1)) will be constructed for the VA Clinic for the convenience of patrons to this medical facility. *See* Exhibit 3 (conceptual site plan; conceptual landscape plan).

Strictly adhering to HAR § 15-215-47(i)(6) would require the use of high albedo concrete for a parking area with over two times the number of parking stalls as required by the KCDD Rules, which is an amount of parking (and an amount of concrete) that HCDA likely did not reasonably anticipate at the time of the adoption of the KCDD Rules.

2. Landscaping for parking lots.

HAR § 15-215-47(j) provides, in part, that for landscaping for surface parking lots located at grade, “Every other row of parking shall include a landscaped median for the entire length of a bay. The entire length shall be planted with large shade trees at least every forty five feet.” (Emphases added).

Given the VA SFO requirement to provide over two times the number of parking spaces as required by the KCDD Rules, the space available for landscaping within the parking lot medians is commensurately limited. Accordingly, a strict application of the rule requiring large shade trees to be planted every forty-five feet along every other median row within the parking lot will create a higher risk of future pavement damage from the large tree roots (vs. providing additional flexibility in the placement and size of trees). This risk is particularly problematic in a

⁸ HAR § 15-215-6(a)(6) provides that “[i]f a conflict occurs between these rules and federal regulations, the federal regulations shall take precedence.

medical facility, where uneven or damaged pavement may cause an increased risk of personal injury to patients with mobility limitations.

D. Architectural Standards - Windows.

HAR § 15-215-43(h)(2) requires that: “Visible light transmission level of windows on the ground floor shall be seventy per cent or greater and on all other floors the visible light transmission level shall be fifty per cent or greater.” *See* Exhibit 2. The VA Clinic will be one floor; accordingly, strictly adhering to this rule would require all of the VA Clinic exterior windows to have a visible light transmission (“VLT”) level of seventy percent or greater. *See* Exhibit 3. As noted below, VA Aloha, to date, has not been able to identify suitable glazing that meets this requirement while also complying with the VA requirement to meet the IECC 2015 standards.

V. THE REASONS WHY PETITIONER SEEKS TO AVOID THE STRICT APPLICATION OF THE PROVISIONS FOR WHICH THE PETITIONER SEEKS THE WAIVERS.

A. Building placement and encroachment.

As discussed above, in preparing its proposal in response to the SFO, Hunt did not propose deviations from the SFO (or deviations from the VA’s conceptual plans) in order to meet, as closely as possible, the VA’s specific needs for the clinic, which in turn, would best serve the needs of Hawaii’s veterans.

Accordingly, Hunt, in its proposal, retained, among other conceptual design elements, the VA’s proposed building orientation, space plan, entrances, setbacks, major circulation routes and gross floor area.

In accepting Hunt’s offer for the clinic, the VA determined that Hunt’s design best met the needs of the VA and its clients. Strictly applying the building placement and encroachment

provisions of HAR § 15-215-41(a) would require an extensive redesign of the layout, orientation, space plan, and footprint of the clinic to fulfill the 50 percent minimum building frontage occupancy at the build to line, and would also reduce the 25-foot security stand-off clearance for the clinic.

Accordingly, VA Aloha believes that a strict application of HAR § 15-215-41(a) would result in a building design that would compromise the needs of the VA and its clients.

B. Large lot development.

1. Principal entrance.

As noted above, Hunt closely adhered to the provisions of the SFO and the VA's preferred conceptual plans in designing the project. The principal entrance to the clinic is consistent with the foregoing, and, specifically, is consistent with the VA's preference, as noted in the SFO's original provisions, of providing a single, centrally-located and secure entry for patient access, as well as controlling vehicular speed and avoiding direct vehicular access. *See* Exhibit 1 at § 4.2.4.B.(2).

The provisions of HAR § 15-215-62(d)(2), which require new buildings to have their principal entrance "off of a new or existing thoroughfare or passageway" is not consistent with the VA's security design preferences, and is not as conducive to ensuring patient safety. In addition, VA Aloha believes that the location of the entrance within the parking lot, and in the middle of the clinic, is more convenient for patients and their caregivers to access the facility and the services within.

2. Mid-block pedestrian passageways.

VA Aloha seeks a waiver of the strict provisions of HAR § 15-215-62(d)(4) to comply with the SFO requirement for "adjoining" space within the VA Clinic, and to preserve the VA's

conceptual floor plan, which, as with many medical facilities, has a contiguous layout to accommodate the required space program and various functional requirements. A mid-block passageway through the clinic would separate areas of the clinic, which, unlike many commercial and retail buildings, is not conducive to the efficient functioning of a medical facility.

In addition, having other potential points of access to the facility created by pedestrian passageways would not be consistent with the VA's preference to have a secure, single point of access to the clinic in order to maintain patient security and improved patient flow into the facility.

C. Parking and loading.

1. High albedo concrete.

VA Aloha seeks a waiver from the strict requirements of HAR § 15-215-47(i)(6), which requires the use of high albedo concrete instead of asphalt in surface parking lots, because of the ramifications of the unique VA requirement for over double the number of parking stalls as would be required under the KCDD Rules. HAR § 15-215-47(e)(1) requires one off-street parking stall per 450 square feet of floor area for clinics, which would ordinarily result in 253 required parking spaces for a medical clinic. As noted above, however, the VA SFO requires 528 parking spaces for the VA Clinic.

Among other issues, working with a significantly greater volume of concrete for a surface parking lot than contemplated under the KCDD Rules for this development would negatively affect the development planning, as the use of concrete requires additional design, preparation, and construction. VA Aloha is required to adhere to a strict development and delivery timetable

imposed by the VA, and a requirement to use high albedo concrete for such a large area adds additional risk and complexity to the project.

Moreover, while economic or financial implications alone are not dispositive, they are relevant factors that may properly be considered by HCDA in granting a waiver, particularly where the significant economic cost of strictly adhering to a rule causes an undue (and unforeseen) burden upon an applicant because of third party requirements that are not within the control of the applicant.

The cost of high albedo concrete is approximately 2.7 times more expensive than asphalt. The significant surface area of the parking lot for the VA Clinic is dictated by the VA requirement for a minimum of 528 parking spaces, or as noted, over twice the amount required under the KCDD Rules. While the number of parking spaces provides a significant public benefit in the form of convenient and ample off-street parking for clinic patrons and visitors, the extensive number of required parking spaces (and the resulting large area required for parking) is solely the result of the VA SFO requirement and is not subject to modification. *See* Exhibit 1 at § 5.2.9.

2. Landscaping for parking lots.

For similar reasons, VA Aloha also seeks a waiver of the strict application of the parking lot tree landscaping requirement of HAR § 15-215-47(j), which provides, in part, that for surface parking lots located at grade, large shade trees are required to be planted every forty five feet in every other median. Given the extensive number of parking stalls required by the VA, the VA Clinic parking lot is planned to be as efficient as possible, and the space available for landscaping is directly limited by the number of required spaces. Accordingly, VA Aloha seeks a waiver of the strict application of this rule to permit flexibility in the placement and size of

trees within the parking lot (including the placement of large shade trees where practical), which VA Aloha believes is a reasonable approach to accommodate the parking required. *See* Exhibit 3 (conceptual landscape plan).

In addition, as noted above, given the space limitations, the planting of large trees every forty five feet in every other median within the parking lot increases the risk of root pavement damage, which is of particular concern in a medical facility parking lot where there is a high likelihood of patients with mobility limitations.

D. Architectural Standards - Windows.

As noted above, the SFO requires the VA Clinic to comply with the IECC 2015 energy standards. *See* Exhibit 1 at 91. Despite diligent research with various manufacturers, VA Aloha's consultants have not been able to locate an insulated glazing unit to date that meets both the 70 percent VLT requirement of HAR § 15-215-43(h)(2) and the Solar Heat Gain Coefficient requirements of IECC 2015 table C402.4 for Climate Zone 1 (Hawaii) with or without a low emissivity coating.

Although uncoated clear glass does meet or exceed the 70 percent VLT, VA Aloha does not believe clear glass is appropriate for this medical facility, and such glass is typically only recommended for north facing or fully shaded windows in cool to cold climates, and therefore does not meet the IECC 2015 requirements for Hawaii.

The VA Clinic's current design targets insulated glazing units with low emissivity coating at approximately 62 percent VLT.

VI. ALTERNATE PLANS OR OTHER MEANS BY WHICH THE SPIRIT AND INTENT FO THE PROVISIONS FOR WHICH VA ALOHA SEEKS THE WAIVERS CAN BE ACCOMPLISHED OTHER THAN THE STRICT APPLICATION OF THE RULES.

A. Building placement and encroachment.

The primary purpose of the minimum frontage occupancy to the build to line and the front yard setbacks is to encourage street frontage and control the relationship of the proposed structure to the street. Here, the spirit and intent of HAR § 15-215-41(a) is fulfilled through the proposed design for the VA Clinic because the design, including the setbacks and landscaping, will not materially or negatively alter the character of the general urban transect; will not impair or impede pedestrian activation around the clinic; and will be compatible with the appropriate and reasonable uses of adjacent properties. *See* Exhibit 3 (conceptual site plan).

VA Aloha therefore respectfully requests a waiver of the strict application of HAR § 15-215-41(a) and related figures so that the clinic can be constructed pursuant to the VA's original design preferences, including the VA's original 25-foot standoff distance requirement.

B. Large lot development.

1. Principal entrance.

The purpose of the requirement in HAR § 15-215-62(d)(2) for new buildings to have their principal entrance off of a new or existing thoroughfare or passageway is presumably to encourage and maintain pedestrian activation and convenience, and promote the walkability of the neighborhood.

While this rationale is appropriate for commercial, residential and retail buildings, a medical facility involves different considerations. The VA Clinic's design, which places its principal entrance within the parking lot and off of the patient drop off area, however, properly maintains the balance of safety considerations as originally outlined in the SFO, while also ensuring patient access and convenience, which all are policies consistent with HAR § 15-215-

62(d)(2). Accordingly, VA Aloha respectfully requests a waiver of the strict application of this rule.

2. Mid-block pedestrian passageways.

The primary purpose of the large lot development rule requirement for mid-block pedestrian passageways every three hundred feet is to facilitate pedestrian access and circulation through smaller, pedestrian-oriented blocks, and, secondarily, to soften the visual effect of continuous building facades.

The spirit and intent of HAR § 15-215-62(d)(4) is fulfilled through the proposed design for the VA Clinic because the design includes pedestrian pathways throughout the site, and the extensive landscaping and open space along the Franklin D. Roosevelt Avenue side of the clinic (including the large open space on the north-east corner of the parcel) will mitigate the effect of the continuous building façade. *See* Exhibit 3 (conceptual site plan).

VA Aloha therefore respectfully requests a waiver of the strict application of the HAR § 15-215-62(d)(4) requirement for a mid-block pedestrian passageway along the Franklin D. Roosevelt side of the clinic, so that the clinic can be constructed pursuant to the VA's conceptual floor plan and the VA's adjoining space and interior functional requirements.

C. Parking and loading.

1. High albedo concrete.

The rationale for requiring high albedo concrete on surface parking areas is presumably to assist with reducing the heat island effect associated with paved or constructed areas. The proposed design for the VA Clinic is within the spirit and intent of HAR § 15-215-47(i)(6) by providing extensive landscaping throughout the parking lot, including shade trees (gold and monkeypod trees), and numerous medium to small trees (including Kou, Plumeria, Rainbow

Shower and Silver Trumpet trees) to provide shade and reduce heat absorption. *See* Exhibit 3 (conceptual landscape plan).

While, as noted below, VA Aloha is requesting a waiver of the landscaping requirements for the parking lot due to the extensive number of spaces required by the VA, large shade trees will be planted in the perimeter, and VA Aloha believes the proposed landscaping is within the spirit and intent of the landscaping rule. In addition, the planned design of the VA Clinic roof will have a high solar reflectance index to further reduce the overall project's heat island effect. *See* Application at Appendix B (Green Globes Scorecard) at Criteria No. 3.2.2.4 (Heat Island Effect).

Accordingly, VA Aloha respectfully requests a waiver of the strict application of the HAR § 15-215-47(i)(6) requirement for high albedo concrete in the clinic parking area.

2. Landscaping for parking lots.

As noted above, while the planting of large shade trees every forty five feet and on every other median is not practical within the parking lot due to the VA parking requirement⁹, the project conceptual landscape plan includes numerous medium and small trees throughout the lot on every median. *See* Exhibit 3 (conceptual landscape plan). In addition, large trees will be planted within the parking lot as practical, and large shade trees will also be planted on the perimeter of the parking lot. Accordingly, VA Aloha believes that its proposed parking lot landscaping plan is within the spirit and intent of HAR § 15-215-47(j)(2) to provide appropriate and extensive landscaping within parking lots, and therefore requests a waiver of the strict application of this rule.

⁹ As noted above, VA Aloha's consultants are continuing to review this issue.

D. Architectural Standards - Windows.

While a VLT of seventy percent or greater on the ground floor level of a commercial building may encourage greater pedestrian activation and interaction in commercial and retail spaces, that rationale does not apply to a medical facility. Here, since the VA Clinic is only one floor, HAR § 15-215-43(h)(2) would require all exterior ground floor windows to have a VLT of seventy percent or greater, which would increase heat and glare, and also present a greater risk of compromising patient privacy, comfort and safety.

VA Aloha's target of approximately 62 percent VLT for all ground floor windows is within the spirit and intent of HAR § 15-215-43(h)(2), and properly balances the requirement to comply with IECC 2015, while taking into account the unique needs of this medical facility.¹⁰

VII. EXTENT TO WHICH THE WAIVERS ARE IN THE BEST INTERESTS OF THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT AND WILL PROMOTE THE HEALTH, SAFETY OR WELFARE OF THE DISTRICT.

Granting the waivers of the KCDD Rules for the VA Clinic as noted above is in the best interests of the KCDD, because waiving the strict application of these rules will enable VA Aloha to develop this important medical facility within the district while maintaining the VA's design requirements, preferences and specifications for this project.

There are more than 87,000 veterans on O'ahu alone, and all veterans, especially those living and working in Kalaeloa and West O'ahu, will directly benefit from this long-awaited, multi-specialty medical center. Veterans in Kalaeloa and West O'ahu, for example, will experience reduced appointment wait times, increased provider availability, and the ability to obtain quality medical care without traveling to the existing Spark M. Matsunaga Veterans Affairs Medical Center at Tripler Army Medical Center.

¹⁰ As noted above, VA Aloha's consultants are continuing to review this issue.

Granting the waivers of the KCDD Rules will also not endanger -- and will in fact actively promote -- the health, safety and welfare of the district. The construction and completion of the VA Clinic will be a significant milestone in the continuing revitalization of the KCDD. In addition to directly improving the health, safety and welfare of veterans, the construction and ongoing operation of the clinic will also provide important public benefits to the community in the form of public dedications, economic benefits and increased activity within Kalaheo.

VIII. CONCLUSION

For all of the foregoing reasons, and the evidence presented at the hearing on this Petition, VA Aloha respectfully requests that the Authority GRANT this Petition and find that granting the requested waivers will not endanger (and in fact will promote) the health, safety and welfare of the KCDD, and either: 1) the proposed design and features of the VA Clinic provide alternate means for which the spirit and intent of the rules for which VA Aloha seeks the waivers can be accomplished; or 2) that the requested waivers of the strict application of the rules discussed herein are in the best interest of the KCDD.

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DATED: Honolulu, Hawai'i, June 1, 2021.



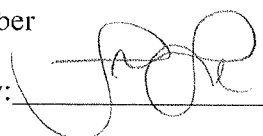
BRIAN A. KANG
SUMMER H. KAIWE
Attorneys for Petitioner
VA Aloha, LLC

SIGNED AND CERTIFIED BY PETITIONER
PURSUANT TO HAR § 15-219-98(a):

VA Aloha, LLC

By: Hunt Communities Hawaii, LLC

Its: Member

By:  _____

Its: Vice President

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

In re the Petition of

VA Aloha, LLC for Waivers of Certain Provisions of the Kalaehoa Community Development District Rules Pursuant to Hawaii Administrative Rules § 15-219-98.

DECLARATION OF COUNSEL;
EXHIBITS 1 - 4

DECLARATION OF COUNSEL

I, BRIAN A. KANG, hereby declare as follows:

1. I am an attorney with the law firm Watanabe Ing LLP, and I am licensed to practice law and I am in good standing in the State of Hawai‘i.
2. I am one of the attorneys for VA Aloha, LLC, and I make this declaration in support of the attached PETITION FOR WAIVERS OF CERTAIN PROVISIONS OF THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT RULES PURSUANT TO HAWAII ADMINISTRATIVE RULES § 15-219-98 based upon personal knowledge, information, and belief, and based upon my review of the files and records in this matter.
3. This declaration is made in lieu of an affidavit.
4. Attached hereto as Exhibit “1” is a true and correct copy of the Solicitation for Offers VA-101-16-R-0027 dated April 2017 (as amended) issued by the U.S. Department of Veterans Affairs for the development of the VA Multi-Specialty Outpatient Clinic (the “SFO”), with various relevant provisions highlighted.

5. Attached hereto as Exhibit “2” are true and correct copies of excerpts of the Kalaeloa Community Development District Rules, Hawaii Administrative Rules, Title 15, Subtitle 4, Chapter 215.

6. Attached hereto as Exhibit “3” are true and correct copies of excerpts of the conceptual plans for the proposed VA Clinic included in VA Aloha’s Application.

7. Attached hereto as Exhibit “4” are true and correct copies of the Leo A. Daly Concept Design Plans included as part of the SFO.

I DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawai‘i, June 1, 2021.



BRIAN A. KANG