

**Victoria Ward, Limited
Consolidated Motion**

**Draft Order of the
Hawaii Community
Development Authority**

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

In re Motion of)	APPLICATION NOS. KAK 13-036,
)	KAK 13-037, AND KAK 13-038
Victoria Ward, Limited,)	
)	
<u>Applicant,</u>)	
)	
for an Order of Amendment to Development)	
Permit Nos. KAK 13-036, KAK 13-037,)	
KAK 13-038 and to Extend Time of Effective)	
Period of Permit KAK 13-038)	
_____)	

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

On February 23, 2015, Victoria Ward, Limited’s (“VWL”) Motion to Amend Development Permit Nos. KAK 13-036, KAK 13-037, and KAK 13-038 ~~and~~ to Allow Sale and/or Rental of Reserved Housing Units and to Extend Time of Effective Period of Permit KAK 13-038 (“Motion”) was filed pursuant to Hawaii Administrative Rules (“HAR”) §15-219-32 and §15-22-118(c). Under the Motion, the VWL requested: (1) an amendment to Development Permit Nos. KAK 13-036, KAK 13-037, and KAK 13-038 (“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) to extend the time of the effective period of Development Permit No. KAK 13-038 to allow construction on the 988 Halekauwila Project (“Project”) to commence

after July 17, 2015, ~~based upon the financing schedule.~~ The properties affected by the Motion are located within the Mauka Area of the Kakaako Community Development District (“KCDD”).

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, along with their respective pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

BACKGROUND

1. On January 14, 2009, the HCDA 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 the VWL. [Pet FOF #18 as amended]

2. Pursuant to Condition No. 9 of the WNMP Permit, the 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.” [Pet FOF #19 as amended]

3. The WNMP Permit is vested under HAR, Chapter 15-22 Mauka Area Rules (“Vested Rules”), which provided in HAR §15-22-115(a) of the Vested Rules that “a planned development containing multi-family dwelling units...shall provide at least twenty percent of the

total number of dwelling units in the development for sale or rental to qualified persons...”. [Pet FOF #20 as amended]

4. On April 18, 2013, the VWL submitted its Development Permit Application numbered KAK 13-038 (“KAK 13-038 Application”) to the HCDA for Ward Village, Land Block 5, Project 1, also known as 988 Halekauwila, in accordance with the WNMP Permit. Under the KAK 13-038 Application, the VWL committed to providing all reserved housing requirements for the Project within the building and noted that the “Project will also satisfy the reserved housing requirements of two concurrent projects on Land Blocks 2 and 3.” [Pet FOF #21 as amended]

5. On July 17, 2013, the HCDA approved Development Permit No. KAK 13-038, subject to the terms and conditions contained in the Development Permit. The Development Permit No. KAK 13-038 provides in pertinent part, “the Applicant shall provide 375 units as reserved housing for sale.” [Pet FOF #22 as amended]

6. On April 18, 2013, the VWL submitted its Development Permit Application numbered KAK 13-037 to the HCDA for Ward Village, Land Block 3, Project 1, in accordance with the WNMP Permit. On April 19, 2013, the VWL submitted its Development Permit Application numbered KAK 13-036 to the HCDA for Ward Village, Land Block 2, Project 1, in accordance with the WNMP Permit. On August 21, 2013, the HCDA approved Development Permit Nos. KAK 13-036 and KAK 13-037 for projects within Land Blocks 2 and 3 of the WNMP Permit area, subject to terms and conditions contained in the respective Development Permit. [Pet FOF #25 as amended]

7. Pursuant to Development Permit Nos. KAK 13-036 and KAK 13-037, the required reserved housing is to be fulfilled through construction of for sale reserved housing units under Development Permit No. KAK 13-038. *[Pet FOF #28 as amended]*

PROCEDURAL HISTORY

1.8. On February 23, 2015, the VWL submitted its Motion. *[Pet FOF #1]*

2.9. On March 7, 2015, when the Motion was considered complete, the HCDA posted the Motion on its website in accordance with Act 61, Session Laws of Hawaii 2014 (“Act 61”).

[Pet FOF #2]

3.10. On March 7, 2015, the Notice of Public Hearings was published pursuant to Act 61 HRS §§ 1-28.5, 92-41, 206E-5.5, and 206E-5.6, and HAR §15-219-27. *[Pet FOF #3 as amended]*

4.11. In accordance with the provisions of Hawaii Revised Statutes (“HRS”) §206E-5.6, 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 the three Pprojects, 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 343-393 individuals and organizations that have shown interest in development activities in the KCDD.

[Pet FOF #4 as amended]

~~5.12.~~ On March 7, 2015, pursuant to Act 61, notification by first-class United States mail, postage prepaid, was made to owners and lessees of record of real property located within a 300-foot radius of the perimeter of each of the three of the projects that ~~comprise~~ 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 of the ~~county~~ City and County of Honolulu in which the project is located. *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. [Pet FOF #5 as amended]*

~~6.13.~~ As set forth in the Notice of Public Hearings, the deadline to intervene was March 30, 2015. No motion for intervention was filed. [Pet FOF #6]

~~7. — No comments were received from any government agencies.~~

~~8.14.~~ On April 2, 2015, a Pre-Hearing conference was held at HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813. [Pet FOF #8]

~~9.15.~~ On April 2, 2015, the HCDA issued its Pre-Hearing Order, requiring the submission of witness lists, exhibits lists, and exhibits on April 6, 2015. [Pet FOF #9]

~~10.16.~~ On April 6, 2015, the VWL submitted its witness lists, exhibit lists, and exhibits pursuant to the Pre-Hearing Order. [Pet FOF #10]

~~11.17.~~ On April 6, 2015, ~~in an effort to provide greater opportunity for the public to offer comments regarding the Motion,~~ the Authority issued additional dates and times for

Supplemental Public Comment Sessions to occur on Saturday, April 11, 2015, at 10:00 a.m. and Tuesday, April 14, 2015, at 5:30 p.m. *[Pet FOF #11 as amended]*

12.18. On April 8, 2015, the contested case hearing on the Motion was held at HCDA's office at 547 Queen Street, Honolulu, Hawaii 96813. *[Pet FOF #12]*

13.19. At the April 8, 2015 hearing, the Authority admitted into evidence the following exhibits: Exhibit 1 – Concord Group Chart; and Exhibit 2 - Slide Presentation. *[Pet FOF #13]*

14.20. At the April 8, 2015 hearing, the VWL presented the testimony of Race Randle, Vice President of Development for The Howard Hughes Corporation. *[Pet FOF #14]*

15.21. For the April 8, 2015 hearing, the HCDA received 78 public comments in writing: 6-7 in support of granting the Motion and 1 providing comments only. *[Pet FOF #15]*

16.22. At the April 8, 2015 hearing, 8 members of the public provided oral comments: 7 in support of granting the Motion and 1 in opposition. *[Pet FOF #16]*

17.23. 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.

[Pet FOF #17]

BACKGROUND

~~18. — On January 14, 2009, HCDA approved the Nune Pro Tune Order Re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit ("Master Plan Permit") for the Ward Master Plan area, which is owned and controlled by VWL.~~

~~19. Pursuant to Condition No. 9 of the Master Plan 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.”~~

~~20. The Master Plan Permit was issued under the Vested Rules, which provided that “a planned development containing multi-family dwelling units . . . shall provide at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons” HAR § 15-22-115(a). The Vested Rules specifically allowed the reserved housing units to be for sale or rental.~~

~~21. On April 18, 2013, VWL submitted its Development Permit Application (“Application”) to HCDA for Ward Village, Land Block 5, Project 1 also known as 988 Halekauwila, in accordance with the Master Plan Permit. Under the Application, VWL committed to providing all reserved housing requirements for the Project within the building and noted that the “Project will also satisfy the reserved housing requirements of two concurrent projects on Land Blocks 2 and 3.”~~

~~22. On July 17, 2013, HCDA approved the Project, adopting HCDA’s Staff Report Findings, and Recommendations. The Staff Report at page 13 provided in relevant part as follows:~~

~~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.~~

~~23. VWL was required to provide 375 units in the Project as reserved housing:~~

~~**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.~~

~~24. — VWL complied with Development Permit No. KAK 13-038 by submitting a program for sale of reserved housing units to HCDA for review and approval.~~

~~25. — On August 21, 2013, HCDA approved Development Permit No. KAK 13-036 (“Land Block 2, Project 1 Permit”) and Development Permit No. KAK 13-037 (“Land Block 3, Project 1 Permit”) (collectively, “Land Block 2 and 3 Permits”) for projects within Land Blocks 2 and 3 of the Master Plan Permit area.~~

~~26. — The Land Block 2, Project 1 Permit requires the provision of “forty five (45) units as reserved housing for sale.”~~

~~27. — The Land Block 3, Project 1 Permit requires the provision of “eighty (80) units as reserved housing for sale.”~~

~~28. — The reserved housing units required for the Land Block 2 and 3 Permits are to be fulfilled through construction of reserved housing units under Development Permit No. KAK 13-038.~~

~~29. — As of this date, VWL is in compliance with all of the conditions under the Development Permits.~~

~~REQUEST FOR RENTAL AND/OR SALE OF RESERVED HOUSING~~

~~30. — One of the purposes of a master plan under HAR Chapter 15-22 (“Vested Rules”) is “to derive public benefits, such as affordable housing, ... which are generally provided by government and would not otherwise be required from private developers.” HAR §15-22~~

~~200(b). Accordingly, under the Master Plan Permit and the Development Permits, VWL committed to providing its required share of reserved housing. In fact, VWL committed to providing upfront a larger number of reserved housing units than initially required by the Development Permits, which will provide VWL with reserved housing credits that may be utilized for other projects.~~

~~31. Pursuant to HAR §15-22-184 of the Vested Rules, the “adjusted household income” of a qualified person **purchasing** a reserved housing unit “shall not exceed **one hundred forty** per cent of median income” and a person **renting** a reserved housing unit “shall not exceed **one hundred per cent** of median income.” “Adjusted household income” means “total income, before taxes and personal deductions, received by all members of the eligible borrower’s household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments but not including business deductions.” Accordingly, reserved housing rental units must be provided for those with **lower household incomes** than the reserved housing units offered for sale.~~

~~32. Pursuant to HAR §15-22-185.1, a purchaser of a reserved housing unit for sale may be required to come up with a down payment that does not exceed ten percent (10%), whereas a renter of a reserved housing unit does not have the same down payment requirement. Indeed, the renter’s financial obligation is typically limited to the monthly rental amount, which cannot exceed thirty percent (30%) of the renter’s gross monthly income, along with a security deposit.~~

~~33. Reserved housing rental units are regulated for a minimum period of 15 years. HAR §15-22-185.1(c). This means that those rental units must remain committed for renters whose adjusted household incomes are no more than one hundred percent (100%) of the AMI for at least 15 years. Reserved housing units offered for sale between one hundred percent (100%) and one hundred forty percent (140%) AMI are regulated anywhere from 2 years to 5 years, depending upon affordability. HAR §15-22-186(b). Accordingly, there are significant benefits to the community of providing both rental and sale options for reserved housing units, which include ensuring the diversity of housing options in the urban core.~~

~~34. Indeed, there was substantial and uncontested evidence and public testimony from the Hawaii Home Ownership Center, Faith Action for Community Equity, and Paul Brewbaker, PhD (TZ Economics) that density is needed within the urban core, especially on the affordable side, and that the 375 reserved housing rental units can help to fill this significant need. According to the State of Hawaii Department of Business, Economic Development and Tourism, approximately 3,500 new housing units are needed annually just on Oahu. Home development has fallen behind significantly, which limits the availability of affordable housing options. There need to be incentives provided to developers who commit to delivering this type of housing earlier than required and in greater quantities. As Dr. Brewbaker testified, one important way to provide such incentive is to reduce the entitlement burdens when a developer is subsidizing a reserved housing project. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~35. While the Vested Rules provide the Authority with discretion to impose a regulated period for reserved housing rental units for more than 15 years, there is~~

~~substantial and uncontested evidence that a regulated rental period of exactly 15 years allows VWL to provide reserved housing earlier than the Vested Rules require and in a greater quantity than the Development Permits under the Vested Rules require. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~36. — A 15-year regulated period for reserved housing rental units is a significant burden to impose upon developers. There was substantial and uncontested evidence that VWL would be required to invest approximately \$85 million, with minimal returns. A regulated period in excess of 15 years would make it more costly for any developer to build the reserved housing units, which are subsidized by the developer without government assistance. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~37. — Any regulated period for reserved housing rentals that is in excess of 15 years will require VWL to re-evaluate and potentially find a different method of financing the Project, which will delay the availability of reserved housing to the community and potentially reduce the number of reserved housing units provided consistent with the Vested Rules. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~38. — A 15-year regulated period for rental reserved housing units is also consistent with the provisions of HCDA's revised rules set forth in HAR Chapter 15-218. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~39. — There was substantial and uncontested evidence and public testimony that a 15-year regulated period (as opposed to a 2-5 year regulated period for the sale of reserved housing) provides tenants with a significant monthly cost savings, which would allow~~

~~tenants a significant period of time to save for a down payment to purchase a home at the end of the 15-year regulated period and to educate and empower tenants to become homeowners. Accordingly, the overwhelming evidence indicates that providing reserved housing rental units regulated for a period of 15 years, as opposed to for sale reserved housing units regulated for 2-5 years as VWL is currently permitted to build, will provide a significant community benefit that is obtainable within the near future. See Exhibits 1-2; April 8, 2015 Testimony.~~

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

~~40. Pursuant to HAR §15-22-118(a), “[a]ny 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....”~~

~~41. Under HAR §15-22-118(c), HCDA “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.”~~

~~42. Subsequent to the issuance of Development Permit No. KAK 13-038 on July 17, 2013, VWL commenced design completion work. Considerable coordination with the Honolulu Authority for Rapid Transportation (“HART”) was necessary as the rail~~

~~guideway runs adjacent to, and over a portion of, the Project. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~43. In addition to coordination with HART, significant redesigning was required to accommodate a 22,000 square foot space for a neighborhood retailer which intends to lease the ground level of the Project and provide a significant amenity to the tenants and residents of KCDD. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~44.24. Around the same time, VWL became aware of other projects in the area offering similar housing types, without comparable reserved housing unit restrictions, that had begun to absorb the market. A depth of market study in mid-2014 confirmed VWL's concerns about the absorption of the market by for sale unit types and showed a significantly higher demand for rental reserved housing units. The study, conducted by The Concord Group, confirmed the existence of approximately 9,330 households on island eligible to purchase a reserved housing unit versus approximately 74,128 households on island eligible to rent a reserved housing unit. See Exhibits 1-2; April 8, 2015 Testimony. [Pet FOF #44 as amended]~~

~~45. In addition to the market study, the community and its leaders began pushing for greater rental units in the urban core based upon affordability to a broader distribution of the low and moderate income families and individuals. Based upon the market studies and the community discussion, VWL began investigating the feasibility of developing the Project to include reserved housing rental units. See Exhibits 1-2; April 8, 2015 Testimony.~~

~~46.25. In July 2014, the VWL completed and submitted an initial application for U. S. Department of Housing and Urban Development ("HUD") financing based on development~~

of reserved housing rental units. ~~Preliminary responses were positive, and VWL continued the HUD due diligence process.~~ Based upon HUD financing deadlines, the earliest the loan could close is October 2015. Construction cannot commence prior to the loan closing. See Exhibits 1-2; April 8, 2015 Testimony. [Pet FOF #46 as amended]

~~47.26. To date, VWL has invested more than \$4.5 million in the Project. The VWL has expended substantial resources in submitting submitted the Project's applications for sewer, demolition, foundation, State Historic Preservation Division (SHPD), and National Pollutant Discharge Elimination System (NPDES) permits. There is substantial and uncontested evidence that The VWL has advanced the Project to nearly meeting the permit deadline. is committed to completing the Project and fulfilling its reserved housing requirements under the Vested Rules. See Exhibits 1-2; April 8, 2015 Testimony. [Pet FOF #47 as amended]~~

48. ~~There are significant public and community benefits to be obtained by allowing the Project to offer rental and/or sale reserved housing units. An extension to Development Permit No. KAK 13-038 would allow VWL to bring to market a diversity of housing options and a product type that is in great demand in Honolulu.~~

[This space is left intentional blank.]

RULINGS ON PROPOSED FINDINGS OF FACT

Any Findings of Fact submitted by the VWL not already ruled upon by the HCDA by adoption herein, or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

Any Conclusions of Law herein improperly designated as Findings of Fact should be deemed or construed as Conclusions of Law; any Findings of Fact herein improperly designated as Conclusions of Law should be deemed or construed as Findings of Fact.

[This space is left intentional blank.]

CONCLUSIONS OF LAW

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

~~2.—— As an agency created by statute, HCDA can only act within the bounds of its legislatively mandated purposes. See *Pilaa 400, LLC v. Board of Land and Natural Resources*, 132 Hawaii 247, 263, 320 P.3d 912, 928 (2014).~~

~~3. The legislatively mandated purpose of HRS Chapter 206E, as set forth in HRS §206E-1, is the redevelopment of designated areas in the State that are substantially undeveloped and in need of renewal and improvement:~~

~~—— 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.~~

~~4. 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.”~~

~~5. The Legislature determined that the Kakaako area was in need of redevelopment and created the KCDD as set forth in HRS §206E-32.~~

~~6. In fact, in HRS §206E-31, the Legislature expressly outlined the need for the redevelopment of Kakaako:~~

~~The legislature finds that:~~

~~(1) The Kakaako district is centrally located in Honolulu proper, in close proximity to the central business district, the government center,~~

~~commercial, industrial and market facilities, major existing and contemplated transportation routes and recreational and service areas;~~

~~(2) Due to its present function as a service and light industrial area, the district is relatively underdeveloped and has especially in view of its proximity to the urban core where the pressure for all land uses is strong the potential for increased growth and development that can alleviate community needs such as low income housing, parks and open space, and commercial and industrial facilities;~~

~~(3) The district, if not redeveloped or renewed, has the potential to become a blighted and deteriorated area. Due to its present economic importance to the State in terms of industry and subsequent employment, there is a need to preserve and enhance its value and potential;~~

~~(4) Kakaako has a potential, if properly developed and improved, to become a planned new community in consonance with surrounding urban areas.~~

~~In coordinating community development in the Kakaako district, the authority shall plan a mixed use district whereby industrial, commercial, residential, and public uses may coexist compatibly within the same area.~~

~~The authority shall plan for the above uses, but shall also respect and support the present function of Kakaako as a major economic center, providing significant employment in such areas as light industrial, wholesaling, service, and commercial activity.~~

~~7. Accordingly, there is a statutory mandate that Authority members fulfill their fiduciary obligations and duties in compliance with the Legislature's stated purposes of redeveloping the KCDD. This statutory mandate includes the redevelopment of the KCDD, which includes low income housing as one component, but not the only component, in a mixed use~~

~~district that is also in the urban core and economic center of Honolulu. In other words, the mission and vision of the Mauka Area Plan and Vested Rules are not limited solely to providing affordable or reserved housing.~~

~~8.1. Consistent with its statutory mandates, The HCDA has jurisdiction to review, consider, and take action on approve this Motion. See HRS Chapter §206E-(4) and §206E-5.6 to allow the rental and/or sale of reserved housing units and to extend the effective period of Development Permit No. KAK 13-038 pursuant to HRS Chapter 6E and HAR Chapter 15-22.~~

~~[Pet COL #8 as amended]~~

~~9.2. Pursuant to the Master Plan WNMP Permit, approved by the HCDA on January 14, 2009, the Vested Rules applicable to this Motion is governed by are those contained in HAR Chapter 15-22, also referred to herein as the “Vested Rules.” [Pet COL #9 as amended]~~

~~3. Pursuant to HAR §15-22-184 of the Vested Rules, the “adjusted household income” of a qualified person **purchasing** a reserved housing unit “shall not exceed **one hundred forty** per cent of median income” and a person **renting** a reserved housing unit “shall not exceed **one hundred per cent** of median income.” “Adjusted household income” means “total income, before taxes and personal deductions, received by all members of the eligible borrower’s household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments but not including business deductions.” Accordingly, reserved housing rental units must be provided for~~

those with lower household incomes than the reserved housing units offered for sale. [Pet FOF #31 as amended]

4. Pursuant to HAR §15-22-185.1 of the Vested Rules, a purchaser of a for sale reserved housing unit may be required to come up with a down payment that does not exceed ten percent (10%), whereas a renter of a reserved housing unit does not have the same down payment requirement. Indeed, the renter’s financial obligation is typically limited to the monthly rental amount, which cannot exceed thirty percent (30%) of the renter’s gross monthly income, along with a security deposit. [Pet FOF #32]

5. Reserved housing rental units are regulated for a minimum period of 15 years pursuant to HAR §15-22-185.1(c) of the Vested Rules. Reserved housing units offered for sale up to one hundred forty percent (140%) area median income (AMI) are regulated anywhere from two (2) years to ten (10) years, depending upon affordability pursuant to HAR §15-22-186(b) of the Vested Rules. [Pet FOF #33 as amended]

6. Pursuant to HAR §15-22-118(a) of the Vested Rules, “[a]ny 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...”. [Pet FOF #40]

7. Under HAR §15-22-118(c) of the Vested Rules, the HCDA “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.” [Pet FOF #41]

~~10.~~—Under the Vested Rules (HAR §15-22-115(a)) and the ~~Master Plan~~ WNMP Permit, the VWL is required to provide twenty percent (20%) of the total number of dwelling units as reserved housing. ~~Accordingly, Development Permit No. KAK 13-036 and Development Permit No. KAK 13-037 require VWL to provide approximately 125 reserved housing units. Under Development Permit No. KAK 13-038, VWL will provide approximately 375 reserved housing units, which exceeds the amount required under Development Permit No. KAK 13-036 and Development Permit No. KAK 13-037 by more than three fold.~~

~~11.~~ Under the Vested Rules (HAR §15-22-203(b)(1)(E)), the VWL is required to provide the off-site reserved housing for Development Permit Nos. KAK 13-036 and ~~Development Permit No. KAK 13-037~~ “within two years after the development is completed on the development lot from which the reserved housing units were transferred...”. ~~VWL anticipates providing the reserved housing units earlier than what is required under the Vested Rules.~~ [Pet COL #10 and #11 as amended]

~~12.8.~~ There is a substantial benefit to the community, which furthers the redevelopment within the KCDD, by providing reserved housing units in excess of, and earlier than, than the Vested Rules require for Development Permit No. KAK 13-036 and Development Permit No. KAK 13-037.

~~13.~~—VWL has satisfied the requirements set forth in HAR §15-22-118, inasmuch as VWL filed the request for extension at least one hundred (100) days in advance of the July 15,

~~2015 automatic termination date of Development Permit No. KAK 13-038, and there are no material changes in circumstances which may be cause for denial of the extension.~~

9. The Applicant's Motion was timely pursuant to HAR §15-22-118 (c). [Pet COL #13 as amended]

~~14.10.~~ Upon consideration of all applicable rules and regulations, the evidence and testimony presented by the VWL, the public comments, and all other evidence appearing of record, the Authority concludes that the Motion should be, and is hereby, GRANTED, pursuant to the Vested Rules. [Pet COL #14 as amended]

[This space is left intentional blank.]

DECISION AND ORDER

IT IS HEREBY ORDERED that the Motion is GRANTED and the Development Permits are hereby amended as set forth herein and subject to the following conditions:

1. The VWL shall provide 375 units in the Project associated with approved as Development Permit No. KAK 13-038 as reserved housing for rental and/or for sale in accordance with the provisions of HAR Chapter 15-22 Subchapter 7 of the Vested Rules. [Pet D&O #1 as amended]

~~2. The regulated term for reserved housing units for rental shall be fifteen (15) years as set forth in HAR §15-22-185.1(c) and shall begin on the date of issuance of Certificate of Occupancy.~~

~~3. The regulated term for reserved housing units for sale shall be established based on unit affordability as set forth in HAR §15-22-186(b) and shall begin on the date of issuance of Certificate of Occupancy.~~

~~4.2. Within ninety (90) days from the date of this approval, Before the HCDA's approval of the foundation permit for the Project associated with KAK 13-038, the~~ VWL shall prepare and submit to the HCDA Executive Director a program for rental and/or sale of reserved housing for approval, which verifies that ~~such rental and/or sales are shall be~~ consistent with the provisions of HAR §15-22-183 of the Vested Rules. [Pet D&O #4 as amended]

~~5.3.~~ The effective period of Development Permit No. KAK 13-038 shall be extended by two (2) years pursuant to HAR §15-22-118 of the Vested Rules, expiring on July 16, 2017.

[Pet D&O #5 as amended]

6.4. Except as provided herein, All other provisions and conditions of the
Development Permits shall remain in full force and effect, the same. [Pet D&O #6 as amended]

[This space is left intentional blank.]

ADOPTION OF ORDER

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

Done at Honolulu, Hawaii, this _____ day of _____, 2015.

Hawaii Community Development Authority
(Kakaako Members)

Jade Butay
Designated Representative of Director of
Department of Transportation

Roderick Becker
Designated Representative of Director of
Department of Budget and Finance

Tom McLaughlin

William Oh

Jason Okuhama

Steven Scott

John Whalen

APPROVED AS TO FORM:

Lori N. Tanigawa, Deputy Attorney General