

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

April 3, 2019

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Executive Director to Execute a One Year Right of Entry Agreement with Kupu for the Use of a Portion of the NOAA Lot at Kewalo Basin?

SUMMARY:

Kupu has a need for additional space to meet the requirements set forth in its development permit and zoning clearance for a propane tank servicing the Net Shed at Kewalo Basin. Under Development Permit KAK 17-133 on-site parking is only adequate to meet buildings use as classroom space. To accommodate other uses, including community events in its lease with the HCDA, additional stalls are needed. Kupu otherwise located its propane tank that services its building on the NOAA lot, initially under a ROE that was previously approved administratively. An additional one-year ROE will allow Kupu and the HCDA to explore options for a suitable long-term arrangement.

AUTHORITIES:

The Board must approve all ROE requests covering over a year in duration. Since Kupu previously held a one-year ROE for the subject area, any additional time would push the total term to be greater than one year.

BACKGROUND:

On November 1, 2017, the Hawaii Community Development Authority (HCDA) executed a 15-year lease to Kupu to redevelop and construct an educational, cultural, and community center at HCDA's Net Shed at Kewalo Basin Harbor. The lease also included two, ten year extension options. The facility broke ground on April 5, 2018, and the Harry and Jeanette Weinberg Hookupu Center formally opened to the public on March 14, 2019.

On April 1, 2018, the HCDA granted Kupu a one-year ROE for a portion of the property commonly identified as the NOAA Lot at Kewalo Basin Harbor. The ROE is attached hereto as Exhibit A. This ROE allowed Kupu to park staff vehicles, store tools, equipment, supplies, and house utilities necessary for Kupu's business operations at the adjacent Net Shed. One of the items included under this ROE was the installation of a 499-gallon propane gas tank. The basis

for the installation of the propane tank is a zoning clearance between Hawaii Gas and HCDA, that was executed by staff.

Relative to parking, condition C of the Development Permit KAK 17-133 (Exhibit B) specifies that the off-street stall requirement is based on the primary use – classroom/vocational use, and specifies that all other uses would be subject to a parking requirement calculation commensurate with the use based on HCDA rules. A parking plan based on the parking calculation would be required and subject to approval by the HCDA Executive Director. With the ROE, Kupu is seeking a larger arrangement to be able to satisfy its parking requirements for other uses, including community events as specified in its lease.

The propane gas tank is necessary for Kupu to operate the commercial kitchen on its leased premises. It was previously planned to be situated within Kupu's leased premises on the harbor channel side of the Net Shed. However, the refueling truck could not access the tank in that location. Due to these issues, HCDA's previous Planning Director and previous Executive Director allowed the propane tank to be relocated to HCDA's NOAA Lot temporarily. The propane tank was installed based on an administrative zoning clearance (Exhibit C).

The NOAA Lot is slated for redevelopment based on HCDA's award to Victoria Ward Limited (VWL) in December 2015. The HCDA executed a Development Agreement with VWL on March 14, 2017 and VWL has been conducting its due diligence and performing an Environmental Assessment. The draft lease is currently pending review by VWL's legal team. Kupu has indicated that VWL is amenable to Kupu's continued presence on the site if it proceeds with its development on the site.

As Kupu's leased premises does not include the NOAA Lot, the aforementioned one-year ROE was issued to allow Kupu to house the propane tank and meet other storage and parking needs. The ROE expired on March 31, 2019, and Kupu has communicated that these items are all long term needs that Kupu will need for the duration of their 15-year lease, plus the two potential 10-year extension options.

ANALYSIS:

Given the pending lease of the NOAA Lot to VWL, the HCDA cannot enter into any long-term encumbrances for that parcel. Kupu is aware that any ROE for the NOAA Lot may be terminated with at least 30 days written notice.

The subject request would allow for a "holdover" period, in which HCDA and Kupu can explore the optimal solution for relocating the propane tank and accommodating Kupu's other needs.


HCDA staff will keep the Board apprised of the situation by providing an update in the Executive Director's report once a viable solution is identified.

RECOMMENDATION:

HCDA staff recommends that the Board:


Authorize the Executive Director to Execute a One-Year Right of Entry Agreement with Kupu for the Use of a Portion of the NOAA Lot at Kewalo Basin.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Aedward Los Banos, Executive Director

Attachments

Exhibit A – Kupu ROE 28-17

Exhibit B – Development Permit KAK 17-133

Exhibit C – Zoning Clearance dated 5/15/2018

REVOCABLE RIGHT OF ENTRY (ROE 28-17)

By this NONEXCLUSIVE REVOCABLE RIGHT OF ENTRY AGREEMENT (ROE) made and executed this _____ day of _____ 2018, the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (HCDA or GRANTOR), a body corporate and a public instrumentality of the State of Hawaii, hereby grants to Kupu, a 501(c)3 nonprofit organization, whose principal place of business and mailing address is 677 Ala Moana Blvd, Suite 1200, Honolulu, Hawaii 96813 (KUPU or GRANTEE), a nonexclusive right of entry upon and use of the Premises (as defined below) subject to each of the following terms and conditions:

1. **Grant of Right-of-Entry.** The HCDA hereby grants to GRANTEE and all of its members, employees, officers, directors, representatives, agents, invitees, guests, and independent contractors (collectively, **Permitted Persons**) a ROE to enter upon the Premises (as defined below) for the sole purposes set forth herein. GRANTEE is responsible for communicating and explaining the terms and conditions of this ROE to all Permitted Persons and ensuring compliance by Permitted Persons with such terms and conditions.

2. **Premises.** This ROE shall pertain to an approximately 4,334 square foot portion of that certain real property identified as NOAA Lot and located at 1125 Ala Moana Boulevard, Honolulu, Hawaii, 96814 and identified by Oahu Tax Map Key 1-2-1-58: 135 por. (**Premises**). The Premises is more particularly shown outlined in blue in the attached Exhibit A. Any question or conflict regarding the boundary of the Premises shall be unilaterally resolved by GRANTOR.

3. **Term.** The term of this ROE shall commence on April 1, 2018, and terminate on March 30, 2019. This ROE shall automatically terminate on the Termination Date, unless earlier revoked as provided herein. GRANTEE agrees to be bound by the terms and conditions of the ROE and any written amendments to this ROE signed by both Parties.

4. **Use of Premises.** The ROE granted hereby shall be for the sole purpose of parking vehicles; housing storage containers for hand tools, equipment, and supplies in connection with GRANTEE's business operations; housing utilities that support the Net Shed, including a propane tank; and supporting Net Shed programs and activities (i.e., washing tools and supplies). GRANTEE shall not alter, obstruct or impede any driveways, entrances, exits or other points of ingress or egress for any other Lessees within the Premises. Vehicles parked in non-designated spaces for any reason, or otherwise obstructing ingress and egress including impeding driveways, entrances and exits, will be subject to removal by towing at the expense of GRANTEE.

5. **Acknowledgement of Use by Other Persons.** GRANTEE acknowledges that other persons or entities have the right to enter and/or use the Premises with the approval of the HCDA, and with the exception of the uses specified herein, GRANTEE

shall not unreasonably interfere with or impair the use and enjoyment of the Premises by such other persons or entities.

6. **Due Care and Diligence.** GRANTEE shall exercise due care and diligence in entering upon the Premises and shall not unreasonably disrupt or disturb the activities customary to the operations of the HCDA or its agents on the Premises, and GRANTEE shall exercise due care for public safety. At all times during the term of this ROE and upon the termination of this ROE, GRANTEE shall be responsible for: (a) removing any debris or trash deposited on the Premises; (b) repairing any damage to the Premises caused by its actions or the actions of third-parties due to GRANTEE's actions or inactions in securing the Premises; and (c) restoring the Premises to substantially the same condition it was in at the time of GRANTEE's entry onto the Premises, normal wear and tear excepted. This provision shall survive the termination of this ROE.

7. **Release and Waiver by GRANTEE.** GRANTEE expressly acknowledges and agrees that GRANTOR assumes no responsibility for any damages to person or property arising of this ROE. Any items left on the Premises, whether owned and/or operated by GRANTEE or Permitted Persons, are at the sole risk of the GRANTEE. GRANTEE expressly agrees that GRANTOR shall not be responsible for any loss or damage to any person or property, including but not limited to collision, fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other Permitted Persons or any other individual.

8. **Indemnity.** GRANTEE shall defend, indemnify and hold harmless the HCDA and the State of Hawaii, and its respective officials, directors, members, employees, and agents (collectively the **Indemnified Parties**) from and against any and all claims, actions, penalties, damages, liabilities, costs and expenses for loss or damage, including property damage, personal injury and wrongful death, based upon or arising out of or in connection with: (a) GRANTEE's breach of this ROE; (b) any Permitted Person's tortious conduct or violation of law on or upon the Premises; (c) any injury sustained or suffered by a Permitted Person while on the Premises; and (d) any other act or omission in any way relating to or arising out of GRANTEE's entry and use of the Premises under this ROE (collectively, **Covered Claims**). GRANTEE shall also reimburse the Indemnified Parties for all costs and expenses, including reasonable attorney's fees, incurred in connection with the Indemnified Parties defense of any Covered Claims. This provision shall survive the termination of this ROE. Notwithstanding anything to the contrary herein, GRANTEE shall not be liable for indemnifying the Indemnified Parties with respect to claims, actions, penalties, damages, liabilities, costs or expenses to the extent they are caused by the negligence or willful misconduct of any such Indemnified Parties.

9. **Insurance.** (a) GRANTEE shall obtain and maintain at all times during the term of this ROE, at its own expense, insurance coverage of the kinds and in amounts greater than or equal to those set forth below:

Commercial General Liability:

\$1,000,000 per occurrence and \$2,000,000 in the aggregate
\$1,000,000 Completed Operations Aggregate Limit
\$1,000,000 Each Occurrence Limit
\$1,000,000 Personal & Advertising Limit

Umbrella Liability: \$2,000,000 Aggregate (optional, if other limits cannot be met)

Worker's Compensation:

Coverage A: As required by Hawaii Laws
Coverage B: Employer's Liability:
\$1,000,000 Bodily Injury by Accident Each Accident
\$1,000,000 Bodily Injury by Disease
\$1,000,000 Policy Limit and \$1,000,000 Each Employee

Automobile: \$2,000,000 combined single limit OR \$1,000,000 bodily injury per person, \$1,000,000 bodily injury per accident, and \$1,000,000 property damage per damage

- (b) Prior to GRANTEE's first entry onto the Premises, GRANTEE shall provide to the HCDA a certificate of insurance to evidence compliance with the insurance requirements set forth in subsection (a) above.**
- (c) The insurance policies obtained by GRANTEE in accordance with subsection (a) above shall name the Hawaii Community Development Authority and the State of Hawaii and their respective officials, directors, officers, members, employees and agents as additional insureds.**
- (d) The HCDA shall be notified at least fifteen (15) days prior to the termination, cancellation or any material change in GRANTEE's insurance coverage.**
- (e) GRANTEE shall cover all injuries, losses or damages arising from, growing out of or caused by any acts or omissions of GRANTEE or Permitted Persons in connection with GRANTEE's use or occupancy of the Premises.**
- (f) The procuring of such required policy or policies of insurance shall not be construed to limit GRANTEE's liability under this ROE or to fulfill the**

indemnification provisions and requirements of this ROE.

Notwithstanding said policy or policies of insurance, GRANTEE shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of GRANTEE or the Permitted Persons connected with this ROE.

- (g) GRANTEE shall keep such insurance in effect and the certificate(s) on deposit with the HCDA during the entire term of this ROE. GRANTEE shall furnish a copy of the policy or policies to the HCDA.
- (h) Failure of GRANTEE to provide and keep in force such insurance shall be regarded as a material default under this ROE and the HCDA shall be entitled to exercise any or all of the remedies provided in this ROE for default of GRANTEE.
- (i) The HCDA is a self-insured State agency. GRANTEE's insurance or self-insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with insurance provided by GRANTEE.

The HCDA reserves the right to inspect and review all coverage, form, and amount of the insurance required by the above. If, in the HCDA's reasonable discretion, the above insurance does not provide adequate protection for the HCDA, it may require GRANTEE to obtain insurance sufficient in coverage, form, and amount to provide such adequate protection.

10. **Compliance with Laws and Regulations.** GRANTEE shall, at all times during the term of this ROE, observe and comply with all applicable laws, rules and regulations, whether County, State or Federal, including but not limited to, the laws applicable to the use of the Premises and the securing of any and all necessary governmental and other approvals and permits for its use of the Premises, including, but not limited to, compliance with Hawaii Revised Statutes (HRS) Chapter 6E and HRS § 269E-4.

11. **Prohibited Use.** Any use of the Premises not authorized herein shall constitute a material breach of this ROE and upon such breach, the HCDA may terminate this ROE and pursue any other remedies to which the HCDA is entitled by law; provided that, the HCDA shall first give GRANTEE notice thereof and afford GRANTEE forty-eight (48) hours to cure such breach.

12. **Improvements.** GRANTEE shall not construct any improvements of any kind or nature upon the Premises without the HCDA's express prior written consent, which consent may be granted or withheld in the HCDA's sole discretion. Any improvements, including but not limited to structures, erected on or moved onto the Premises by GRANTEE shall remain the property of GRANTEE and GRANTEE shall have the right, prior to the termination or revocation of this ROE, or within an additional period the HCDA in its discretion may allow, to remove the improvements from the

Premises; provided, however, that in the event the GRANTEE shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the HCDA may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to GRANTEE. This provision shall survive the termination of this ROE.

13. **No Lien.** GRANTEE shall not: (a) create, incur, or assume any attachment, judgment, lien, charge, or other encumbrance on the Premises or any improvements thereon; or (b) suffer to exist any such encumbrance other than one created, incurred, or assumed by the HCDA.

14. **Non-transferrable.** This ROE or any rights hereunder shall not be sold, assigned, conveyed, or otherwise transferred or disposed of without the HCDA's express prior written consent.

15. **Additional Terms and Conditions.**

- (a) GRANTEE shall pay the HCDA a usage fee of \$535.50 per month (50 cents per square foot of 1,071 sq. ft. parking area) without notice or demand, on the first (1st) day of each month for the ensuing month during the term of this ROE. If the first (1st) day falls on a weekend or State holiday, GRANTEE shall tender payment of the usage fee on the first business day immediately following the weekend or State holiday. Without prejudice to any other remedy available to the HCDA, GRANTEE shall, without further notice or demand, pay to the HCDA, a service charge of \$200.00 for each calendar month in which payment is due and remains unpaid more than ten (10) days after its due date on the first of the month.
- (b) No one may reside on the Premises, and the Premises may not be accessed for any other purpose except as authorized.
- (c) GRANTEE must keep the Premises clear of all unauthorized persons, unauthorized vehicles, debris, and trash at all times during this ROE.
- (d) Plants, rocks, dirt, asphalt and other materials that are on or part of the Premises shall not be harmed or removed from the Premises.
- (e) The HCDA reserves the right to impose additional terms and conditions it deems reasonably necessary; provided that written notice of any such additional terms and conditions shall be provided to GRANTEE not less than thirty (30) days prior to their effective date and that any such additional terms and conditions shall not materially interfere with or impair GRANTEE's rights of use herein.

16. **Termination.** Either Party may terminate this ROE at any time upon not less than sixty (60) days prior written notice. This ROE will automatically terminate upon the execution of a lease for, or which includes, the subject Premises with Kewalo Harbor LLC.

17. **Notices.** Any notice, request, demand, or other communication required or permitted to be given or made under this ROE by either party hereto shall be in writing and shall be deemed to have been duly given or served if: (a) personally delivered; (b) sent by mail, postage prepaid and certified with return receipt requested; (c) transmitted by facsimile, or (d) sent by e-mail with request for delivery confirmation, at the address, facsimile number, or e-mail address given below:

Hawaii Community Development Authority
Attention: Lindsey Doi, Asset Manager
547 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 594-0300
Fax: (808) 587-0299
Email: dbedt.hcda.contact@hawaii.gov

Kupu:
Attention: John Leong, Chief Executive Officer
677 Ala Moana Blvd., Suite 1200
Honolulu, Hawaii 96813
Telephone: (808) 735-1221

18. **Headings/Captions.** The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.

19. **Governing Law.** This ROE shall be governed by and construed under the laws of the State of Hawaii.

20. **Representation on Authority of Parties/Signatories.** Each person signing this agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this agreement. Each party represents and warrants to the other that the execution and delivery of the agreement and the performance of such party's obligations hereunder have been duly authorized and that the agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

21. **Counterparts.** This ROE may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.


22. **Entire Agreement.** This ROE constitutes the entire Agreement and understanding between the Parties and shall supersede any and all prior

communications, representations, or agreements, both verbal and written, between the Parties regarding the use of the Premises. This ROE cannot be modified except by a written instrument signed by both Parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the HCDA and GRANTEE have caused this ROE to be executed as of the day and year first above written.

**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

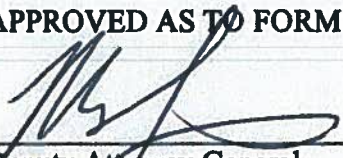
By: 

Garrett Kamemoto
Interim Executive Director

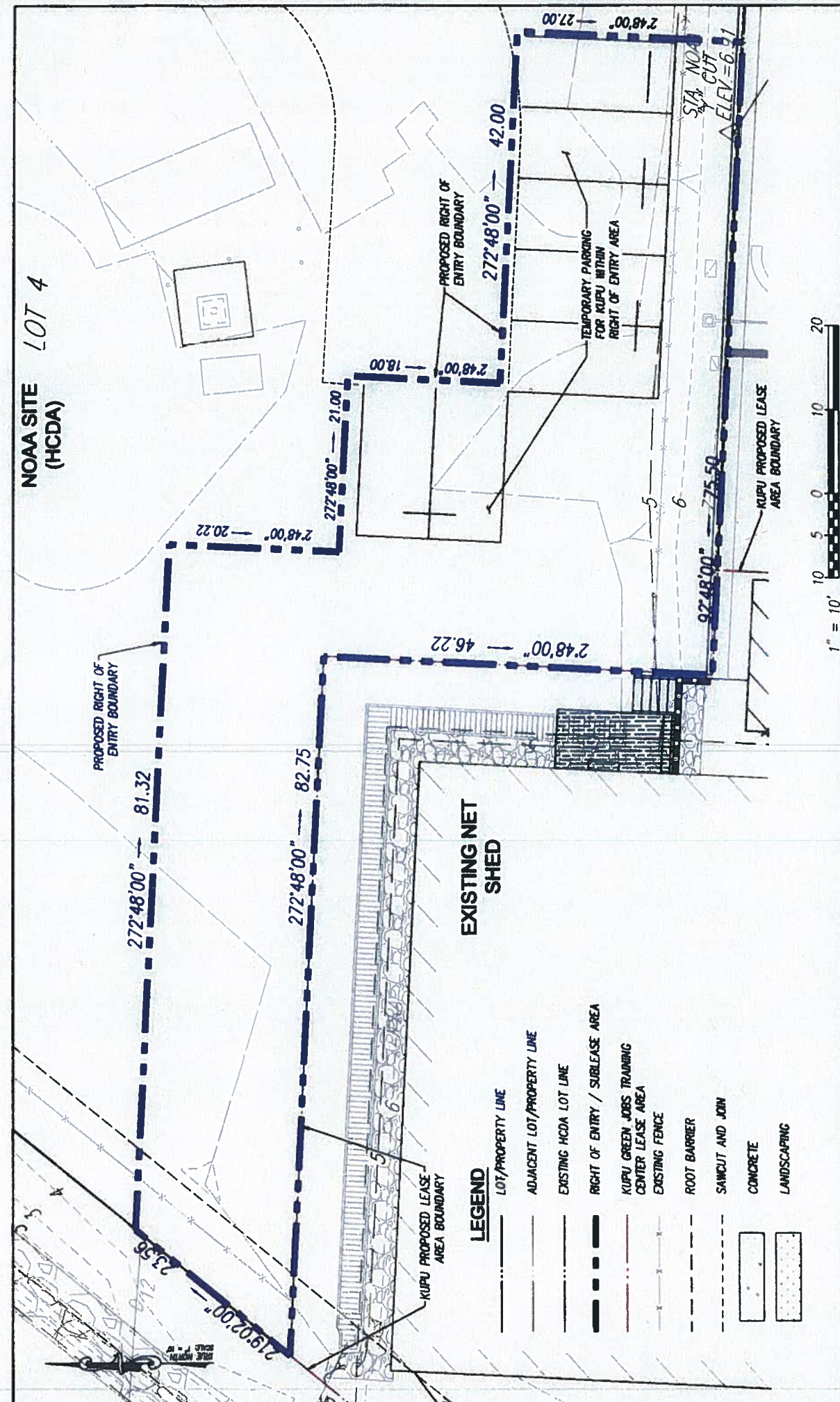
KUPU
By: 

John Leong
Chief Executive Officer

APPROVED AS TO FORM:



Deputy Attorney General



LEGEND

	LOT/PROPERTY LINE
	ADJACENT LOT/PROPERTY LINE
	EXISTING HCDA LOT LINE
	RIGHT OF ENTRY / SUBLEASE AREA
	KUPU GREEN JOBS TRAINING CENTER LEASE AREA
	EXISTING FENCE
	ROOT BARRIER
	SAWCUT AND JOIN
	CONCRETE
	LANDSCAPING

KUPU GREEN JOBS TRAINING CENTER

LEASE AREA EXHIBIT - ENLARGEMENT
Scale: As Shown

November 2, 2017



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



David Y. Ige
Governor

John Whalen
Chairperson

Jesse K. Souki
Executive Director

547 Queen Street
Honolulu, Hawaii
96813

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(808) 594-0300

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(808) 587-0299

E-Mail
dbedt.hcda.contact@hawaii.gov

Website
dbedt.hawaii.gov/hcda

DEVELOPMENT PERMIT

KAK 17-133

November 29, 2017

I. REQUEST

The applicant, Kupu (Applicant), is requesting a Development Permit to make improvements to an existing shed at the Kewalo Basin Harbor, also known as the Net Shed building, for the Kupu Green Job Training Center (Project).

The Project site is located in the Makai Area of the Kakaako Community Development District (KCDD) and is identified as Tax Map Keys: (1) 2-1-058:136 and (1) 2-1-058:137 (portion) and is approximately 21,952 square feet in area. The Hawaii Community Development Authority (HCDA) is the landowner; however, HCDA has executed a 15-year lease of the Project site to Kupu and also provided project authorization for the Project. The Applicant's Development Permit application is attached as Exhibit A.

II. PRELIMINARY CONSULTATION AND APPROVALS

Prior to submitting the Development Permit application, the Applicant was required to complete and submit an Environmental Assessment (EA) in compliance with the Hawaii Environmental Policy Act in Hawaii Revised Statutes (HRS) Chapter 343 for acceptance by the HCDA and Hawaii State Department of Health's Office of Environmental Quality Control (OEQC). The requirement for the EA was based on the fact that the Project is proposed on land owned by the State of Hawaii.

During the EA preparation process, the Applicant consulted with the following agencies and organizations.

Federal

- U.S. Army – Engineer Division,
- U.S. Fish and Wildlife Service,
- National Marine Fisheries Service, and
- Federal Emergency Management Agency.

State of Hawaii

- Department of Accounting and General Services,

- Department of Business, Economic Development & Tourism (DBEDT),
- DBEDT – HCDA,
- DBEDT – Energy Division,
- DBEDT – Office of Planning,
- Department of Defense,
- Department of Hawaiian Homelands,
- Department of Health (DOH),
- DOH – OEQC,
- DOH – Environmental Planning Office,
- DOH – Clean Water Branch,
- Department of Human Services,
- Department of Labor and Industrial Relations,
- Department of Land and Natural Resources (DLNR),
- DLNR - State Historic Preservation Division (SHPD),
- Department of Transportation (DOT) – Airports Division,
- DOT – Highways Division,
- Hawaii Housing Finance and Development Corporation,
- Office of Hawaiian Affairs,
- University of Hawaii (UH) Water Resources Research Center,
- Hawaii State Libraries, and
- Department of Education (DOE).

City and County of Honolulu

- Department of Community Services,
- Department of Design and Construction,
- Department of Facility Maintenance,
- Department of Parks and Recreation,
- Department of Transportation Services (DTS),
- Department of Community Services,
- Department of Planning and Permitting (DPP),
- Board of Water Supply (BWS),
- Honolulu Fire Department,
- Honolulu Police Department, and
- Department of Environmental Services (DES).

Elected Officials

- Senator Brickwood Galuteria,
- Representative Tom Brower,
- Representative Scott Saiki,

- Councilmember Stanley Chang, and
- Chair Larry Hurst, Neighborhood Board No.11.

Other Consulted Parties

- Honolulu Star Advertiser,
- Hawaiian Electric Company, Inc.,
- Friends of Kewalos,
- Kewalo Keiki Fishing Conservancy,
- The Howard Hughes Corporation,
- Obama Library Committee, and
- Kewalo Basin Harbor Master.

On October 7, 2015, the HCDA accepted the EA and made a determination of findings of no significant impact (FONSI). On October 23, 2015, HCDA submitted a notice of FONSI along with the final EA to the OEQC. The OEQC subsequently published the determination on its website on November 8, 2015.

State of Hawaii Historic Preservation Review

As a part of the EA process, the Applicant and HCDA consulted with SHPD as required by HRS Chapter 6E-42, *Historic Preservation Review* process. On July 14, 2015, SHPD issued a letter to HCDA stating that its, "determination for the proposed project is **no historic properties affected.**"

III. KAKAAKO MAKAI CONCEPTUAL MASTER PLAN

The proposed Project is located within the 2011 Kakaako Makai Conceptual Master Plan (Conceptual Master Plan) area. The existing Net Shed building is shown within the Conceptual Master Plan as an existing building to remain. The Project plans to keep the Net Shed building intact, which is consistent with the Conceptual Master Plan. Additionally, the Conceptual Master Plan shows a waterfront promenade located between the Project site and the Kewalo Basin Harbor. The Applicant is required to remove existing planters and fixture in order to maintain clear pedestrian access between the Project site and the harbor.

IV. MAKAI AREA RULE ANALYSIS

The proposed Project is subject to compliance with the Hawaii Administrative Rules ("HAR") Chapter 15-23 Makai Area Rules (Makai Rules).

Project Eligibility Review

Prior to accepting a development permit application, the executive director may require a Project eligibility review pursuant to HAR § 15-23-10 of the Makai Rules. The project eligibility review of a Project considers the Project's relationship to the overall Makai area and its impact on infrastructure. The Applicant was not required to complete a project eligibility review for the Project, since the Project completed an EA, which addresses similar matters such as availability of infrastructure, traffic, etc. that are considered when determining project eligibility.

Development Permit Application

The Applicant submitted its request for a development permit pursuant to HAR § 15-23-11 of the Makai Rules. HAR § 15-23-83(d)(1) provides that for a development with a floor area ratio of up to 1.5 and not requiring a variance or a modification, the decision on the development permit application shall be rendered by the executive director. Therefore, in response to the request, the executive director can consider the application and determine if the proposed development complies with the Makai Area Plan and Rules. Upon review, the executive director may issue a development permit certifying that the development complies with the applicable plan and rules.

Nonconformities

HAR § 15-23-15 of the Makai Rules provides for nonconforming structures to continue and be improved upon, subject to the conditions in subsection (f). Under this section, the proposed Project may alter the existing nonconforming structure as long as the alterations do not increase its nonconformity and provided that the following conditions are met:

- (A) *The floor area of the proposed construction does not exceed twenty-five per cent of the floor area of the structure as it legally existed on October 10, 1998, or floor area of the structure at the time of application for a development permit excluding proposed demolitions, whichever is less;*
- (B) *The proposed construction does not encroach into a required yard, except that roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, planters, or awnings are allowed if they do not extend more than four feet from the existing structure. However, in no event shall roof overhangs, eaves, sunshades, sills, frames, beam ends, projecting courses, or planters be closer than five feet from the property line; and awnings may extend over the property line above public property pursuant to the provisions of paragraph (6);*
- (C) *The total floor area of the existing structure and the expansion do not exceed 1.5 FAR;*
- (D) *The proposed construction does not exceed forty-five feet in height;*
- (E) *The proposed construction does not adversely affect neighboring properties;*

(F) The parking requirements of this chapter are satisfied for the area proposed to be constructed; and

(G) The area created by the proposed construction will be utilized for a permitted use;

The Project proposes to comply with all of the above conditions and will not add any additional floor area; will not construct inside any required yards or outside the existing building envelope; will not adversely impact neighboring properties; will meet the parking requirements of Makai Rules; and utilize the structure for a permitted use.

Application Fees

Pursuant to HAR § 15-23-16, a nonrefundable processing fee of \$200 is required for the Project to go through the public hearing process. The proposed Project does not require a public hearing and therefore is not subject to an application fee.

Land Use

Land use designation for the area where the Net Shed is located is 'Park' and 'Waterfront Commercial'. A small portion of the Net Shed building is situated within the land use designated as Waterfront Commercial.

Under HAR § 5-23-40, within the Park land use designation the following uses are permitted:

- (1) Amphitheaters;*
- (2) Performing art centers;*
- (3) Museums, art galleries and workshops;*
- (4) Aquariums and [marine] research facilities;*
- (5) Active and passive recreation;*
- (6) Gardens and greenhouses;*
- (7) Parking;*
- (8) Exploratoriums; and*
- (9) Uses and structures which are customarily accessory and clearly incidental and subordinate to principal uses and structures. The authority may allow other uses, provided that such other uses shall further the purpose and intent of this chapter [i.e., the Makai Area Rules] and the makai area plan.*

At its meeting on April 5, 2017, the HCDA Board approved a motion providing that: "The Authority finds that the uses proposed by Kupu and listed in the HCDA staff report on page 3 is consistent with the purpose and intent of the Makai Area Plan and Rules."

The list of Kupu uses provided on page 3 of the April 5, 2017 staff report are as follows:

- Classrooms
- Workshops
- Art Exhibits
- Exploratorium Space
- Symposium & Event Hosting
- Microenterprise facility (e.g., aquaponics)
- Temporary Food Service (food truck)

The above land uses are permitted as allowable uses within the Park land use designation. However, due to parking constraints, the Applicant is proposing only a classroom/vocational use as the Project's primary use. If any other use is utilized, an additional parking requirement will apply.

General Development Requirements

Density

The Project site is divided between two floor-area-ratio (FAR) designations according to Makai Rules HAR § 15-23-62, and the associated Exhibit 3, "Maximum Height and Density Plan". The Project site is approximately 21,952 square feet (SF). 18,034 SF of Project site is allocated a 0.1 FAR, or 1803.4 SF of floor area, and the remaining 3,918 SF of the site is allocated a 0.2 FAR, or 783.6 SF of floor area. The maximum floor area allowed on site equals 2,587 SF.

However, the Net Shed is an existing, legal nonconforming structure and the Project is not proposing to add any additional floor area. Therefore, the existing density of 0.4 FAR, or 8784 sf, is allowed pursuant to Makai Rules HAR § 15-23-15 *Nonconformities*.

Height

The Project site has a maximum allowable height of 45' pursuant to Makai Rules HAR § 15-23-63 and the associated Exhibit 3, "Maximum Height and Density Plan". The 25'-6" high existing Net Shed currently complies with the applicable rule. The Applicant is not proposing to increase the height of the existing structure.

Yards

Pursuant to HAR § 15-23-64 of the Makai Rule, there is a 15 feet front yard and 10 feet side and rear yard setback requirement. The existing Net Shed encroaches into the required setbacks along the front yard, the north side yard, and the rear yard.

However, the Net Shed is an existing, legal nonconforming structure and the Project is not proposing to increase the setback non-conformity; therefore, the existing yard encroachment is allowed pursuant to Makai Rules HAR § 15-23-15 *Nonconformities*.

Open Space

HAR § 15-23-65 of the Makai Rules, requires that approximately 11%, or 2,415 square feet of the 21,952 sf development lot be provided as open space.

Building Envelopes

Makai Rules HAR § 15-23-67 and the associated Exhibit 4, requires structures to be built below 45' in height. The 25'-6" high existing structure currently complies with the applicable rule. The Applicant is not proposing to increase the height of the Net Shed building.

Off-Street Parking

The Applicant is proposing classroom/vocational use as the Project's primary use. The off-street parking requirement is determined based on the primary use of the Net Shed building. If any use other than the primary use is to occur on-site, additional parking requirement will apply.

For classroom/vocational uses, the Makai Rules HAR § 15-23-68 requires one stall for each ten students of design capacity, plus one stall per four hundred square feet of office floor area. The Project is designed for 40 students and 650 SF of office space, requiring six off-street parking stalls. The Project is providing six off-street parking stalls.

Off-Street Loading

HAR § 15-23-69(b) of the Makai Rules requires off-street loading for buildings in the Makai area; however, buildings existing in the Makai area on or before October 10, 1998 are only required to provide off-street loading spaces for newly constructed floor area. The Net Shed building was constructed in 1992 and the Applicant is not proposing to construct any new floor area, therefore, the Project is not required to provide any off-street loading.

Signs

Pursuant to HAR § 15-23-70 of the Makai Rules, all required signage for the Project shall comply with the requirements of the City and County of Honolulu, Land Use Ordinance.

Circulation

HAR § 15-23-72 of the Makai Rules require HCDA approval prior to any addition, deletion, modification, or alteration of existing streets. The Project is not proposing any additions, deletions, modifications, or alterations of existing streets.

Public Facilities Fee

Pursuant to HAR § 15-23-73 of the Makai Rules, public facility fees shall be calculated and collected for any development within the Makai area that increases an existing development's floor area by more than twenty-five (25) percent as compared to the development's floor area existing within the Makai area on October 10, 1998, or at the time

of application for a development permit, whichever is less. The Project is not proposing any increase in floor area and has not had an increase in floor area after October 10, 1998; therefore, the Project is not required to provide public facility fees.

Prohibition of Structures in Mapped Streets

Structures are prohibited to be built in mapped streets pursuant to Makai Rule HAR § 15-23-74. The Project is not proposing any structures on mapped streets.

Development of Properties within the Aloha Tower Special District

The Makai Rules HAR § 15-23-75 has additional provisions applicable to developments within the Aloha Tower Special District. The additional provisions do not apply to the Project, since it is located outside of the Aloha Tower Special District.

Utilities Required to be Underground

Any new utility lines provided as a part of the proposed Project shall be located underground pursuant to HAR § 15-23-76 of the Makai Rules. Any above ground utilities shall be screened from view from adjacent properties.

Environmental Standards

The Applicant proposes that the Project will comply with HAR § 15-23-77, *Environmental Standards*. The Project will not have more than thirty percent of its wall surface containing reflective material. Uses within the Project shall not emit an obnoxious or dangerous degree of odor or fumes, and the Project shall comply with all applicable DOH rules and regulations.

Flood Hazard District

The Project is located within an 'AE' flood zone designation. Pursuant to HAR § 15-23-81, the Project shall comply with the applicable provisions of Article 7 of the City and County of Honolulu's Land Use Ordinance relating to flood hazard districts.

In accordance with Revised Ordinances of Honolulu (ROH) § 1A-1.8 *Flood Fringe Area*, the Project proposes renovating the building's exterior walls to include a minimum three-foot high waterproofed concrete masonry unit or concrete perimeter sill along with removable flood barriers at the door openings to mitigate against flood damage.

Special Urban Design Rules

Landscaping

All required side and rear yards are required to be landscaped pursuant to HAR § 15-23-142.

Historical and Cultural Sites

The building was not identified as a historic structure under the Makai Area Plan. During the EA process, the Applicant received SHPD's review and approval for the Project.

III. DETERMINATION, CONDITIONS AND ACTION

Executive Director Determination

HAR § 15-23-84 requires that when reaching a decision on a development permit, the executive director 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;*

The proposed Project utilizes an existing, legal nonconforming structure. The existing one-story structure's size, shape, and height appropriately fit the site and neighboring properties.

- (2) *Whether the open spaces*
 - (A) *Are of such size and location as to serve as convenient areas for recreation, relaxation, and social activities for the patrons of the development; and*
 - (B) *Are so planned, designed, and situated as to function as necessary physical and aesthetic open areas among and between individual structures and groups of structures;*

The required open space for the Project is provided in a manner that is convenient for recreation, relaxation, and activities for the users of the Project. The open space function as a contiguous space of the adjacent Kewalo Basin Park.

- (2) *Whether the setbacks, yards, pedestrian ways, bikeways, and related walkways are so located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation, and necessary vehicular access;*

The existing structure associated with the Project was built to allow for adequate light, air, pedestrian circulation and vehicular access.

- (4) *Whether the vehicular circulation system, including access and off-street parking and loading, is so designed as to provide an efficient, safe, and convenient transportation system;*

Parking access is provided directly onto the site in an efficient, safe and convenient manner.

- (5) *Whether the pedestrian circulation system:*
- (A) *Is so located, designed, and of sufficient size as to conveniently handle pedestrian traffic efficiently and without congestion;*
 - (B) *Is separated, if necessary, from vehicular roadways so as to be safe, pleasing, and efficient for movement of pedestrians; and*
 - (C) *Provides efficient, convenient, and adequate linkages among open spaces, commercial and employment areas, and public facilities;*

Pedestrian access to and from the site is provided directly from Kewalo Basin Park and is located, designed and sized to be safe, pleasing and efficient.

- (6) *The adequacy of landscaping, screening, parking, and loading areas, service areas, lighting and signs, with relation to the type of use and neighborhood;*

The landscape, screening, parking, loading, and service area lighting and signage are all adequate with relation to the proposed use and surrounding neighborhood.

- (7) *The appropriateness of the proposed mixtures of uses;*

The proposed use is consistent with the allowable uses within the Makai Plan and Rules. On April 5, 2017, the Authority approved the following addition use of the Net Shed as being consistent with the purpose and intent of the Makai Area Plan and Rules.

- (8) *The staging program and schedule of development;*

The proposed improvements to the existing building shall be constructed in one phase.

- (9) *Relationship between structures and operations within structures;*

There is only one structure proposed on the site.

- (10) *Whether views will be preserved or blocked;*

The single-story Net Shed building does not block any views identified to be preserved in the Kakaako Community Development District Plans.

- (11) *Surface treatment;*

The surface treatment associated with the Project will not change from the existing condition.

(12) Overall appearance of a development from the street and adjacent developments;

The appearance of the development will not change from the street or adjacent properties, since the proposed Project is utilizing an existing building.

(13) Whether structures have an appropriate orientation to take advantage of winds, reduce direct sun exposure, and minimize shadow effect on adjacent buildings;

Wind, sun, and shadow effects from the Project are minimal due to the low-rise nature of the existing building.

(14) Preservation of adjacent view corridors;

View corridors will not be impacted by the Project.

(15) Whether the facades of building are properly terraced, landscaped, and designed;

As a one-story structure, façade terracing is not appropriate.

(16) Relationship between and among uses along the adjacent street;

The closest street to the Project is Ala Moana Boulevard. The Project is setback several hundred feet from Ala Moana Boulevard and has minimal impact on the street.

(17) Development contribution to the attractiveness of the street-scape;

The exterior improvements to the existing structure will increase the building's attractiveness from the street and adjacent properties.

(18) Any other matter relating to the development or its impact on affected properties or public facilities.

The overall impact of the Project on the site and adjacent neighborhood is minimal given it is an existing, small-scale building.

Lapse of Development Permit

The Development Permit for this proposed project shall be subject to the provisions of HAR § 15-23-85 and shall automatically lapse if the initial building permit has not been issued within two years from the date of granting the development permit or from a date otherwise allowed within this section of the Makai Rule.

Conditions

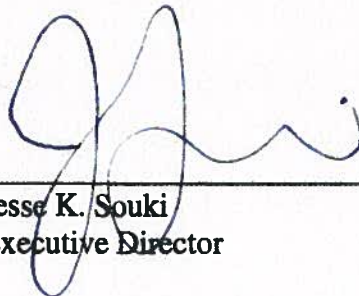
Pursuant to HAR § 15-23-86, the executive director may attach conditions to a development permit that may concern any matter subject to regulation under this chapter.

The Development Permit for the Project is approved subject to the following condition:

- A. The Applicant shall comply with all applicable Federal, State and County rules, including but not limited to regulations administered by the State of Hawaii Department Health, the Office of Planning, Coastal Zone Management Program, City and County of Honolulu Department of Planning and Permitting.
- B. Any improvements or structures shall comply with Rev. Ord. 1990, Chapter 18, Section 18-3.1, "Permit Required" (Building Code) of the City and County of Honolulu.
- C. The off-street parking stall requirement is calculated based on the proposed primary use – classroom/vocational use – for the Project. The Applicant may use the Project site for other uses approved by the Authority on April 5, 2017. For all uses other than classroom/vocational use, the Applicant shall prepare parking requirement calculations and a parking plan indicating where any additional required parking will be provided. The required parking calculations and parking plan shall be provided to the Executive Director for review and acceptance, prior to implementing any uses other than classroom/vocational use.
- D. All off-street parking and loading shall occur in marked stalls. Vehicles are prohibited from parking in the site area between the Net Shed Building and the Kewalo Basin Harbor and in any required side or rear yard.
- E. As represented in the letter from the Applicant to the HCDA Chairperson dated March 14, 2017, the Applicant shall install large concrete pavers segmented by bands of grass or gravel, or any other suitable material including grass and/or grass paver, that allows for storm water infiltration in the area between the Net Shed Building and the Kewalo Basin Harbor. Simple repaving of the area with asphalt concrete will not be acceptable.
- F. The Applicant shall maintain a minimum of twenty feet wide clear, unobstructed maintenance easement from the inside of Kewalo Basin Harbor revetment into the Project site as shown on Drawing No. C400, Utility Plan, submitted as part of the Development Permit Application. Any existing trees, the Net Shed and other encroachments, within the

maintenance easement may remain. Any planters, concrete beams and other impediments within the maintenance easements shall be removed by the Applicant before HCDA approval of Certificate of Occupancy for the Project.

- G. Less than thirty percent of all exterior surfaces shall be less than thirty percent reflective.
- H. All exterior above ground utility boxes shall be adequately screened so as not to be visible from the ground level of adjacent properties or waterways.
- I. Any planned removal of an existing tree shall be replanted or replaced in-kind on site or on an adjacent site near the Project lot.
- J. No new fence or exterior wall shall be installed as a part of this Project.
- K. Any exterior improvements not shown on in the Project application require additional HCDA approval prior to construction.
- L. The proposed Project shall meet or exceed the base U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) base certification equivalency, as indicated in the Applicant's development permit application. LEED verification calculations and documentation shall be submitted for review and approval to Executive Director in two stages: a design submittal provided prior to approval of the initial building permit and a construction submittal provided prior to approval of the certificate of occupancy.



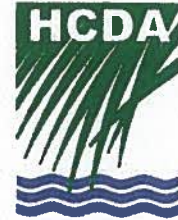
Jesse K. Souki
Executive Director

Attachments:

Exhibit A – Development Permit Application & Project Plans



Hawaii Community Development Authority
 Planning Office
 547 Queen Street
 Honolulu, Hawaii 96813
 (808) 594-0340 FAX (808) 587-0299



REQUEST FOR ZONING CLEARANCE

Kakaako Community Development District
Mauka & Makai Areas

Attach a location map, site plan, and floor plans for existing and proposed improvements.

Please print legibly or type the required information.

Applicant: Hawaii Gas Attn: Jeremy Santiago
 Mailing Address: 515 Kama Kee St.
Honolulu HI, 96814
 Telephone: (808) 594-5552
 Site Address: 1125 B Ala Moana Blvd. Honolulu, HI 96814
 TMK: 2-1-058:135 HCDA Zoning: WC-MAKA1
 Proposed Use: Gas supply for kitchen equipment

Floor area and parking requirements for all activities on the subject TMK property:

Land Use	Gross Floor Area *		Parking Requirements **	
	Existing	Proposed	Existing	Proposed
Commercial				
Industrial				
Residential				
Other	8784 SF	8,784 SF	6	6
TOTAL	8,784 SF	8,784 SF	6 STALLS	6 STALLS

- * Attach plans which identify all uses and associated floor areas.
- ** Attach calculations of parking requirements.

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all City and County of Honolulu ordinances and state laws regulating development and building construction and I hereby authorize HCDA to inspect the property upon notification of the applicant.

Signature (Owner or Agent) Jeremy Santiago Date 5/15/18
 If Agent, print name Jeremy Santiago Agent's phone number (808) 594-5552

Land use is NOT PERMITTED _____ Land use is PERMITTED gjs.

Comments: HCDA IS OKAY WITH LOCATION OF PROPOSED GAS TANK.

[Signature] Signature Date 6.15.18