

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAII

In re:)
)
 The Application of)
 Baranof Holdings Investor Queen)
 Street, LLC,)
)
 Applicant,)
)
 To request a development)
 permit, Permit Number KAK 18-054,)
 for the construction)
 of a proposed retail and)
 self-storage facility at)
 facility at 868 Queen Street,)
 819, 825, 835 and 841)
 Kawaiahao Street,)
 TMK Nos. (1)2-1-049:011, 033,)
 and 032.)
 _____)

DECISION-MAKING HEARING

TRANSCRIPT OF PROCEEDINGS

Wednesday, February 5, 2020

Taken at Hawaii Community Development Authority

547 Queen Street, Second Floor

Honolulu, Hawaii 96813

commencing at 1:00 p.m.

Reported by: LAURA SAVO, CSR No. 347

A P P E A R A N C E S

John Whalen, Chairperson

Phillip Hasha, Vice Chair

Wei Fang, Secretary

Jason Okuhama

Chason Ishii

Kevin Sakoda

STAFF:

Garett Kamemoto, Interim Executive Director

LEGAL COUNSEL:

Max Levins, Esq.

ALSO PRESENT:

For the Applicant:

CHARLES D. HUNTER, ESQ.
Kobayashi Sugita & Goda, LLP
999 Bishop Street, 26th Floor
Honolulu, HI 96813

and

Susan Tamura

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I N D E X

PAGE:

Call to Order

4

Adjournment

25

WITNESSES FOR THE APPLICANT:

POLLY TICE

Direct Testimony

8

Cross-Examination by Member Fang

11

NOLAN BORDEN

Direct Testimony

22

PUBLIC TESTIMONY BY:

(None.)

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1 Wednesday, February 5, 2020, 1:00 p.m.

2 ---oOo---

3

4 CHAIR WHALEN: I'd like to call to order
5 the February 5th, 2020, public hearing of the Hawaii
6 Community Development Authority. The time is now
7 1:00 p.m. Thank you for your interest in Kaka'ako
8 and your attendance today. My name is John Whalen,
9 Chair of the Authority.

10 Let the record reflect that the following
11 Kaka'ako members are present: Phillip Hasha, Wei
12 Fang, Jason Okuhama, Chason Ishii, Kevin Sakoda and
13 John Whalen.

14 Will counsel for the applicant please
15 make appearance?

16 MR. HUNTER: Good afternoon. Charles
17 Hunter here on behalf of the applicant, Baranof
18 Holdings.

19 CHAIR WHALEN: You tower over the
20 microphone. That's why it's hard to hear. Okay.
21 Thank you.

22 Before we continue, we have received what
23 amounts to a motion to intervene by Lorraine
24 Minatoishi on January 29th, 2020. In accordance with
25 Hawaii Administrative Rules, Chapter 15-219-49, as

1 was published in our public hearing notice, motions
2 to intervene must have been timely filed by December
3 10th, 2019. The Authority was to act on such motions
4 by December 17th, 2019.

5 So I'd ask the interim executive director
6 whether this motion meets the deadline set forth in
7 Hawaii Administrative Rules?

8 INTERIM EXECUTIVE DIRECTOR: So we
9 received the motion on January 29th, 2020. So it was
10 not timely filed as per the deadlines and HAR
11 15-219-49. And it was published in our public
12 hearing notice dated November 20 that the deadline to
13 intervene was December 10, 2019.

14 Let me note that regarding the substance
15 of this petition, the Department of Land and Natural
16 Resources, State Historic Preservation Division, is
17 asked to analyze whether our proposed project
18 complies with the law and what mitigation is
19 required.

20 On September 30, 2019, we had received a
21 letter from SHPD stating SHPD concurs with HCDA's
22 determination and effect with agreement --
23 agreed-upon mitigation comments for the site. SHPD
24 has required -- well, SHPD has requested that in
25 addition to archaeological monitoring, a Historic

1 American Buildings short -- Survey short report be
2 prepared for each eligible building at the affected
3 site. The letter is in Exhibit D of the packet that
4 you received before the last hearing.

5 MEMBER FANG: Before the last hearing?

6 INTERIM EXECUTIVE DIRECTOR: I believe
7 it's in the white binder.

8 CHAIR WHALEN: Okay. So yeah. It is in
9 the board packet.

10 INTERIM EXECUTIVE DIRECTOR: But that's
11 responsive to what SHPD's required to do.

12 CHAIR WHALEN: Okay. Thank you, Garrett.
13 At this time I will entertain a motion denying the
14 application to intervene. Let me clarify that it
15 does not permit the applicant from testifying during
16 the public testimony portion of today's hearing.

17 Is there a second? First of all, is
18 there a motion to deny the petition to intervene? Is
19 there a motion to deny the petition to intervene or
20 the request to intervene? Okay. I guess there's a
21 lack of a motion on the intervention.

22 DEPUTY AG LEVINS: Well, it would still
23 have to be voted on to be granted or denied.

24 CHAIR WHALEN: Yeah. It has to be voted
25 on to be either granted or denied.

1 MR. HUNTER: Is applicant capable of
2 making such a motion?

3 CHAIR WHALEN: I don't think so. But I
4 guess would you like to speak to the issue about the
5 timeliness in terms of the basis for intervention?

6 MR. HUNTER: Certainly. Applicant would
7 echo HCDA's findings on this, and as to the
8 substance, we do have Polly Tice here who is from
9 Mason Architects and our historical consultant for
10 the project. If there's any specific questions, I
11 think she would be best to answer them, and I can
12 call her if you would like.

13 CHAIR WHALEN: Okay. Would members like
14 to hear those statements from the witness?

15 MEMBER FANG: Yes, please, that would be
16 great.

17 CHAIR WHALEN: Okay.

18 MEMBER FANG: Thank you.

19 MR. HUNTER: So I'll call Polly Tice.

20 THE WITNESS: Hello.

21 CHAIR WHALEN: Polly, will you affirm
22 that you will be telling the truth? This is what we
23 have to do.

24 THE WITNESS: Yes. I affirm to tell the
25 truth. Is that what I'm supposed to say?

1 POLLY TICE,
2 having been called as a witness
3 by the Applicant, affirmed to tell the truth
4 and was examined as follows:

5 THE WITNESS: So the firm that I work
6 for, Mason Architects, was hired by Baranof Holdings
7 on behalf of the project in 2018 to consult -- assist
8 them with their SHPD consultation, and we did consult
9 with SHPD on behalf of the project and did receive
10 the letter that was referenced for the Historic
11 American Buildings Survey documentation, and we did
12 actually perform that documentation as well and it's
13 been submitted to SHPD.

14 CHAIR WHALEN: All right. Well, the
15 requester for the intervention is not even present.
16 So I don't see anybody in the audience.

17 Okay. Members, are there any other
18 questions? Okay. I think we can proceed then.
19 Thank you for your testimony.

20 Let's call that the additions to the
21 record.

22 DEPUTY AG LEVINS: There still needs to
23 be action on the petition. It either needs to be
24 accepted or denied. It can't just be ignored.

25 CHAIR WHALEN: Well, I'm waiting for

1 somebody to make a motion to deny intervention.

2 MEMBER SAKODA: My understanding is it
3 didn't meet the deadlines; right?

4 INTERIM EXECUTIVE DIRECTOR: It didn't
5 meet the procedural deadlines.

6 CHAIR WHALEN: But, technically, we have
7 to act on whether there's intervention or not
8 intervention, and we have to decide one way or
9 another. And since the intervenor -- proposed
10 intervenor is not present at the hearing, I think
11 it's a pretty easy decision to make.

12 MEMBER SAKODA: So I'll motion to deny
13 intervention --

14 CHAIR WHALEN: Deny intervention.

15 MEMBER SAKODA: -- based on not complying
16 with the rules.

17 CHAIR WHALEN: Okay. Is there a second
18 to the motion?

19 MEMBER OKUHAMA: (Raising hand.)

20 CHAIR WHALEN: Okay. Jason Okuhama
21 seconds.

22 So, Interim Executive Director, would you
23 please call the roll on the intervention question?

24 INTERIM EXECUTIVE DIRECTOR: So on the
25 motion to deny the intervention because the dates

1 weren't met, Member Sakoda.

2 MEMBER SAKODA: Yes.

3 INTERIM EXECUTIVE DIRECTOR: Member

4 Okuhama.

5 MEMBER OKUHAMA: Yes.

6 INTERIM EXECUTIVE DIRECTOR: Member

7 Hasha.

8 VICE CHAIR HASHA: Yes.

9 INTERIM EXECUTIVE DIRECTOR: Member Fang.

10 MEMBER FANG: Yes.

11 INTERIM EXECUTIVE DIRECTOR: Member

12 Ishii.

13 MEMBER ISHII: Yes.

14 INTERIM EXECUTIVE DIRECTOR: Chair

15 Whalen.

16 CHAIR WHALEN: Yes.

17 INTERIM EXECUTIVE DIRECTOR: Motion

18 passes with six ayes and three excused.

19 CHAIR WHALEN: So given the additional

20 testimony of Polly Tice, do members accept that

21 additional testimony as part of the record?

22 MEMBER FANG: Can I have a question?

23 CHAIR WHALEN: Yes.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MEMBER FANG:

3 Q So in the Exhibit D from the white
4 binder, the letter from SHPD dated September 30th
5 proposes additional mitigation in the form of a
6 historic buildings survey. Is there -- has that been
7 done? Is it planned, in process?

8 A Yes. It was completed. We completed it.
9 It was three reports that they requested, and we did
10 complete them.

11 CHAIR WHALEN: I think that's what you
12 said earlier.

13 THE WITNESS: Yeah, that's what I was
14 saying earlier. We did get that request, and we were
15 hired to do that work, and we did complete that work,
16 and it's been submitted to SHPD already.

17 BY MEMBER FANG:

18 Q Okay. Has SHPD responded?

19 A SHPD responded, and we communicated with
20 them. They needed an additional review fee, and that
21 got to them about a month ago. And then they needed
22 a map, and they got an additional map, and they got
23 that. So just any day now, we should have their
24 letter. They've approved it without a formal letter
25 yet. In email. We correspond with them often by

1 email.

2 MEMBER FANG: Okay. Thank you.

3 CHAIR WHALEN: Thank you.

4 Okay. So with that, the record is hereby
5 closed. So let's proceed with the decision-making.
6 Today's hearing on Development Permit No. KAK 18-054
7 is being held in accordance with Hawaii Revised
8 Statutes, Section 206E-5.6, Hawaii Administrative
9 Rules, Chapter 15-219, and Hawaii Administrative
10 Rules, Chapter 15-217.

11 So the applicant is Baranof Holdings
12 Investor Queen Street, LLC. The tax map key is
13 2-1-49, parcels 11, 33 and 32. Project address is
14 868 Queen Street, 819, 825, 835 and 847 (sic)
15 Kawaiahao Street. And the request is for a
16 development permit to construct a proposed retail and
17 self-storage facility consisting of a single-story
18 structure that will house the offices for the
19 self-storage facility and a five-story structure
20 located on Kawaiahao Street that will house the
21 self-storage units on the second through fifth floors
22 and commercial use on the ground/first floor.

23 The proposed project which involves
24 11,564 square feet of commercial use and 111,766
25 square feet of industrial use also includes parking

1 and loading areas, landscaping and trash enclosure
2 areas. And the application date was
3 November 20th, 2019.

4 A public hearing notice was published in
5 Hawaii (sic) Star-Advertiser, Maui News, The Garden
6 Isle (sic), Hawaii Tribune-Herald and West Hawaii
7 Today on Wednesday, November 20th, 2019.

8 So this is a decision-making hearing.
9 Let me briefly explain our procedure. Authority
10 members have received HCDA staff's proposed findings
11 of fact, conclusions of law and decision and order
12 and applicant's proposed finding of fact -- findings
13 of fact, conclusions of law and decision and order.
14 So HCDA staff will first present its findings of
15 fact, conclusions of law and decision and order.
16 Then the applicant, Baranof Holdings, will be
17 afforded 15 minutes to present their closing
18 arguments.

19 Only the members of the Authority and the
20 executive director will be permitted to ask questions
21 of the staff, applicant or individuals providing
22 testimony.

23 Finally, we will hear testimony from the
24 public.

25 Are there any questions on our

1 procedures?

2 Okay. So we'll start with the
3 presentation by HCDA staff on the findings of facts,
4 conclusions of law and decision and order.

5 INTERIM EXECUTIVE DIRECTOR: So we're
6 working off of our staff findings of fact,
7 conclusions of law and decision and order which is in
8 your binder. The first set of findings of fact
9 really have to do with the procedural history of this
10 project, procedural history, as it applies to HCDA.

11 From Finding 6 to, let's see -- so for
12 the next several pages, it goes on as far as
13 government agencies and public consultation that was
14 conducted as part of this -- this permit application.
15 You get to Finding 40, and that's where it talks with
16 how this -- this project complies with the Mauka Area
17 Rules. And then 45 is compliance with the Mauka Area
18 Plan. Skipping down to 47 shows the compliance with
19 applicable HRS -- HRS 206E-5.6 requirements which are
20 typical of every finding of fact that we do.

21 Then on page 16, look at the conclusions
22 of law which are very consistent with all of the
23 conclusions of law that we make on any project.

24 So then the decision and order starts on
25 page 19. Most -- all of these are very

1 straightforward. It does require them to comply with
2 all laws -- all applicable laws and address various
3 issues. Or Conclusion 3 is standard where we put in
4 every single D & O. And then it says that they must
5 comply with the SHPD-approved monitoring plan and all
6 laws there, and then it talks about the incidental
7 skeletal remains that's required by law.

8 No. 6 says that prior to the HCDA staff
9 approval of the building permit, it shall record this
10 D & O, and then they need to make payment of the
11 public facilities dedication fee. So this one is
12 very straightforward.

13 CHAIR WHALEN: So the public facilities
14 dedication fee is based on what? The street
15 improvements?

16 INTERIM EXECUTIVE DIRECTOR: Yeah. The
17 public facilities dedication fee is -- I can't
18 remember which exhibit it was, but it was part of the
19 presentation hearing.

20 CHAIR WHALEN: Okay.

21 INTERIM EXECUTIVE DIRECTOR: Do you know
22 which -- where that is?

23 MR. BORDEN: I know what it's based on.

24 MS. TAMURA: Exhibit A.

25 INTERIM EXECUTIVE DIRECTOR: It's in

1 Exhibit A?

2 MS. TAMURA: Three percent of the total
3 commercial.

4 (Reporter clarification.)

5 INTERIM EXECUTIVE DIRECTOR: Three
6 percent of the total space. So that's by formula.

7 CHAIR WHALEN: Right. So it's a formula.
8 Right. Okay.

9 Members, do you have any questions about
10 the proposed decision and order from the staff?

11 MEMBER FANG: I have a question on the
12 findings of fact -- about the Mauka Area Rules.
13 Sorry. I know you said that starts at 40. This is
14 more just -- I think a little bit more just for
15 historical understanding of HCDA and how the rules
16 were developed, but at any point during the
17 discussion in the rule-making for the Mauka Area
18 Rules or in an earlier version of the rules, was
19 there specific discussion about storage facilities?
20 Usage type.

21 INTERIM EXECUTIVE DIRECTOR: Yeah. It's
22 an allowed usage in the industrial area.

23 MEMBER FANG: Is it considered commercial
24 or industrial or --

25 INTERIM EXECUTIVE DIRECTOR: The -- yeah,

1 it's an industrial area. But I would say if you go
2 back and look at our rules, things that are allowed
3 are -- there's a very wide, you know, things that can
4 be done in our area, so --

5 MEMBER FANG: Okay. I'm just asking
6 because I didn't -- you know, it is true that we
7 don't have a lot of storage facilities in Kaka'ako,
8 and I know not a lot of new things get built in
9 Central Kaka'ako to begin with, but I just wanted to
10 understand a little bit more about if storage
11 facilities, you know, that there's past discussions
12 specifically about them and how appropriate they are
13 for our neighborhood.

14 INTERIM EXECUTIVE DIRECTOR: And one of
15 the things that this project does require is the
16 retail on the ground floor and the sidewalks to make
17 this a more walkable and livable area. So it kind of
18 combines the idea of having a storage facility with
19 having ground-level activity that would, you know,
20 greatly benefit the district as far as making it
21 walkable, you know, putting in wider sidewalks.

22 MEMBER FANG: Yeah.

23 INTERIM EXECUTIVE DIRECTOR: As you know,
24 in this area, there is -- you know, it hasn't been
25 improved to that level.

1 MEMBER FANG: Right.

2 INTERIM EXECUTIVE DIRECTOR: So that's
3 one of the things that we are looking at as far as
4 compliance with the plan, you know, the spirit of the
5 plan and the rules.

6 MEMBER FANG: Thanks.

7 CHAIR WHALEN: My understanding was that
8 the public storage facility on Kapiolani was
9 developed prior to the current Mauka Area Rules, and
10 I believe the ground floor retail was not really
11 retail space. It was just sort of left as loft space
12 for possible future retail space and was added as a
13 condition of the approval of the public storage
14 facility. Because, otherwise, I think they would
15 just have built, you know, the ground floor as part
16 of the loading area, I think, probably for the public
17 storage area. At least that's my recollection. And
18 you see those kind of uses around the city, you know,
19 because the city didn't have that.

20 MEMBER FANG: So, Chair, that project in
21 some ways set the precedent for public storage being
22 allowed and welcome, but with the caveat that ground
23 floor retail needed to be a part of it?

24 CHAIR WHALEN: Yeah. Some kind of active
25 use space instead of just --

1 INTERIM EXECUTIVE DIRECTOR: So instead
2 of a plain wall, we try to -- you know, our rules are
3 designed to promote active street usage.

4 MEMBER FANG: Yeah.

5 INTERIM EXECUTIVE DIRECTOR: So whether
6 that's -- whether it's retail or another thing that
7 could be -- you know, that could promote street
8 usage, I think that's the overall goal that we're
9 trying to reach here.

10 MEMBER FANG: Okay. Thanks.

11 CHAIR WHALEN: Okay. Any other
12 questions?

13 Okay. I'd ask the applicant -- you
14 submitted your proposed findings of facts,
15 conclusions of law and decision and order, and that
16 is -- for the board members, it's in the following
17 pack.

18 MR. HUNTER: Thank you. I'll start by
19 saying that the proposed findings of fact,
20 conclusions of law and decision or order -- and order
21 from applicant is substantially similar to that
22 submitted by HCDA. I've reviewed both in great
23 detail. I don't have any objection to anything that
24 is in HCDA's version. Applicant has complied from
25 the beginning with all regulations, all the Mauka

1 Area Rules, and has worked very hard with HCDA to
2 make sure that they are implementing the spirit of
3 those rules. With active street frontage, we've made
4 design changes. You know, we have really worked hard
5 to put together a project that will benefit the area,
6 and on the retail side, have the active street
7 frontage and sidewalks in an area that is not,
8 frankly, there yet. It needs help. And that's part
9 of what applicant intends to do. So unless there are
10 any questions, I would stand on what's been
11 submitted.

12 CHAIR WHALEN: All right. Thank you.
13 Are there questions of the applicant?

14 MEMBER FANG: I have one more question.

15 We did get testimony from Pacific
16 Resource Partnership with a question about who the
17 new general contractor on this project might be.

18 MR. HUNTER: Would you like me to call a
19 witness to answer that or --

20 MEMBER FANG: No. If you can answer it,
21 that's okay.

22 MR. HUNTER: U.S. Pacific Development has
23 been selected, and from my understanding, and, again,
24 we can -- we can call someone from applicant who's
25 actually been in closer contact, but my understanding

1 is they plan on using local labor. And that, I
2 think, was really what the letter was getting at.

3 MEMBER FANG: Yeah.

4 MR. HUNTER: So I think that they would
5 be okay with where things are going with that.

6 MEMBER FANG: Okay. Thanks.

7 VICE CHAIR HASHA: Who is the local --
8 who were you going to present to talk about that?

9 MR. HUNTER: Someone from applicant. One
10 of the partners at Baranof if you'd like to hear.
11 Nolan Borden can come speak to that.

12 THE WITNESS: Hello. Do I need to be
13 sworn in again?

14 CHAIR WHALEN: Can we say he was sworn in
15 from the last hearing?

16 DEPUTY AG LEVINS: You've got to reswear
17 him.

18 CHAIR WHALEN: Okay. Just affirm that
19 you will tell the truth in your testimony.

20 THE WITNESS: I will tell the truth.

21

22 NOLAN BORDEN,

23 having been called as a witness

24 by the Applicant, affirmed to tell the truth

25 and was examined as follows:

1 THE WITNESS: So the contractor that
2 we're moving forward with is U.S. Pacific
3 Development. They've been on the islands doing work
4 for the last 30 years. And I had a conversation with
5 them this morning about the letter, and they are
6 going to use local labor for all the sub-trades.
7 It's a smaller project in the grand scheme of
8 construction. So it doesn't make sense to fly in
9 groups from out of town. And they also will be
10 using -- a significant portion of their labor will
11 also be union.

12 CHAIR WHALEN: Okay. Thank you.
13 Any other questions for the applicant?
14 Is there any public testimony? None? That's
15 surprising.

16 So we'll continue with deliberations and
17 decision-making. Please indicate yes or no to
18 signify that you've received and reviewed the record
19 of the application and are prepared to deliberate on
20 the application.

21 Phillip Hasha?

22 VICE CHAIR HASHA: Yes.

23 CHAIR WHALEN: Okay. Who else is left
24 here? Wei Fang?

25 MEMBER FANG: Yes.

1 CHAIR WHALEN: Jason Okuhama?

2 MEMBER OKUHAMA: Yes.

3 CHAIR WHALEN: Chason Ishii?

4 MEMBER ISHII: Yes.

5 CHAIR WHALEN: Kevin Sakoda?

6 MEMBER SAKODA: Yes.

7 CHAIR WHALEN: And John Whalen, yes.

8 Okay. So after having reviewed the
9 record, which includes HCDA staff recommendations,
10 the applicant's evidence and arguments, and also
11 having considered no public testimony --

12 Okay. Well, is there -- okay. Members,
13 having received all these records, is there a motion
14 to hold an executive session prior to
15 decision-making, or are we ready for decision-making?
16 No. Crickets.

17 Okay. So having -- having received the
18 records -- after having reviewed the record and
19 including -- which includes the staff
20 recommendations -- HCDA staff's recommendations,
21 applicant's evidence and arguments, and also having
22 considered public testimony, is there a motion for
23 the Authority to adopt HCDA staff's findings of fact,
24 conclusions of law and decision and order for
25 development permit application KAK 18-054 for the

1 applicant, Baranof Holdings, for the project located
2 at 868 Queen Street, 819, 825, 835 and 847 Kawaiahao
3 Street, Honolulu, Hawaii 96814, tax map key 2-1-49,
4 parcels 11, 33 and 32? Is there a motion to that
5 effect to adopt?

6 MEMBER ISHII: So moved.

7 CHAIR WHALEN: Good. Thank you. Is
8 there a second?

9 MEMBER OKUHAMA: Second.

10 CHAIR WHALEN: Okay. Jason seconds. Is
11 there any further discussion?

12 Okay. So, members, a motion's been made
13 to adopt the findings of fact, conclusions of law and
14 decision and order with conditions 1 through 8. So
15 would you call the roll on this?

16 INTERIM EXECUTIVE DIRECTOR: Yes. So
17 motion being made and seconded, Member Hasha?

18 VICE CHAIR HASHA: Yes.

19 INTERIM EXECUTIVE DIRECTOR: Member
20 Okuhama?

21 MEMBER OKUHAMA: Yes.

22 INTERIM EXECUTIVE DIRECTOR: Member Ishii?

23 MEMBER ISHII: Yes.

24 INTERIM EXECUTIVE DIRECTOR: Member Fang?

25 MEMBER FANG: Yes.

1 INTERIM EXECUTIVE DIRECTOR: Member
2 Sakoda?

3 MEMBER SAKODA: Yes.

4 INTERIM EXECUTIVE DIRECTOR: And Chair
5 Whalen?

6 CHAIR WHALEN: Yes.

7 INTERIM EXECUTIVE DIRECTOR: Vote is six
8 ayes, three excused. Motion passes.

9 CHAIR WHALEN: Okay. On behalf of HCDA
10 Authority members and staff, thank you for your
11 attendance. The public hearing's now closed. The
12 time is 1:29 p.m.

13 (Whereupon, the hearing adjourned at
14 1:29 p.m.)

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STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

LAURA SAVO, RPR, CSR NO. 347