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BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of

ASSOCIATION OF UNIT OWNERS
OF 988 HALEKAUWILA

VICTORIA WARD, LIMITED'S
MOTION TO DISMISS PETITIONER
ASSOCIATION OF UNIT OWNER'S OF
988 HALEKAUWILA'S PETITION FOR
DECLARATORY RELIEF AND FOR
HEARING FILED HEREIN ON MAY 4,
2021; MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF
COUNSEL; EXHIBITS "1"- "10";
CERTIFICATE OF SERVICE

**VICTORIA WARD, LIMITED'S MOTION TO DISMISS PETITIONER
ASSOCIATION OF UNIT OWNER'S OF 988 HALEKAUWILA'S PETITION FOR
DECLARATORY RELIEF AND FOR HEARING FILED HEREIN ON MAY 4, 2021**

Interested Party VICTORIA WARD, LIMITED ("VWL"), by and through its attorneys,
WATANABE ING LLP, and pursuant to Hawai'i Administrative Rules §§ 15-219-32 and 15-
219-84(b), hereby submits this Motion to Dismiss the Petition for Declaratory Relief and for
Hearing filed herein on May 4, 2021 (the "Petition") by Petitioner ASSOCIATION OF UNIT
OWNERS OF 988 HALEKAUWILA ("Petitioner" or the "AOUO").

As set forth in the attached Memorandum in Support of Motion, the Hawai'i Community Development Authority ("HCDA") should decline to issue a declaratory ruling on the Petition and should dismiss the Petition on the basis that the HCDA lacks jurisdiction to grant the relief requested by the AOOU in the Petition and for good cause.

DATED: Honolulu, Hawai'i, MAY 20 2021.



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BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of

ASSOCIATION OF UNIT OWNERS
OF 988 HALEKAUWILA

MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Interested Party VICTORIA WARD, LIMITED (“VWL”), by and through its attorneys, WATANABE ING LLP, and pursuant to Hawai‘i Administrative Rules (“HAR”) §§ 15-219-32 and 15-219-84(b), hereby submits this Motion to Dismiss the Petition for Declaratory Relief and for Hearing filed herein on May 4, 2021 (the “Petition”) by Petitioner ASSOCIATION OF UNIT OWNERS OF 988 HALEKAUWILA (“Petitioner” or the “AOUO”).¹ The Hawai‘i Community Development Authority (“HCDA”) should decline to issue the declaratory relief requested by Petitioner and should dismiss the Petition on several grounds.

First, the Petition should be dismissed pursuant to HAR § 15-219-84(b)(4) because the HCDA lacks jurisdiction to grant the relief requested in the Petition. Specifically, HCDA lacks jurisdiction to retroactively declare that the Ke Kilohana reserved housing units are allegedly no longer “affordable” (and no longer reserved housing units) due to an increase in monthly maintenance fees assessed by the AOUO board after the certification and sale of the units.

¹ VWL has standing to oppose the request for declaratory relief and file this Motion to Dismiss as an interested party. Petitioner’s request for declaratory relief is a discrete administrative procedure under the HCDA rules and Chapter 91 of the Hawai‘i Revised Statutes (“HRS”), and is not a contested case hearing. Therefore, there is no requirement to intervene to oppose the Petition; however, as described in detail below, VWL clearly meets all requirements for intervention pursuant to HAR § 15-219-49 and has standing to oppose the Petition as an interested party. VWL requests that it be recognized as such by HCDA.

Accordingly, HCDA also lacks jurisdiction to declare that the reserved housing units at issue ostensibly cannot be credited toward the minimum requirement under HCDA rules and the development permits for Ke Kilohana, Anaha, and Waiea.

In accordance with HCDA rules, the HCDA certified, before any building permit was issued for Ke Kilohana, that the development provided 375 reserved housing units sold to qualified buyers. There are no provisions – express or implied – in the HCDA rules granting the HCDA authority to determine, after such certification (and in perpetuity), whether the units continue to qualify as reserved housing units because of an increase in maintenance fees assessed.

Second, good cause also exists for HCDA to decline to issue a declaratory ruling and to dismiss the Petition in the interests of judicial and administrative efficiency and economy pursuant to HAR § 15-219-84(b). The issues and allegations raised in the Petition are identical and/or substantially the same as issues and allegations raised in Petitioners' Complaints filed in existing cases pending before the Circuit Court of the First Circuit, State of Hawai'i (the "Circuit Court"). Allowing duplicative and overlapping proceedings, *i.e.*, the Petition and the Circuit Court Complaints, is inefficient – and more importantly – could result in inconsistent and conflicting results and rulings on claims for relief.

In addition, Petitioner's request for declaratory relief via the Petition is a discrete administrative procedure under HCDA rules and HRS Chapter 91, and is not a contested case hearing. Without the discovery means and methods provided for under the Hawai'i Rules of Civil Procedure (the "HRCPP") (which are applicable to Petitioner's pending Circuit Court actions but are not applicable to this proceeding), the resulting evidentiary record before the HCDA will be incomplete and any decision thereon subject to inconsistent and conflicting

factual findings, legal conclusions, and rulings on claims for relief. An incomplete record raises due process issues.

The fact that the Petition requires an adjudication of Petitioner's claim that the HCDA is responsible for exercising jurisdiction over reserved housing maintenance fees for Ke Kilohana (and by implication, for all reserved housing developments in the Mauka Area) after the HCDA certifies the provision of reserved housing units (and in perpetuity) also raises the concern that the issuance of a declaratory ruling in this proceeding may affect the interests of the HCDA in litigation that is pending or may reasonably be expected to arise by the Petitioner, namely, Petitioner's pending Circuit Court action regarding maintenance fees, and / or any future litigation involving the Petitioner. Therefore, HCDA should also decline to issue a declaratory ruling pursuant to HAR § 15-219-84(b)(3). For all these reasons, good cause exists for HCDA to decline to issue the declaratory relief requested by Petitioner.

Finally, Petitioner's request for declaratory relief, including its request to condition the HCDA's approval of the development permit applications for Ulana Ward Village ("Ulana") and The Park Ward Village ("The Park Ward Village") on compliance with the permit conditions for Ke Kilohana is moot, untimely, and not properly before the HCDA.

Because Ke Kilohana already complies with the development permit conditions for Ke Kilohana and the applicable rules, the requested relief, *i.e.*, to condition the approval of the development permit applications for Ulana and The Park Ward Village upon compliance with the permit conditions for Ke Kilohana, is unnecessary. Moreover, the requested relief is untenable because it improperly attempts to penalize Ulana and The Park Ward Village despite the fact that Ke Kilohana complies with its development permit conditions and the applicable

rules. The requested relief is also moot because the HCDA already issued the decisions and orders on the applications for Ulana and The Park Ward Village.

Importantly, despite the opportunity to do so, Petitioner did not intervene as a party to the application proceedings for Ulana and The Park Ward Village, the record of the proceedings on the applications is closed, and, again, HCDA already approved the decisions and orders on the applications for those projects. Under the circumstances, it would be improper, unfair, and raise due process concerns to subsequently and unilaterally implement Petitioner's requested relief with respect to Ulana and The Park Ward Village. For these additional reasons, good cause exists for HCDA to decline to issue a declaratory ruling and to dismiss the Petition.

For all (or any) of the foregoing reasons, the HCDA should decline to issue the requested declaratory relief and the Petition should be dismissed.

II. BACKGROUND

A. Reserved Housing / Credit System

Pursuant to HAR § 15-22-115(a) of the Vested Rules, VWL is required to provide "at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons." HAR § 15-22-203(b) gives HCDA the authority, as part of a master plan approval, to permit reserved housing units to be transferred from one development lot to one or more development lots within the master plan area. HCDA exercised this authority with respect to Ward Village through its approval of the Ward Neighborhood Master Plan (the "Ward MP D&O") in 2009 and its execution of the Ward Neighborhood Master Plan Development Agreement (the "Development Agreement") in 2010. *See Exhibit "1", Ward MP D&O; see also Exhibit "2", the Development Agreement.*²

² The Ward MP D&O required the execution of the Development Agreement. Specifically, Condition No. 2 of the Ward MP D&O provided that: "[VWL] shall execute a Master Plan Development Agreement

Under Hawai'i Revised Statutes § 206E-7(b), the development of lands under a master plan permit are governed by both the Master Plan D&O and the Development Agreement; therefore, both of these documents govern VWL's rights, which are vested with respect to the flexibility in the manner of delivery and timing of reserved housing within Ward Village. *See generally* Exh. 1, Ward MP D&O; *see generally* Development Agreement. Under the terms of the Development Agreement, HCDA sought to incentivize the early delivery of reserved housing in Ward Village in advance of market housing. Specifically, Section V.B.4. of the Development Agreement provided that:

To encourage the early delivery of reserved housing within the Kaka'ako Community Development District in advance of the construction of market housing, the HCDA will effectuate a reserved housing credit process that will apply to the Ward MP under the following circumstances:

* * *

[I]f VWL . . . construct[s] more reserved housing for any planned development in the Master Plan Area than is required for that project;"

* * *

VWL . . . may use [its] reserved housing credits to satisfy all or part of the Ward MP reserved housing requirements[.]

* * *

The reserved housing credits shall be applied on a one-for-one basis.

See Ex. 2, Development Agreement at p. 7, Section V.B.4.

Under this credit system, HCDA agreed that it would allow VWL to build reserved housing units in advance and off-site, and it would allow VWL to accrue credits for reserved housing built in excess of current requirements. *See id.* HCDA further agreed that it would allow VWL to use its credits, at its option (and on a one-for-one basis), to satisfy "all or part" of the Ward MP reserved housing requirements for future developments, rather than requiring the inclusion of reserved housing on a development-by-development basis. *See id.*

to the satisfaction of the Authority. . . . Pursuant to HRS Chapter 206E-4, the Authority is authorized to enter into a development agreement to provide parties to the development agreement with assurances of the following . . . descriptions of the delivery, manner and timing of reserved housing." Exh. 1, Ward MP D&O Condition No. 2.

The Development Agreement credit system, which documents and recognizes VWL’s right to exercise the option to construct reserved housing units in advance and off-site, is consistent with HCDA’s recognition that “[t]he phasing and timing of development under the Ward MP is intended to be flexible to give VWL the ability to adapt to economic and market conditions.” See Ex. 2, Development Agreement at p. 6, Section V.B.3. The Development Agreement credit system is also in compliance with, and satisfies, the provisions HAR § 15-22-115(c), which provides that “[i]f the authority so determines, it may require that, instead of providing reserved housing units within the development . . . the applicant may meet the requirement . . . [b]y providing such reserved housing units elsewhere within the mauka area.” HAR § 15-22-115(c).

A running total of the reserved housing provided by project in the Ward MP pursuant to the Development Agreement and in accordance with HCDA rules is summarized below:

Project	Residential Units	Reserved Housing Units Provided
<i>KAK 13-036 [LB2-P1] Waiea</i>	*177	0
<i>KAK 13-037 [LB3-P1] Anaha</i>	318	0
<i>KAK 13-038 [LB5-P1] Ke Kilohana</i>	424	375
<i>KAK 14-074 [LB1-P2] Ae'o</i>	466	0
<i>KAK 16-075 [LB1-P3] 'A'ali'i</i>	751	150
<i>KAK 18-038 [LB1-P4] Kō'ula</i>	570	0
<i>KAK 19-069 [LB2-P3] Victoria Place</i>	350	0
<i>KAK 21-001 [LB5-P2] Ulana Ward Village</i>	697	697
<i>KAK 21-002 [LB1-P5] The Park Ward Village</i>	546	0
Total Residential Units	4299	1222
Reserved Housing Units Required (20%)	860	
Reserved Housing Units Balance- exceeding requirements	362	

*The Waiea Planned Development Permit included 177 residential units, but only 174 units were constructed

B. Ke Kilohana

Ke Kilohana is a 43-floor mixed-use, fee simple condominium project located at 988 Halekauwila Street, Honolulu, Hawai'i 96814. The land on which Ke Kilohana is located is identified by Tax Map Key Nos. (1) 2-1-050:001, :061 and :062. Ke Kilohana contains a total of

424 fee simple residential condominium units, which includes one (1) resident manager unit, and one (1) commercial unit.

Twenty percent (20%) of the 424 residential units translates to a total of 106 units required in order to meet the reserved housing provisions of HAR § 15-22-115(a) of the Vested Rules. Of the 424 residential units, 375 residential units were offered for sale as reserved housing units pursuant to the Vested Rules as administered by HCDA, and Planned Development Permit (“PDP”) No. KAK 13-038 issued by HCDA on July 17, 2013.

The Ke Kilohana reserved housing units were offered and sold subject to various occupancy,³ income,⁴ and other eligibility requirements,⁵ as well as buy-back rights and equity sharing restrictions in favor of HCDA in accordance with the Vested Rules,⁶ PDP No. KAK 13-038, the Ward MP and Development Agreement. It is undisputed that HCDA certified 375 residential units within Ke Kilohana as reserved housing units and acknowledged a credit of 269 reserved housing units in excess of the required 106 reserved housing units. *See Exhibit “3”*, PDP No. KAK 13-038 (Ke Kilohana).⁷

³ *See* HAR § 15-22-185 (Occupancy).

⁴ *See* HAR § 15-22-184 (Income) (providing that the adjusted household income of a qualifying applicant purchasing a reserved housing unit shall not exceed 140% of the area median income, and that the applicant’s assets shall not exceed 125% of the applicable limit).

⁵ *See e.g.*, HAR § 15-22-185.1 (Affordability) (requiring, in order to ensure that an applicant can afford to purchase a reserved housing unit, that the applicant’s monthly payments, which consist of principal and interest, real property taxes, insurance, and fees and costs required by the bylaws of a condominium property regime, shall not exceed 33% of the applicant’s gross monthly income); HAR § 15-22-182 (Qualified Persons for Reserved Housing)

⁶ *See e.g.*, HAR § 15-22-186 (Conditions on Transfer of Reserved Housing Units); HAR § 15-22-187 (Equity Sharing Requirements).

⁷ HCDA has confirmed its certification of the Ke Kilohana reserved housing units and the reserved housing credits through other HCDA D&Os. Forty-five (45) reserved housing unit credits from Ke Kilohana, for example, were applied to satisfy the reserved housing requirement applicable to Waiea. *See Exhibit “4”*, PDP No. KAK 13-036 (Waiea), at 3. Eighty (80) reserved housing unit credits from Ke

C. Petitioners’ Pending Circuit Court Actions Regarding Ke Kilohana

1. Construction Defect Litigation

On February 28, 2020, the AOUO filed a Complaint commencing the lawsuit designated in the Circuit Court as *Assoc. of Unit Owners of 988 Halekauwila v. Howard Hughes Corp., et al.*, Civil No. 1ccv-20-0000335 (the “Construction Defect Litigation”). The AOUO’s Complaint asserts claims against Defendants Howard Hughes Corporation; 988 Halekauwila, LLC; VWL; Ward Management Development Company, LLC; The Hughes Corporation; Howard Research and Development Corporation; and Nordic PCL Construction, Inc., arising from approximately 60 alleged construction defects in connection with Ke Kilohana, such as inadequate size and access to compact parking spaces. *See Exhibit “6”*, Construction Defect Litigation Complaint (without exhibits), at ¶¶ 38, 52 (regarding alleged inadequate sized parking spaces).⁸ The Construction Defect Litigation remains pending before the Circuit Court.

2. Maintenance Fee Litigation

On March 2, 2020, the AOUO filed a Complaint commencing the lawsuit designated in the Circuit Court as *Assoc. of Unit Owners of 988 Halekauwila v. Howard Hughes Corp., et al.*, Civil No. 1ccv-20-0000342 (the “Maintenance Fee Litigation”). The AOUO’s Complaint asserts claims against Defendants Howard Hughes Corporation; 988 Halekauwila, LLC; Victoria Ward, Limited; Hughes Corporation, and Howard Research and Development Corporation (collectively, “Defendants”). The crux of the Complaint is that Ke Kilohana allegedly does not satisfy the affordability requirements applicable to reserved housing.

Kilohana were applied to satisfy the reserved housing requirement applicable to Anaha. *See Exhibit “5”*, PDP No. KAK 13-037 (Anaha), at 3.

⁸ Compare Petition at p. 2, 4, 23-24, 36 (alleging inadequate sized parking spaces), with Exh. 6, Construction Defect Litigation at ¶¶ 38, 52 (alleging the same).

The AOUO's Complaint alleges that Defendants underestimated the operating costs, including the monthly maintenance fees, for Ke Kilohana. *See Exhibit "7", Maintenance Fee Litigation Complaint (without exhibits), at ¶¶ 34-38, 41.*⁹ The Complaint alleges that because HAR § 15-22-185.1 prescribes that an applicant's monthly payments, including monthly maintenance fees, could not exceed 33% of the applicant's gross monthly income, the estimated monthly maintenance fees affected the maximum price at which the Ke Kilohana reserved housing units could be sold. *Exh. 7, Maintenance Fee Litigation Complaint at ¶ 35.* The Complaint further alleges that Defendants underestimated the costs for operating Ke Kilohana in order to allegedly make the units appear affordable, and that if Defendants had properly estimated the monthly maintenance fees, the price of a unit would have had to have been lower in order to satisfy the HCDA's affordability requirements. *See id.* The Maintenance Fee Litigation remains pending before the Circuit Court.

D. The Instant Petition Regarding Ke Kilohana

On May 4, 2021, during the pendency of the AOUO's Construction Defect and Maintenance Fee Litigation, the AOUO filed a Petition for Declaratory Relief and for Hearing before the HCDA. Like the AOUO's Complaint in the pending Maintenance Fee Litigation, the AOUO's Petition alleges that VWL, Howard Hughes Corporation, and 988 Halekauwila, LLC (collectively, "Developers") underestimated the operating costs, including the monthly maintenance fees, for Ke Kilohana. *See Petition at 2, 7- 8, 17-18, 34-35.* The Petition alleges that because HAR § 15-22-185.1 prescribes that an applicant's monthly payments, including monthly maintenance fees, could not exceed 33% of the applicant's gross monthly income, the

⁹ *Compare* Petition at 2, 7, 8, 17, 18 (alleging that VWL and other defendants named in Maintenance Fee Litigation Complaint grossly underestimated the operating costs, including the monthly maintenance fees, for Ke Kilohana, in order to artificially make the units appear affordable), *with* *Exh. 7, Maintenance Fee Complaint at ¶¶ 34-38, 41* (alleging the same).

estimated monthly maintenance fees affected the maximum price at which the Ke Kilohana reserved housing units could be sold. *See id.* The Petition further alleges that Developers underestimated the costs for operating Ke Kilohana in order to allegedly make the units appear affordable, and that if Defendants had properly estimated the monthly maintenance fees, the price of a unit would have had to have been lower in order to satisfy the HCDA's affordability requirements. *See id.*

By the Petition, the AOOU asks the HCDA to declare that the Ke Kilohana units provided by VWL, Howard Hughes Corporation, and 988 Halekauwila, LLC (defined collectively in the Petition as the "Developers") do not satisfy the HCDA affordability criteria; that the Developers are in violation of the Ward MP, Development Agreement, and PDPs for Waiea, Anaha, and Ke Kilohana; that the approval of VWL's applications for Ulana and The Park Ward Village and any future PDPs under the Ward MP should be conditioned upon compliance with the permit conditions for Ke Kilohana; and for a moratorium on future PDPs under the Ward MP until the Developers have complied with the permit conditions for Ke Kilohana. *See generally* Petition at 3-4.

III. LEGAL STANDARD – REQUESTS FOR DECLARATORY RELIEF

Pursuant to HAR § 15-219-83, "[a]ny interested person or governmental agency may petition the authority for a declaratory order as to the applicability of any statutory provision or rule or order of the authority." *See also* HRS § 91-8 ("Any interested person may petition an agency for a declaratory order as to the applicability of any...order of the agency."). However, requests for declaratory relief are necessarily limited to matters within the jurisdiction of HCDA, where good cause exists, and other circumstances. Indeed, pursuant to HAR § 15-219-84(b), the HCDA has the authority to refuse to grant requests for declaratory relief for good cause,

including without limitation, where “[t]he issuance of a declaratory ruling may affect the interests of the authority, or any of its officers or employees, in litigation that is pending or may reasonably be expected to arise” or “[t]he matter is not within the jurisdiction of the [A]uthority.”

IV. LEGAL ARGUMENT

A. VWL Has Standing to Oppose Petitioner’s Request for Declaratory Relief and to File this Motion to Dismiss

VWL has standing to oppose Petitioner’s request for declaratory relief and file this Motion to Dismiss the Petition as an interested party. Petitioner’s request for declaratory relief is a discrete administrative procedure under the HCDA rules and HRS Chapter 91, and is not a contested case hearing. Therefore, there is no requirement to intervene to oppose and seek to dismiss the Petition; however, VWL clearly meets all requirements for intervention pursuant to HAR § 15-219-49, including as follows:

- (1) the nature of the applicant’s statutory or other right to participate in the contested case proceeding;
- (2) the nature and extent of the applicant’s property, financial, or other interest in the pending contested case proceeding;
- (3) the other means by which the applicant’s interest may be protected;
- (4) the extent to which applicant’s interest will not be represented by existing parties to the contested case proceeding;
- (5) the extent to which applicant’s participation can assist in the development of a sound record;
- (6) the extent to which applicant’s participation will broaden the issues or delay the proceeding; and
- (7) whether the applicant’s position is in support of or in opposition to the relief sought.

VWL has substantial rights in and to the real property and other interests against which Petitioner seeks to obtain declaratory relief through its Petition. Specifically, VWL is a fee

simple owner of lands underlying the Ward MP, the applicant under the Ward MP, a party to the Development Agreement, and the applicant for the Ke Kilohana, Waiea, Anaha, Ulana, and The Park Ward Village. *See e.g.*, Exh. 1, Ward MP D&O; Exh. 2, Development Agreement; Exh. 3, PDP No. KAK 13-038 (Ke Kilohana), Exh. 4, PDP No. KAK 13-036 (Waiea); Exh. 5, PDP No. KAK 13-037 (Anaha). In addition, VWL is named as a defendant in the AOUO's Complaints pending before Circuit Court in the Construction Defect and Maintenance Fee Litigation. Exh. 6, Construction Defect Litigation Complaint; Exh. 7, Maintenance Fee Litigation Complaint. Petitioner's request for declaratory relief via its Petition is duplicative of its allegations and claims for relief in the Circuit Court proceedings. VWL has denied all of the material allegations in the proceedings, which are still in their infancy, and there has been no discovery.

By the Petition, the AOUO asks the HCDA to declare that the Ke Kilohana units provided by the Developers do not satisfy the HCDA affordability criteria; that the Developers are in violation of the Ward MP, Development Agreement, and PDPs for Waiea, Anaha, and Ke Kilohana; that the approval of VWL's applications for Ulana and The Park Ward Village and any future PDPs under the Ward MP should be conditioned upon compliance with the permit conditions for Ke Kilohana; and for a moratorium on future PDPs under the Ward MP until the Developers have complied with the permit conditions for Ke Kilohana. *See* Petition at 2, 7- 8, 17-18, 34-35. Assuming *arguendo*, HCDA granted Petitioner's requested declaratory relief and issued a notice of violation to VWL, VWL would have the right to appeal pursuant to HAR § 15-21934(a). Clearly, VWL has protected real property and other interests against which Petitioner seeks to obtain declaratory relief through its Petition.

As a landowner and applicant against which Petitioner seeks relief, VWL's interests are not protected and cannot be represented by Petitioner. VWL's participation as an interested

party will greatly assist in and expedite the development of a sound record in any proceedings on this Motion and the Petition. Under the circumstances, VWL clearly meets all requirements for intervention pursuant to HAR § 15-219-49 and has standing to oppose the Petition as an interested party. VWL requests that it be recognized as such by HCDA.

B. The Petition Should be Dismissed Pursuant to HAR § 15-219-84(b)(4) for Lack of Jurisdiction

The crux of the Petition is that, because the AOUO board decided to increase the monthly maintenance fees for the Ke Kilohana reserved housing units effective March 2020 (*i.e.* subsequent to the initial provision and sale of those units), the units allegedly no longer satisfy the affordability requirements under the HCDA rules, and, therefore, no longer qualify as “reserved housing.” *See* Petition at 2, 7-8 (alleging that “[a]s a result of this [maintenance fee] increase, monthly dues payments for units at Ke Kilohana are no longer affordable, as defined by the HCDA’s rules.”); *see also* Petition at 17-18, 20 (alleging that “the AOUO was forced to increase total assessments by 53.44% for the combined residential and commercial unit classes, beginning in March 2020”), and 34-35.

However, the HCDA rules governing reserved housing clearly provide that whether a unit qualifies as reserved housing is determined at the initial point of the provision and sale of the unit, and the HCDA has no jurisdiction thereafter to monitor/regulate whether a unit remains reserved housing because of a subsequent increase in self-assessed maintenance fees.

Therefore, as set forth more fully herein, the Petition should be dismissed pursuant to HAR § 15-219-84(b)(4) because the HCDA lacks jurisdiction to grant Petitioner’s requested declaratory relief. *See Hous. Fin. & Dev. Corp. v. Castle*, 79 Hawai‘i 64, 76, 898 P.2d 576, 588 (1995) (noting that “[j]urisdiction is the base requirement for any court considering and resolving an appeal or original action.”); *Chun v. Employees’ Retirement Sys.*, 73 Haw. 9, 14, 828 P.2d

260, 263, *reconsideration denied*, 73 Haw. 625, 829 P.2d 859 (1992) (explaining that the “lack of subject matter jurisdiction can never be waived by any party at any time.”).

Specifically, as discussed in detail below, HCDA lacks jurisdiction to retroactively declare that the Ke Kilohana reserved housing units are allegedly no longer “affordable” (and no longer reserved housing units) due to an increase in monthly maintenance fees assessed by the AOUO board after the certification and sale of the units. Accordingly, HCDA also lacks jurisdiction to declare that the reserved housing units at issue ostensibly cannot be credited toward the minimum requirement under HCDA rules and the development permits for Ke Kilohana, Anaha, and Waica.

HRS § 206E-101 defines “reserved housing” as “housing designated for residents in the low-or moderate-income ranges who meet such eligibility requirements as the authority may adopt by rule.” In turn, HAR § 15-22-115(a) defines reserved housing as “dwelling units in the development for sale or rental to qualified persons as determined by the authority.” In addition, HAR § 15-22-115(b) provides that reserved housing units “shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 7 of this chapter.”

These rules specify that whether someone is a “qualified person” for “reserved housing” is determined at the time of the “sale” or “rental”. If the intent was to regulate the maintenance fee for each reserved housing unit sold to each “qualified person” in perpetuity, the rule would have defined reserved housing broader without restricting the applicability of the rules to instances of “sale” or “rental” as, for example, “dwelling units in the development for qualified persons as determined by the authority.” Importantly, however, HCDA did not adopt such a broad rule.

In addition, HAR § 15-22-115(d) provides in part that “No building permit shall be issued for any planned development until the authority has certified that the development complies with the requirements of this section.” The rule further provides that “When this [*i.e.*, the provision of reserved housing units,] has been assured to the satisfaction of the authority and it [HCDA] has determined that the proposed development meets the requirements and standards of this section, it shall certify the application approved as to the housing requirements of this section.” (Emphases added).

Thus, the provision of reserved housing units is determined, approved and certified by HCDA at the time that the reserved housing units are provided in the development, and the rules do not grant HCDA any continuing jurisdiction or authority to monitor or regulate whether any reserved housing units allegedly remain “affordable” based on an association board’s decision to subsequently increase the maintenance fees going forward. There is no dispute that HCDA certified the reserved housing at Ke Kilohana and the reserved housing units were provided at the time of sale.

Further, HAR § 15-22-185.1 describes the “affordability criteria” “of units for sale.” The “affordability criteria” is applied at the time of the fee “sale” of the units and not thereafter. This is clear because the plain language of the rule provides that “monthly payments” (among other “affordability criteria”) “shall be utilized in determining price and income equivalencies of units for sale.” *See* HAR § 15-22-185.1(a) (emphasis added).

Finally, HAR § 15-22-185.1(c), which regulates the monthly payment and qualifications for the rental of reserved housing, provides that the monthly payment and qualifications requirements for the rental of reserved housing “shall be regulated for a minimum period of

fifteen years.” Therefore, where HCDA intended to exercise continuing jurisdiction, it has expressly done so.

In contrast, there is no comparable provision that grants HCDA with authority or jurisdiction to continue to regulate the “monthly payment and qualification requirements” for the fee sale of reserved housing units. The omission of such a regulatory provision makes clear that HCDA intentionally chose not to exercise continuing jurisdiction to regulate the “monthly payment and qualification requirements” for the fee sale of reserved housing units.

When construing a statute, “laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other.” Haw. Rev. Stat. § 1–16; *State v. Villeza*, 85 Hawai‘i 258, 273, 942 P.2d 522, 537 (1997) (citing *Richardson v. City and County of Honolulu*, 76 Hawai‘i 46, 55, 868 P.2d 868 P.2d 1193, 1202 (1994) (internal brackets omitted)). “[W]here a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed.” *State v. Rodgers*, 68 Haw. 438, 442, 718 P.2d 275, 277 (1986) (elipses and citations omitted).

The same general principles that apply to statutory interpretation also apply to interpretation of administrative rules. *Allstate Ins. Co. v. Ponce*, 105 Hawai‘i 445, 454, 99 P.3d 96, 105 (2004) (citation omitted). Applying the principles of statutory construction as to the HCDA rules, the omission of such a regulatory provision makes clear that HCDA intentionally chose not to exercise continuing jurisdiction to regulate the “monthly payment and qualification requirements” for the fee sale of reserved housing units.

Therefore, under the HCDA rules and consistent with principles of statutory construction, HCDA does not have continuing jurisdiction to regulate an increase in maintenance fees after

reserved housing units are sold, and HCDA lacks jurisdiction to grant the Petitioner's requested relief.¹⁰

Moreover, assuming, *arguendo*, that HCDA had such jurisdiction (and it does not), HCDA's continuing regulation of maintenance fees, as a practical matter, would be untenable and unduly burdensome, because HCDA (and all developers in the Mauka Area) would be required to continually monitor whether reserved housing units are "affordable" for buyers/owners in perpetuity after the units are sold in fee and certified by HCDA as reserved housing units.

C. The Petition Should be Dismissed Pursuant to HAR § 15-219-84(b)(3) for Good Cause

HAR § 15-219-84(b) grants HCDA the authority to refuse to issue a declaratory ruling for good cause. The bases listed in the rule are non-exclusive. The issues and allegations raised in the Petition are identical and/or substantially the same as issues and allegations raised in Petitioners' Complaints filed in existing, pending Circuit Court Construction Defect and Maintenance Fee Litigation. Therefore, good cause also exists for HCDA to refuse to issue a declaratory ruling in the interests of judicial and administrative efficiency and economy pursuant to HAR § 15-219-84(b). *See Hawaii Hous. Auth. v. Lyman*, 68 Haw. 55, 78, 704 P.2d 888, 902 (1985) (trial court has discretion to weigh the potential of waste of judicial resources).

Here, Petitioners filed their Complaints in Circuit Court, which has jurisdiction over Petitioners' claims. Allowing duplicative and overlapping proceedings, *i.e.*, the Petition and the

¹⁰ Petitioners also base much of their request for declaratory relief on various alleged violations of the Hawai'i Condominium Property Act, HRS Chapter 514B. *See* Petition at 20-22. HCDA has no jurisdiction to interpret (much less adjudicate alleged violations of), HRS Chapter 514B, and nothing in HCDA's enabling statute (HRS Chapter 206E) grants HCDA such jurisdiction. *See Pilaa 400, LLC v. Bd. of Land and Nat. Resources*, 132 Hawai'i 247, 263, 320 P.3d 912, 928 (2014) (noting that an administrative agency's jurisdiction is limited by the terms of the governing statute).

Circuit Court Complaints, is inefficient – and more importantly – could result in inconsistent and conflicting results and rulings on claims for relief.

In addition, Petitioner’s request for declaratory relief via the Petition is a discrete administrative procedure under the HCDA rules and HRS Chapter 91, and is not a contested case hearing. The HRCP govern the parties’ rights to conduct discovery regarding the claims and defenses in the ongoing Circuit Court actions. In contrast, the HCDA’s rules do not authorize the conduct of such discovery.¹¹ Without the discovery means and methods provided for under the HRCP (which are applicable to Petitioner’s pending Circuit Court actions but are not applicable to this declaratory proceeding), the resulting evidentiary record will be incomplete and any decision thereon subject to inconsistent factual findings, legal conclusions and claims for relief. An incomplete record raises due process issues.

The fact that the Petition requires an adjudication of Petitioner’s claim that the HCDA is responsible for exercising jurisdiction over reserved housing maintenance fees for Ke Kilohana (and by implication, for all reserved housing developments in the Mauka Area) after the HCDA certifies the provision of reserved housing units (and in perpetuity) also raises the concern that the issuance of a declaratory ruling in this proceeding may affect the interests of the HCDA in litigation that is pending or may reasonably be expected to arise by the Petitioner, namely, Petitioner’s pending Circuit Court action regarding maintenance fees, and / or any future litigation involving the Petitioner, and thus HCDA should decline to issue a declaratory ruling pursuant to HAR § 15-219-84(b)(3). *See Lyman*, 68 Haw. at 78, 704 P.2d at 902.

For all these reasons, good cause exists for HCDA to decline to issue a declaratory ruling and HCDA should dismiss the Petition.

¹¹ Under the HCDA Rules of Practice and Procedure, contested case hearings are also not subject to the scope of discovery permitted under the HRCP. *See HAR § 15-219-45, et seq.*

D. The Petition Should Also be Dismissed as Seeking Declaratory Relief that is Moot, Untimely, and Not Properly Before the HCDA

Petitioners' request for declaratory relief, including to condition the HCDA's approval of the development permit applications for Ulana and The Park Ward Village on compliance with the permit conditions for Ke Kilohana, is moot, untimely, and not properly before the HCDA.

As an initial matter, Ke Kilohana complies with the development permit terms and conditions for Ke Kilohana and the applicable rules; therefore, the requested relief, *i.e.*, to condition the approval of the development permit applications for Ulana and The Park Ward Village upon compliance with the permit conditions for Ke Kilohana, is unnecessary. Moreover, the requested relief is untenable because it improperly attempts to penalize Ulana and The Park Ward Village despite the fact that Ke Kilohana complies with its development permit conditions and applicable rules.

In addition, HCDA has already issued the decisions and orders on the applications for Ulana and The Park Ward Village. *See* **Exhibit "8"**, Findings of Fact, Conclusions of Law and Decision and Order for Ulana (KAK 21-001) ("Ulana D&O"); *see also* **Exhibit "9"**, Findings of Fact, Conclusions of Law and Decision and Order for The Park Ward Village (KAK 21-002) ("The Park Ward Village D&O"). Petitioners' requested relief, including to condition the approval of such applications on compliance with the permit conditions for Ke Kilohana is moot, and HCDA should dismiss the Petition for this additional reason.

The deadline for motions to intervene in the application proceedings for the Ulana and The Park Ward Village was February 4, 2021. It is undisputed that Petitioners did not attempt to intervene as a party to the application proceedings (nor did they submit public testimony at the presentation or modification request hearings for Ulana and The Park Ward Village), the record of the proceedings on the applications is closed, and the decisions and orders have been approved

by HCDA. *See id.* Under the circumstances, it would be improper, unfair, and raise due process concerns to unilaterally implement Petitioners' requested condition particularly where the issue of alleged violation of the reserved housing requirement and related issues raised in the petition are the subject of ongoing litigation in the Circuit Court matters.

It is well-established that the "basic elements of due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." *Sandy Beach Def. Fund v. City Council of City & County of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989) (citations omitted).

Determination of the specific procedures required to satisfy due process requires a balancing of several factors: (1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and (3) the governmental interest, including the burden that additional procedural safeguards would entail. *Id.* (citations omitted).

Consideration of these factors weighs against granting Petitioner's requested declaratory relief.

As a fee simple owner of lands underlying the Ward MP, the applicant under the Ward MP, a party to the Development Agreement, the applicant for the Ke Kilohana, Waiea, Anaha, Ulana, and The Park Ward Village and an entity against which Petitioner seeks declaratory relief, VWL clearly has protectible property interests which trigger procedural due process protections. Through the application proceedings for the Ulana and The Park Ward Village, VWL presented admissible evidence in the form of written and live witness testimony and documentary evidence in support of its applications and requested modifications. *See* Exh. 8, Ulana D&O; *see also* Exh. 9, The Park Ward Village D&O.

Through the presentation hearing on March 3, 2021 and the modification request hearing on March 10, 2021, VWL presented its evidence in support of the project applications and requested modifications. HCDA exercised the opportunity and right at both hearings to cross-examine VWL's witnesses and to ask questions regarding the applications and requested modifications. The evidentiary record was closed at the conclusion of the March 10, 2021 modification request hearing. *See* Excerpt of Relevant Portions of Transcript of HCDA March 10, 2021 Modification hearing attached as **Exhibit "10"**, at 123:13-124:13.

Without conceding that Petitioners are at all entitled to the declaratory relief they seek, and putting aside the jurisdictional and other defects in their Petition, the time (if at all) for Petitioners to assert their request for declaratory relief to condition HCDA's approval of the Ulana and The Park Ward Village applications on compliance with the permit conditions for Ke Kilohana has long since passed. The deadline for intervention in the Ulana and The Park Ward Village applications expired, the evidentiary record on the applications was closed, and the decisions and orders were approved by HCDA.

The Petitioner's request for declaratory relief after the close of the evidentiary record is untimely and amounts to a unilateral request without affording VWL any due process to protect its tangible and specific protectable property interests. For these additional reasons, good cause exists for HCDA to decline to issue a declaratory ruling and to dismiss the Petition pursuant to HAR § 15-219-84(b).

V. **CONCLUSION**

Based on all of the reasons asserted herein and any reasons appearing of record, VWL respectfully requests that the HCDA decline to issue the requested declaratory relief and that the HCDA dismiss the Petition.

VWL believes HCDA can decide this Motion without a hearing and therefore does not request one; however, if HCDA decides to hold a hearing on this Motion, VWL requests, in the interests of administrative efficiency and economy, that the hearing on this motion be set prior to a hearing, if any, for the Petition on the merits.

DATED: Honolulu, Hawai'i, MAY 20 2021.



J. DOUGLAS ING
BRIAN A. KANG
SUMMER H. KAIawe
Attorneys for Interested Party
VICTORIA WARD, LIMITED

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

In re the Petition of

ASSOCIATION OF UNIT OWNERS
OF 988 HALEKAUWILA

DECLARATION OF COUNSEL;
EXHIBITS "1"- "10"

DECLARATION OF COUNSEL

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

1. I am an attorney with the law firm Watanabe Ing LLP, and am licensed to practice law and am in good standing in the State of Hawai'i.

2. I am one of the attorneys for Victoria Ward, Limited ("VWL"), and I make this declaration in support of the attached MOTION TO DISMISS PETITIONER ASSOCIATION OF UNIT OWNER'S OF 988 HALEKAUWILA'S PETITION FOR DECLARATORY RELIEF AND FOR HEARING FILED HEREIN ON MAY 4, 2021 based upon personal knowledge, information, and belief, and based upon my review of the files and records in this matter.

3. This declaration is made in lieu of an affidavit.

4. Attached hereto as Exhibit "1" is a true and correct copy of the January 14, 2009 Nunc Pro Tunc Order re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit (the "Ward MP D&O").

5. Attached hereto as Exhibit "2" is a true and correct copy of the December 30, 2020 Ward Neighborhood Master Plan Development Agreement (the "Development Agreement").

6. Attached hereto as Exhibit “3” is a true and correct copy of PDP No. KAK 13-038 (Ke Kilohana).

7. Attached hereto as Exhibit “4” is a true and correct copy of PDP No. KAK 13-036 (Waiea).

8. Attached hereto as Exhibit “5” is a true and correct copy of PDP No. KAK 13-037 (Anaha).

9. Attached hereto as Exhibit “6” is a true and correct copy of the Complaint filed by the Assoc. of Unit Owners of 988 Halekauwila (the “AOUO”) on February 28, 2020 commencing the lawsuit designated in the Circuit Court of the First Circuit, State of Hawai‘i (the “Circuit Court”) as *Assoc. of Unit Owners of 988 Halekauwila v. Howard Hughes Corp., et al.*, Civil No. 1ccv-20-0000335 (the “Construction Defect Litigation”)

10. Attached hereto as Exhibit “7” is a true and correct copy of the Complaint filed by the AOUO on March 2, 2020 commencing the lawsuit designated in the Circuit Court as *Assoc. of Unit Owners of 988 Halekauwila v. Howard Hughes Corp., et al.*, Civil No. 1ccv-20-0000342 (the “Maintenance Fee Litigation”).

11. Attached hereto as Exhibit “8” is a true and correct copy the Findings of Fact, Conclusions of Law and Decision and Order for Ulana (KAK 21-001) (“Ulana D&O”) issued by the Hawai‘i Community Development Authority (“HCDA”).

12. Attached hereto as Exhibit “9” is a true and correct copy the Findings of Fact, Conclusions of Law and Decision and Order for The Park Ward Village (KAK 21-002) (“The Park Ward Village D&O”) issued by the HCDA.

13. Attached hereto as Exhibit “10” is a true and correct copy of excerpts of relevant portions of the Transcript of HCDA March 10, 2021 Modification hearing.

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

DATED: Honolulu, Hawai'i, MAY 20 2021.



BRIAN A. KANG

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

In re the Petition of

ASSOCIATION OF UNIT OWNERS
OF 988 HALEKAUWILA

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a true and correct copy of the foregoing document was duly served VIA HAND-DELIVERY to the following party via their attorneys as follows:

Kenneth S. Kasdan, Esq.
Brittany L. Grunau, Esq.
Sharla Manley, Esq.
1003 Bishop Street, Suite 1180
Honolulu, Hawai'i 96813

Attorneys for Petitioner
ASSOCIATION OF UNIT OWNERS OF 988 HALEKAUWILA

The undersigned hereby further certifies that one (1) original and thirty (30) copies of the document was duly served VIA HAND-DELIVERY to the following:

HAWAI‘I COMMUNITY DEVELOPMENT AUTHORITY
547 Queen Street
Honolulu, Hawai‘i 96813

DATED: Honolulu, Hawai‘i, MAY 20 2021 .



J. DOUGLAS ING
BRIAN A. KANG
SUMMER H. KAIawe
Attorneys for Interested Party
VICTORIA WARD, LIMITED

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Application of) File No.: PL MASP 13.1.3
) NUNC PRO TUNC ORDER RE:
GENERAL GROWTH PROPERTIES,) HEARING OFFICER'S PROPOSED
INC. on behalf of its affiliate VICTORIA) FINDINGS OF FACT, CONCLUSIONS
WARD, LIMITED) OF LAW, AND DECISION AND
) ORDER FOR A MASTER PLAN
For a Master Plan Permit) PERMIT; EXHIBIT "A"
_____)

**NUNC PRO TUNC ORDER RE: HEARING OFFICER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A MASTER PLAN PERMIT**

On January 14, 2009, the Hawaii Community Development Authority ("Authority") issued its Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit ("Decision & Order"), granting GENERAL GROWTH PROPERTIES, INC., on behalf of its affiliate, VICTORIA WARD, LIMITED's ("Petitioner" or "VWL") application for a master plan, pursuant to chapter 206E of the *Hawai'i Revised Statutes* ("HRS") and chapter 15-22 of the *Hawai'i Administrative Rules* ("HAR"), for approximately 59.96 acres of land in the Kaka'ako Community Development District, Oahu, Hawai'i, also known as the Ward Neighborhood Master Plan ("Master Plan").

There is a clerical omission on pages 1, 8-9, and 42 of the Decision & Order. Although TMK No. 2-1-052: 022 was part of the Master Plan application, and was

5/5/2009

incorporated by reference on Exhibit "A" of the Decision & Order, it was inadvertently omitted from the text of the Decision & Order.

Therefore, the corrected portions of the Decision & Order should read as follows:

Page 1: On April 2, 2008, GENERAL GROWTH PROPERTIES, INC., on behalf of its affiliate, VICTORIA WARD, LIMITED ("Petitioner" or "VWL"), submitted an application for a master plan, pursuant to chapter 206E of the *Hawai'i Revised Statutes* ("HRS") and chapter 15-22 of the *Hawai'i Administrative Rules* ("HAR"), to obtain a master plan permit for approximately 59.96 acres of land in the Kaka'ako Community Development District, Oahu, Hawai'i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-052: 034, 2-1-052: 035, 2-1-052: 036, 2-1-052: 038, 2-1-052: 039, 2-1-052: 040, 2-1-052: 042, 2-1-052: 043, 2-1-052: 045, 2-1-052: 046, 2-1-052: 051, 2-1-052: 052, 2-1-052: 053, 2-1-053: 001, 2-1-053: 030, 2-3-002: 001, 2-3-002: 067, 2-3-002: 086, 2-3-002: 087, 2-3-002: 104, 2-3-003: 022, 2-3-003: 094, 2-3-005: 013, 2-3-005: 014, 2-3-005: 015, 2-3-005: 016, 2-3-005: 017, 2-3-005: 019, and 2-3-005: 022 (collectively, the "Master Plan Area") for the Ward Neighborhood Master Plan ("Master Plan").

Pages 8-9 (Finding of Fact 38): The Master Plan Area consists of approximately 59.96 acres of land located in the Kaka'ako Community Development District, Oahu, Hawai'i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-

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Page 42: IT IS HEREBY ORDERED that the Master Plan, consists of approximately 59.96 acres of land in the Kaka'ako Community Development District, Oahu, Hawai'i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-052: 034, 2-1-052: 035, 2-1-052: 036, 2-1-052: 038, 2-1-052: 039, 2-1-052: 040, 2-1-052: 042, 2-1-052: 043, 2-1-052: 045, 2-1-052: 046, 2-1-052: 051, 2-1-052: 052, 2-1-052: 053, 2-1-053: 001, 2-1-053: 030, 2-3-002: 001, 2-3-002: 067, 2-3-002: 086, 2-3-002: 087, 2-3-002: 104, 2-3-003: 022, 2-3-003: 094, 2-3-005: 013, 2-3-005: 014, 2-3-005: 015, 2-3-005: 016, 2-3-005: 017, 2-3-005: 019, and 2-3-005: 022, and as shown approximately on Exhibit "A", attached hereto and incorporated by reference herein[.]

The above corrections, as well as other technical corrections not affecting the substance of the Decision and Order, are reflected on Exhibit "A" attached hereto, which is an Amended And Restated Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, adopted by the Authority as a *nunc pro tunc* order.

ADOPTION OF NUNC PRO TUNC ORDER

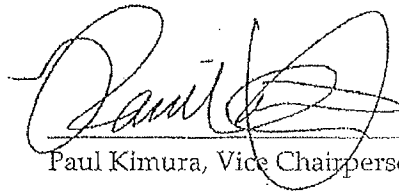
The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing NUNC PRO TUNC ORDER as of the date set forth below. This Order, its ADOPTION, and the attached Exhibit "A" shall relate back to the Decision & Order and be effective as of the original date of January 14, 2009.

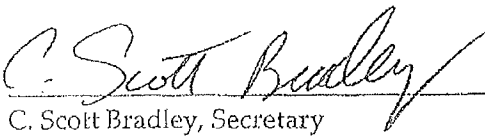
Done at Honolulu, Hawai'i, this 6th day of May, 2009.

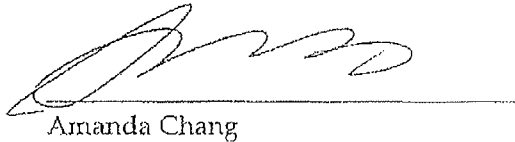
Hawai'i Community Development
Authority (Kaka'ako members)

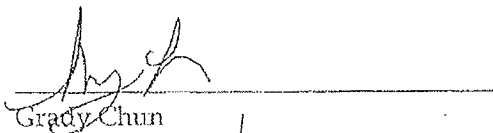
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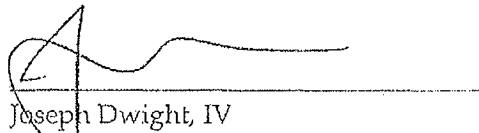
Jonathan W. Y. Lai, Chairperson

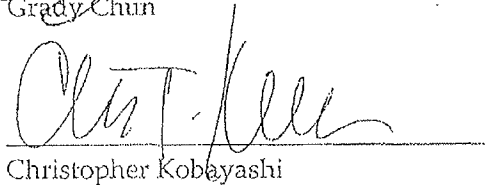

Paul Kimura, Vice Chairperson


C. Scott Bradley, Secretary

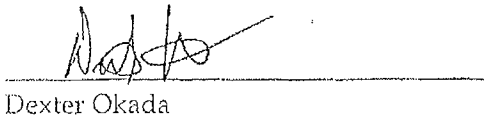

Amanda Chang


Grady Chun


Joseph Dwight, IV

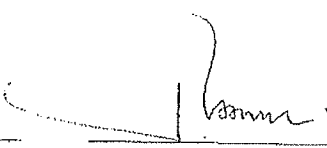

Christopher Kobayashi


Kay Mukaigawa

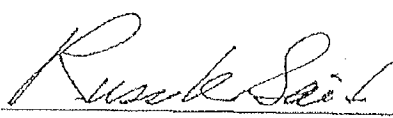

Dexter Okada


for Brennon Morioka


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Georgina K. Kawamura

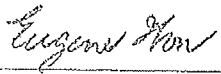


Theodore E. Liu



Russ K. Saito

Approved as to form for the Authority by
the Department of the Attorney General,
State of Hawaii:



By: Eugene Won
Deputy Attorney General

EXHIBIT "A"

AMENDED AND RESTATED HEARING OFFICER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A MASTER PLAN PERMIT

5/5/2009

Nunc Pro Tunc Order: GGP Master Plan

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Application of)	File No.: PL MASP 13.1.3
)	
GENERAL GROWTH PROPERTIES,)	HEARING OFFICER'S PROPOSED
INC. on behalf of its affiliate VICTORIA)	FINDINGS OF FACT, CONCLUSIONS
WARD, LIMITED)	OF LAW, AND DECISION AND
)	ORDER FOR A MASTER PLAN
For a Master Plan Permit)	PERMIT
_____)	

**AMENDED AND RESTATED HEARING OFFICER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A MASTER PLAN PERMIT**

On April 2, 2008, GENERAL GROWTH PROPERTIES, INC., on behalf of its affiliate, VICTORIA WARD, LIMITED ("Petitioner" or "VWL"), submitted an application for a master plan, pursuant to chapter 206E of the *Hawai'i Revised Statutes* ("HRS") and chapter 15-22 of the *Hawai'i Administrative Rules* ("HAR"), to obtain a master plan permit for approximately 59.96 acres of land in the Kaka'ako Community Development District, Oahu, Hawai'i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-052: 034, 2-1-052: 035, 2-1-052: 036, 2-1-052: 038, 2-1-052: 039, 2-1-052: 040, 2-1-052: 042, 2-1-052: 043, 2-1-052: 045, 2-1-052: 046, 2-1-052: 051, 2-1-052:

5/5/2009

Nunc Pro Tunc Order: GGP Master Plan

052, 2-1-052: 053, 2-1-053: 001, 2-1-053: 030, 2-3-002: 001, 2-3-002: 067, 2-3-002: 086, 2-3-002: 087, 2-3-002: 104, 2-3-003: 022, 2-3-003: 094, 2-3-005: 013, 2-3-005: 014, 2-3-005: 015, 2-3-005: 016, 2-3-005: 017, 2-3-005: 019, and 2-3-005: 022 (collectively, the "Master Plan Area") for the Ward Neighborhood Master Plan ("Master Plan").

The Hawai'i Community Development Authority ("Authority"), having heard and examined the testimony, evidence, and argument of counsel during the hearings, along with Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, filed on January 2, 2009, and Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, filed January 6, 2009, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

FINDINGS OF FACT

1. On April 2, 2008, Petitioner on behalf of its affiliate submitted its Application for the proposed Master Plan. See Exhibit 1 (Letter, from Petitioner, dated April 2, 2008). VWL is the landowner of portions of the properties described above. Portions of the properties described above are also owned by Bank of Hawaii Trust Nos. 89433 and 89434, and by First Hawaiian Bank Trust Nos. 200601 and 200602. The beneficiary for all four trusts is VWL. See Petitioner's Exhibit 7 (Letter, dated September 5, 2008, from Petitioner to the Authority).

2. On April 16, 2008, the Authority placed on its website portal a webpage to receive public comments on the Master Plan.
3. On May 28, 2008, the Authority requested the submission of additional items to complete the Application. See Petitioner's Exhibit 12 (Letter, dated May 28, 2008, from the Authority to Petitioner/VWL).
4. On May 28, 2008, the Authority organized an open house meeting at the Honolulu Design Center, Cupola Theatre Room to provide public discussion regarding the Master Plan.
5. On May 28, 2008, the Limehouse website link was activated through PBR Hawaii's website to receive comments for the Master Plan.
6. On June 14, 2008, the Authority created a telephone comment line to allow the public to call in their comments to the Master Plan.
7. On July 3, 2008, the Authority received a letter from the Native Hawaiian Legal Corporation dated July 3, 2008, stating that the Authority should require the completion of the environmental assessment or environmental impact statement prior to decision making on the Master Plan.
8. On July 7, 2008, the Authority mailed approximately 11,000 flyers through the Authority's Connections mailing list to solicit comments to the Master Plan.
9. On July 11, 2008, Petitioner submitted the additional items to the Authority.

10. On July 16, 2008, the Master Plan was deemed to be complete.
11. On July 24, 2008, the Authority received a letter from Victoria Ward, Limited responding to the Native Hawaiian Legal Corporation's letter dated July 3, 2008.
12. On September 3, 2008, the Authority formed a committee ("GGP Committee") to review the Master Plan and make its recommendations to the Authority.
13. On September 12, 2008, Petitioner submitted an Addendum to the Authority, which included the items previously submitted in July 11, 2008, as well as additional information and clarification on certain items. See Petitioner's Exhibit 4 (Addendum).
14. On September 15, 2008, the Authority's staff issued its Master Plan Findings.
15. On September 30, 2008, Petitioner issued its response to the Master Plan Findings.
16. On October 3, 2008, the Authority received Mr. Edward Halealoha Ayau's request for a contested case hearing and petition for intervention on the Master Plan.
17. On October 15, 2008, the Authority held a public hearing at the Honolulu Design Center, Cupola Theatre Room. The Authority members received testimony from the general public.

18. On October 16, 2008, the Authority received Mr. Ayau's clarification to his request for a contested case hearing.

19. On November 5, 2008, by a majority vote of those members entitled to vote thereon, the Authority (a) set the Master Plan for a contested case hearing, (b) adopted procedures to govern the contested case proceeding, (c) established December 17, 2008 as the date for contested case hearing, (d) established January 14, 2009 as the date for the Authority to take action on the Master Plan, and (e) appointed Curtis Tabata, Esq. to serve as the hearing officer for the contested case hearing.

20. By letter dated November 7, 2008, the Office of Planning, State of Hawai'i, declined to intervene as a party in the contested case hearing.

21. On November 17, 2008, the Notice of Hearing for the contested case hearing was published in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, The Maui News and Kauai Publishing Company dba The Garden Island.

22. The deadline for filing petitions for intervention was on November 28, 2008 and the only petition received was filed by Mr. Ayau.

23. On December 1, 2008 a prehearing conference was held at the Authority's offices at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813. J. Douglas Ing, Esq. and Brian A. Kang, Esq. appeared for the Petitioner, and Alan Murakami, Esq. appeared for Mr. Edward Halealoha Ayau.

24. On December 8, 2008, the Authority received a letter from Mr. Ayau indicating that a settlement was reached between Mr. Ayau and Petitioner, and that Mr. Ayau withdraws his request for a contested case hearing with prejudice. An executed Settlement Agreement dated December 4, 2008 was also included with the letter.

25. On December 11, 2008, the Authority received a letter from Petitioner confirming the settlement with Mr. Ayau.

26. On December 17, 2008, the hearing on Mr. Ayau's petition for intervention was conducted, at which time Mr. Ayau, through his legal counsel, David Frankel, Esq., confirmed the Settlement Agreement with Petitioner and Mr. Ayau's withdrawal of his request for a contested case hearing.

27. On December 17, 2008, the contested case hearing on the Master Plan was held at the Authority's offices at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813. The hearing was continued until December 18, 2008. J. Douglas Ing, Esq. and Brian A. Kang, Esq. appeared for the Petitioner.

28. On December 18, 2008, the continued contested case hearing was held at the Authority's offices to accept Petitioner's offer of Petitioner's exhibits numbered 1, 2, 3, 4, 5, and 6. Having admitted said exhibits, the contested case hearing was closed on December 18, 2008.

29. On December 29, 2008 the contested case hearing was re-opened for the purpose of accepting Petitioner's offer of Petitioner's supplemental exhibits number 7,

8, 9, 10, 11, and 12. Having admitted said supplemental exhibits, the contested case hearing was closed on January 2, 2009.

30. On January 2, 2009, Petitioner filed Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

31. On January 6, 2009, the Hearing Officer filed Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

32. On January 7, 2009, the GGP Committee neither submitted a report, nor offered anything to supplement the evidentiary record in the contested case hearing as the Authority set the Master Plan for a contested case hearing subsequent to the GGP Committee's formation.

33. On January 14, 2009, the Authority held its portion of the contested case hearing to consider the Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit submitted by the Hearing Officer and Petitioner, respectively, and to take action on the Master Plan application.

Master Plan Overview

34. The Authority's rules regarding master planning are designed to encourage investment in new development and commitment to master planning of large land holdings. See HAR § 15-22-200(a).

35. Master plans are intended to encourage timely development, reduce the economic cost of development, allow for the orderly planning and implementation of

public and private development projects, and provide a reasonable degree of certainty in the development approval process. See id.

36. Through the master planning process, a developer can obtain assurances that proposed projects within the Kaka'ako Mauka area that are in accordance with the Authority's Mauka Area Rules in effect at that time will not later be restricted or prohibited by subsequent changes to those rules. See HAR § 15-22-200(c). Master planning also provides a developer with greater flexibility than would otherwise be possible through typical lot-by-lot development. See HAR § 15-22-200(d).

37. In exchange for these assurances and greater flexibility, the master planning process allows the Authority to negotiate with the developer to provide public benefits which are generally provided by the government. See HAR § 15-22-200(b).

Description of the Master Plan Area

38. The Master Plan Area consists of approximately 59.96 acres of land located in the Kaka'ako Community Development District, Oahu, Hawai'i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-052: 034, 2-1-052: 035, 2-1-052: 036, 2-1-052: 038, 2-1-052: 039, 2-1-052: 040, 2-1-052: 042, 2-1-052: 043, 2-1-052: 045, 2-

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39. The Master Plan Area is owned in fee simple by or held in trust for the exclusive benefit of Victoria Ward, Limited, an affiliate of General Growth Properties, Inc.

40. The Master Plan Area is bordered on the mauka side by Queen Street and Halekauwila Street, on the Diamond Head end by Queen Lane and residential towers, on the 'Ewa side generally by 'Ohe Lane, and on the makai side by Ala Moana Boulevard. Smaller parcels are located between Queen and Waimanu Streets, and on the corner of Kapi'olani Boulevard and Ward Avenue. A Master Plan Boundary Map is attached hereto as Exhibit "A".

41. Urban areas adjacent to the Master Plan Area include Downtown Honolulu, the Ala Moana and Kaka'ako Waterfront regional parks, the Ala Moana Center, Kewalo Basin, office buildings, and residential towers.

42. The Master Plan outlines several sustainability strategies. These include energy conservation, sustainable energy supply, lowering energy demand, creating a pedestrian supportive environment, reducing water consumption, and recycling. The Master Plan does not describe how these strategies will be incorporated into each individual project. Without preparing detailed designs for specific projects it is difficult

to identify how some of the sustainability concepts will be implemented in the Master Plan area. The details of how sustainability and energy efficiency and conservation will be integrated are not necessary for the master plan application. These details of Petitioner's sustainability strategy shall be provided to the Authority at the time of each planned development or base zone permit application.

43. Businesses may be displaced by the development within the Master Plan Area.

44. One of the public benefits to be derived from a master plan is the provision of relocation assistance by the Petitioner. See HAR § 15-22-200(b).

45. The importance of adequate and attractive recreational areas and facilities suitably located to residents, patrons, and workers was recognized by the Mauka Area Plan. See Mauka Area Plan at Page 53.

46. **Land Uses/Area:** The Master Plan proposes a mixed-use development including residential, retail, office, commercial, and industrial uses, for a total floor area of 9,334,240 square feet, with a floor area ratio ("FAR") of 3.8. It is a long range plan that would span over more than 20 years, potentially including 10-15 different phases. The phasing and mix of uses developed under the Master Plan will depend on changing market and social conditions. See Exhibit 1 (Application), at 19-55; Exhibit 5 (Staff Findings), at 3-4. Specifically, the maximum floor area requested for each use is:

- Residential -- 7.6 million square feet

- Retail, Restaurants & Entertainment -- 5 million square feet
- Office/Commercial/Other -- 4 million square feet
- Industrial -- 736,914 square feet

Although this is the maximum floor area requested for each use, Petitioner is requesting that the allocation of floor area for each use be flexible to accommodate changing market conditions and the evolving needs of the community. See Exhibit 6 (Petitioner's Response to Staff Findings), at 2. In no instance, however, is Petitioner intending to develop all commercial spaces without any residential components. See id. In fact, residential uses are an important component of the Master Plan. See id.

47. **Urban Design Objectives:** The Master Plan proposes a pedestrian-friendly, smart-growth community, where its residents can live, work, and play. See Petitioner's Exhibit 1 (Application), at 19-26.

48. **Streetscapes:** Major design objectives of the Master Plan include connected public spaces, a pedestrian supportive environment including the redesign of Auahi Street as a landscaped promenade, preservation of Mauka-Makai view corridors and an enhanced roadway network with canopy trees and pedestrian amenities. See Petitioner's Exhibit 5 (Staff Findings), at 3. To mitigate the unsightliness of structured parking, the Plan anticipates extensive use of "liners" which are buildings designed to have aesthetically pleasing facades and to provide interaction with pedestrian traffic at ground level. See id.

49. **Open Space:** Approximately 245,638 square feet are proposed for open space. See id.; Petitioner's Exhibit 4 (Addendum), at 19; Exhibit 6 (Petitioner's Response to Staff Report), at 2.

50. **Ward Neighborhood Commons:** The Central Plaza described in the Master Plan will be designed and developed as flexible spaces that accommodate a range of occasional activities or events and allow separate activities to be enjoyed in relative privacy without disturbing adjacent areas. This area will be designated as and allow for public gathering and multiple "unprogrammed spaces". Unprogrammed spaces do not rely on active participation, but rather accommodate it. Unprogrammed spaces accommodate change of use over time, as the needs or interests of the surrounding community who use the space change.

51. The area shall be controlled by Petitioner and used alternately as a forum of respite and passive gatherings, community and commercial activities, events and celebrations. Individuals (whether neighborhood residents, commercial tenants and their customers or the general public), small groups, or by design, throngs of people, might engage in a variety of passive activities in this area, which is not dependent on the delineated area having to be designed for specific activities.

52. The area will be defined by appropriate landscaping and hardscape treatments, and will have a park-like appearance. Pedestrian walkways or paths, seating areas, water features, gazebos, a venue for outdoor entertainment and

supplementary commercial uses may be included as part of the hardscape improvements.

53. This "commons" will be located in the area currently identified as the "Central Plaza" in the Master Plan and will be designated as the "Ward Neighborhood Commons" or other appropriate name that reflects the focal nature of the commons.

54. **Transportation:** To support the travel needs of people living in, working in, and visiting the area, the Master Plan will feature multi-modal systems, a mix of programs and infrastructure proposals to increase transit ridership, improve the pedestrian and bicycle environment, and minimize traffic congestion overall. Improved street connectivity, traffic calming devices, and reduction on the reliance of vehicles are all included in Petitioner's proposed Master Plan. See Petitioner's Exhibit 1 (Application), at 73-80.

55. The proposed roadway system will close segments of Ahui Street (Mauka), Kamani Street (between Auahi and Halekauwila Streets), and Auahi Street (between Kamani and Ward Avenue) and the Halekauwila couplet proposed in the Mauka Area Plan. See Petitioner's Exhibit 5 (Staff Findings), at 3.

56. In place of these streets and to improve connectivity, the Master Plan proposes new streets including 'Ehiku, 'Elua, 'Eko'u, 'Ekahi Streets, an extension of Pohukaina Street to Ward Avenue, and streets around the Central and 'Ewa Plazas. See id.; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

57. 'Ehiku, 'Elua, 'Ekolu, 'Ekahi Streets, located adjacent to the Central and Ewa Plazas, are not consistent with the Mauka Area Plan.

58. The proposed development of an extension of Pohukaina Street to Ward Avenue is consistent with the Mauka Area Plan.

59. The Honolulu High-Capacity Transit Corridor Project has identified a preferred route and station in the Master Plan area. The precise alignment and exact station location is unknown at this time. See Petitioner's Exhibit 5 (Staff Findings), at 4; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

60. **Building Envelopes:** The Master Plan proposes a mix of mid-rise and high-rise development ranging from a mid-rise podium of 65 feet to 400 foot high-rise towers. The development is circumscribed around three public plazas, with Auahi Street serving as a spine connecting the plazas. See Petitioner's Exhibit 5 (Staff Findings), at 4; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

61. **Public Facilities:** Petitioner is proposing to dedicate 225,678 square feet of land for public facilities. These lands will include new streets (including typical sidewalks), pedestrian walkways (in addition to typical sidewalks), public plazas, and a mass transit connection. Petitioner is proposing to dedicate another 104,375 square feet of land for public facilities, or pay a cash equivalent to offset the costs of constructing upgraded infrastructure, utilities improvements, and parking. See Petitioner's Exhibit 5 (Staff Findings), at 4; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

62. Modifications to Mauka Area Rules: Petitioner has identified the following necessary modifications to the Mauka Area Plan to achieve the vision of the Master Plan:

- Increase the maximum podium or street front element height from 45 feet to 65 feet for parcels fronting Ala Moana Boulevard and to 75 feet for all other parcels not directly fronting Ala Moana Boulevard, which will allow retail, restaurants and residential units to be built within the podium and parking structures to be moved up and away from the street, creating a more aesthetically pleasing and pedestrian friendly facade;
- Eliminate the 1:1 setback slope from 20 feet to 45 feet in the building height along Ala Moana Boulevard, Ward Avenue, Kamake'e Street and Queen Street, which will allow for development of a continuous building facade that better defines the edge of the street;
- Eliminate the 75-foot view corridor setback for towers along Ala Moana Boulevard that have a Mauka-Makai orientation, which will allow for the tower footprint to be rotated perpendicular to the ocean, in a Mauka-Makai direction, to enhance ocean and mountain views;
- Allow for the development of a mid-rise or mid-height element without a maximum floor plate restriction where the maximum

building height is no more than 240 feet and the separation between the buildings is at least 60 feet, which allows for a more evenly distributed building mass and reduces the number of towers needed to achieve the density proposed for this area; and

- Preserve all modifications and variances previously granted for the ~~Ward Village Shops project in Land Block 3~~ in order to complete and include it in the Master Plan framework.

See Petitioner's Exhibit 5 (Staff Findings), at 5; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings), at 121-24. Petitioner requests that these modifications be granted as part of the approval of the Master Plan.

63. Amendments to Mauka Area Plan: Petitioner has identified the following necessary amendments to the Mauka Area Plan to achieve the vision of the Master Plan:

- Deletion of the Halekauwila Extension shown in the Mauka Area Plan on the East side of Ward Avenue connecting to Queen Street to be replaced by a street parallel to Queen Street between Ward Avenue and Kamake'e Street, which will enhance pedestrian and vehicular connectivity in the area and break down a larger block into smaller, more walkable, blocks;

- Deletion of the park/parking garage facility designation along the Halekauwila Extension contained in the Mauka Area Plan; and
- A single "mixed-use" land use designation for VWL-owned lands, instead of the "mixed-use commercial" (MUZ-C) and "mixed-use residential" (MUZ-R) land use designations, which will allow more flexibility in designing and developing the mixed use community that is proposed under the Master Plan.

See Petitioner's Exhibit 5 (Staff Findings), at 5, 21; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings), at 7-8. Petitioner intends to process an application requesting these amendments subsequent to approval of the Master Plan and prior to application for development permits. If Petitioner's application for a Mauka Area Plan amendment to delete the park / parking garage facility designation along the Halekauwila Extension is approved, Petitioner, to mitigate any loss of park space, will provide an area equal to the actual amount of park space lost, but no more than 30,000 square feet for park space to be located in the open space of the 'Ewa Plaza located in block 5, shown in the Proposed Open Space Plan on page 19 of Petitioner's Master Plan Application Addendum (dated September 12, 2008). This park space would be controlled by Petitioner and dedicated through a perpetual easement for public use gathering areas.

64. The Authority's Mauka Area Rules require that the following be considered in reaching a determination for master plan approval:

- The nature of the proposed master planned area and proposed developments therein in terms of size, use, density, general bulk and height of structures, setbacks, required open space and recreation areas, the location and amount of residential uses including reserved housing units, and on-site parking;
- The relationship between structures and use within structures, building orientation, deck level activities, and preservation of view corridors;
- Whether the pedestrian and vehicular circulation system is so designed as to provide an efficient, safe, and convenient transportation system;
- The appropriateness of the public benefits to be provided and the adequacy of provisions for the delivery of those public benefits;
- The appropriateness of any proposed exception to the applicable development rules which are needed to implement the master plan;
- The appropriateness for providing greater development flexibility for the purpose of attracting investment capital into the area and

encouraging timely redevelopment and better overall planning for the area; and

- Any other matter which the Authority deems appropriate.

See HAR § 15-22-205(a).

65. The Authority's Mauka Area Rules require that the proposed master plan be consistent with the provisions of the Mauka Area Rules and Mauka Area Plan in effect on the date of master plan approval. See HAR § 15-22-205(b).

66. **Nature of the Proposed Master Planned Area & Consistency with Development Rules:** The nature of the proposed Master Plan is generally consistent with the Mauka Area Plan and Rules, as set forth below.

67. Land Use and Mixed Use Concept: The Application proposes residential, retail, commercial, and industrial uses. These uses are expressly permitted under MUZ-C and MUZ-R zoning, set forth in HAR §§ 15-22-32 and 15-22-34, respectively. The Application also proposes uses that are mixed vertically and horizontally, as contemplated by the Mauka Area Plan, pages 3-4, and HRS Chapter 206E.

68. HAR § 15-22-113 requires different mixes of land use and controls the proportion of commercial and residential uses that can be developed for larger projects. Based on the total land area encompassing the Master Plan, the Mauka Area Rules allow a maximum of 4,008,092 square feet of retail, restaurant, & entertainment,

office/commercial/other floor area, and 9,334,240 square feet of residential development.

The Master Plan proposes the following maximum floor areas:

- Residential -- 7.6 million square feet
- Retail, Restaurants & Entertainment -- 5 million square feet,
- Office/Commercial/Other -- 4 million square feet
- Industrial -- 736,914 square feet

See Petitioner's Exhibit 5 (Staff Findings), at 10; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

69. Density/Floor Area: HAR § 15-22-116 allows a maximum density of 3.5 FAR for projects with a minimum land area of 80,000 square feet. This section also provides the 0.3 FAR bonus for any planned development that provides industrial use, among other uses. The Master Plan proposes 9,334, 240 square feet of floor area on approximately 59.96 acres of land (total land area available for floor area allocation is 56.39 acres and excludes existing streets that are owned by VWL but cannot be considered development lots). This translates to a density of 3.8 FAR, including a bonus of 0.3 FAR. The proposed density is consistent with the Mauka Area Plan and Rules. See Petitioner's Exhibit 5 (Staff Findings), at 11; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

70. The maximum floor area allowed within the Kaka'ako Community Development District at full build out is as follows:

- Residential -- 17.1 million square feet
- Commercial -- 13.7 million square feet
- Industrial -- 5.3 million square feet
- TOTAL -- 36.1 million square feet

At full build out, the Master Plan includes 9.33 million square feet of floor area. Even at full build out, the Master Plan will encompass only 26% of the total projected density for the Kaka'ako Community Development District. See Petitioner's Exhibit 5 (Staff Findings), at 11-12.

71. Height: HAR § 15-22-116 provides for a maximum height allowance of 400 feet for projects with a minimum of 80,000 square feet of land. The Master Plan proposes to construct towers of a range of heights with a maximum of 400 feet. The Master Plan proposes towers that are in conformance with the Mauka Area Plan and Rules. See Petitioner's Exhibit 5 (Staff Findings), at 12-13.

72. Urban Form: Urban form refers to the physical layout and design of a development. A major focus of the Master Plan is to create gathering places in the neighborhood. It also attempts to improve the pedestrian experience and foster an urban village lifestyle. Much of the off-street parking will be located in parking structures, which are proposed to be screened from view by retail/office and residential liners, up to the 65-foot or 75-foot level, depending on the location. The retail use at the street level will promote pedestrian activity. The proposed design concepts will

significantly improve the quality of the urban environment. Many of the platform levels will also include a certain amount of landscaping to serve as resident and employee recreation areas. The urban form proposed by the Master Plan consists of creating public spaces, pedestrian promenades, parking podiums with liner facades, and towers ranging from 105 to 400 feet in height, creating a varied skyline.

73. Reserved Housing: One of the goals of HRS Chapter 206E is 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” addressing, among other things, “a lack of suitable affordable housing.” See HRS § 206E-1. Along these lines, HRS § 206E-33 outlines development guideline policies, which includes the “integration both vertically and horizontally of residents of varying incomes, ages, and family groups; and an increased supply of housing for residents of low- or moderate-income” The Mauka Area Rules require that a developer “provide at least twenty per cent of the total number of dwelling units in the development for sale or rental to qualified persons....” See HAR § 15-22-115(a). The Mauka Area Rules also allow a cash payment in lieu of the reserved housing, with a maximum payment equivalent to the 20% reserved housing requirement. The Mauka Area rules establish that the development of at least the 20% requirement fulfills the reserved housing policy. See HAR § 15-22-115(c).

74. Under the Mauka Area Rules, Petitioner would be required to set aside 20% of its total residential units for reserved housing to families whose annual income is no more than 140% of the annual area median income. Under the Master Plan, Petitioner has proposed to meet the 20% reserved housing requirement by providing the units on- or off-site within Kaka'ako, or elsewhere as permitted. While the current requirement is to build reserved housing for families whose incomes are no more than 140% of the annual median household income, Petitioner has offered to provide 10% (or one-tenth) of the units that will fulfill the reserved housing requirement for families at 100% of the annual median household income. The amount of reserved housing units proposed by the Master Plan is consistent with the Mauka Area Plan and Rules. See Exhibit 1 (Application), at 21, 119; Exhibit 6 (Petitioner's Response to Staff Findings).

75. The reserved housing unit mix, as well as the provision for delivery of the reserved housing, need not be determined at the master planning stage; instead, these issues are more appropriately determined at the project development stage.

76. Open Space: Open space is a portion of a development lot, exclusive of required setbacks and parking areas, that is open and unobstructed by any structures above, is an area that is landscaped and maintained as a recreational or social facility, and cannot be used for driveways, loading areas, storage, or parking. HAR § 15-22-64(c)(1) requires that 10% of a development lot be set aside as open space. The Master Plan provides 253,737 square feet of open space, which is 10% of the development lots,

and is consistent with the Mauka Area Plan and Rules. See Petitioner's Exhibit 5 (Staff Findings), at 13.

77. Recreation Space: Recreation space is a portion of a development lot, exclusive of required setbacks and parking areas, that is set aside and designed for the exclusive use of residents, employees, or visitors. The recreation space can be an outdoor or indoor space and can be provided on any floor within the building. HAR § 15-22-65 requires that fifty-five square feet of recreation space be provided for each dwelling unit being proposed. The Master Plan proposes to provide 253,737 square feet of recreation area for residential use, which is consistent with the Mauka Area Plan and Rules.

78. Parking: HAR § 15-22-67 imposes certain off-street parking requirements. The Master Plan proposes 9,600 parking stalls, which satisfies the Mauka Area Plan and Rules requirements. Additionally, the Master Plan proposes a shared parking concept, which allows for various stalls to be shared among residents and commercial users. The shared parking idea is consistent with the Mauka Area Plan and Rules, though more details of such a plan can be developed prior to the approval of the first development permit under the Master Plan. See Petitioner's Exhibit 1 (Application), at 82; Petitioner's Exhibit 5 (Staff Findings), at 16.

79. Off-Street Loading: At a master plan application level, specific details on off-street loading requirements for each project are not required. Determination for

loading area requirements can only be made at the time a base zone development or planned development permit application is submitted. Each development within the Master Plan will be required to meet the loading area requirements of the Mauka Area Rules. See Petitioner's Exhibit 5 (Staff Findings), at 14.

80. **Relationship Between Structures and Uses, including Building Orientation & View Corridor Preservation, Consistent with Development Rules:**

Petitioner is proposing two major Mauka-Makai view corridors: (1) Ward Avenue; and (2) Kamake'e Street. A view corridor is an important community resource and allows residents and visitors alike to experience mountain and ocean perspectives. See Petitioner's Exhibit 5 (Staff Findings), at 9. The Petitioner's proposed view corridors are consistent with the Mauka Area Plan and Rules.

81. **Efficient, Safe, and Convenient Pedestrian and Transportation System:**

The Master Plan generally proposes the following improvements that are designed to provide an efficient, safe, and convenient transportation system. Some of the components or improvements will need to be further detailed and analyzed at the individual development permit stage.

82. **Vehicular Circulation:** The proposed vehicular circulation system of the Master Plan includes various roadway improvements, traffic management, parking management, transit integration, and a pedestrian-friendly environment. A mixed use, live-work-play development, such as that proposed under the Master Plan, would

support a pedestrian environment and reduce the need for residents to use their vehicles. The proposed vehicular circulation system eliminates the Halekauwila Street extension, which was provided for in the Mauka Area Plan and Rules, and replaces it with a street parallel to Queen Street that would run between Ward Avenue and Kamake'e Street. An amendment to the Mauka Area Plan will need to be approved by the Authority.

83. The traffic issues in Kaka'ako, however, are not just a product of development within Kaka'ako. Because of its central location between the downtown business district and Waikiki visitor district, any development outside of Kaka'ako will impact traffic within Kaka'ako. It appears that a regional traffic study is necessary before a determination on the adequacy of the proposed transportation strategies can be made. It is thus appropriate for Petitioner to conduct a regional traffic study prior to the submission of a development permit application for the first individual project. In addition, at the individual development permit stage, it is appropriate for Petitioner to conduct traffic impact assessments for individual development projects. See Petitioner's Exhibit 5 (Staff Findings), at 14-15.

84. Pedestrian Circulation: The Master Plan proposes several enhancements to pedestrian circulation within the district in the form of street improvements to Auahi Street, Ward Avenue, Kamake'e Street, and Pohukaina Street. Auahi Street is being proposed as a major landscaped, pedestrian friendly street. In addition to the street

improvements, the Master Plan includes several public plazas and open spaces that are connected to Auahi Street. Retail and commercial liners have been proposed along major streets that would hide the parking structures behind them. The buildings and public plazas will be linked by a street system that is designed to accommodate pedestrians. The Master Plan's proposed pedestrian circulation system is consistent with the goals of the Mauka Area Plan and Rules. See Petitioner's Exhibit 5 (Staff Findings), at 15.

85. High Capacity Transit Corridor and Station: The City and County of Honolulu's ("C&C") High Capacity Transit proposal could have a major impact on the proposed Master Plan. The C&C's current preferred transit route is situated within the Mauka portion of the master plan area. The proposed location of the transit station will influence access to residential areas and places of employment. Petitioner and the C&C have been engaged in discussions regarding the precise alignment and exact location for the transit station within the Master Plan area, and will continue to do so. As part of individual project development permit applications for this area, a more detailed transit route and station location shall be addressed and incorporated. See Petitioner's Exhibit 5 (Staff Findings), at 15-16.

86. Bike Plan: HAR § 15-22-71(b) provides in relevant part that "[p]ublic or private...bicycle circulation paths may be required where appropriate in conjunction with development projects." The Master Plan proposes bicycle networks along

Pohukaina Street, Ward Avenue, Ala Moana Boulevard, Auahi Street, and Kamake'e Street. It also proposes bicycle lockers and racks to be located along these streets. Detailed bicycle facilities plans must be submitted in conjunction with individual development permit applications. See Petitioner's Exhibit 5 (Staff Findings), at 17.

87. **Public Benefits:** The public benefits described below are consistent with the Mauka Area Plan and Rules. These public benefits enhance the surrounding communities and provide a benefit to the residents of the area, as well as the general public.

88. **Pedestrian Friendly Street Network:** The Master Plan proposes the development of Auahi Street as a pedestrian friendly promenade. A promenade is typically an open and level area where people can stroll and enjoy pedestrian activities. Creation of an Auahi Street promenade represents a positive urban design feature that will support and enhance existing and planned retail businesses at the street level. Moreover, because it is unlikely that Ala Moana Boulevard will be developed as a significant pedestrian corridor in the future, the promenade will represent an alternative pedestrian route together with a significant retail experience. Most major streets within the Master Plan area, including Ward Avenue and Kamake'e Street, are proposed to be pedestrian supportive environments. Petitioner's inclusion of promenades into the urban form of the Ward Neighborhood is thus consistent with the

intent of, though not required by, the Mauka Area Rules and Plan. See Petitioner's Exhibit 6 (Staff Findings), at 8.

89. Public Facilities Dedication: HRS Chapter 206E requires the Authority to establish rules for public facilities dedications, See HRS § 206E-12, and sets the definition of "public facilities" as follows:

"Public facilities" includes streets, utility and service corridors, and utility lines where applicable, sufficient to adequately service developable improvements in the district, sites for schools, parks, parking garage, sidewalks, pedestrian ways, and other community facilities. "Public facilities" shall also include public highways, as defined by statute, storm drainage systems, water systems, street lighting systems, off-street parking facilities, and sanitary sewerage systems.

See HRS § 206E-2(7) (emphasis added)

90. The Authority's rules require that a developer "dedicate land for public facilities for the joint use by the occupants and employees of the development as well as by the public" and that the dedication be "subject to the maximum ceiling in land or money in lieu thereof calculated in accordance with the formula designated in subsections (d) to (f) herein." Haw. Admin. R. § 15-22-73(b) (emphases added).

Subsection (d) sets the formula for dedication as follows: "The amount of land area required to be dedicated for public facilities shall be equal to: (1) Three percent of the total commercial and community service floor area...; and (2) Four percent of the total residential floor area of the development." HAR § 15-22-73(d). In lieu of land dedication, the Authority's rules also permit the payment of a fee equal to the fair market value of the land area otherwise required to be dedicated. See HAR § 15-22-73(e) (emphasis added).

91. Under the Authority's rules, Petitioner is required to provide a total of 330,053 square feet of land for public facilities, or a cash equivalent. The Master Plan proposes to set aside 225,678 square feet of land in the form of improved roads, sidewalks, and public plazas. To meet the remaining requirement of 104,375 square feet, the Master Plan proposes community facilities, utility and infrastructure improvements, and public parking. See Exhibit 1 (Application), at 119; Petitioner's Exhibit 4 (Addendum), at 18; Exhibit 5 (Staff Findings), at 18-19; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings).

92. The Master Plan will eliminate the park on parking garage located along the Halekauwila couplet in the Mauka Area Plan.

93. The Master Plan does not propose to provide any dedicated public park to replace the loss of the park on parking garage.

94. The Mauka Area Plan notes that the Mauka Area lacks recreational facilities. See paragraph 3, page 47, Mauka Area Plan.

95. The Mauka Area Plan specifies that a neighborhood park of two to five acres in size would be necessary to serve the residential population of 5,000. See Figure 17, page 55, Mauka Area Plan.

96. The Master Plan proposes to develop as much as 4,300 units in the Master Plan area.

97. The Mauka Area Plan anticipates that public dedicated parks will be developed by the private sector. See Figure 28, page 109, Mauka Area Plan.

98. The Master Plan proposes to develop as much as 4,300 units in the Master Plan Area. The Plan does not discuss the impact of this new residential population on and the need for public school facilities.

99. The development of 4,300 residential units in the Master Plan Area represents 23% of the total residential units anticipated in the Mauka Area Plan. See Residential Standards Study, page 75, Mauka Area Plan.

100. The development of as many as 4,300 residential units in the Master Plan Area may result in up to 506 residents of elementary school age. See Public Facilities Proposal, page 85, Mauka Area Plan.

101. Additional Public Benefits: Besides the foregoing, implementation of the Master Plan will result in several other public benefits. These public benefits will be in

the form of new public spaces, parks and streets and infrastructure improvements.

Approximately \$300 million in street, infrastructure, and utilities improvements will be invested. It is estimated that the overall development will generate approximately \$8 billion in revenue for the State economy.

102. Modification of 75 foot tower setback -- The modification of the 75-foot tower setback requirement for buildings along Ala Moana Boulevard will allow the orientation of buildings in a Mauka-Makai direction, thereby facilitating a slender building profile, enhancing ocean and mountain views and maximizing visual transparency throughout the area. The existing 75-foot tower setback for buildings along major roadways could encourage the construction of structures along Ala Moana Boulevard in an 'Ewa to Diamond Head direction, potentially blocking view planes. The 75-foot tower modification would allow the tower footprint to be rotated perpendicular to the ocean, so that the narrow part of the footprint would face the ocean. See Petitioner's Exhibit 4 (Addendum), at 38-39.

103. Modification to podium heights -- The Master Plan proposes increasing the maximum podium height from 45 feet to 65 feet for parcels fronting Ala Moana Boulevard, and from 45 feet to 75 feet for other parcels not directly fronting Ala Moana Boulevard. Increasing the podium height allows for retail, restaurants, office and residential units to be built within the podium. The additional podium height offers the opportunity to move a parking structure up and away from the street, occupying a

smaller floor plate and making room for alternative uses. These new uses can then surround the garages. See Petitioner's Exhibit 4 (Addendum), at 36-37.

104. Modification to podium setback -- The Master Plan proposes to eliminate the 1:1 setback slope defined as a 20-foot to 45-foot slope in building height along Ala Moana Boulevard, Ward Avenue, Kamake'e Street and Queen Street. This would allow a more continuous urban street front with greater usable building density brought closer to ground level and a façade that would better define the edge of the street. See Petitioner's Exhibit 4 (Addendum), at 37-38.

105. Modification with respect to Mid-Rise or "Mid-Height Element" -- The Master Plan proposes the introduction of the "Mid-Height Element" as a building type, without a maximum floor plate restriction, with a maximum height of 240 feet and with a minimum separation of 60 feet between buildings. This could effectively replace one 400-foot tower with two 240-foot mid-rise buildings, which would create more favorable view angles within the Master Plan Area and reduce the number of towers needed to achieve the proposed density in Master Plan Area. In addition, this would allow the building mass to be distributed more evenly among different parcels.

106. As described in detail on pages 36 through 41 of Petitioner's Master Plan Application Addendum (dated September 12, 2008), the foregoing modifications proposed in the Master Plan: (a) will result in a development that is consistent with the intent of the Mauka Area Plan and Rules; (b) will provide flexibility for different uses

and various design strategies noted in the Master Plan, including concealed parking structures and pedestrian-friendly facades, which will result in a development that is practically and aesthetically superior to one which could be accomplished without such modifications; (c) will not adversely affect adjacent developments or uses; and (d) are necessary to implement the mixed-use, live-work-play neighborhood vision of the Master Plan and Mauka Area Plan.

107. **Appropriate Opportunity for Providing Greater Development Flexibility, Attracting Investment Capital, and Encouraging Timely and Better Overall Development:** The Master Plan application establishes a template for an orderly and methodical development of a large section of the Kaka'ako Community Development District. Redevelopment of Kaka'ako is a primary objective of HCDA. The Master Plan will promote much-needed economic development for the whole State of Hawaii in terms of new job creation and an increased tax base.

108. The Master Plan, over a 20-30 year development period, is expected to create 17,300 on-site construction jobs and 16,270 off-site construction related jobs. The total construction and construction related payroll for the development period is estimated to be approximately \$1.3 billion. At full build out, it is estimated that the Master Plan development will generate 7,800 full-time professional and service jobs and generate \$345 million in annual payroll. Estimates indicate that the construction phase of the Master Plan development will inject a total of \$8 billion into the local economy

over the development period. Tax revenue to the State from the construction phase is estimated to be \$370 million in excise tax and \$135 million in income tax. After the development is completed, it is projected that annual revenue to the State in income tax will be approximately \$16.5 million. Similarly, the County government stands to collect approximately \$26 million annually in the form of property taxes. See Petitioner's Exhibit 5 (Staff Findings), at 21-22.

Cultural/Historic Preservation Issues

109. Based on consultation with recognized cultural descendants of the Master Plan area, the State Historic Preservation Division, Oahu Island Burial Council, Office of Hawaiian Affairs, the Ahahui Ka'ahumanu Society, Council for Native Hawaiian Advancement, Hawaii Community Assets, Hui Malama I Na Kupuna E, and other native Hawaiian organizations, see Letter, dated July 24, 2008, from Petitioner to the Authority, no known customary or traditional native Hawaiian rights have been asserted in the Master Plan area. See Petitioner's Exhibit 10 (Letter, dated July 24, 2008, from Petitioner to the Authority).

110. Petitioner has engaged a consultant to prepare an archeological literature review and a predictive model to identify, to the extent possible, culturally sensitive areas where potential burials may exist.

111. To ensure the proper protection and preservation of cultural and historic resources, specifically the protection and preservation of native Hawaiian burials in the

Master Plan area, Petitioner shall prepare: (1) a historic building inventory; (2) a predictive model that is designed to identify locations within the Master Plan area that are likely to contain native Hawaiian burial sites; (3) an archeological inventory survey plan in accordance with HAR § 13-284-5(c), approved by the State Historic Preservation Division of the State of Hawaii, which relies in part on the predictive model and includes consultation with potential lineal or cultural descendants of the Master Plan area, the Oahu Island Burial Council, the Office of Hawaiian Affairs, and other appropriate native Hawaiian organizations; and (4) prior to obtaining individual development permits, an archeological inventory survey for development of specific project sites within the Master Plan area.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner not already ruled upon by the Authority by adoption herein, or rejected by clearly contrary finding of fact herein, are hereby denied and rejected.

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. The Authority has jurisdiction to approve master plan applications and issue master plan permits pursuant to HRS §206E-33.
2. Master plan permits are deemed approved if no decisions are made granting or denying them within 200 days. HAR §15-22-23(a)(1). The 200-day deadline commenced on July 16, 2008 when the Master Plan application was deemed complete. The Master Plan will be deemed approved if no decisions are made granting or denying it by February 1, 2009.
3. "Master plan" is defined as a long-range development plan for an area within the mauka area which describes the overall character of development envisioned within said area and the manner in which development projects will be implemented. HAR §15-22-201.
4. The master plan is "intended to encourage timely development, reduce the economic cost of development, allow for the orderly planning and implementation of public and private development projects, and provide a reasonable degree of certainty in the development approval process." HAR §15-22-200(a).
5. Article XII, Section 7, of the Hawai'i State Constitution requires the State to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of

native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903 P.2d 1246, *certiorari denied*, 517 U.S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

6. The Authority is empowered to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa'akai O Ka'Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

7. The Oahu Island Burial Council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites located in the Master Plan Area is warranted, following criteria which shall include recognition that burial sites of high preservation value, such as areas with a concentration of skeletal remains, or prehistoric or historic burials associated with important individual or events, or areas that are within a context of historic properties, or have known lineal descendants, shall receive greater consideration for preservation in place. HRS §6E-43. The requirements of a request to preserve in place or relocate a Native Hawaiian burial site shall be in the form of a burial treatment plan and is governed by HAR §13-300-33.

8. In the event any human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential

historic site shall cease. The discovery shall be reported as soon as possible to the Department of Land and Natural Resources, the appropriate medical examiner or coroner, and the Honolulu Police Department. HRS §6E-43.6. The Department of Land and Natural Resources has jurisdiction over any inadvertent discovery of human skeletal remains over fifty years old, and the protocol to be followed is set forth in HAR §13-300-40.

9. Petitioner has provided for the Authority's consideration the nature of the proposed master planned area and proposed developments therein in terms of size, use, density, general bulk and height of structures, setbacks, required open space and recreation areas, the location and amount of residential uses including reserved housing units, and on-site parking.

10. Notwithstanding the physical development parameters of the proposed master planned area provided by the Petitioner, each proposed development shall be subject to applicable development rules on a project-by-project basis.

11. A regional traffic study shall be completed by the Petitioner before the Authority considers Petitioner's request for amendments to the Mauka Area Plan and Rules.

12. The Authority may require that the public facility dedication land component be comprised of lands for streets, utility and service corridors, utility lines,

schools, parks, parking garages, sidewalks, pedestrian ways, and other community and public facilities.

13. Petitioner's proposal to modify Mauka Area Rules may be addressed as part of the planned development review process and shall be evaluated under HAR § 15-22-22.

14. Petitioner's proposal to amend Mauka Area Rules shall be addressed pursuant to the Authority's rule making procedure pursuant to HAR §15-16-26, *et. seq.* and HAR §15-22-18.

15. The Authority is authorized to enter into master plan development agreements for the necessary or convenient exercise of its powers and functions under HRS chapter 206E. HRS §206E-4(3).

16. Approving the Master Plan will provide greater development flexibility for the purpose of attracting investment capital into the area and encouraging timely redevelopment and better overall planning for the area.

17. Upon consideration of HRS chapter 206E and the Mauka Area Rules under HAR chapter 15-22 and the facts contained in this Order, and Authority finds upon the clear preponderance of the evidence, that the Master Plan is consistent with the provisions of the Mauka Area Plan and HAR chapter 15-22 pursuant to HAR §15-22-205(b).

DECISION AND ORDER

IT IS HEREBY ORDERED that the Master Plan, consists of approximately 59.96 acres of land in the Kaka`ako Community Development District, Oahu, Hawai`i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-052: 034, 2-1-052: 035, 2-1-052: 036, 2-1-052: 038, 2-1-052: 039, 2-1-052: 040, 2-1-052: 042, 2-1-052: 043, 2-1-052: 045, 2-1-052: 046, 2-1-052: 051, 2-1-052: 052, 2-1-052: 053, 2-1-053: 001, 2-1-053: 030, 2-3-002: 001, 2-3-002: 067, 2-3-002: 086, 2-3-002: 087, 2-3-002: 104, 2-3-003: 022, 2-3-003: 094, 2-3-005: 013, 2-3-005: 014, 2-3-005: 015, 2-3-005: 016, 2-3-005: 017, 2-3-005: 019, and 2-3-005: 022, and as shown approximately on Exhibit "A", attached hereto and incorporated by reference herein, and

IT IS HEREBY FURTHER ORDERED that for the effective period of the Master Plan, the Authority's Mauka Area Plan and Mauka Area Rules applicable to development shall be those plan and rules in effect on January 14, 2009, and the Master Plan shall be and is hereby approved subject to the following conditions:

1. Effective Period of Master Plan. Master Plan approval shall be valid for a period of fifteen years from the date of issuance of this Order, provided that the Authority may grant any other relief if the Master Plan is being implemented to the satisfaction of the Authority. No extensions of the Master Plan effective period shall be granted. Notwithstanding the foregoing, the Petitioner, however, may request an extension of the Master Plan effective period if the Master Plan is being implemented to the satisfaction of the Authority and any other conditions for granting a variance are met by the Petitioner, by seeking a variance from the Authority without regard to condition number 3 below. The Master Plan Permit shall be issued to VWL.

2. Deadlines / Development Agreement.

Petitioner shall execute a Master Plan Development Agreement to the satisfaction of the Authority within two years from the date of issuance of this Order. Pursuant to HRS Chapter 206E-4, the Authority is authorized to enter into a development agreement to provide parties to the development agreement with assurances of the following, and to include provisions necessary to facilitate the purpose and intent of HRS chapter 206E and the Authority's rules, including but not limited to: (a) the development will proceed in accordance with all applicable laws, rules, regulations, and the terms and conditions of the Master Plan Permit; (b) the development will not be restricted or prohibited by any statutes or rules enacted or promulgated by the Authority after the date of approval of the Master Plan Permit; (c)

the timing and phasing of Mauka Area Plan amendments; (d) descriptions of the delivery, manner and timing of reserved housing, the dedication of public facilities, the public use easements, and the manner in which any joint developments in the Master Plan Area will be administered; and (e) timing for filing of the first complete Planned Development Permit Application for the first phase of the Master Plan. A memorandum of the Master Plan Development Agreement shall be recorded at the Bureau of Conveyances within thirty (30) days of execution of the Master Plan Development Agreement, and shall include the signatures of all parties owning a fee simple interest in the Master Plan Area.

3. Plan Variances. If Petitioner proposes any variances to the Mauka Area Rules, such variance requests shall be addressed at the time of review of each planned development or base zone development project and evaluated for technical adequacy and enhancement of design and urban character.

4. Amendments. Petitioner's proposal to amend the Mauka Area Rules shall be addressed pursuant to the Authority's rule making procedure pursuant to HAR §15-16-26, *et. seq.* and HAR §15-22-18. If Petitioner applies for a Mauka Area Plan amendment to delete the park / parking garage facility designation along the Halekauwila Extension, to mitigate any loss of park space, Petitioner shall provide an area equal to the actual amount of park space lost, but not more than 30,000 square feet, for park space to be located in the open space of the 'Ewa Plaza located in block 5,

shown in the Proposed Open Space Plan on page 19 of Petitioner's Master Plan Application Addendum (dated September 12, 2008). This park space would be dedicated through a perpetual easement for public use gathering areas.

5. Historical, Cultural and Archaeological Resources. Prior to submission of the first individual development permit application for the development projects under the Master Plan, Petitioner shall prepare and submit a historic building inventory, a cultural impact assessment, and an archaeological inventory survey plan accepted by the State of Hawaii, Department of Land and Natural Resources' State Historic Preservation Division (or its successor agency) to the Authority.

6. Dedication of Public Facilities. Petitioner shall satisfy its public facility dedication requirement, estimated to be 330,053 square feet of land, based on the most likely mix of residential and commercial development proposed by the Petitioner, as described in the Proposed Public Facilities Plan table and graphic illustration on page 18 of Petitioner's Master Plan Application Addendum (dated September 12, 2008). With respect to the public plazas and pedestrian walkways in blocks 1 and 2 on the Proposed Public Facilities Plan, Petitioner shall dedicate a perpetual easement for public use gathering areas on portions of the public plazas and pedestrian walkways for use as gathering areas.

7. Open Space. Petitioner shall satisfy its open space requirement, which totals an estimated 245,638 square feet, as proposed by Petitioner in the Proposed Open

Space Plan table and graphic illustration on page 19 of its Master Plan Application Addendum (dated September 12, 2008). Petitioner shall dedicate a perpetual easement for public use gathering areas on portions of the designated open space areas in blocks 1 and 2.

8. Ward Neighborhood Commons. The Ward Neighborhood Commons shall be located within the area currently identified as the "Central Plaza" in the Master Plan, and will generally include the public plazas and pedestrian walkways in blocks 1 and 2 of the Proposed Public Facilities Plan and the open space on blocks 1 and 2 of the Proposed Open Space Plan, as shown and indicated on pages 18 and 19, respectively, of Petitioner's Master Plan Application Addendum (dated September 12, 2008).

Petitioner's design and development of the commercial and residential spaces surrounding the Ward Neighborhood Commons will determine the precise land area of the commons. However, the area of the Ward Neighborhood Commons, which shall be dedicated via a perpetual easement for public use gathering areas, shall be least 150,000 square feet. Petitioner shall provide capital improvements, day to day maintenance, and security, which shall be addressed in the development agreement.

9. Reserved Housing. Petitioner shall 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.

10. Traffic Study Requirements. Prior to the submission of the first development permit application for an individual project pursuant to the Master Plan, Petitioner shall conduct a regional traffic study. In addition, at the individual development permit stage, Petitioner shall conduct traffic impact assessments for individual development projects.

11. Relocation Assistance. Petitioner shall provide relocation assistance to affected tenants, first, by relocating businesses to other spaces within the Ward Master Plan area, to the extent feasible, and if infeasible, by working with a commercial broker to assist these businesses in locating alternative space.

12. Sustainability. Prior to the submission of the first development permit application for an individual project pursuant to the Master Plan, Petitioner shall provide sustainability guidelines to the Authority. At the time Petitioner applies for any individual development permit, it shall indicate how the sustainability guidelines shall be implemented for the respective project in the development permit area.

13. Compliance with Laws. Petitioner shall comply with all applicable federal, state and county laws, statutes, ordinances, rules and regulations in connection with the implementation of the Master Plan.

14. Notice of Change of Ownership / Transfer of Master Plan Permit and Master Plan Development Agreement. Petitioner shall notify the Authority of any sale, or assignment of title to its property in the Master Plan Area if it occurs prior to

development of such property. The (i) master plan permit, and (ii) master plan development agreement will be freely assignable or transferable by VWL, provided that VWL promptly notifies the Authority in writing of such an assignment or transfer, and provided that the terms and conditions of the master plan permit and master plan development agreement will be binding on VWL's successors, assigns, and transferees.

15. Extensions of Time. Petitioner may apply for extensions to any of the foregoing time limits prescribed in these conditions based on a reasonable showing of good cause.

16. Recordation of Order. Petitioner shall record a memorandum of this Order with the Bureau of Conveyances in a form and with content to be reasonably prescribed by the Executive Director of the Authority, and the terms and conditions of this Order shall run with the land.

ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 14th day of January, 2009. This Order and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawai'i, this 14th day of January, 2009.

Hawai'i Community Development
Authority (Kaka'ako members)

-Excused-

Jonathan W. Y. Lai, Chairperson

Paul Kimura

Amanda Chang

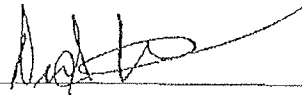
C. Scott Bradley

Grady Chun

Joseph Dwight, IV

Christopher Kobayashi

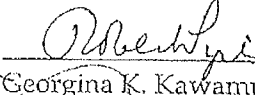
Kay Mukaigawa



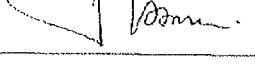
Dexter Okada



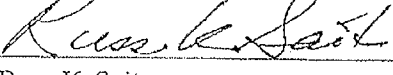
for Brennon Morioka



Georgina K. Kawamura

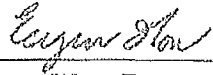


Theodore E. Liu



Russ K. Saito

Approved as to Form:



Eugene Won, Deputy Attorney General

CONSENT

Petitioner has received a copy of, has read, and consents to the *nunc pro tunc* order, dated May 6, 2009 and consisting of 56 pages, issued by the Hawaii Community Development Authority ("Authority"), and entitled "Nunc Pro Tunc Order Re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit" in the matter of the application of General Growth Properties, Inc. on behalf of its affiliate Victoria Ward, Limited for a master plan permit under Hawai'i Administrative Rules chapter 15-22 (such order, the "Nunc Pro Tunc Order").

Petitioner understands and acknowledges that the Authority adopted the Nunc Pro Tunc Order, without additional formal proceedings on the matter following the Authority's original decision and order of January 14, 2009, to correct errors in the original order. Pursuant to Hawaii Revised Statutes section 91-9(d), Petitioner waives all procedural rights to which the undersigned would otherwise be entitled under Hawaii Revised Statutes chapter 91 with respect to the Authority's adoption of the Nunc Pro Tunc Order.

Watanabe Ing, LLP

By: 

Attorneys for Victoria Ward, Limited,
a Delaware corporation, a debtor in
possession, Petitioner

5/5/2009

PARCEL THIRD: 2-3-002-067

FIRST:

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 14, in Block 4 of the "KEWALO TRACT", as shown on that certain map recorded in Book 162 Page 222, recorded in the Bureau of Conveyances of the State of Hawaii, and containing an area of 4,847 square feet, more or less.

SECOND:

All of that certain parcel of land situate at Kewalo, Honolulu, City and County of Honolulu, State of Hawaii, being LOT 15, in Block 4 of the "KEWALO TRACT", as shown on that certain map recorded in Book 162 Page 222, recorded in the Bureau of Conveyances of the State of Hawaii, and containing an area of 4,312 square feet, more or less.

Being a portion of the land described in Exchange Deed dated November 21, 1951, recorded in said Bureau of Conveyances in Book 2526 Page 245.

LEGEND

MASTER PLAN LAND BLOCK BOUNDARY

MASTER PLAN TRK PARCEL BOUNDARY

LAND COURT LOT LINE

NON-MASTER PLAN PARCELS/EXISTING ROADWAY

MASTER PLAN AREA LAND BLOCK	AREA (SQ FT)
1	919,750
2	355,130
3	270,159
4	289,706
5	777,157
6A	23,000
6B	20,000
6C	25,625
TOTAL	2,811,675

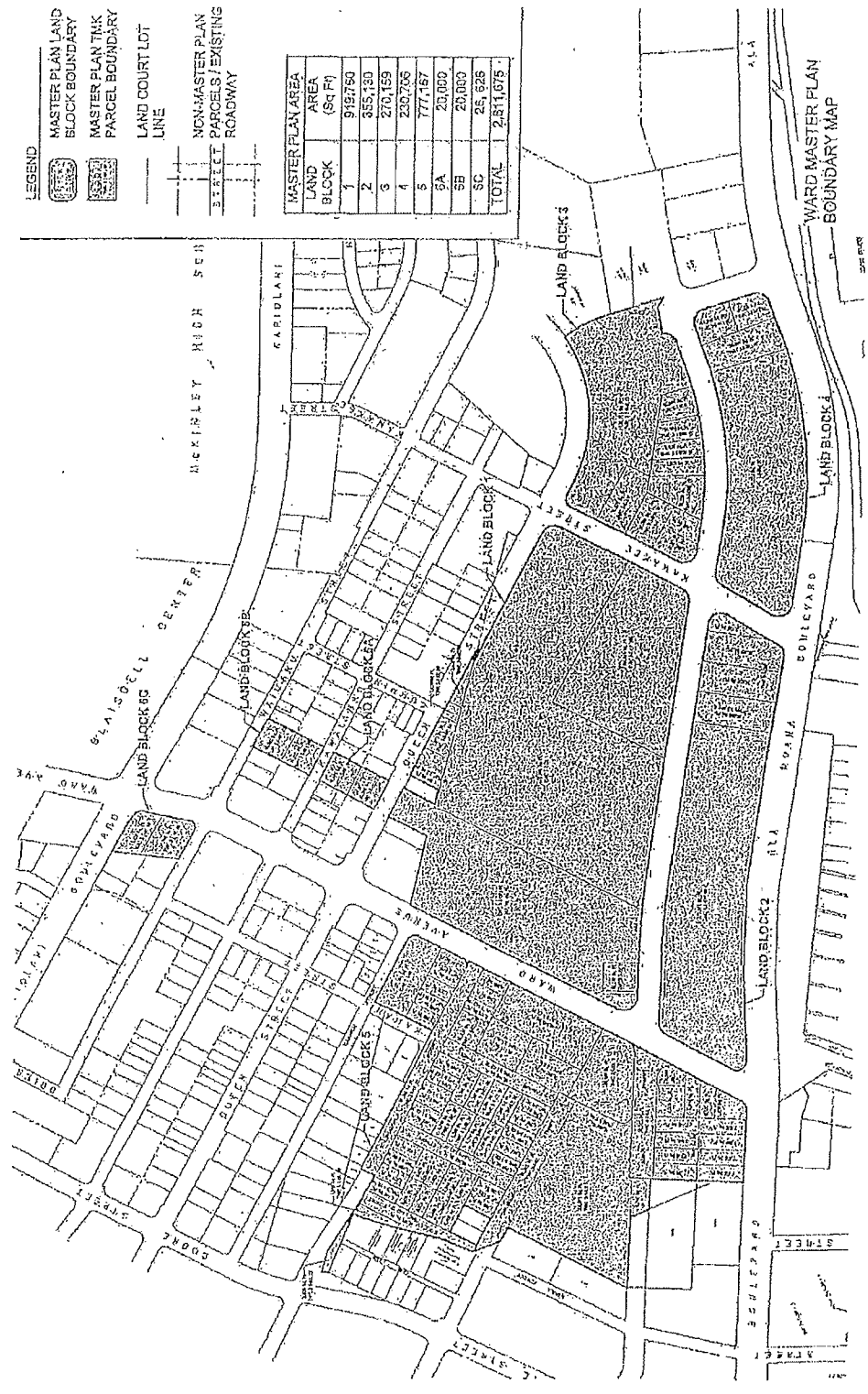


EXHIBIT "A"

MASTER PLAN DEVELOPMENT AGREEMENT

for the

WARD NEIGHBORHOOD

MASTER PLAN

HAWAII COMMUNITY DEVELOPMENT AUTHORITY
State of Hawaii

and

VICTORIA WARD, LIMITED

and

BANK OF HAWAII,
as Trustee under Trust Nos. 89433 and 89434,

and

FIRST HAWAIIAN BANK,
as Trustee under Trust Nos. FHB-TRES 200601 and 200602

EXHIBIT 2

MASTER PLAN DEVELOPMENT AGREEMENT

THIS MASTER PLAN DEVELOPMENT AGREEMENT (“Agreement”) made this 30th day of December, 2010, by and among the **HAWAII COMMUNITY DEVELOPMENT AUTHORITY**, State of Hawaii (“State”), whose office address is 461 Cooke Street, Honolulu, Hawaii 96813 (“HCDA”); **VICTORIA WARD, LIMITED**, a Delaware corporation (“VWL”), whose address is 1240 Ala Moana Boulevard, Suite 601, Honolulu, Hawaii 96814; **BANK OF HAWAII**, a Hawaii corporation (“BOH”), whose address is 111 South King Street, Honolulu, Hawaii 96813, as trustee under (a) that certain Land Trust Agreement and Conveyance dated October 21, 2004 (Trust No. 89433) and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on November 3, 2004, as Document No. 3188119, and (b) that certain Land Trust Agreement and Conveyance dated October 21, 2004 (Trust No. 89434) and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii on November 3, 2004, as Document No. 3188118 (each of the foregoing trusts for the benefit of affiliates of VWL, and hereinafter collectively referred to as the “Bank of Hawaii Trust”); **FIRST HAWAIIAN BANK**, a Hawaii corporation (“FHB”), whose address is 999 Bishop Street, Suite 900, Honolulu, Hawaii 96813, as trustee under (a) that certain unrecorded Land Trust Agreement dated September 20, 2006 (Trust No. FHB-TRES 200601), and (b) that certain unrecorded Land Trust Agreement dated September 20, 2006 (Trust No. FHB-TRES 200602) (each of the foregoing trusts for the benefit of affiliates of VWL, and hereinafter collectively referred to as the “First Hawaiian Bank Trust”). This Agreement covers the Ward Neighborhood Master Plan (“Ward MP”) for the development of certain lands in Kakaako under the authority of the Hawaii Revised Statutes, Chapter 206E, as amended, and Chapter 22, Title 15, Hawaii Administrative Rules, in effect on **January 14, 2009**.

I. PARTIES; NOTICES

HCDA: HAWAII COMMUNITY DEVELOPMENT AUTHORITY

Address: 461 Cooke Street
Honolulu, Hawaii 96813
Telecopier No. (808) 594-0299

Attention: Anthony J. H. Ching
Executive Director

VWL: VICTORIA WARD, LIMITED

Address: 1240 Ala Moana Boulevard, Suite 601
Honolulu, Hawaii 96814

Attention: Francisco Gutierrez

With a copy to: VICTORIA WARD, LIMITED

Address: c/o The Howard Hughes Corporation
Attention: General Counsel
13355 Noel Road, Suite 950
Dallas, TX 75240

Address: c/o The Howard Hughes Corporation
Attention: Christopher J. Curry
12301 Wilshire Boulevard, Suite 206
Los Angeles, CA 90025

Address: c/o The Howard Hughes Corporation
Attention: Sandra D. Turner
10000 West Charleston Boulevard, Suite 200
Las Vegas, NV 89135

BOH: BANK OF HAWAII
Address: 111 South King Street
Honolulu, Hawaii 96813

Attention: Robin L. Nonaka, Vice President

FHB: FIRST HAWAIIAN BANK

Address: 999 Bishop Street, Suite 900
Honolulu, Hawaii 96813

Attention: Kelley G.A. Nakano, Trust Officer

The parties include their respective successors, successors in trust and permitted assigns. All notices between and among the parties shall be in writing and shall be mailed certified mail, return receipt requested postage prepaid, sent by overnight courier or telecopied (with hard copy to follow immediately by certified mail or overnight courier) to the foregoing addresses. Notices shall be deemed delivered, if by certified mail, three business days after deposit in the U.S. Mail,

or, if by overnight courier, on the date of delivery or attempted delivery if delivery is refused. A party may change its address for the receipt of notices by giving written notice of such change to the other party.

II. DEFINITIONS

The terms below, whenever used in this Agreement, shall have the following meanings:

- A. "Agreement" means this Development Agreement.
- B. "D&O" means the Findings of Fact, Conclusions of Law and Decision and Order issued by the HCDA on January 14, 2009 in this matter, as corrected by Nunc Pro Tunc Order dated May 6, 2009.
- C. "Development Rules" means Chapter 22, Title 15, Hawaii Administrative Rules in effect on January 14, 2009.
- D. "HRS" means the Hawaii Revised Statutes, as amended from time to time.
- E. "Ward MP" means the Ward Neighborhood Master Plan submitted by VWL that was approved by HCDA on January 14, 2009, with a clerical error contained therein corrected by Nunc Pro Tunc Order dated May 6, 2009, within the Kakaako Community Development District.

III. BACKGROUND OF APPLICATION LEADING TO APPROVAL OF MASTER PLAN

- A. On April 2, 2008, VWL submitted for the Authority's consideration its application for the Ward MP.
- B. On October 15, 2008, a community meeting on the proposed Ward MP was held.
- C. On December 17-18, and 29, 2008, and January 14, 2009, the contested case hearing was held for the Ward MP.
- D. On January 14, 2009, HCDA, pursuant to the Development Rules pertaining to master plans, approved the Ward MP subject to certain conditions pursuant to its D&O, which is attached hereto as Exhibit A. Thereafter, HCDA issued the Master Plan Permit ("PL MASP 13.1.3").

- E. Other information and details leading up to the approval of the Ward MP are set forth in Findings of Fact #1 to #111 of the D&O.

IV. IDENTIFICATION OF LANDS COVERED UNDER THE DEVELOPMENT AGREEMENT

The Ward MP area consists of approximately 59.96 acres. Portions of the Ward MP land area are held in fee by (1) VWL, (2) BOH as trustee of the Bank of Hawaii Trust, and (3) FHB as trustee of the First Hawaiian Bank Trust. These portions are described on Exhibits A, B, or C, respectively, of the VWL Master Plan Permit Memorandum of Decision and Order which was recorded with the Bureau of Conveyances, State of Hawaii, on June 17, 2009 as Land Court Document No. 3869623 and Bureau of Conveyances Document No. 2009-093051.

V. AGREEMENT

HCDA and VWL hereby agree that:

- A. Development of the master plan lands identified in this Agreement shall be in conformance with the Development Rules, D&O, the PL MASP 13.1.3, and this Agreement.
- B. Implementation of the Ward MP and development projects subject to the Ward MP shall be subject to the following conditions:
 - 1. Effective Period of the Ward MP and Applicability of Development Rules.
 - a. Approval of the Ward MP shall be valid until January 14, 2024, which is 15 years from the issuance of the D&O on January 14, 2009. Extensions of the effective period may be requested by seeking a variance from HCDA based on a reasonable showing of good cause. See paragraphs 1 and 15 at pages 43 and 48 of the D&O, respectively.

- b. For the effective period of the Ward MP, the Development Rules shall be applicable to development of the master plan lands encompassed by the Ward MP. See page 42 of the D&O.
 - c. For the effective period of the Ward MP, the development will proceed in accordance with paragraphs 1 and 2 at pages 43-44 of the D&O.
 - d. In the event of any conflict among Development Rules, D&O, the PL MASP 13.1.3, and/or this Agreement, the conflict shall be resolved in a contested case hearing, and the decision of the HCDA in such hearing shall prevail.
2. Land Use and Development Parameters. The development of the master plan lands under the Ward MP shall proceed in conformance with the provisions of the Ward MP.
3. Phasing of Development. The initial and future phases of implementation of the Ward MP shall be in conformance with the provisions in the Ward MP and/or any supplemental development agreement(s) which might be entered into by VWL and the HCDA. The phasing and timing of development under the Ward MP is intended to be flexible to give VWL the ability to adapt to economic and market conditions.
- a. The initial phase is currently planned to occur on Land Block 1 and Land Block 3 as described in the Ward MP Applications. Prior to submitting the development permit application for the initial phase, VWL will prepare and submit to HCDA a historic building inventory, a cultural impact assessment, and archeological inventory survey plan accepted by the State, a regional traffic study, individual traffic impact assessments, and sustainability guidelines. If any of these required analyses, the economy, and/or market conditions cause changes to the initial phase and

its components, any changes to the initial phase shall be submitted to HCDA for review.

b. The development permit application for the initial phase shall include descriptions of the delivery, manner, and timing of reserved housing, dedication of public facilities, and public use easements.

4. Reserved Housing Credits

a. To encourage the early delivery of reserved housing within the Kakaako Community Development District in advance of the construction of market housing, the HCDA will effectuate a reserved housing credit account process that will apply to the Ward MP under the following circumstances:

- (1) if VWL and/or the beneficiaries of the Bank of Hawaii Trust and/or the First Hawaiian Bank Trust transfer or cause to be transferred Kakaako Community Development District land to the Authority or another entity identified by and at a rate approved by the Authority, and which shall be used to construct reserved housing;
- (2) if VWL and/or the beneficiaries of the Bank of Hawaii Trust and/or the First Hawaiian Bank Trust construct more reserved housing for any planned development in the Master Plan Area than is required for that project;
- (3) if a third-party entity has built more reserved housing in the Kakaako Community Development District than required under its development and transfers reserved housing credits to VWL and/or the beneficiaries of the Bank of Hawaii Trust and/or the First Hawaiian Bank Trust;

- (4) if VWL and/or the beneficiaries of the Bank of Hawaii Trust and/or the First Hawaiian Bank Trust participate in a joint venture that results in excess reserved housing in the Kakaako Community Development District; and/or
 - (5) as approved by Authority, if VWL and/or the beneficiaries of the Bank of Hawaii Trust and/or the First Hawaiian Bank Trust convert existing non-reserved housing, not in use by those intended to benefit by reserved housing, into reserved housing within the Kakaako Community Development District;
- b. VWL and/or the beneficiaries of the Bank of Hawaii Trust and/or the First Hawaiian Bank Trust may use their reserved housing credits to satisfy all or part of the Ward MP reserved housing requirements (including but not limited to its requirement to provide 10% (or one tenth) of its reserved housing requirement at 100% or below of the area median income if those credits are generated from the same area median income) and/or transfer their excess credits to a third-party.
 - c. The reserved housing credits shall be applied on a one-for-one basis.
5. Other Conditions. Conditions set forth in paragraphs 1 through 15 at pages 43-48 of the D&O are incorporated into this Agreement. Further, all terms and conditions of the D&O remain in full force and effect, and shall not be deemed terminated, waived, or modified in any way through the execution and/or performance of this Agreement.

VI. AMENDMENT OR MODIFICATION TO DEVELOPMENT AGREEMENT

No provision or term of this Agreement or any agreement contemplated herein between the parties hereto may be supplemented, amended, modified, waived, or terminated except in a

writing duly executed by both parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Failure of a party to insist on strict compliance with any of the terms and conditions of this Agreement shall not be deemed as waiver of any such terms and conditions.

However, VWL and the HCDA may negotiate and execute an amended/modified or supplemental Master Plan Development Agreement that may address additional implementation issues.

VII. MISCELLANEOUS PROVISIONS

- A. Enforceability; Applicability. Unless terminated or cancelled, this Agreement, amended Agreement, or modified Agreement, once entered into, shall be enforceable by any party thereto, or their successors in interest or assigns, notwithstanding any subsequent change in any Development Rule adopted by HCDA after January 14, 2009.
- B. Severability. If any one or more of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.
- C. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties herein named and their respective permitted successors, successors in trust and permitted assigns.
- D. Headings. All headings used in this Agreement are for reference and convenience only. They shall not be considered in the construction and interpretation of the provisions stated in this Agreement.

- E. Written Agreement. This Agreement shall supersede and replace all prior agreements or portions insofar as such are inconsistent with this Agreement, written and oral, between the parties, concerning the Ward MP. This Agreement shall not be modified except by an instrument in writing executed and acknowledged by the parties.
- F. Time of Essence. Time is of the essence of this Agreement.
- G. Governing Law. The laws of the State of Hawaii shall govern the validity, construction and effect of this Agreement. This Agreement shall be interpreted in a manner which is consistent with the Development Rules in effect on January 14, 2009.
- H. Assignment. VWL shall notify HCDA of any sale or assignment of title to the Ward MP lands if it occurs prior to development of such property. The (i) Ward MP permit and (ii) this Agreement will be freely assignable or transferable by VWL, BOH and FHB with respect to their respective properties, provided that the assigning or transferring party promptly notifies HCDA in writing of such an assignment or transfer, and provided that the terms and conditions of the Ward MP permit and this Agreement will be binding on such successors, assigns and transferees.
- I. Cooperation. The parties shall cooperate with one another in effectuating this Agreement and agree to execute such further and additional mutually approved documentation required to facilitate and complete the actions contemplated in this Agreement.
- J. No Party Deemed Drafter. The parties agree that no party shall be deemed to be the drafter of this Agreement and that, in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against any party as drafter of this Agreement.
- K. Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

- L. Computation of Periods. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and State or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or State or national holiday, such act or notice shall be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.
- M. Trustees Not Personally Liable. This Agreement is made by each of BOH and FHB as trustees as aforesaid and not personally or individually, but solely as trustees as aforesaid, and it is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the covenants, warranties, representations and agreements contained in this Agreement or in any amendments, hereto, are made and intended not as personal covenants, warranties, representations, undertakings and agreements of BOH and FHB or any of their officers, agents, or employees, but this Agreement is made by each of BOH and FHB solely as trustees as aforesaid and no personal liability or personal responsibility is assumed by, or shall at any time be asserted or enforced against either BOH or FHB, or their respective officers, agents or employees on account of any covenants, warranties, representations, undertakings or agreements contained in this Agreement or any amendments hereto, or otherwise, either express or implied, all such personal liability, if any, being hereby expressly waived and released; it being understood that all parties hereto or anyone claiming by, through or under such parties or claiming any rights under this Agreement or any amendments hereto shall look solely to the assets of the respective trusts established pursuant to the Bank of Hawaii Trust or the First Hawaiian Bank Trust for the enforcement or collection of any such liability.

In accordance with the terms of this Agreement and the exception clause of section 560:7-306(a) of the HRS, as amended, any liability of BOH which may arise as a result of BOH accepting or approving this instrument is a liability of the

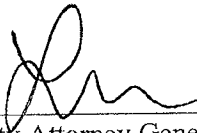
respective trust estates established under the Bank of Hawaii Trust described above and not the personal liability of BOH.

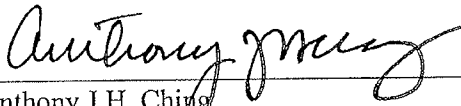
In accordance with the terms of this Agreement and the exception clause of section 560:7-306(a) of the HRS, as amended, any liability of FHB which may arise as a result of FHB accepting or approving this instrument is a liability of the respective trust estates established under the First Hawaiian Bank Trust described above and not the personal liability of FHB.

The parties have executed this Agreement effective as of the date first above written.

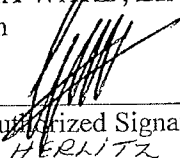
APPROVED AS TO FORM

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

By: 
Deputy Attorney General
State of Hawaii

By: 
Anthony J.H. Ching
Its Executive Director

VICTORIA WARD, LIMITED, a Delaware
corporation

By: 
Its Duly Authorized Signatory
GRANT HERLITZ

BANK OF HAWAII, as Trustee as aforesaid

By: _____
Name:
Its:

By: _____
Name:
Its:

FIRST HAWAIIAN BANK, as Trustee as aforesaid

By: _____
Name:
Its:

respective trust estates established under the Bank of Hawaii Trust described above and not the personal liability of BOH.

In accordance with the terms of this Agreement and the exception clause of section 560:7-306(a) of the HRS, as amended, any liability of FHB which may arise as a result of FHB accepting or approving this instrument is a liability of the respective trust estates established under the First Hawaiian Bank Trust described above and not the personal liability of FHB.

The parties have executed this Agreement effective as of the date first above written.

APPROVED AS TO FORM

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

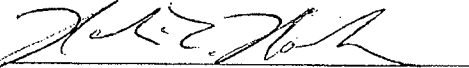
By: _____
Deputy Attorney General
State of Hawaii

By: _____
Anthony J.H. Ching
Its Executive Director

VICTORIA WARD, LIMITED, a Delaware
corporation

By: _____
Its Duly Authorized Signatory

BANK OF HAWAII, as Trustee as aforesaid

By: 
Name: **ROBIN L. NONAKA**
Its: VICE PRESIDENT

By: 
Name: **RACHEL S. UEHARA**
Its: ASSISTANT VICE PRESIDENT

FIRST HAWAIIAN BANK, as Trustee as aforesaid

By: _____
Name:
Its:

respective trust estates established under the Bank of Hawaii Trust described above and not the personal liability of BOH.

In accordance with the terms of this Agreement and the exception clause of section 560:7-306(a) of the HRS, as amended, any liability of FHB which may arise as a result of FHB accepting or approving this instrument is a liability of the respective trust estates established under the First Hawaiian Bank Trust described above and not the personal liability of FHB.

The parties have executed this Agreement effective as of the date first above written.

APPROVED AS TO FORM

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

By _____
Deputy Attorney General
State of Hawaii

By _____
Anthony J.H. Ching
Its Executive Director

VICTORIA WARD, LIMITED, a Delaware
corporation


By: _____
Its Duly Authorized Signatory

BANK OF HAWAII, as Trustee as aforesaid

By: _____
Name:
Its:

By: _____
Name:
Its:

FIRST HAWAIIAN BANK, as Trustee as aforesaid

By:  _____
Name: **SCOTT H. ONO**
Its: **VICE PRESIDENT**

DEVELOPMENT PERMIT

for

**Ward Village Land Block 5, Project 1
(Master Plan Permit No.: PL MASP 13.1.3)**

Approved by the

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY
461 Cooke Street
Honolulu, Hawaii 96813**

on

July 17, 2013

Pursuant to Chapter 206E, Hawaii Revised Statutes

PLANNED DEVELOPMENT PERMIT NO.: KAK 13-038

EXHIBIT 3

I. PROJECT SUMMARY AND ENTITLEMENTS

Refer to the attached Table 1 as Exhibit A.

II. PUBLIC FACILITIES DEDICATION: Based on the information provided on the Development Permit application, land requirement for public facilities dedication is determined to be 2,997.60 square feet. The Applicant's request has been approved to fulfill the public facilities dedication requirement for this Project through part of its existing public facilities dedication credit of 39,580.74 square feet as well as through a perpetual public easement for public right-of-way for the 2,483 square feet of land along Ilaniwai Street. Prior to the Hawaii Community Development Authority's ("HCDA") approval of the foundation permit, the Applicant shall prepare a perpetual public easement acceptable to the HCDA Executive Director and file with the Bureau of Conveyance.

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 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.

IV. INFRASTRUCTURE IMPROVEMENTS: Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements which are immediately necessary to proceed with the Project; and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program.

A. Improvements Necessary to Proceed with the Project: With regard to infrastructure improvements or requirements which are necessary to proceed with the Project, the Applicant shall be responsible for providing necessary developer improvements.

B. Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program: As part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the Kakaako Community Development District, financed in part through an Improvement District Program.

In this regard, the Project shall be subject to assessments for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective projects under the HCDA or other government agencies' improvement programs. The projects will be assessed under the same methods and in the same manner as other properties in the area.

In order to ensure the participation of the Project, the Applicant, and its successors and assigns, shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented. The terms specified in the agreement shall be made a part of all condominium and conveyance documents for the Project and said documents shall be reviewed and approved by the HCDA prior to submission to the Real Estate Commission and to execution.

V. DECISION: Staff report, findings, and recommendations for the Development Permit application dated July 17, 2013, including the conditions set forth in the Staff Report, Findings, and Recommendations and adopted by the Authority is hereby incorporated into this Development Permit and made part of this Permit. The Development Permit for the Project is hereby approved, subject to the following provisions:

A. Provide a Development Agreement and a Joint Development Agreement with the HCDA that binds the Applicant, and its successors and assigns, individually and collectively, to develop and to maintain the Project site in

conformity with the provisions of this Development Permit and with the Vested Rules. This Agreement shall be filed as a covenant running with the land with the Bureau of Conveyances or the Assistant Registrar of the Land Court. Proof of such filing in the form of copies of the covenants certified by the appropriate agency shall be submitted to the HCDA.

- B. Comply with all the conditions set forth in the Staff Report, Findings, and Recommendations dated July 17, 2013 and adopted by the Authority.
- C. Comply with all applicable requirements of Subchapter 3 (General Development Requirements) of the Vested Rules.
- D. Comply with all applicable requirements of Subchapter 4 (Planned Developments) of the Vested Rules.
- E. Comply with all applicable requirements of Subchapter 5 (Special Urban Design Rules) of the Vested Rules.
- F. Comply with all applicable requirements of Subchapter 7 (Sale and Rental of Reserved Housing Units) of the Vested Rules.
- G. Comply with all requirements as specified under Parts I., II., and III. of this Permit.
- H. Comply with all requirements as specified under Part IV. (Infrastructure Improvements) of this Permit.
- I. Comply with any other terms and conditions as required by the HCDA Executive Director to implement the purpose and intent of the Rules.

All conditions shall be met prior to the issuance of the initial Building Permit for the Project.

Dated at Honolulu, Hawaii, this 17th day of July, 2013.

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, State of Hawaii

By 

Brian Lee, Chairperson

Table 1

I. PROJECT SUMMARY AND ENTITLEMENTS

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
Lot Area			Ward Village, Land Block 5 Total: 621,871 sf Land Block 5, Project 1 Total: 70,399 sf 3 parcels TMK: 2-1-050: 001 (15,000 sf) TMK: 2-1-050: 061 (27,124 sf) TMK: 2-1-050: 062 (9,644 sf)	Areas of existing streets (155,296 sf) are deducted from 777,167 sf of total land area.
Street Widening	Ilaniwai Widening		Ilaniwai easement for potential widening	
§15-22-30; §15-22-33 Land Use Zone	Mixed-Use Zone - Residential Emphasis	Single Mixed-Use Zone	Residential and commercial uses	
§15-22-9 Method of Development	Base Zone Development or Planned Development		Planned Development	
§15-22-113 Floor Area for Commercial Use	No more than 1.2 FAR, or 746,245 sf	100% of the total FAR allowed	25,110 sf	
Floor Area for Residential Use	100% of the total FAR allowed	100% of the total FAR allowed	487,287 sf	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
Total Dwelling Units			424 units	
§15-22-115 Reserved Housing Units	At least 20% of the total number of dwelling units		375 units	
§15-22-116 Building Height	400 ft	400 ft	400 ft, plus additional 18 ft for allowable protrusion such as mechanical equipment and screens.	
§15-22-116 Land Block FAR	4.75 (3.5 + 0.3 bonus + 25% transferred FAR) is the maximum allowed for Land Block 5.	Development Lot x up to 4.75 FAR = Total Allowed Floor Area Discretionary review process for the transfer of floor area from a sending site to a receiving site.	For Land Block 5 a total of 4.27, or 2,653,845 sf	
§15-22-116 Ward MP FAR	3.8 (including 0.3 bonus) for the entire Ward Master Plan.		512,397 sf in this Project, with the remaining floor area to be developed on the rest of Land Block 5 and the other Land Blocks.	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
§15-22-203 Transferred FAR	No more than 25% of the allowable FAR, or 0.95 (3.8 x 0.25)		Land Block 5 currently plans to transfer 12.3% or 290,736 sf in from other development lots in Ward Village per Master Plan.	
§15-22-116 Tower Footprint	16,000 sf	16,000 sf	Approximately 13,023 sf	
§15-22-117 View Corridor Setback - Tower	75 ft from property line fronting Ward Avenue	Ward Neighborhood Master Plan acknowledges a potential modification of eliminating the 75' tower element setback along Ala Moana Boulevard	75 ft from property line fronting Ward Avenue.	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-117 View Corridor Setback - Platform</p>	<p>15 ft from property line fronting Ward Avenue; 1:1 slope from 20 ft high</p>	<p>The Ward Neighborhood Master Plan contemplates the sloping setback on the platform allows for the development of a continuous building facade that better defines the edge of street.</p>	<p>15 ft from property line fronting Ward Avenue at ground level. Modification request to eliminate 1:1 sloped setback.</p>	<p>Modification approved by the Authority at its July 17, 2013 Public Hearing</p>
<p>§15-22-120 Platform Height</p>	<p>Platform height may be modified to exceed 45 ft.</p>	<p>The Ward Neighborhood Master Plan contemplates increasing the platform or street front element height to 75' for parcels not directly fronting Ala Moana Boulevard.</p>	<p>Modification requesting 75 ft for entire platform, plus additional ancillary architectural components with height up to 87 ft for up to 15% of the Platform.</p>	<p>Modification approved by the Authority at its July 17, 2013 Public Hearing</p>

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
§15-22-63.1 Front Yard	15 ft	Eliminate side and rear yard setbacks in selected locations where the facades of new buildings will abut solid walls of existing or future neighboring structures.	15 ft with "front yard averaging" approach; canopy encroachment up to 10 ft.	Both modifications approved by the Authority at its July 17, 2013 Public Hearing
§15-22-62 Front Yard Height Setback	Same as View Corridor Setbacks.	Eliminating setbacks in these locations will allow connections between buildings and prevent new residual spaces from being created between buildings, thus helping to minimize narrow and unsafe areas.	Same as View Corridor Setbacks.	
§15-22-63.2 Side and Rear Yard	Not required for structure without openings. 10 ft for structure with openings.	Eliminating setbacks in these locations will allow connections between buildings and prevent new residual spaces from being created between buildings, thus helping to minimize narrow and unsafe areas.	No openings on rear yard, no setback on rear yard.	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-143 Tower Orientation</p>	<p>The long axis shall be between 35 degrees and 65 degrees west of south.</p>	<p>Coincides with the Mauka Area Plan and promotes Mauka-Makai building orientation.</p>	<p>The long axis of tower is 38 degrees west of south.</p>	
<p>§15-22-143 Tower Spacing</p>	<p>300 ft between the long parallel sides of neighboring towers to the extent practicable.</p>	<p>Separation of 300 feet between long sides and 200 feet between short sides where practicable</p>	<p>120 ft from the neighboring tower. The property width is 250 ft; a setback of 75 ft from Ward Avenue is maintained. The 120 ft spacing provided is the practicable extent for this site.</p>	
<p>§15-22-143 Tower Spacing</p>	<p>200 ft between the short sides of towers.</p>		<p>No existing towers are within 200 ft from the short side of the tower.</p>	
<p>§15-22-144 Landscaping</p>	<p>Along Ward Avenue, Rainbow shower shall be provided at 45 ft on center.</p>	<p>Planting designs will comply with the HCDA Mauka Area Rules currently in effect.</p>	<p>Street tree landscaping to be provided consistent with Ward, based on draft landscape plans included and subject to further design and approval.</p>	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-64 Open Space</p>	<p>The lower of: 10% of the lot area; or 25% of the lot area less required yard areas.</p>	<p>At least 10% of the lot area shall be provided as open space.</p>	<p>Pursuant to the master plan, a total of 245,639 sf of open space will be provided throughout the Ward Neighborhood. In Land Block 5, the amount is estimated at 62,187 sf per the attached table.</p> <p>57 sf of open space is being provided as a part of this project.</p> <p>The balance will be provided by the later phases of Block 5 development.</p>	
<p>§15-22-65 Recreation Space</p>	<p>55 sf per dwelling unit</p>	<p>Nearly 250,000 square feet is to be provided as recreational space within Ward Neighborhood.</p>	<p>83.3 sf per dwelling unit, or 35,329 sf provided.</p>	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-67 Off-Street Parking</p>	<p>Multi-family dwellings: 600 sf or less: 0.9 per unit 600 sf to 800 sf: 1.13 per unit 800 sf and over: 1.35 per unit Commercial uses: 1 per 444 sf</p>	<p>All parking areas shall comply with local codes and regulations, ratio requirements, general parking dimensions and any other applicable policies regarding parking</p>	<p>Requirements: Multi-family dwellings: 0.90 x 141 = 126.90 spaces 1.35 x 283 = 382.05 spaces Subtotal: 509 spaces Standard space required: 255 spaces Commercial Use: 25,110/444 = 56.55 spaces Standard spaces required: 57 spaces Total for all Uses: Required: 566 spaces Standard: 312 spaces Compact: 254 spaces Provided: 589 spaces Standard: 319 spaces Compact: 270 spaces</p>	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-68 Off-Street Loading</p>	<p>Commercial Use: 20,000 sf to 40,000 sf: 3 spaces</p> <p>Residential Use: 512,658 sf: 4 spaces</p> <p>After adjustment of up to 50% for two or more uses, 4 stalls are required.</p> <p>At least 2 stalls shall be 12'W x 35'L x 14'H. The balance may be 8.5'W x 19'L x 10'H.</p>	<p>All parking areas shall comply with local codes and regulations, ratio requirements, general parking dimensions and any other applicable policies regarding parking.</p> <p>Based on the proposed Project programming, this totals: Multi-Family Dwellings: 3 stalls required Commercial: 2 stalls</p> <p>Required 50% of required number of loading spaces may be allowed when assigned to serve two or more uses.</p>	<p>Total: 4 spaces 2 - 12' x 35' x 14' spaces 2 - 8.5' x 19' x 10' spaces</p>	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-73 Dedication of Public Facilities</p>	<p>3% of commercial floor areas 4% of residential floor areas Exempt for reserved housing</p>		<p>Required Public Facilities: Commercial: 3% x 25,110 sf = 753.3 sf; Residential: 4% x 56,108 sf (Market Units) = 2,244.3 sf. Total: 2,997.60 sf. Public facilities for Land Block 5 will be provided through a perpetual public easement for public right-of-way and sidewalk extensions.</p>	
<p>§15-22-80 Joint Development</p>	<p>Required two or more adjacent lots developed together.</p>		<p>Pursuant to the Master Plan, all of the parcels in Land Block 5 are included and will be made part of a larger Joint Development Agreement.</p>	
<p>§15-22-82 Flood Hazard District</p>	<p>Follow Honolulu Land Use Ordinance Article 7.</p>		<p>Will comply.</p>	

Description	Mauka Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-115 Reserved Housing</p>	<p>§15-22-115 Requirement of Providing Reserved housing Units) Every applicant for a planned development containing multi-family dwelling units on a development lot of at least 20,000 square feet shall provide at least 20% of the total number of dwelling units in the development for sale or rental to qualified persons as determined by the Authority. Also, subsections (b), (c), (d), and (e) of §15-22-115.1 Waiver of Reserved Housing Cash in Lieu Payment.</p>	<p>20% of total dwelling units to be provided for sale or rental to qualified persons. Under the Master Plan, as many as 860 units could be provided as reserved housing units. Reserved housing to be provided within Ward Neighborhood, off-site within Kakaako, or elsewhere as permitted, within two years of the development of market rate housing in a given development phase.</p>	<p>This Project will provide 375 reserved housing units to satisfy its own requirement of 106 units as well as provide excess credits to satisfy the requirements of other Ward MP projects.</p>	

DEVELOPMENT PERMIT

for

**Ward Village Land Block 2, Project 1
(Master Plan Permit No.: PL MASP 13.1.3)**

Approved by the

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY
461 Cooke Street
Honolulu, Hawaii 96813**

on

August 21, 2013

Pursuant to Chapter 206E, Hawaii Revised Statutes

PLANNED DEVELOPMENT PERMIT NO.: KAK 13-036

EXHIBIT 4

I. PROJECT SUMMARY AND ENTITLEMENTS

Refer to the attached Table 1 as Exhibit A.

II. PUBLIC FACILITIES DEDICATION: Based on the information provided on the Development Permit application, land requirement for public facilities dedication is determined to be 21,029 square feet. The Applicant's request to fulfill the public facilities dedication requirement for this Project through its facilities dedication credit is approved. The table below is a summary of public facilities dedication proposed by the Applicant creating a public facilities dedication credit in favor of the Applicant.

WNMP Public Facilities Dedication				
Credit from Pre-WNMP Projects				39,581 (SF)
Proposed Public Facilities Dedication				
Location				Area (SF)
Land Block 2_Project 1: Sidewalk along Ala Moana Boulevard				519
Land Block 2_Project 1: Sidewalk along Kamakee Street				499
Land Block 5_Project 1: Road/Sidewalk along Ilaniwai Street				2,483
Halekauwila Street				37,261
Total Proposed Public Facilities Dedication				40,762
Total Public Facilities Dedication Credit				80,343
Required Public Facilities Dedication				
Project	Use	Floor Area	Dedication %	Area (SF)
LB2_Project 1	Commercial	8,255	3%	248
LB2_Project 1	Residential	519,526	4%	20,781
LB2 Project 1, Project Total				21,029
LB3_Project 1	Commercial	17,137	3%	514
LB3_Project 1	Residential	632,223	4%	25,289
LB3 Project 1, Project Total				25,803
LB5_Project 1	Commercial	25,110	3%	753
LB5_Project 1	Residential	56,108	4%	2,244
LB5 Project 1, Project Total				2,997
Total Required Public Facilities Dedication (SF)				49,829
Total Balance (SF)				30,514

Regarding the public facilities credits generated from dedication of additional sidewalk along Ala Moana Boulevard, Kamakee Street, and Ilaniwai Street, the Applicant shall

prior to the approval of the foundation permit by the Hawaii Community Development Authority ("HCDA"), prepare perpetual public easement and public facilities dedication documents acceptable to the HCDA Executive Director which shall be recorded with Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. With regard to the portion of Halekauwila Street proposed for fulfillment of public facilities dedication, the Applicant shall convey the said land to the HCDA in fee simple before the HCDA approval of the building permit for the Project.

- III. RESERVED HOUSING:** The Applicant shall comply with the provisions of the Reserved Housing subsection in Chapter 22, Kakaako Mauka Area Rules ("Vested Rules"). The Project consists of 177 residential units. Twenty percent (20%) of the total residential units, which translates to a total of forty-five (45) units, shall be required to meet the reserved housing provisions of the Vested Rules. The Applicant shall provide forty-five (45) units as reserved housing for sale. The Applicant is proposing to provide all the reserved housing units required for this Project in a separate project that has already received a Planned Development Permit and is proposed to be located on Land Block 5 of the Ward MP area.

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 HCDA prior to approval of the initial Building Permit by the HCDA.

- IV. HELIPAD:** As part of Exhibit B-9 of the Development Permit Application discussing noise impacts, the Applicant has indicated that a helipad on the roof of the tower element of the Project may be included in the development. The Vested Rules do not have a provision governing design, construction, and operation of a helipad. In the event that

the Applicant includes a helipad on the roof of the tower element of the Project, the Applicant shall comply with all applicable local, State, and Federal regulations governing the design, construction, and operation of a helipad.

V. INFRASTRUCTURE IMPROVEMENTS: Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements which are immediately necessary to proceed with the Project; and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program.

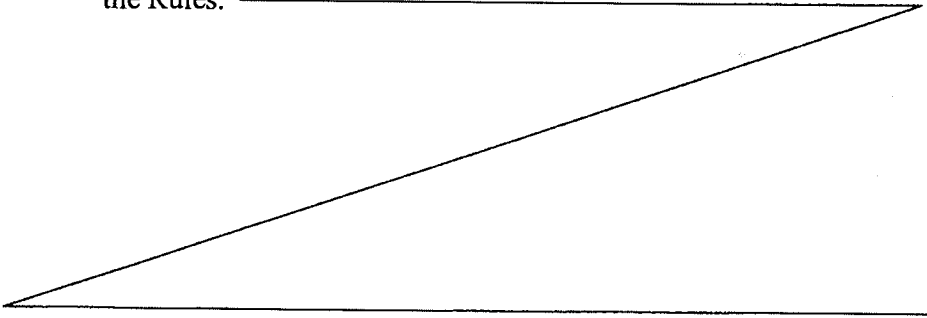
A. Improvements Necessary to Proceed with the Project: With regard to infrastructure improvements or requirements which are necessary to proceed with the Project, the Applicant shall be responsible for providing necessary developer improvements.

B. Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program: As part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the Kakaako Community Development District, financed in part through an Improvement District Program.

In this regard, the Project shall be subject to assessments for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective projects under the HCDA or other government agencies' improvement programs. The Project will be assessed under the same methods and in the same manner as other properties in the area.

In order to ensure the participation of the Project, the Applicant, and its successors and assigns, shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented. The terms specified in the agreement shall be made a part of all condominium and conveyance documents for the Project and said documents shall be reviewed and approved by the HCDA prior to submission to the Real Estate Commission and to execution.

VI. DECISION: Staff Report, Findings, and Recommendations for the Development Permit Application dated August 21, 2013, including the conditions set forth in the Staff Report, Findings, and Recommendations and adopted by the Authority is hereby incorporated into this Development Permit and made part of this Permit. The Development Permit for the Project is hereby approved, subject to the following provisions:

- A. Provide a Development Agreement and a Joint Development Agreement with the HCDA that binds the Applicant, and its successors and assigns, individually and collectively, to develop and to maintain the Project site in conformity with the provisions of this Development Permit and with the Vested Rules. This Agreement shall be recorded with the Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. Proof of such filing in the form of copies of the covenants certified by the appropriate agency shall be submitted to the HCDA.
 - B. Comply with all the conditions set forth in the Staff Report, Findings, and Recommendations dated August 21, 2013 and adopted by the Authority.
 - C. Comply with all applicable requirements of Subchapter 3 (General Development Requirements) of the Vested Rules.
 - D. Comply with all applicable requirements of Subchapter 4 (Planned Developments) of the Vested Rules.
 - E. Comply with all applicable requirements of Subchapter 5 (Special Urban Design Rules) of the Vested Rules.
 - F. Comply with all applicable requirements of Subchapter 7 (Sale and Rental of Reserved Housing Units) of the Vested Rules.
 - G. Comply with all requirements as specified under Parts I., II., III., and IV. of this Permit.
 - H. Comply with all requirements as specified under Part V. (Infrastructure Improvements) of this Permit.
 - I. Comply with any other terms and conditions as required by the HCDA Executive Director to implement the purpose and intent of the Rules.
- 

All conditions shall be met prior to the issuance of the initial Building Permit for the Project.

Dated at Honolulu, Hawaii, this 21st day of August 2013.

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, State of Hawaii

By 

Brian Lee, Chairperson

Attachment: Exhibit A – Table 1

Table 1

I. PROJECT SUMMARY AND ENTITLEMENTS

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>Lot Area</p>			<p>Ward Village, Land Block 2 Total: 355,130 sf</p> <p>Land Block 2, Project 1</p> <p>TMK: 2-3-001: 01 = 56,446 SF TMK: 2-3-001: 04 = 25,000 SF TMK: 2-3-001: 05 = 273,684 SF Total: 355,130 SF</p>	
<p>Street Widening</p>	<p>None</p>		<p>None</p>	
<p>§15-22-30; §15-22-33 Land Use Zone</p>	<p>MUZ-C</p>	<p>Single Mixed-Use Zone</p>	<p>Residential and commercial uses</p>	
<p>§15-22-9 Method of Development</p>	<p>Base Zone Development or Planned Development</p>		<p>Planned Development</p>	
<p>§15-22-113 Floor Area for Commercial Use</p>	<p>No more than 1.2 FAR, or 746,245 sf</p>	<p>100% of the total FAR allowed</p>	<p>8,255 sf</p>	
<p>Floor Area for Residential Use</p>	<p>100% of the total FAR allowed</p>	<p>100% of the total FAR allowed</p>	<p>519,526 sf</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
Total Dwelling Units			177 units	
§15-22-115 Reserved Housing Units	At least 20% of the total number of dwelling units		45 units	Provided on Land Block 5 – Project 1
§15-22-116 Building Height	400 ft	400 ft	400 ft, plus additional 18 ft for allowable protrusion such as mechanical equipment and screens.	
§15-22-116 -Site FAR	4.75 (3.5 + 0.3 bonus + 25% transferred FAR) is the maximum allowed for Land Block 2.	4.75 FAR	1.83 FAR for the Project	
§15-22-116 Land Block FAR	4.75 FAR	527,781 sf for Land Block 2	1,159,087 sf remaining to be developed on Land Block 2	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-203 Transferred FAR</p>	<p>No more than 25% of the allowable FAR, or 0.95 (3.8 x 0.25)</p>		<p>Land Block 2 currently plans to receive 25% from other development lots in Ward Village per Master Plan.</p>	
<p>§15-22-116 Tower Footprint</p>	<p>16,000 sf</p>	<p>16,000 sf</p>	<p>Approximately 15,053 sf</p>	
<p>§15-22-117 View Corridor Setback - Tower</p>	<p>75 ft from property line fronting Ala Moana Boulevard and Kamakee Street</p>	<p>Ward Neighborhood Master Plan acknowledges a potential modification of eliminating the 75 ft tower element setback along Ala Moana Boulevard</p>	<p>75 ft from property line fronting Ala Moana Boulevard. 30 ft from property line fronting Kamakee Street.</p>	<p>Modification approved by the Authority at its August 21, 2013 Public Hearing.</p>

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-120 Platform Height</p>	<p>Platform height may be modified to exceed 45 ft.</p>	<p>The Ward Neighborhood Master Plan contemplates increasing the platform or street front element height to 75 ft for parcels not directly fronting Ala Moana Boulevard.</p>	<p>Modification requesting 65 ft for entire platform, plus additional ancillary architectural components with height up to 77 ft for up to 15% of the Platform.</p>	<p>Modification approved by the Authority at its August 21, 2013 Public Hearing.</p>

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
§15-22-63.1 Front Yard	15 ft	Eliminate side and rear yard setbacks in selected locations where the facades of new buildings will abut solid walls of existing or future neighboring structures.	15 ft with "front yard averaging" approach; canopy encroachment up to 10 ft.	Both Modifications approved by the Authority at its August 21, 2013 Public Hearing.
§15-22-62 Front Yard Height Setback	Same as View Corridor Setbacks.	Eliminating setbacks in these locations will allow connections between buildings and prevent new residual spaces from being created between buildings, thus helping to minimize narrow and unsafe areas.	Same as View Corridor Setbacks.	
§15-22-63.2 Side and Rear Yard	Not required for structure without openings. 10 ft for structure with openings.		No openings on rear yard, no setback on rear yard.	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-143 Tower Orientation</p>	<p>The long axis shall be between 35 degrees west and 65 degrees west of south.</p>	<p>Coincides with the Vested Plan and promotes Mauka-Makai building orientation.</p>	<p>The long axis of tower is 48 degrees west of south.</p>	
<p>§15-22-143 Tower Spacing</p>	<p>300 ft between the long parallel sides of neighboring towers to the extent practicable.</p>	<p>Separation of 300 ft between long sides and 200 ft between short sides where practicable</p>	<p>No existing towers are within 300 ft from the long side of the tower.</p>	
<p>§15-22-143 Tower Spacing</p>	<p>200 ft between the short sides of towers.</p>		<p>No existing towers are within 200 ft from the short side of the tower.</p>	
<p>§15-22-144 Landscaping</p>	<p>Along Ward Avenue, Rainbow shower shall be provided at 45 ft on center.</p>	<p>Planting designs will comply with the HCDA Vested Rules currently in effect.</p>	<p>Street tree landscaping to be provided consistent with Vested Rules, based on draft landscape plans included and subject to further design and approval.</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-64 Open Space</p>	<p>The lower of: 10% of the lot area; or 25% of the lot area less required yard areas.</p>	<p>At least 10% of the lot area shall be provided as open space.</p>	<p>19.2% of the development lot area, or 68,158 sf. Project 1 will provide 13,667 sf or 16.8% of its own lot area.</p>	
<p>§15-22-65 Recreation Space</p>	<p>55 sf per dwelling unit</p>	<p>Nearly 250,000 square feet is to be provided as recreational space within Ward Neighborhood.</p>	<p>Approximately 88.44 sf/dwelling unit, or 15,653 sf provided on-site for the 177 dwelling units.</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-67 Off-Street Parking</p>	<p>Multi-family dwellings: 600 sf or less: 0.9 per unit 600 sf to 800 sf: 1.13 per unit 800 sf and over: 1.35 per unit Commercial uses: 1 per 444 sf</p>	<p>All parking areas shall comply with local codes and regulations, ratio requirements, general parking dimensions and any other applicable policies regarding parking.</p>	<p>Requirements: Multi-family dwellings: 1.35 x 177 = 239 spaces Standard space required: 120 spaces Commercial Use: 8,255/444 = 19 spaces Standard spaces required: 19 spaces Total for all Uses: Required: 258 spaces Standard Sized: 139 spaces Provided: 317 spaces</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-68 Off-Street Loading</p>	<p>Commercial Use: 2,000 sf to 10,000 sf: 1 space</p> <p>Residential Use: 519,526 sf: 5 spaces</p> <p>After adjustment of up to 50% for two or more uses, 3 stalls are required.</p> <p>At least 2 stalls shall be 12'W x 35'L x 14'H. The balance may be 8.5'W x 19'L x 10'H.</p>	<p>All parking areas shall comply with local codes and regulations, ratio requirements, general parking dimensions and any other applicable policies regarding parking.</p> <p>Based on the proposed Project programming, this totals: Multi-Family Dwellings: 5 stalls required Commercial: 1 stall</p> <p>Required 50% of required number of loading spaces may be allowed when assigned to serve two or more uses.</p>	<p>Total: 3 spaces</p> <p>2 - 12' x 35' x 14' spaces</p> <p>1 - 8.5' x 19' x 10' spaces</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-73 Dedication of Public Facilities</p>	<p>3% of commercial floor areas 4% of residential floor areas Exempt for reserved housing</p>		<p>Required Public Facilities: Commercial: 3% x 8,255 sf = 248 sf; Residential: 4% x 497,832 sf = 20,781 sf Total: 20,781 sf.</p> <p>Public facilities for Land Block 2 will be provided through a perpetual public easement for public right-of-way and sidewalk extensions as well as land dedication.</p>	
<p>§15-22-80 Joint Development</p>	<p>Required two or more adjacent lots developed together.</p>		<p>Pursuant to the Master Plan, all of the parcels in Land Block 2 are included and will be made part of a larger Joint Development Agreement.</p>	
<p>§15-22-82 Flood Hazard District</p>	<p>Follow Honolulu Land Use Ordinance Article 7.</p>		<p>The Project ground elevation is being raised in order to comply.</p>	

DEVELOPMENT PERMIT

for

**Ward Village Land Block 3, Project 1
(Master Plan Permit No.: PL MASP 13.1.3)**

Approved by the

**HAWAII COMMUNITY DEVELOPMENT AUTHORITY
461 Cooke Street
Honolulu, Hawaii 96813**

on

August 21, 2013

Pursuant to Chapter 206E, Hawaii Revised Statutes

PLANNED DEVELOPMENT PERMIT NO.: KAK 13-037

EXHIBIT 5

I. PROJECT SUMMARY AND ENTITLEMENTS

Refer to the attached Table 1 as Exhibit A.

II. PUBLIC FACILITIES DEDICATION: Based on the information provided on the Development Permit Application, land requirement for public facilities dedication is determined to be 25,803 square feet. The Applicant's request to fulfill the public facilities dedication requirement for this Project through its facilities dedication credit is approved. The table below is a summary of public facilities dedication proposed by the Applicant creating a public facilities dedication credit in favor of the Applicant.

WNMP Public Facilities Dedication				
Credit from Pre-WNMP Projects				39,581 (SF)
Proposed Public Facilities Dedication				
Location				Area (SF)
Land Block 2_Project 1: Sidewalk along Ala Moana Boulevard				519
Land Block 2_Project 1: Sidewalk along Kamakee Street				499
Land Block 5_Project 1: Road/Sidewalk along Ilaniwai Street				2,483
Halekauwila Street				37,261
Total Proposed Public Facilities Dedication				40,762
Total Public Facilities Dedication Credit				80,343
Required Public Facilities Dedication				
Project	Use	Floor Area	Dedication %	Area (SF)
LB2_Project 1	Commercial	8,255	3%	248
LB2_Project 1	Residential	519,526	4%	20,781
LB2 Project 1, Project Total				21,029
LB3_Project 1	Commercial	17,137	3%	514
LB3_Project 1	Residential	632,223	4%	25,289
LB3 Project 1, Project Total				25,803
LB5_Project 1	Commercial	25,110	3%	753
LB5_Project 1	Residential	56,108	4%	2,244
LB5 Project 1, Project Total				2,997
Total Required Public Facilities Dedication (SF)				49,829
Total Balance (SF)				30,514

Regarding the public facilities credits generated from dedication of additional sidewalk along Ala Moana Boulevard, Kamakee Street, and Ilaniwai Street, the Applicant shall

prior to the approval of the foundation permit by the HCDA, prepare perpetual public easement and public facilities dedication documents acceptable to the HCDA Executive Director which shall be recorded with Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. With regard to the portion of Halekauwila Street proposed for fulfillment of public facilities dedication, the Applicant shall convey the said land to the HCDA in fee simple before the HCDA approval of the building permit for the Project.

- 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 318 residential units. Twenty percent (20%) of the total residential units, which translates to a total of eighty (80) units, shall be required to meet the reserved housing provisions the Vested Rules. The Applicant shall provide eighty (80) units as reserved housing for sale. The Applicant is proposing to provide all the reserved housing units required for this Project in a separate project that has already received a Planned Development Permit and is proposed to be located on Land Block 5 of the Ward MP area.

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 HCDA prior to approval of the initial Building Permit by the HCDA.

- IV. INFRASTRUCTURE IMPROVEMENTS:** Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements which are immediately necessary to proceed with the Project; and (2) improvements which are

necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program.

- A. **Improvements Necessary to Proceed with the Project:** With regard to infrastructure improvements or requirements which are necessary to proceed with the Project, the Applicant shall be responsible for providing necessary developer improvements.
- B. **Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program:** As part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the Kakaako Community Development District, financed in part through an Improvement District Program.

In this regard, the Project shall be subject to assessments for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective projects under the HCDA or other government agencies' improvement programs. The Project will be assessed under the same methods and in the same manner as other properties in the area.

In order to ensure the participation of the Project, the Applicant, and its successors and assigns, shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented. The terms specified in the agreement shall be made a part of all condominium and conveyance documents for the Project and said documents shall be reviewed and approved by the HCDA prior to submission to the Real Estate Commission and to execution.

- V. **DECISION:** Staff Report, Findings, and Recommendations for the Development Permit Application dated August 21, 2013, including the conditions set forth in the Staff Report, Findings, and Recommendations and adopted by the Authority is hereby incorporated into this Development Permit and made part of this Permit. The Development Permit for the Project is hereby approved, subject to the following provisions:

- A. Provide a Development Agreement and a Joint Development Agreement with the HCDA that binds the Applicant, and its successors and assigns, individually and collectively, to develop and to maintain the Project site in conformity with the provisions of this Development Permit and with the Vested Rules. This Agreement shall be recorded with the Bureau of Conveyances or

the Assistant Registrar of the Land Court as a covenant running with the land. Proof of such filing in the form of copies of the covenants certified by the appropriate agency shall be submitted to the HCDA.

- B. Comply with all the conditions set forth in the Staff Report, Findings, and Recommendations dated August 21, 2013 and adopted by the Authority.
- C. Comply with all applicable requirements of Subchapter 3 (General Development Requirements) of the Vested Rules.
- D. Comply with all applicable requirements of Subchapter 4 (Planned Developments) of the Vested Rules.
- E. Comply with all applicable requirements of Subchapter 5 (Special Urban Design Rules) of the Vested Rules.
- F. Comply with all applicable requirements of Subchapter 7 (Sale and Rental of Reserved Housing Units) of the Vested Rules.
- G. Comply with all requirements as specified under Parts I., II., and III. of this Permit.
- H. Comply with all requirements as specified under Part IV. (Infrastructure Improvements) of this Permit.
- I. Comply with any other terms and conditions as required by the HCDA Executive Director to implement the purpose and intent of the Rules.

All conditions shall be met prior to the issuance of the initial Building Permit for the Project.

Dated at Honolulu, Hawaii, this 21st day of August 2013.

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, State of Hawaii

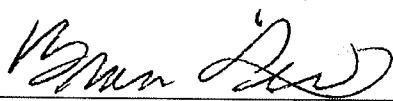
By 
Brian Lee, Chairperson

Table 1

I. PROJECT SUMMARY AND ENTITLEMENTS

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
Lot Area			Ward Village, Land Block 3 Total: 270,159 sf Land Block 3, Project 1 Total: 89,882 sf 4 parcels TMK: 2-3-005: 019 TMK: 2-3-005: 022 TMK: 2-3-005: 013 por. TMK: 2-3-005: 017 por.	
Street Widening	none		none	
§15-22-30; §15-22-33 Land Use Zone	Mixed-Use Zone - Residential Emphasis	Single Mixed-Use Zone	Residential and commercial uses	
§15-22-9 Method of Development	Base Zone Development or Planned Development		Planned Development	
§15-22-113 Floor Area for Commercial Use	No more than 1.2 FAR, or 746,245 sf	100% of the total FAR allowed	17,137 sf	
Floor Area for Residential Use	100% of the total FAR allowed	100% of the total FAR allowed	632,223 sf	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
Total Dwelling Units			418 units	
§15-22-115 Reserved Housing Units	At least 20% of the total number of dwelling units		80 units	To be provided on Land Block 5 – Project 1
§15-22-116 Building Height	400 ft	400 ft	400 ft, plus additional 18 ft for allowable protrusion such as mechanical equipment and screens.	
§15-22-116 Land Block FAR	3.8 (3.5 + 0.3 bonus + 25% transferred FAR) is the maximum allowed for Land Block 3.	Development Lot 2.88 FAR Discretionary review process for the transfer of floor area from a sending site to a receiving site.	For Land Block 3 a total of 2,884, or 779,138 sf	
§15-22-116 Ward MP FAR	3.8 (including 0.3 bonus) for the entire Ward Master Plan.		Upon completion of this Project, there is no remaining floor area for this Land Block	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-203 Transferred FAR</p>	<p>No more than 25% of the allowable FAR, or 0.95 (3.8 x 0.25)</p>		<p>Land Block 3 currently plans to transfer 24.1% or 247,466 sf to other development lots in Ward Village per Master Plan.</p>	
<p>§15-22-116 Tower Footprint</p>	<p>16,000 sf</p>	<p>16,000 sf</p>	<p>Approximately 14,500 sf</p>	
<p>§15-22-117 View Corridor Setback - Tower</p>	<p>75 ft from property line fronting Kamakee Street and Queen Street</p>	<p>Ward Neighborhood Master Plan acknowledges a potential modification of eliminating the 75 ft tower element setback along Ala Moana Boulevard</p>	<p>75 ft from property line Kamakee Street and Queen Street</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-117 View Corridor Setback - Platform</p>	<p>15 ft from property line fronting Kamakee Street and Queen Street; 1:1 slope from 20 ft high</p>	<p>The Ward Neighborhood Master Plan contemplates the sloping setback on the platform allows for the development of a continuous building facade that better defines the edge of street.</p>	<p>15 ft from property line fronting Kamakee Street at ground level. Modification request to eliminate 1:1 sloped setback.</p>	<p>Modification approved by the Authority at its August 21, 2013 Public Hearing</p>
<p>§15-22-120 Platform Height</p>	<p>Platform height may be modified to exceed 45 ft.</p>	<p>The Ward Neighborhood Master Plan contemplates increasing the platform or street front element height to 75 ft for parcels not directly fronting Ala Moana Boulevard.</p>	<p>Modification requesting 75 ft for entire platform.</p>	<p>Modification approved by the Authority at its August 21, 2013 Public Hearing</p>

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-63.1 Front Yard</p>	<p>15 ft</p>	<p>Eliminate side and rear yard setbacks in selected locations where the facades of new buildings will abut solid walls of existing or future neighboring structures.</p>	<p>15 ft with "front yard averaging" approach; canopy encroachment up to 10 ft.</p>	<p>Both modifications were approved by the Authority at its August 21, 2013 Public Hearing</p>
<p>§15-22-62 Front Yard Height Setback</p>	<p>Same as View Corridor Setbacks.</p>	<p>Eliminating setbacks in these locations will allow connections between buildings and prevent new residual spaces from being created between buildings, thus helping to minimize narrow and unsafe areas.</p>	<p>Same as View Corridor Setbacks.</p>	
<p>§15-22-63.2 Side and Rear Yard</p>	<p>Not required for structure without openings. 10 ft for structure with openings.</p>			

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-143 Tower Orientation</p>	<p>The long axis shall be between 35 degrees and 65 degrees west of south.</p>	<p>Coincides with the Vested Plan and promotes Mauka-Makai building orientation.</p>	<p>The long edge of the tower element of the project is oriented parallel to the Mauka-Makai View Corridor</p>	
<p>§15-22-143 Tower Spacing</p>	<p>300 ft between the long parallel sides of neighboring towers to the extent practicable.</p>	<p>Separation of 300 feet between long sides and 200 feet between short sides where practicable</p>	<p>The distance between the proposed tower and neighboring existing towers is a minimum of 445 ft. Another proposed tower on Land Block 2 will be a distance of 387 ft.</p>	
<p>§15-22-143 Tower Spacing</p>	<p>200 ft between the short sides of towers.</p>		<p>No existing towers are within 200 ft from the short side of the tower.</p>	
<p>§15-22-144 Landscaping</p>	<p>Along Ward Avenue, Rainbow shower shall be provided at 45 ft on center.</p>	<p>Planting designs will comply with the HCDA Mauka Area Rules currently in effect.</p>	<p>Street tree landscaping to be provided consistent with the Vested Rules, based on draft landscape plans included and subject to further design and approval.</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-64 Open Space</p>	<p>The lower of: 10% of the lot area; or 25% of the lot area less required yard areas.</p>	<p>At least 10% of the lot area shall be provided as open space.</p>	<p>Ground level open space of the proposed project totals approximately 11,260 square feet or 12.5% of the 2-acre site. In addition, the Ward Village Shops Phases 1A, 1B and 2A have incorporated open space requirements exceeding 10% of their land area, resulting in the overall land block fulfilling its open space requirement.</p>	
<p>§15-22-65 Recreation Space</p>	<p>55 sf per dwelling unit</p>	<p>Nearly 250,000 square feet is to be provided as recreational space within Ward Neighborhood.</p>	<p>318 units x 55 square feet of recreation space per unit Required = 17,490 SF Provided = 55,085 SF</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-67 Off-Street Parking</p>	<p>Multi-family dwellings: 600 sf or less: 0.9 per unit 600 sf to 800 sf: 1.13 per unit 800 sf and over: 1.35 per unit Commercial uses: 1 per 444 sf</p>	<p>All parking areas shall comply with local codes and regulations, ratio requirements, general parking dimensions and any other applicable policies regarding parking</p>	<p>A total of 411 stalls are required for the residential component and 39 stalls for the commercial. An approximate total of 579 stalls will be provided.</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-68 Off-Street Loading</p>	<p>Commercial Use: 10,001 sf to 20,000 sf: 2 spaces</p> <p>Residential Use: 512,658 sf: 4 spaces</p> <p>After adjustment of up to 50% for two or more uses, 4 stalls are required.</p> <p>At least 2 stalls shall be 12'W x 35'L x 14'H. The balance may be 8.5'W x 19'L x 10'H.</p>	<p>All parking areas shall comply with local codes and regulations, ratio requirements, general parking dimensions and any other applicable policies regarding parking.</p> <p>Based on the proposed Project programming, this totals:</p> <p>Multi-Family Dwellings: 3 stalls required</p> <p>Commercial: 2 stalls</p> <p>Required 50% of required number of loading spaces may be allowed when assigned to serve two or more uses.</p>	<p>Total: 3 spaces</p> <p>2 - 12' x 35' x 14' spaces</p> <p>1 - 8.5' x 19' x 10' spaces</p>	

Description	Vested Rules Requirements	Ward Neighborhood Master Plan	Proposed Development	Remarks
<p>§15-22-73 Dedication of Public Facilities</p>	<p>3% of commercial floor areas 4% of residential floor areas Exempt for reserved housing</p>		<p>Required Public Facilities: Commercial: 3% x 17,137 sf = 514 sf Residential: 4% x 632,223 sf = 25,289 sf. Total: 25,803 sf. Public facilities for Land Block 3 will be provided through a perpetual public easement for public right-of-way and sidewalk extensions as well as through land dedication.</p>	
<p>§15-22-80 Joint Development</p>	<p>Required two or more adjacent lots developed together.</p>		<p>Pursuant to the Master Plan, all of the parcels in Land Block 3 are included and will be made part of a larger Joint Development Agreement.</p>	
<p>§15-22-82 Flood Hazard District</p>	<p>Follow Honolulu Land Use Ordinance Article 7.</p>		<p>Ground level is elevation 8'6" according to the current FEMA regulation.</p>	

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Attorneys for Plaintiff Association of Unit Owners of 988 Halekauwila

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

ASSOCIATION OF UNIT OWNERS OF
988 HALEKAUWILA,

Plaintiff,

v.

HOWARD HUGHES CORPORATION; 988
HALEKAUWILA, LLC; VICTORIA
WARD, LIMITED; WARD
MANAGEMENT DEVELOPMENT
COMPANY, LLC; THE HUGHES
CORPORATION; HOWARD RESEARCH
AND DEVELOPMENT CORPORATION;
NORDIC PCL CONSTRUCTION, INC.;
DOES 1-20; DOES 21-50; DOES 51-200;
DOES 201-400,

Defendants.

CIVIL NO.
(Construction Defects)

**COMPLAINT; EXHIBITS "1" – "3";
DEMAND FOR JURY TRIAL; SUMMONS**

Judge:
Trial Date: None

COMPLAINT

1. Plaintiff Association of Unit Owners of 988 Halekauwila ("Plaintiff" or "AOUO"), by its undersigned attorneys, hereby files this Complaint against Defendants Howard Hughes Corporation ("Howard Hughes"), 988 Halekauwila, LLC ("988 Halekauwila"), Victoria

Ward, Limited (“Victoria”), Ward Management Development Company, LLC (“Ward”), The Hughes Corporation (“Hughes Corp.”), Howard Research and Development Corporation (“HR&D”), and Nordic PCL Construction, Inc. (“Nordic”) (collectively “Defendants”) and alleges the following on information and belief.

2. Ke Kilohana (the “Project”) is a 43-floor, high-rise, mixed-use building developed and constructed by Defendants. The Project consists of commercial space and residential units located in the Kaka’ako district of Honolulu, Hawai’i. The Project encompasses approximately 525,535 square feet consisting of commercial space and 424 individual residential units, 375 of which are Reserved Housing units.

3. Defendants developed and constructed the Project with multiple code violations and construction defects.

4. The Project also fails to meet codes that are mandated for the safety of the residents. Parking guard rails have open spaces between the floor and metal railing that exceed the four (4) inch maximum required under the applicable International Building Code (“IBC”). The railing on the communal lanais in the project (“Sky Lanai”) fail to meet the required height of 44.25 inches from the support curb, creating a hazard where a person is at risk of falling over if standing on the curb.

5. The Project contains multiple construction defects as a result of Defendants deficient development and construction. The parking screen, Victaulic couplings, and copper piping are corroding due to Defendants’ improper installation. Defendants have also improperly installed Packaged Terminal Air Conditioner (“PTAC”) units causing evaporated water to blow back into the building, streaking the windows in the unit below.

6. Other construction defects directly affect the safety of the residents—fire walls

contain penetrations, electrical conduits and sprinkler pipes are not properly fire stopped, and the stairway has penetrations that impair the pressurization system.

7. Moreover, the parking spaces in the parking structure of the Project fail to meet code because they contain obstructions, which preclude typical and ordinary access to use of parking spots.

THE PARTIES

8. Plaintiff, as an Association of Unit Owners, in accordance with its governing documents, has the right and duty to manage, operate, and control the Project and has all of the powers necessary to carry out its rights and obligations, including the right, duty, and power to contract for legal services to prosecute any action affecting the Association when such action is deemed by it necessary to enforce its powers, rights and obligations, including the bringing of this action.

9. Plaintiff brings the claims set forth herein on its own behalf and on behalf of its members.

10. The facts set forth in this Complaint affect two or more unit owners at the Project.

11. The AOOU governing documents give the AOOU the power to pursue the claims herein.

12. At a Special Meeting that took place on February 12, 2020, the AOOU held a vote by secret ballot of its members concerning the commencement and maintenance of claims against developers 988 Halekauwila, Howard Hughes, Victoria, and appropriate and related parties, as well as Nordic, the General Contractor, Subcontractors, Design Professionals, and appropriate and related parties as deemed appropriate for construction defects in the Ke Kilohana building, breach of warranty, breach of contract, and negligence, to include but not be limited to claims regarding inadequate planning, construction, and design of the parking spaces in the

building garage and obstruction of access to parking spaces by building components, and related claims, and to engage legal counsel with regard thereto. Over 95% of the voting members approved the commencement and maintenance of this litigation, and thus, the AOOU has satisfied all prerequisites to pursue the claims herein.

13. Defendant 988 Halekauwila is a developer of the Project and is a Delaware corporation doing business in Hawai'i.

14. Defendant Hughes Corp. is a developer of the Project and is a Delaware corporation doing business in Hawai'i. Hughes Corp. is the Sole Member of 988 Halekauwila.

15. Defendant HR&D is a developer of the Project and is a Delaware corporation doing business in Hawai'i. HR&D is the Sole Shareholder of Hughes Corp.

16. Defendant Howard Hughes is a developer of the Project and is a Delaware corporation doing business in Hawai'i. Howard Hughes is the Sole Shareholder of HR&D.

17. Defendant Victoria is a developer of the Project and is a Delaware corporation with its principal place of business in Dallas, Texas. Howard Hughes held out that Victoria is a subsidiary of Howard Hughes and therefore, they are one and the same.

18. Defendant Ward is a developer of the Project and is a Delaware corporation with a principal place of business in Dallas, Texas.

19. Defendants Howard Hughes, 988 Halekauwila, Hughes Corp., HR&D, Victoria, and Ward (collectively "Developer Defendants") are the developers of the Project.

20. Defendant Nordic is a Hawai'i corporation with its principal place of business in Hawai'i. Nordic is and was the general contractor and manager of the Project. Nordic at all times acted as the general contractor, and in addition hired various subcontractors to perform work and selected and purchased materials for the construction. Nordic directed the means and

methods of construction under direction of the Developer Defendants and design professionals engaged by Developer Defendants.

21. Plaintiff has reviewed public and other records available to it in order to ascertain the true and full names and identities of all defendants in this action, but Plaintiff has no further knowledge or information at this time regarding all responsible parties and are unable to ascertain the identity of defendants in this action designated as Does 1-20; Does 21-50, Does 51-200, Does 201-400 (collectively, the “Doe Defendants”). The Doe Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiff, except that they may be connected in some manner with the named defendant, such as being agents, servants, employees, employers, representatives, co-venturers, associates or independent contractors of Defendants and/or were in some manner presently unknown to Plaintiff engaged in activities such as designing, manufacturing, selling, distributing, installing and/or providing materials and/or services for the building of the Project which may be identified herein. The Doe Defendants’ true names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or its attorneys. Plaintiff prays for leave to amend this Complaint to show the true names and capacities, activities and/or responsibilities when the same has been discovered.

22. Plaintiff is ignorant of the names of Defendants fictitiously named herein as DOES 1-20 (hereafter collectively “Developer Doe Defendants”), who otherwise participated in the financing, construction, development, and sale of units in the Project through a series of corporations, partnerships, limited liability companies, or other entities designed to allow undisclosed participation in the development of the Project and shielding from liability for any defective construction of the Project, and which participated in the development, construction,

and sale of, and profit-taking from, the Project.

23. Plaintiff is ignorant of the names of Defendants fictitiously named herein as DOES 21-50 (hereinafter collectively “Design Doe Defendants”), who at all relevant times hereto were doing business in the Honolulu, Hawai‘i. Design Doe Defendants supplied professional design services, including architectural, engineering, design, and construction management services to the Project during its construction and/or were the alter ego, responsible principal, or agent of the others.

24. Plaintiff is ignorant of the names of Defendants fictitiously named herein as DOES 51-200 (hereinafter collectively “Supplier Doe Defendants”), who at all relevant times hereto were doing business in the Honolulu, Hawai‘i. Supplier Doe Defendants supplied building materials, components, and/or housing products, to the Project during its construction and/or were the alter ego, responsible principal, or agent of the others.

25. Plaintiff is ignorant of the names of Defendants fictitiously named herein as DOES 201-400 (hereinafter collectively “Subcontractor Doe Defendants”), who at all relevant times hereto were doing business in the Honolulu, Hawai‘i. Subcontractor Doe Defendants supplied labor and/or materials to the Project during its construction and/or were the alter ego, responsible principal, or agent of the others.

Chapter 672E Notice Requirement

26. Plaintiff sent Defendants a notice of potential claims (“Notice”) as provided by Hawai‘i Revised Statutes (“HRS”) Chapter 672E concurrently with the filing of this Complaint.

27. The Notice satisfies the notice requirement under HRS Chapter 672E, in addition to any notice requirement required under the governing documents of the Association.

28. Plaintiff files this Complaint concurrently with the Notice in order to ensure that no applicable statute of limitations or repose would preclude this action prior to completing the notice requirements, as permitted under HRS §672E-8.

AGENCY ALLEGATIONS

29. Defendants, and each of them, were at all times relevant hereto acting as the agents, servants, employees, partners, and/or joint venturers of each of the other defendants, and that each such defendant was acting within the scope of its agency, employment, partnership or joint venture, and with the knowledge, permission, consent and ratification of its actions by each of the other defendants. At all relevant times herein, each and every defendant was acting as the duly authorized agent of each and every other defendant, so that each defendant is liable for each and every wrong committed by each and every other defendant. Said defendants have proximately caused Plaintiff's damages.

JURISDICTION AND VENUE

30. All incidents described herein took place in Hawai'i, within the jurisdiction of this Court and the amount in controversy meets or exceeds the jurisdictional limit of this Court.

GENERAL ALLEGATIONS

31. The Project was developed as part of the Ward Neighborhood Master Plan ("Master Plan"). The Master Plan, which was approved by the Hawai'i Community Development Authority ("HCDA") on January 14, 2009.

32. On April 18, 2013, Howard Hughes and Victoria submitted an Application for Development Permit for the Project.

33. The Developer Defendants subsequently hired Nordic to serve as the general contractor on the project.

34. Nordic was hired to build the Project and to ensure that its work and the work of its subcontractors and all materials provided were of sufficient quality and free from defects and was in full compliance with applicable building codes and the requirements contained in all of the contract documents.

35. The Developer Defendants executed the Declaration of the Condominium Property Regime of 988 Halekauwila (“Declaration”) on February 18, 2016. The Declaration is signed by David Striph, the Vice President of Defendant 988 Halekauwila. A true and correct copy of the Declaration is attached to this Complaint as Exhibit “1” and is incorporated herein by reference.

36. Pursuant to XXXIX of the Declaration, the Project was to be built in compliance with all zoning and building ordinances and codes of the County, as applicable, and all other County permitting requirements, as applicable. Pursuant to XL of the Declaration, “all Improvements constructed or made by Developer in the Project [are] built or made in compliance with all applicable building codes and ordinances and . . . improvements are of a quality that is consistent with Project Quality Standards.” *Id.* Such statement that the building was constructed in accordance with building codes and ordinances is false and inaccurate as the building is replete with defects.

37. The condominium units and building were constructed poorly as Defendants disregarded and failed to fulfill its obligations and duties to provide code compliant and quality work on the Project for which they were responsible, leading to deficient construction, continuing and expensive delay in reaching completion, and diminishing the value of the building.

38. At a minimum, Nordic's construction on the following aspects of the Project was substandard, and defective, failed to meet its quality commitments, failed to meet the Project quality standard, and/or failed to meet codes and constructed a project with defects as set forth below:

1.0 Parking Garage Accessibility

- 1.1 Inadequate size and access to "compact" parking spots
- 1.2 Blind spots in driveways
- 1.3 Inaccessible parking spots for intended and typical use
- 1.4 Intrusions into area of parking spaces in excess of applicable code regulation allowance of 6"
- 1.5 Multiple intrusions into compact parking spaces
- 1.6 Inadequate size of handicap parking stall

2.0 Parking Garage Building

- 2.1 Gaps in guard rail in excess of 4" code allowance
- 2.2 Guardrail not contiguous to edge of slab
- 2.3 Gap at slab edge hazardous condition
- 2.4 Guardrail of excessive length without intermediate support
- 2.5 Guardrail corroding. Inappropriate use of galvanized cable
- 2.6 Guardrail spacing in excess of 4"
- 2.7 Cracking of garage slabs
- 2.8 Screen attachment hardware including bolts and brackets corroding
- 2.9 Metal screen wall panels and support metal structure not primed or painted adequately, and corroding

- 2.10 Selection of metal for screen/frame/hardware - not sufficiently corrosion resistant

3.0 Plumbing – Cold Water Supply

- 3.1 Corrosion on copper water pipes in garage
- 3.2 Corrosion on copper water pipes in garage and pump room
- 3.3 Corrosion of Victaulic fasteners
- 3.4 Dissimilar metal corrosion at Victaulic couplers and pipe junctions
- 3.5 Use of non-corrosion resistant pipes and couplers and resulting corrosion on pipe assemblies

4.0 Water Lines/ Washer-Dryer Cabinets

- 4.1 Corrosion on copper pipe assemblies in units at hot water tank
- 4.2 Hydrogen Sulfide induced corrosion on copper pipes damaging pipes and connectors
- 4.3 Inaccessible shut-off valve at unit washer-dryer assembly

5.0 Plumbing Assembly

- 5.1 Defective vent system/drain systems, defective vent assemblies resulting in hydrogen sulfide – sewer gas-inside units
- 5.2 Presence of toxic hydrogen sulfide gas in units
- 5.3 Improper placement of plumbing vent lines adjacent to air intakes at roof
- 5.4 Roof ponding of water on roof
- 5.5 Excessive patching of roof material
- 5.6 Corrosion of electrical junction boxes on roof

6.0 Hallways

6.1 Excessive wind noise in hallways and units

6.2 Inadequate hallway ventilation

7.0 Staircase Assemblies

7.1 Improper Presence of materials in fire staircase and duct not required for stair system

7.2 Failure to adequately tape and seal drywall joints

7.3 Unsealed and untapped joints and fasteners in the fire stairway duct assemblies

7.4 Failure of fire stairways to comply with IBC 909.6 for pressurization, and excess door pull force

7.5 Failure of fire assemblies to have a Registered Professional Engineer certified full code compliance

7.6 Failure of obtain Fire Department approval of deficiencies

8.0 Lobby

8.1 Excessive cracking of lobby floor

9.0 Security System

9.1 Inadequate security cameras on building exteriors, entries and hallways for security monitoring.

10.0 Fire Control Room

10.1 Inadequate manual and plans for operation of pressurized staircase and alarm assemblies- inadequate commissioning report

11.0 Building General

- 11.1 Failure to provide adequate Building Commissioning Reports
- 11.2 Inadequate guardrails assembly at Sky Lanais on floors: 31–33 and 36-38
- 11.3 Excessive height of curbs causing guardrail height to be inadequate
- 11.4 Lack of drainage at amenity deck planters causing wet concrete and slip hazards

12.0 Drywall

- 12.1 Excessive drywall cracks along ceiling lids

13.0 PTAC Units

- 13.1 Inadequate condensate evaporation system in PTAC units
- 13.2 Failure to provide condensate drain
- 13.3 Damage to building envelope/window frame due to condensate water
- 13.4 Obstruction of window sight area due to PTAC condensation
- 13.5 Excessive operating noise of unit
- 13.6 Obstruction of window and floor space due to PTAC placement
- 13.7 Improper installation of PTAC system so as to preclude condensate drainage

14.0 Windows

- 14.1 Corrosion of window hinges
- 14.2 Inadequate design/strength of window hinge to keep window open in typical wind conditions
- 14.3 Failure of window hinges to retain windows on an open position to allow for fresh air ventilation into units

15.0 Fire Protection

- 15.1 Inadequate firestops at penetrations of fire rated walls and assemblies
- 15.2 Unidentified fire stop materials without verification of suitable material
- 15.3 Inadequate protection of structural steel

16.0 LEED

- 16.1 Failure to install appropriate high efficiency luminaire assemblies and bulbs, resulting in excessive energy consumptions and costs
- 16.2 Lighting not LEED appropriate

39. The Project contains additional defects and code violations, which are included in the Notice of Warranty Claim sent to Nordic on February 28, 2020. A true and correct copy of the Notice of Warranty Claim is attached as Exhibit “2” and incorporated herein by reference.

40. Plaintiff anticipates additional defects and code violations will be discovered as this case progresses. Plaintiff will amend this complaint to add those defects within a reasonable time after they are discovered.

41. Defendants violated applicable building codes and municipal ordinances when it developed and constructed the Project.

42. Defendants deviated from industry standards when it developed and constructed the Project.

43. Defendants developed, constructed, planned, designed, and engineered the Project in such a way that it knew or should have known that this Project would pose serious risks of physical harm.

44. As a result of all Defendants’ conduct, multiple aspects of the Project fail to function as any association or member would expect, creating an unsafe and uninhabitable

environment with construction and components that must be repaired and/or replaced at significant expense.

45. Defendants violated applicable building codes and deviated from industry standards, by constructing the Project with these and other defects.

46. As a direct result of Defendants' conduct described herein, these and other defects (a) have caused and continue to cause Plaintiff damages, including financial harm, (b) have materially diminished and continue to diminish the value of the Project; (b) have had and continue to have obvious and material negative impacts on the safety and comfort of the Project's common elements and units; (c) have violated and continue to violate applicable building codes; (d) materially deviated and continue to deviate from industry standards; (e) posed and continue to pose serious risks of physical harm that the Defendants knew or should have known were present and (f) resulted and continue to result in the inability of the Project to provide the functions that can be reasonably expected in a residential building.

Nordic Provides Warranties For Defects in Materials and Workmanship

47. In the Construction Management Agreement ("CMA") between Nordic and Developer Defendants, Nordic provided an express warranty in its CMA, representing among other things, that the Project shall comply in all respects with the terms and requirements of the Contract Documents, shall be of good quality, free from faults and defects, latent or patent, shall be fit and sufficient for the specific purpose(s) intended, shall pass without objection in the trade, shall be merchantable, and shall comply with the requirements of all applicable Laws and Regulations. Nordic also represented that the Project shall be free from defects in design.

48. Nordic's express warranty in the CMA provides:

4.4 Warranties.

4.4.1 Construction Manager warrants to Development Manager and Owner with respect to all goods, materials and equipment furnished in respect to the Work that same (i) shall be new (unless otherwise specified), (ii) shall be free of all liens and claims, (iii) shall comply in all respects with the terms and requirements of the Contract Documents, (iv) shall be of good quality, free from faults and defects, latent or patent, (v) shall be fit and sufficient for the specific purpose(s) intended, (vi) shall pass without objection in the trade, (vii) shall be merchantable, and (viii) shall comply with the requirements of all applicable Laws and Regulations. Construction Manager further warrants that goods and materials of Construction Manager's design will be free from defects in design. Construction Manager, for itself and its Suppliers, waives all rights to receive prompt notice of non-conforming goods or materials, and Development Manager has no duty to inspect or approve said goods or materials prior to or upon incorporation into the Work. Development Manager may give Construction Manager notice at any time of non-conformance or rejection of Construction Manager's goods or materials, subject only to applicable statutes of limitation and repose, if any. The warranties provided for herein with respect to the goods, materials and equipment furnished in respect to the Work shall be in addition to and not in limitation of any other warranty or remedy required by law or provided by the Contract Documents.

4.4.2 Construction Manager warrants to Development Manager and Owner with respect to all labor and services provided in respect of the Work that same (i) shall be timely performed, in a good and workmanlike manner, by skilled and competent workmen and laborers, (ii) shall comply in all respects with the terms and requirements of the Construction Documents and the Supplemental Provisions, and (iii) shall comply with all applicable Laws and Regulations. The warranties provided for herein with respect to the labor and services provided with respect to the Work shall be in addition to and not in limitation of any other warranty, guarantee, or remedy required by law or provided by the Contract Documents.

49. Nordic additionally provided an additional short form express warranty ("Warranty"), in which it warrants its work for defects in materials and workmanship for a period of one year from the date of substantial completion which was stated as March 1, 2019.

50. Each supplier and subcontractor of Nordic has also provided a warranty for at least the same period of time—one year from the date of substantial completion. These warranties are for all work on the project against defects due to faulty equipment, material, workmanship or labor.

51. In the purchasing document for the Ke Kiloohana housing units ("Purchase Agreement"), Defendant 988 Halekauwila assigned all interest it had in express warranties to the purchaser of each unit. A true and correct copy of the terms of a Purchase Agreement is attached to this Complaint as Exhibit "3" and is incorporated herein by reference. Pursuant to Section E-17 of the Purchasing Agreement:

The execution, delivery and recordation of Purchaser's Unit Deed shall constitute an assignment without recourse by Seller to Purchaser of such warranty and the assignment without recourse by Seller to Purchaser of any other warranties relating to the Unit. Seller may assign such warranties described herein to future purchasers if such warranties are still in effect at the time the Unit is conveyed. Seller, however, makes no representation or warranty whatsoever as to whether such warranties can be further transferred. Any rights to inspection of the Unit described in **Section E.8** herein conferred on Purchaser by Seller pursuant to this Purchase Agreement shall not extend to any future purchasers of such Unit. In addition, Seller shall assign to Purchaser, without recourse, any manufacturer's or dealer's warranties covering the furnishings and appliances in the Unit. In no event shall all or any portion of such warranties be deemed to come from Seller, and Seller shall have no obligations or liabilities related to such warranties.

52. Defendants developed and constructed the Project with several defects in materials and workmanship, which violate building ordinances and codes, and some of which pose serious risk of bodily harm as set forth below:

1.0 Parking Garage Accessibility

- 1.1 Inadequate size and access to "compact" parking spots
- 1.2 Blind spots in driveways
- 1.3 Inaccessible parking spots for intended and typical use
- 1.4 Intrusions into area of parking spaces in excess of applicable code regulation allowance of 6"
- 1.5 Multiple intrusions into compact parking spaces
- 1.6 Inadequate size of handicap parking stall

2.0 Parking Garage Building

- 2.1 Gaps in guard rail in excess of 4" code allowance
- 2.2 Guardrail not contiguous to edge of slab
- 2.3 Gap at slab edge hazardous condition

- 2.4 Guardrail of excessive length without intermediate support
- 2.5 Guardrail corroding. Inappropriate use of galvanized cable
- 2.6 Guardrail spacing in excess of 4"
- 2.7 Cracking of garage slabs
- 2.8 Screen attachment hardware including bolts and brackets corroding
- 2.9 Metal screen wall panels and support metal structure not primed or painted adequately, and corroding
- 2.10 Selection of metal for screen/frame/hardware - not sufficiently corrosion resistant

3.0 Plumbing – Cold Water Supply

- 3.1 Corrosion on copper water pipes in garage
- 3.2 Corrosion on copper water pipes in garage and pump room
- 3.3 Corrosion of Victaulic fasteners
- 3.4 Dissimilar metal corrosion at Victaulic couplers and pipe junctions
- 3.5 Use of non-corrosion resistant pipes and couplers and resulting corrosion on pipe assemblies

4.0 Water Lines/ Washer-Dryer Cabinets

- 4.1 Corrosion on copper pipe assemblies in units at hot water tank
- 4.2 Hydrogen Sulfide induced corrosion on copper pipes damaging pipes and connectors
- 4.3 Inaccessible shut-off valve at unit washer-dryer assembly

5.0 Plumbing Assembly

- 5.1 Defective vent system/drain systems, defective vent assemblies resulting in hydrogen sulfide – sewer gas-inside units

- 5.2 Presence of toxic hydrogen sulfide gas in units
- 5.3 Improper placement of plumbing vent lines adjacent to air intakes at roof
- 5.4 Roof ponding of water on roof
- 5.5 Excessive patching of roof material
- 5.6 Corrosion of electrical junction boxes on roof

6.0 Hallways

- 6.1 Excessive wind noise in hallways and units
- 6.2 Inadequate hallway ventilation

7.0 Staircase Assemblies

- 7.1 Improper Presence of materials in fire staircase and duct not required for stair system
- 7.2 Failure to adequately tape and seal drywall joints
- 7.3 Unsealed and untapped joints and fasteners in the fire stairway duct assemblies
- 7.4 Failure of fire stairways to comply with IBC 909.6 for pressurization, and excess door pull force
- 7.5 Failure of fire assemblies to have a Registered Professional Engineer certified full code compliance
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15.0 Fire Protection

- 15.1 Inadequate firestops at penetrations of fire rated walls and assemblies
- 15.2 Unidentified fire stop materials without verification of suitable material
- 15.3 Inadequate protection of structural steel

16.0 LEED

- 16.1 Failure to install appropriate high efficiency luminaire assemblies and bulbs, resulting in excessive energy consumptions and costs
- 16.2 Lighting not LEED appropriate.

53. The Project contains additional defects and code violations, which are included in the Notice of Warranty Claim sent to Nordic on February 28, 2020.

Developer Defendants Drafted the Declaration with Unconscionable Language Disclaiming All Warranties

54. Developer Defendants include language in the Declaration attempting to disclaim all express and implied warranties for construction defects in the Project.

55. Pursuant to Article XXXVII, Section F-8 of the Declaration:

WARRANTIES. Developer is developing the Project but it is not the general contractor or an affiliate of the general contractor who is building the Project. Developer makes no warranties, express or implied, about the Units or the Project, or about consumer products or anything else installed

or contained in the Units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. All rights and interests in the Project are sold by Developer "as is" and "where is", with all defects, whether visible or hidden, and whether known or not known. This means, among other things, that Developer does not have to fix any defect no matter what causes it or when it is discovered. Each Owner and every other Interested Person gives up (in legal terms, "waives and releases") any and all rights and claims such Person may have, now or in the future, against Developer, its Representatives, successors and assigns for (i) any defects in the Units or the Project or any consumer products or anything else installed or contained in the Units or the Project, and (ii) for injury to Persons or property arising from any such defects. This means that Developer will not have to pay for any injury or damage to people or things as a result of any defect.

56. Developer Defendants' warranty disclaimer, if enforceable, would significantly impair Plaintiff and its members ability to recover for construction defects in the Project and the units.

57. Developer Defendants' provision disclaiming all express and implied warranties is unconscionable and against public policy.

Developer Defendants Drafted The AOUO's Declaration of Property Regime With Unconscionable Language Requiring the AOUO to Receive Permission from an Employee of Developer Defendants to Sue Developer Defendants

58. Article VIII, Section E of the Declaration states the following:

EXTRAORDINARY ACTIONS. Although the Board shall have broad powers to regulate, govern and manage the Project, the power to approve certain extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than eighty percent (80%) of the Residential Unit Class and the approval of the Commercial Director and Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a Majority of the votes of the Residential Unit Class and the approval of the Commercial Director. As used herein, the term "Extraordinary Actions" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the Common Elements, commencing or maintaining any litigation, defending an action, filing a

counterclaim, mediation or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Act and that are not prohibited by an express provision of this Declaration. Extraordinary Actions shall not, however, be deemed to include Capital Upgrades or actions by the Association in connection with operational expenses, including the establishment and utilization of reserves for the repair or replacement of Common Elements.

59. The Commercial Director is an individual appointed as a Director by Developer Defendants until Developer Defendants no longer owns any commercial units at the Project and sits on the Board of the AOOU. Developer Defendants appointed a corporate officer and a member of Howard Hughes's General Counsel, Justin Carley, as the Commercial Director.

60. The Association has in fact obtained consent of more than 95% of voting members to commence this action. The Association, without admitting it was required to obtain consent, requested consent from the Commercial Director. The Commercial Director did not respond and thus has failed to object to the commencement of this action.

61. Purporting to require Developer Defendants' consent for the Association to sue the Developer Defendants is a nullity, void, unenforceable, and against public policy.

COUNT I

Breach of Contract - Breach of Express Warranty Against Nordic, Design Doe Defendants, Supplier Doe Defendants, and Subcontractor Doe Defendants

62. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

63. Nordic provided an express warranty in the CMA, representing among other things, that the Project shall comply in all respects with the terms and requirements of the Contract Documents, shall be of good quality, free from faults and defects, latent or patent, shall be fit and sufficient for the specific purpose(s) intended, shall pass without objection in the trade,

shall be merchantable, and shall comply with the requirements of all applicable Laws and Regulations. Nordic also represented that the Project shall be free from defects in design.

64. Defendant Nordic provided an additional short form express warranty to Plaintiff and members of the AOOU. In the Warranty, Defendants represented, among other things, that the Project is free from defects in materials and workmanship.

65. To the extent any express warranties were provided to Developer Defendants, Developer Defendants assigned those warranties to Plaintiff and members of the AOOU.

66. Nordic breached the express warranty in the CMA and the Warranty by constructing the Project with construction defects, including but not limited to, construction defects as set forth above requiring substantial repairs to properly restore units and common areas to their original intended designs, safety standards, and strengths.

67. The construction defects set forth herein (a) materially affect the units in the Project and/or their common elements; (b) have obvious and material negative impacts on the appearances of units in the Project and/or their common elements; (c) jeopardize the life and safety of AOOU members; and (d) result in the inability of the Project to provide the functions that can be reasonably expected in a mixed-use building.

68. As a result of Nordic's breaches of both express warranties as detailed above, Nordic deprived Plaintiff of the benefit of the bargain of its contracts, and suffered damages in amounts to be proven at trial.

COUNT II

Breach of Implied Warranty Against All Defendants

69. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

70. Nordic is in the business of constructing high-rise buildings.

71. Nordic is obligated to construct the Project reasonably free of defects and pursuant to the plans, building codes and specifications.

72. Developer Defendants are in the business of developing high-rise buildings and is obligated to develop the Project reasonably free of defects and pursuant to the plans, building codes and specifications.

73. In the development, construction, and building of the Project, Defendants impliedly warranted that the Project was constructed in a reasonably workmanlike manner.

74. Defendants failed to construct and develop the Project in a reasonably workmanlike manner, because the defects in them set forth herein expose AOOU members to serious life, safety, and property risks.

75. The construction defects set forth herein (a) materially affect the units in the Project and/or their common elements; (b) have obvious and material negative impacts on the appearances of units in the Project and/or their common elements; (c) jeopardize the life and safety of AOOU members; and (d) result in the inability of the Project to provide the functions that can be reasonably expected in a mixed-use building.

76. As a result of Defendants' breach of these implied warranties as detailed above, Plaintiff has suffered damages in amounts to be proven at trial.

COUNT III

Breach of Contract - Breach of Declaration Against Developer Defendants and Developer Doe Defendants

77. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

78. The Developer Defendants executed the Declaration on February 18, 2016. The Declaration is signed by David Striph, the Vice President of Defendant 988 Halekauwila.

79. Developer Defendants represented in the Declaration that the Project is compliant with all zoning and building ordinances and codes of the County, as applicable and all other County permitting requirements, as applicable.

80. Developer Defendants breached the Declaration by developing the Project with construction defects and code violations that violate building ordinances and codes, including but not limited to, construction defects and code violations as set forth above requiring substantial repairs to properly restore the Project to its original intended designs, safety standards, and strengths.

81. The construction defects set forth herein (a) materially affect the units in the Project and/or their common elements; (b) have obvious and material negative impacts on the appearances of units in the Project and/or their common elements; (c) jeopardize the life and safety of AOOU members; and (d) result in the inability of the Project to provide the functions that can be reasonably expected in a mixed-use building.

82. As a result of Developer Defendants' breaches of the Declaration detailed above, Developer Defendants deprived Plaintiff of the benefit of the bargain of its contracts, and suffered damages in amounts to be proven at trial.

COUNT IV

Negligence Against All Defendants

83. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

84. As developers and builders of homes to the public, including Plaintiff, Defendants owed a duty of due care in designing and building homes to fully comply with building code requirements, to be free from construction defects, to be free from components that endanger life, safety, and property, to be free from defects that have obvious and material negative impacts

on the homes appearances, and to function as homeowners would reasonably expect in a residential dwelling.

85. Defendants breached its duty of due care to Plaintiff by, including and but not limited to, designing, developing, building, and selling homes that did not comply with applicable building codes, which Defendants knew or should know will pose serious risks of physical harm, and that contained multiple construction defects.

86. As a legal result of Defendants' breaches of its duties of due care as detailed above, Plaintiff has suffered damages in amounts to be proven at trial.

COUNT V

Gross Negligence Against All Defendants

87. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

88. As developers and builders of homes to the public, including Plaintiff, Defendants owed a duty of due care in designing and building homes to fully comply with building code requirements, to be free from construction defects, to be free from components that endanger life, safety, and property, to be free from defects that have obvious and material negative impacts on the homes appearances, and to function as homeowners would reasonably expect in a residential dwelling.

89. Defendants breached its duty of due care to Plaintiff by, including and but not limited to, designing, developing, building, and selling homes that did not comply with applicable building codes, which Defendants knew or should know will pose serious risks of physical harm, and contained multiple construction defects. Defendants breached its duty with recklessness and conscious indifference to the consequences that could arise.

90. As a legal result of Defendants' breaches of its duties of due care as detailed above, Plaintiff has suffered damages in amounts to be proven at trial.

COUNT VI

Unfair Business Practices Violation of HRS §§ 480 et seq. Against All Defendants

91. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

92. Plaintiff is a consumer pursuant to HRS § 514B-104(4).

93. Plaintiff is also a person pursuant to HRS § 480-1.

94. Defendants engaged in unfair and deceptive acts or practices when it, among other misconduct described herein, designed, developed, built, and sold the defective Project and failed to comply with applicable building codes.

95. As a legal result of Defendants' unfair and deceptive acts and practices, Defendants has caused economic damages to Plaintiff, including causing them to incur attorneys' fees and costs in amounts to be proven at trial.

96. Defendants unfair and/or deceptive business practices also amount to unfair competition under HRS § 480-2. Defendants unfair and deceptive business practices negatively affected competition by concealing the true value of the units at Ke Kilohana, thus giving the Ke Kilohana project an unfair market advantage relative to other housing options.

97. As a legal result of Defendants' unfair and deceptive acts and practices, Plaintiff are entitled to an award of three times their damages, attorneys' fees and costs in amounts to be proven at trial.

COUNT VII

Declaratory Relief – Unenforceable Terms Against Developer Defendants and Developer Doe Defendants

98. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

99. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties under the Declaration in that Plaintiff contends that the Article XXXVII, Section F-8 of the Declaration is unconscionable, void, and unenforceable whereas Defendants contend the terms of this clause are enforceable.

100. Plaintiff is informed and believes, and thereon alleges that Defendants dispute Plaintiff's contentions and deny that Article XXXVII, Section F-8 of the is illegal, unconscionable, *void ab initio*, and/or unenforceable.

101. Developer Defendants' warranty disclaimer clauses contain a disclaimer of all express and implied warranties that significantly undermine Plaintiff's ability to obtain relief to repair construction defects in the Project. Plaintiff hereby objects to enforcement of this clause as it is contrary to Hawai'i statutory law, common law, at equity, public policy, and/or Constitution of the State of Hawai'i.

102. A judicial determination is necessary and appropriate under the circumstances in order that Plaintiff may ascertain its rights and duties under the Declaration.

COUNT VIII

Declaratory Relief – Unenforceable Terms Against Developer Defendants and Developer Doe Defendants

103. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

104. An actual controversy has arisen and now exists between Plaintiff and Developer Defendants concerning their respective rights and duties under the Declaration in that Plaintiff contends that the Article VIII, Section E of the Declaration is unconscionable, void, and unenforceable whereas Defendants contend the terms of this clause are enforceable.

105. Plaintiff is informed and believes, and thereon alleges that Defendants dispute Plaintiff's contentions and deny that Article VIII, Section E of the Declaration is illegal, unconscionable, *void ab initio*, and/or unenforceable. This clause contains a conflict of interest in that it requires Plaintiff to seek authorization to bring a claim from the very corporate entity against which it seeks to bring a claim. Plaintiff hereby objects to enforcement of this clause as it is contrary to Hawai'i statutory law, common law, at equity, public policy, and/or Constitution of the State of Hawai'i.

106. A judicial determination is necessary and appropriate under the circumstances in order that Plaintiff may ascertain its rights and duties under the Declaration.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

1. Damages according to proof, including but not limited to the monetary amounts needed to repair and/or replace any other portion of each unit damaged by the defects and/or repairs and replacement work sought here herein;
2. Declaratory relief;
3. Injunctive relief;
4. Specific performance;
5. Treble damages;
6. Prejudgment and post judgment interest;
7. Attorneys' fees and costs; and

8. Such other and further relief the Court may deem just and proper.

DATED: Honolulu, Hawai'i, February 28, 2020.

/s/ Christopher K. Hikida

KENNETH S. KASDAN
BRITTANY L. GRUNAU
CHRISTOPHER K. HIKIDA
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ASSOCIATION OF UNIT OWNERS OF
988 HALEKAUWILA,

Plaintiff,

v.

HOWARD HUGHES CORPORATION; 988
HALEKAUWILA, LLC; VICTORIA
WARD, LIMITED; HUGHES
CORPORATION; HOWARD RESEARCH
AND DEVELOPMENT CORPORATION;
DOES 1-10,

Defendants.

CIVIL NO.
(Other Civil Action)

**COMPLAINT; EXHIBITS "1" – "3";
DEMAND FOR JURY TRIAL; SUMMONS**

COMPLAINT

1. Plaintiff ASSOCIATION OF UNIT OWNERS OF 988 HALEKAUWILA ("Plaintiff" or "AOUO"), by its undersigned attorneys, hereby files this Complaint, pursuant to HRS §514B-104(4), against Defendants HOWARD HUGHES CORPORATION ("Howard Hughes"), 988 HALEKAUWILA, LLC, VICTORIA WARD, LIMITED ("Victoria"), THE

EXHIBIT 7

HUGHES CORPORATION (“Hughes Corp.”), and THE HOWARD RESEARCH AND DEVELOPMENT CORPORATION (“MD”) (collectively “Howard Hughes Defendants”) and alleges the following on information and belief.

INTRODUCTION

2. Ke Kilohana (the “Project”) is a 43-floor, high-rise, mixed-use building developed by Howard Hughes Defendants. The Project consists of commercial space and residential units located in the Kaka‘ako district of Honolulu, Hawai‘i. The Project encompasses approximately 525,535 square feet comprised of commercial space and 424 individual residential units, 375 of which are Reserved Housing units.

3. The Ke Kilohana project is governed by Hawai‘i Revised Statutes (“HRS”) Chapter 206E and Hawai‘i Administrative Rules (“HAR”) Title 15, Chapter 22.

4. The legislature created the Hawai‘i Community Development Authority (“HCDA”) to plan for the development of underutilized urban areas in Hawai‘i. Recognizing the economic importance of the Kaka‘ako area, and that potential development in Kaka‘ako could “alleviate community needs such as low-income housing, parks, and open space, and commercial and industrial facilities”, the legislature gave HCDA oversight over the planned mixed-use district to “preserve and enhance its [Kaka‘ako’s] value and potential”. HRS §§ 206E-3, 206E-31.

5. The legislature charged the HCDA with creating rules for an integrated residential community “of residents of varying incomes, ages and family groups” and to increase the “supply of housing for residents of low- or moderate-income.” HRS § 206E-33. HCDA was therefore charged with adopting eligibility requirement rules for “housing designated for residents in the low or moderate-income ranges” (“Reserved Housing”). HRS §206E-101.

6. To accomplish the goals set by HRS Chapter 206E, HCDA created re-

development rules for the Kaka‘ako district. HAR §15-22-1.

7. Pursuant to HAR §15-22-115, the HCDA required that every developer of a “planned development containing multi-family dwelling units on a development lot of at least 20,000 square feet shall provide at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons as determined by the authority.” Thus, Howard Hughes Defendants, specifically the purported applicant Victoria Ward, Limited, were required to set aside twenty percent of the total number of dwelling units developed within their projects in Kaka‘ako for Reserved Housing. Howard Hughes Defendants represented to the HCDA that Ke Kilohana would satisfy its quota for Reserved Housing units for most or all of their Kaka‘ako developments which were pending for HCDA approval at the time of the application—thus allowing Howard Hughes Defendants to develop separate, more expensive developments in Kaka‘ako without Reserved Housing units.

8. The HCDA prescribes specific requirements for the developers’ pricing of the units based upon the income level of the would-be homeowner. Howard Hughes Defendants’ substantial underestimation of the operating costs caused the AOOU to necessarily increase assessments/dues of purchasers, including those purchasers of the Reserved Housing units, in the amount of 53.44%.

9. Further, Howard Hughes Defendants inappropriately drafted the Declaration of Condominium Property Regime of 988 Halekauwila (“Declaration”) in such a manner that the AOOU’s Commercial Director on the Board, who is an employee of Howard Hughes, has a direct conflict of interest. Howard Hughes Defendants also wrongly drafted the Declaration in a manner that inequitably allocated costs incurred by the units in favor of Howard Hughes Defendants.

THE PARTIES

10. Plaintiff, as an Association of Unit Owners, per its governing documents, has the right and duty to manage, operate, and control the Project and has all of the powers necessary to carry out its rights and obligations, including the right, duty, and power to contract for legal services to prosecute any action affecting the AOOU, when such action is deemed by it, necessary to enforce its powers, rights, and obligations, including the bringing of this action.

11. Plaintiff brings the claims set forth herein on its own behalf and on behalf of its members.

12. The facts set forth in this Complaint are brought in the AOOU's own name on behalf of itself and multiple unit owners for matters affecting the condominium.

13. Defendant Howard Hughes Corporation is a developer of the Project and is a Delaware corporation doing business in Hawai'i.

14. Defendant 988 Halekauwila, LLC is a developer of the Project and is a Delaware corporation doing business in Hawai'i. The sole member of 988 Halekauwila, LLC is Howard Hughes.

15. Defendant the Hughes Corporation is a developer of the Project and is a Delaware corporation doing business in Hawai'i. The Hughes Corporation is the Sole Member of 988 Halekauwila.

16. Defendant The Howard Research and Development Corporation ("MD") is a Delaware corporation doing business in Hawai'i and is the sole shareholder of Howard Hughes Corporation. Howard Hughes Corporation is the sole shareholder of The Howard Research and Development Corporation (MD).

17. Defendant Victoria Ward, Limited (“Victoria”) is a developer of the Project and is a Delaware corporation with its principal place of business in Dallas, Texas. Howard Hughes held out that Victoria Ward, Limited is a subsidiary of Howard Hughes.

18. As alleged below, Howard Hughes Defendants are one in the same in that they are the agents and the alter egos one another.

19. Plaintiff has reviewed public and other records available to them to ascertain the correct and full names and identities of all defendants in this action. However, Plaintiff has no further knowledge or information at this time regarding all responsible parties and is unable to ascertain the identity of defendants in this action designated as Does 1-10 (collectively, the “Doe Defendants”). The Doe Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiff, except that they may be connected in some manner with the named defendant, such as being agents, servants, employees, employers, representatives, co-venturers, associates or independent contractors of Howard Hughes Defendants and/or were in some manner presently unknown to Plaintiff engaged in activities such as designing, manufacturing, selling, distributing, installing and/or providing materials and/or services for the building of the condominium units in residential projects which may be identified herein. The Doe Defendants’ true names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or its attorneys. Plaintiff prays for leave to amend this Complaint to show the true names and capacities, activities and/or responsibilities when the same has been discovered.

ALTER EGO ALLEGATIONS

20. Plaintiff alleges based upon information and belief that Howard Hughes Defendants and Does 1-10 are, and at all relevant times were, either a director officer and/or

owner of stock and equitable interests of each other. The shares and equitable interests so owned constitute either a (i) 100 percent, or, at a minimum, (ii) a voting majority, of the total number of shares issued and outstanding, and of all, -- or, at least, a controlling majority of -- the ownership interest in and of such entities. Plaintiff further alleges that Howard Hughes Defendants were and are veritable alter egos of each other, who and/or which have commingled assets, who and/or which have commingled business operations, who and/or which have ignored corporate formalities, and who and/or which have formed multiple corporations and companies to avoid valid debts and obligations, and that it would therefore be unjust to permit said defendants to avoid both individual, and parental, and subsidiary, corporate liability through the use of sham, corporate, parental and subsidiary, entities.

21. Plaintiff alleges, based upon information and belief, that there exists, and at all relevant times there has existed, a unity of interest and ownership between and among that Howard Hughes Defendants such that any individuality and separateness between or among them has ceased, and that said Howard Hughes Defendants are but the alter egos one another, in that each of them was, and has been, used as merely a shell, an instrumentality, and a conduit by the others for the provision of construction services agreement. Notably, Howard Hughes submitted essential information to government agencies on behalf of Victoria on Howard Hughes letterhead.

22. Plaintiff alleges, based upon information and belief, that there exists, and at all relevant times there has existed, a unity of interest and ownership between and among that Howard Hughes Defendants such that any individuality and separateness between or among them has ceased, and that said Howard Hughes Defendants are but the alter egos of one another,

in that each of them was, and has been, used as merely a shell, an instrumentality, and a conduit by the others for the provision of construction services agreement.

23. Plaintiff further alleges, based upon information and belief, that Howard Hughes Defendants (except for Howard Hughes), and each of them, were not and are not adequately capitalized for performance, of their professional duties to be performed within the State of Hawai'i. Rather, the object of their [the defendants'] activities was to generate income, funds and gain for the benefit of their respective true principals, including, but not limited to, Does 1 to 10; their assets and liabilities were manipulated as between and among them so as to concentrate the assets in some corporate entities and the liabilities in others; and such entities, transactions, and business structures were employed by the defendants with an intent to avoid performance of their duties and the satisfaction of their respective corporate and fiduciary responsibilities, and to use such business entities as a shield against liabilities for the negligent performance of, and/or the contractual breach of, such duties as defendants have directly undertaken and/or assumed within the various municipalities in the State of Hawai'i.

24. Plaintiff accordingly alleges, based upon information and belief, that there are not sufficient assets and capital held by Howard Hughes Defendants to fully satisfy any judgment Plaintiff may obtain, and thus to compensate Plaintiff for the damages sustained by Plaintiff, as more particularly set forth herein.

25. Adherence to the fiction of the separate existence of the defendants would, under the circumstances alleged above, permit the abuse of the corporate privilege, sanction a fraud, promote injustice, and produce an inequitable result, in that these true principals and defendant entities transferred funds and assets from and among defendants for these principals' or certain defendant corporations' undisclosed benefit and use, and enabled defendants to engage in the

business of public finance consultation for and with various municipalities in the State of Hawai‘i, without assets or capital sufficient to compensate Plaintiff for the damages sustained by Plaintiff, as herein alleged.

JURISDICTION AND VENUE

26. All incidents described herein took place in Hawai‘i, within the jurisdiction of this Court and the amount in controversy meets or exceeds the jurisdictional limit of this Court.

FACTUAL BACKGROUND

The HCDA’s Requirements for Reserved Housing

27. The HCDA created eligibility requirements to ensure that Reserved Housing would be awarded to applicants who are deserving of the Reserved Housing units (based on income and intent to reside in the unit) and to those applicants who could afford the units.

28. To qualify to purchase a Reserved Housing Unit, an applicant’s adjusted household income cannot exceed 140% of the medium income and the applicant’s assets cannot exceed 125% of the applicable limit. HAR § 15-22-184.

29. To ensure that applicants can afford to purchase Reserved Housing units, the HCDA required that the applicant’s monthly payments – which consists of principal and interest, real property taxes, insurance, and fees and costs required by the bylaws of a condominium property regime – add up to no more than 33% of the applicant’s gross monthly income. HAR §15-22-185.1(a). These monthly payments necessarily include Maintenance Fees, which are required by the bylaws of the condominium property regime for Ke Kilohana.

30. Given this limit set by the HCDA whereby applicants cannot pay more than 33% of their gross monthly income on monthly payments including Maintenance Fees, the ability of an applicant to afford a Reserved Housing unit would be significantly impacted if monthly maintenance fees are too high.

31. The Project was developed as part of the Ward Neighborhood Master Plan (“Master Plan”). The Master Plan, which was approved by the HCDA on January 14, 2009, on the condition that the Howard Hughes defendants comply with the HCDA’s rules for Reserved Housing.

Howard Hughes Underestimated Association Fees/Dues In An Effort to Make The Project’s Reserved Housing Units Appear To Be Affordable

32. On April 18, 2013, Howard Hughes Defendants submitted an application for a development permit for the Project, representing that the Project would generate 375 Reserved Housing units.

33. In 2016, Howard Hughes Defendants submitted to the HCDA pricing for the 375 Reserved Housing units which was determined by several factors such as the mortgage rate published by HUD, the mortgage term, the maximum down payment allowed by the HCDA, household size, and the estimated association fees/dues.

34. On April 20, 2017, Howard Hughes Defendants submitted a Second Amended Developer’s Public Report for the Project (“Public Report”) containing their estimated budget for the Project as Exhibit “H.” A true and correct of the Public Report is attached to this Complaint as Exhibit “1” and is incorporated herein by reference. On information and belief, Howard Hughes Defendants under-stated the association fees/dues in the Public Report so as to allow them to ostensibly satisfy the HCDA’s Reserved Housing requirements.

35. Because HAR §15-22-185.1 prescribes that an applicant’s payment (including association fees/dues) could not exceed 33% of the applicant’s gross monthly income, the Maintenance Fees directly affected the maximum price at which the Howard Hughes Defendants could sell the units. Had Howard Hughes properly estimated the association fees/dues, the price

of the units would have been significantly lower in order to satisfy the HCDA's affordability requirements.

36. On information and belief, the Howard Hughes Defendants had a motive to grossly underestimate line items within the Estimated Budget in order to artificially make the units appear affordable under the HCDA's Reserved Housing rules. With the artificially deflated Estimated Budget and resulting erroneous association fees/dues, Howard Hughes Defendants could sell units at a higher price since prospective home buyers could justify higher mortgage payments. The categories of the Estimated Budget, which Howard Hughes Defendants undervalued include, but are not limited to: electricity reimbursements; payroll expenses for vital services to the upkeep and safety of the building such as maintenance, housekeeping, security; and cable. These services are reasonably necessary for the standard upkeep of a building such as the Project. Further, Howard Hughes Defendants failed to properly allocate the Commercial Unit Class (which is conveniently owned by Howard Hughes Defendants) fair and equitable expenses as required by HRS § 514B-41 and Declaration Article XII, Section A. A true and correct copy of the Declaration is attached to this Complaint as Exhibit "2." Importantly, the Estimated Budget states that the reserves would be funded at a rate of approximately \$14,000.00 per month; however, as a result of the substantial shortfall, the AOUO has not been able to divert any funds to the reserve as of January 2020.

37. Moreover, Howard Hughes Defendants failed to include the expense of building-wide internet and cable in the Estimated Budget, a service that is customarily included within a building such as Ke Kilohana and a necessity for its basic operation. Upon information and belief, Howard Hughes Defendants delayed the contract process with an internet and cable

service provider to attempt to justify the exclusion within the Estimated Budget. An accurate Estimated Budget should have provided an allocation for internet and cable services.

38. As a result of this underestimation, the AOOU experienced a deficiency in operating expenses and struggled to maintain reserve funds. Ultimately, the AOOU was forced to increase total assessments by 53.44% for the combined residential and commercial unit classes for 2020.

39. Plaintiff alleges upon information and belief that had Howard Hughes Defendants appropriately calculated the association dues/fees, the Howard Hughes Defendants would have had to lower the unit prices to make the units affordable.

Howard Hughes Submitted an Estimated Budget to the Real Estate Commission That Significantly Underestimated Operational Costs of the AOOU

40. Howard Hughes Defendants were required to provide the Real Estate Commission a public report containing a good faith estimate of annual and monthly maintenance fees for each unit that was “certified to have been based on generally accepted accounting principles.” HRS § 514B-83. Further, Howard Hughes Defendants were prohibited from providing misstatements of facts within the Public Report, and they were prohibited from making misleading statements and omissions in the sale of condominiums. HRS § 514B-60; HRS § 514B-94.

41. The Estimated Budget was created based upon expense and income data provided by Howard Hughes Defendants and was reasonably relied upon by the AOOU in the creation of its actual budget, which is standard practice in Hawai‘i. It is evident from the gross shortfall more specifically alleged in the section above that the Estimated Budget was not submitted in good faith and was not based upon generally accepted accounting principles. Howard Hughes

submitted an estimated budget which contained blatant omissions and misleading statements of costs.

42. Howard Hughes Defendants caused injury to the AOOU and its members who are left with a significant deficiency of funds for basic and necessary operating expenses.

**Howard Hughes Failed to Properly Allocate Expenses Attributable to Howard Hughes’
Disproportionate Ownership of Residential Limited Common Elements**

43. Article I, Section B, Paragraph 99 of the Declaration defines “Residential Limited Common Elements” as elements of the building that are for the exclusive use of a specific residential unit. Article III, Section C of the Declaration requires that the profits and expenses of the support, maintenance, operation, and repair of Residential Limited Common Elements, specifically including storage lockers, storage units, and parking stalls, be allocated to a residential unit based upon the Class Common Interest. The Residential Class Common Interest was calculated based purely upon dividing the approximate net living area of the residential unit by the total net area of the residential units in the project. Thus, this calculation does not take into consideration a residential unit’s share of the Residential Common Elements for which the AOOU would incur expenses. Public Report, Exhibit A, Paragraph C.

44. The Resident Manager Unit (Unit 801) is a residential unit that was and still is retained by Howard Hughes Defendants. Howard Hughes Defendants allocated 114 storage lockers within the parking garage, 92 storage units within the building, and 34 parking stalls to the Resident Manager Unit (Unit 801) and thereby retained this parking and storage for itself. This is a highly disproportionate share of common elements compared to the common elements allocated to any other Unit in the Project.

45. While Howard Hughes Defendants owns a disproportionate share of common elements for which the AOUO incurs expenses and bills the entire membership, Howard Hughes Defendants only allocated itself 0.305289% of the Resident Common Interest. This is less than a 3-bedroom unit with one parking stall that is allocated a Resident Common Interest of 0.330977%. Thus, Howard Hughes Defendants allocated itself a severely disproportionate amount of storage lockers, storage units, and parking stalls as compared to any other units within Ke Kilohana and thereby failed to allocate itself an equitable share of the expenses for maintaining those elements. Howard Hughes Defendants engaged in self-dealing by unfairly allocating itself Residential Class Common Interest purely based on the size of the unit as opposed to the share of actual expenses Howard Hughes Defendants causes the AOUO to incur.

Howard Hughes Charged Homeowners a “Start-Up Fee” That Should Have Been

Incorporated Within the Units’ Purchase Price

46. Howard Hughes Defendants incorporated a deceptive kickback to itself through the addition of a “start-up fee” into homeowner purchase agreements as an “Additional Sum[s] to be Paid.” The Purchase Agreement & Deposit Receipt agreement (“Purchase Agreement”). A true and correct of the standard Purchase Agreement for this Project is attached to this Complaint as Exhibit “3” and is incorporated herein by reference. Section D.3 of the Purchase Agreement States:

Additional Sums to be Paid. In addition to the Total Purchase Price set forth above, (a) a Project start-up fee (being a non-refundable, non-transferable “start-up” fee for the Association) in an amount equivalent to two (2) months’ estimated maintenance fees for the Unit; (b) one (1) month’s estimated maintenance fees for the Unit as an advance payment for the initial month’s maintenance fees payable by a Unit Owner; and (c) all estimated closing costs and prorations payable by Purchaser, as estimated by Escrow, shall be payable by Purchaser to Escrow on the earlier of (i) the Pre-Closing Date as instructed in the Seller’s Pre-Closing Notice pursuant

to Section E.7 of the “General Terms and Conditions” below, or (ii) four (4) business days prior to the Closing Date (as defined in Section E.9)... For purposes of this Purchase Agreement, the Project start-up fee is not an advance payment of future maintenance fee assessments but rather is intended to and shall be used to fund and pay for all costs and expenses typically associated with the opening of a new residential building, including by way of example and not limitation, office furniture, equipment for the Resident Manager (including computer(s) and software programs), initial maintenance supplies and equipment for the Project, artwork for the Common Elements, communications equipment for Association staff, secured entry fobs or cards, and the initial premiums for the Project insurance. Seller shall have the right to use the Project start up fees to pay for these costs and expenses and/or to be reimbursed for the cost of the same if previously purchased and paid for by Seller. Any surplus funds shall be deposited with the Association.

Notably, this “start-up fee” is treated as an additional cost item at closing as opposed to part of the purchase price. In total, \$337,000.00 was paid by unit purchasers in “start-up fees” to the AOOU.

47. Despite the above language in the Purchase Agreements, there was never an obligation for the AOOU to reimburse Howard Hughes Defendants these funds. In direct contradiction to the Purchase Agreement, neither the Public Report nor the Declaration state that the AOOU is required to reimburse Howard Hughes Defendants this “start-up fee.” Section 9 of Exhibit “I” to the Public Report has identical language to the Purchase Agreement *except* that the Public Report omits the portion that states that the “start-up fee” may be recovered by the Howard Hughes Defendants. Howard Hughes Defendants never contracted with the AOOU for any reimbursement of this fee, and therefore the AOOU has no contractual obligation to pay Howard Hughes any part of the fees collected.

48. To the extent that Howard Hughes Defendants seek reimbursement from the AOOU for this “start-up fee,” this fee was a deceptive action by Howard Hughes Defendants to collect more money from the purchasers of the units without raising the price of the units.

Howard Hughes Defendants incorporated this “start-up fee” to skim off a portion of its cost of construction.

Howard Hughes Defendants Drafted the AOOU’s Declaration of Property Regime With Unconscionable Language Requiring the AOOU to Receive Permission from a Howard Hughes Defendants Employee to Sue Howard Hughes Defendants

49. The Declaration, drafted by Howard Hughes Defendants, states the following:

EXTRAORDINARY ACTIONS. Although the Board shall have broad powers to regulate, govern and manage the Project, the power to approve certain extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than eighty percent (80%) of the Residential Unit Class and the approval of the Commercial Director and Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a Majority of the votes of the Residential Unit Class and the approval of the Commercial Director. As used herein, the term "Extraordinary Actions" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the Common Elements, commencing or maintaining any litigation, defending an action, filing a counterclaim, mediation or similar proceeding (except for routine Common Expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Act and that are not prohibited by an express provision of this Declaration. Extraordinary Actions shall not, however, be deemed to include Capital Upgrades or actions by the Association in connection with operational expenses, including the establishment and utilization of reserves for the repair or replacement of Common Elements.

Declaration, Article VIII, Section E.

50. The Commercial Director is an individual appointed as a Director by Howard Hughes or a Howard Hughes affiliate until Howard Hughes no longer owns any commercial

units at the Project and sits on the Board of the AOOU. Howard Hughes Defendants appointed a corporate officer and a member of its own General Counsel, Justin Carley, as the Commercial Director.

51. The Association has in fact obtained consent of more than 95% of voting members to commence this action. The Association, without admitting it was required to obtain consent, requested consent from the Commercial Director. The Commercial Director did not respond and thus has failed to object to the commencement of this action.

52. Purporting to require Howard Hughes Defendants' consent for the Association to sue Howard Hughes Defendants is a nullity, void, unenforceable, and against public policy.

COUNT I

Breach of Fiduciary Duty (Inaccurate Estimated Budget)

53. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

54. As developers and builders of condominiums for the public, Howard Hughes Defendants owed a fiduciary duty to the AOOU and its members. Plaintiff asserts that this fiduciary is imposed upon 988 Halekauwila, LLC, Victoria, and Does 1-10 based upon the alter ego allegations above. This duty includes but is not limited to, submitting an accurate Estimated Budget upon which the AOOU can rely upon for the creation of an operating budget and creation of reserve and operating accounts. The fiduciary duty also includes a duty to refrain from making decisions in the interest of the Howard Hughes Defendants at the expense of the AOOU and its members.

55. Howard Hughes Defendants breached the fiduciary duties owed to Plaintiff and its members by engaging in wrongful conduct, including but not limited to, the following acts: failing to exercise the reasonable care required in creation and submission of an Estimated

Budget, failing to fairly allocate expenses to the Commercial Unit Class as required under HRS § 514B-41 and Declaration Article XII, Section A, inequitably allocating the expenses of Residential Limited Common Elements, and failing to assess the Property for an adequate accounting of operating and reserve funds. Further, AOOU members relied upon this Estimated Budget in the application and qualification for Reserved Housing.

56. As a direct and proximate result of the breaches of fiduciary duty owed by Howard Hughes Defendants to Plaintiff, Plaintiff has suffered damages in an amount to be proven at trial.

57. As a direct and proximate result of the breaches of fiduciary duty owed by Howard Hughes Defendants to Plaintiff, Plaintiff was and will be required to retain the services of experts and consultants to investigate the nature and extent of the resulting damages.

COUNT II

Breach of Fiduciary Duty (Unequitable Allocation of Common Element Expenses)

58. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

59. As developers and builders of condominiums for the public, Howard Hughes Defendants owed a fiduciary duty to the AOOU and its members. Plaintiff asserts that this fiduciary is imposed upon 988 Halekauwila, LLC, Victoria, and Does 1-10 based upon the alter ego allegations above. This duty includes but is not limited to, allocating AOOU expenses in an equitable manner Howard Hughes Defendants to HRS § 514B-41.

60. Howard Hughes Defendants breached the fiduciary duties owed to Plaintiff and its members by engaging in wrongful conduct, including but not limited to, the following acts: acting in its own self-interest by failing to allocate Residential Common Class Interest in an equitable manner per HRS § 514B-41. In consideration of the common elements owned by

Howard Hughes Defendants, Howard Hughes Defendants allocated a disproportionately low share of expenses to themselves, resulting in an inequitable allocation of membership fees.

COUNT III

Breach of Fiduciary Duty (Conflicted Director)

61. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

62. As developers and builders of condominiums for the public, Howard Hughes Defendants owed a fiduciary duty to the AOOU and its members. Plaintiff asserts that this fiduciary is imposed upon 988 Halekauwila, LLC, Victoria, and Does 1-10 based upon the alter ego allegations above. This duty includes but is not limited to: drafting the Declaration without inherent conflicts of interests for Directors and refraining from making decisions in the interest of the Howard Hughes Defendants at the expense of the AOOU and its members.

63. Howard Hughes Defendants breached the fiduciary duties owed to Plaintiff and its members by: 1) drafting Article VIII, Section E so as to inherently create a conflict of interest between the Commercial Director and the AOOU as to the decision to sue Howard Hughes Defendants; and 2) appointing a Commercial Director who is an employee of Howard Hughes Defendants and thus has a conflict of interest as to any decision to bring claims against Howard Hughes Defendants.

64. As a direct and proximate result of the breaches of fiduciary duty owed by Howard Hughes Defendants to Plaintiff, Plaintiff has suffered damages in an amount to be proven at trial.

65. As a direct and proximate result of the breaches of fiduciary duty owed by Howard Hughes Defendants to Plaintiff, Plaintiff was and will be required to retain the services of experts and consultants to investigate the nature and extent of the resulting damages.

COUNT IV

Unfair and Deceptive Business Practices Violation of HRS §§ 480 et seq.

66. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

67. Plaintiff is a consumer pursuant to HRS § 514B-104(4).

68. Plaintiff is also a person pursuant to HRS § 480-1.

69. Howard Hughes Defendants specialize in real estate management and development.

70. Howard Hughes Defendants engaged in unfair and/or deceptive business practices by, among other things:

- failing to create an Estimated Budget according to generally accepted accounting principles;
- failing to adequately assess the Property for an adequate accounting of operating and reserve funds;
- underestimating the appropriate AOUO dues/fees in order to keep the cost of the units lower;
- submitting a deflated allocation of association/fees and dues to the HCDA based upon inaccurate and false accounting of AOUO costs;
- submitting an inaccurate Estimated Budget to the Real Estate Commission;
- failing to fairly allocate expenses to the Commercial Unit Class as required under HRS § 514B-41 and Declaration Article XII, Section A;
- failing to disclose material facts about the true cost of maintenance;

- failing to report in the Public Report and the Declaration that the “start-up fee” was to be paid by the AOOU to Howard Hughes Defendants (to the extent that Howard Hughes Defendants is in fact owed this fee);
- failing to incorporate the \$337,000.00 of “start-up fees” into the purchase price of the units (to the extent that Howard Hughes Defendants is in fact owed this fee);
and
- appointing an employee of Howard Hughes Defendants as a director of the AOOU with the power to determine whether the AOOU could bring claims against Howard Hughes Defendants.

71. These practices were unscrupulous, substantially injurious, and or had the tendency to mislead Plaintiff and its members.

72. Howard Hughes Defendants’ unfair and/or deceptive business practices also amount to unfair competition under HRS § 480-2. Howard Hughes Defendants unfair and deceptive business practices negatively affected competition by hiding the true monthly costs of running Ke Kilohana, thus giving the Ke Kilohana project an unfair market advantage relative to other housing options.

73. As a direct and proximate result of Howard Hughes Defendants’ unfair and deceptive acts and practices, Howard Hughes Defendants caused economic damages to Plaintiff, including causing them to incur attorneys’ fees and costs in amounts to be proven at trial.

74. As a direct and proximate result of Howard Hughes Defendants’ unfair and deceptive acts and practices, Plaintiff is entitled to an award of three times their damages, attorneys’ fees and costs in amounts to be proven at trial.

COUNT V

Negligent Misrepresentation

75. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

76. Howard Hughes Defendants, by and through their principals, officers, and/or directors, made representations within the documents submitted to the HCDA, the Real Estate Commission, and the AOOU concerning the operating costs of the Project.

77. These representations were provided as a result of failure to exercise reasonable care and were made without reasonable grounds for believing them to be true.

78. Howard Hughes Defendants intended that Plaintiff and its members rely on these statements in the creation of its budget and other related budgetary decisions. Plaintiff and its members did, in fact, rely on these statements for those purposes.

79. Further, to the extent that a determination is made that the Howard Hughes Defendants are to be reimbursed the "start-up fees" by the AOOU, Howard Hughes Defendants failed to report this fact within the Public Report and the Declaration. As this was further payment to Howard Hughes Defendants as the seller of the units, this should have been incorporated into the purchase price of the units rather than a closing cost.

80. As a direct and proximate result of Howard Hughes Defendants' misrepresentations, reliance upon which was a substantial factor of causing Plaintiff's injury, Howard Hughes Defendants caused economic damages to Plaintiff, including causing them to incur attorneys' fees and costs in amounts to be proven at trial.

COUNT VI

Declaratory Relief – Unenforceable Terms of Declaration – Commercial Director Consent

81. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

82. An actual controversy has arisen and now exists between Plaintiff and Howard Hughes Defendants concerning their respective rights and duties under the Declaration in that Plaintiff contends that the Article VIII, Section E of the Declaration is unconscionable, void, and unenforceable, whereas Howard Hughes Defendants contend the terms of this clause are enforceable.

83. Plaintiff is informed and believes, and thereon alleges that Howard Hughes Defendants dispute Plaintiff's contentions and deny that Article VIII, Section E of the Declaration is illegal, unconscionable, *void ab initio*, and/or unenforceable. This clause contains a conflict of interest in that it requires Plaintiff to seek authorization to bring a claim from the very corporate entity against which it seeks to bring a claim. Plaintiff hereby objects to the enforcement of this clause as it is contrary to Hawai'i statutory law, common law, at equity, public policy, and/or Constitution of the State of Hawai'i.

84. A judicial determination is necessary and appropriate under the circumstances so that Plaintiff may ascertain its rights and duties under the Declaration.

COUNT VII

Declaratory Relief – Unenforceable Terms of Declaration - Start-Up Fee Reimbursement

85. Plaintiff restates and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

86. An actual controversy has arisen and now exists between Plaintiff and Howard Hughes Defendants concerning their respective rights and duties concerning the reimbursement

of the “start-up fees” by the AOOU to Howard Hughes Defendants in that Plaintiff contends that no contract exists between AOOU and Howard Hughes Defendants requiring the AOOU to pay Howard Hughes Defendants any portion of the “start-up fees” collected. Indeed, all publicly available, recorded documents note that the AOOU is to receive the fees and make no mention of Howard Hughes Defendants.

87. A judicial determination is necessary and appropriate under the circumstances in order that Plaintiff may ascertain its rights and duties.

WHEREFORE, Plaintiff prays for judgment and relief as follows:

1. Damages according to proof, including but not limited to compensatory damages;
2. Declaratory relief;
3. Injunctive relief;
4. Specific performance;
5. Treble Damages
6. Prejudgment and post-judgment interest;
7. Punitive damages in connection with the claims asserted in Count IV;
8. Attorney’s fees and costs; and
9. Such other and further relief the Court may deem just and proper.

DATED: Honolulu, Hawai‘i, March 2, 2020.

/s/ Sharla Manley

KENNETH S. KASDAN
BRITTANY L. GRUNAU
SHARLA MANLEY
MELVIN Y. AGENA

Attorneys for Plaintiff
ASSOCIATION OF UNIT OWNERS OF
988 HALEKAUWILA



THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re Application of

Application No. KAK 21-001

VICTORIA WARD, LIMITED,

Applicant

For a Planned Development Permit for Land
Block 5, Project 2 (Ulana Ward Village).

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

On December 20, 2020, VICTORIA WARD, LIMITED (“VWL”) submitted an application (“Application”) for a planned development permit pursuant to Hawaii Revised Statutes (“HRS”) Chapter 206E, Hawaii Administrative Rules (“HAR”) Chapter 15-22 (“Vested Rules”), and HAR Chapter 15-219, for a proposed mixed use, reserved housing high-rise condominium project known as Land Block 5, Project 2 of the Ward Neighborhood Master Plan (Master Plan Permit No. PL MASP 13.1.3) (“Ward MP”) (the “Project” or “Ulana Ward Village”).

Ulana Ward Village is located within the Kakaako Community Development District (“KCDD”) on Land Block 5 bound by Halekauwila Street / Ilaniwai Street to the north (Mauka), Ward Avenue to the east (Diamond Head), Ala Moana Boulevard to the south (Makai) and land owned by Kamehameha Schools to the west (Ewa), further currently identified as Tax Map Key No. (“TMK”) 2-1-053:001 (por.).

The Hawaii Community Development Authority (“HCDA” or the “Authority”), having heard and examined the testimony, evidence, related pleadings, and argument of counsel

presented during the hearings, hereby makes the following Findings of Fact (“FOF”),
Conclusions of Law (“COL”), and Decision and Order (“D&O”).

FINDINGS OF FACT

Any Findings of Fact not ruled upon by the Authority by adoption herein or rejected by
clearly contrary Findings of Fact are hereby denied and rejected.

PROCEDURAL HISTORY

1. On December 21, 2020, VWL submitted the Application to the Authority
2. On January 14, 2021, HCDA deemed the Application complete.
3. On January 15, 2021, HCDA posted the Application on its website in accordance
with HRS § 206E-5.5(2), and HCDA encouraged the public to provide comments on the Project.
4. On January 15, 2021, pursuant to the provisions of HAR Chapters 15-22 and 15-
219, and HRS § 206E-5.6, HCDA published a notice of public hearings for the Project in the
Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald and Maui News (the
“Notice of Public Hearings” or the “Notice”).
5. The Notice stated that, in accordance with the Governor’s December 16, 2020
Seventeenth Proclamation Related to the COVID-19 Emergency (“Seventeenth Emergency
Proclamation”), specifically Section VI (B), ordering the suspension of specific provisions of
certain laws including HRS Chapter 92, “public agency meetings and records” and social
distancing guidelines issued by state and federal public health agencies in an effort to contain
community spread of the ongoing COVID-19 Virus, the public hearings would be convened
virtually via Zoom.

6. The Notice further stated that pursuant to HAR § 15-219-30, the hearings for the Project would be consolidated with the hearings for VWL's planned development permit application for Land Block 1, Project 5 (KAK 21-002) ("The Park Ward Village").

7. In accordance with the provisions of HRS § 206E-5.6(d), HCDA notified the President of the Senate and Speaker of the House of Representatives of the Hawaii State Legislature of the public hearings.

8. HCDA notified the associations of apartment owners of residential buildings in the KCDD adjacent to the Project, surrounding landowners and businesses, the Ala Moana/Kakaako Neighborhood Board, the Kakaako Business and Landowners Association and the Kakaako Improvement Association of the Application and the public hearings. HCDA also notified various elected officials and state and county agencies of the Application and the public hearings.

9. HCDA also notified individuals and organizations that have shown interest in development in Kakaako in the past and who have requested that they be kept informed of development activities in the KCDD.

10. On January 15, 2021, via first class United States mail postage prepaid, VWL notified owners and lessees of record of real property located within a three hundred foot radius of the perimeter of the Project, identified from the most current list available from the City and County of Honolulu Real Property Assessment Division, of the Application and the hearings.

11. The mailed notifications included, without limitation, (a) project specifications; (b) requests for variance, exemption, or modification of a community development plan or the

Authority's community development rules; and (c) procedures for intervention and a contested case hearing.

12. The Notice stated that the deadline to intervene was February 4, 2021.
13. No parties petitioned to intervene in this proceeding.
14. On February 8, 2021, HCDA held a pre-hearing conference virtually via Zoom.
15. In addition to HCDA's staff, VWL attended the pre-hearing conference.
16. On February 10, 2021, HCDA issued a pre-hearing order, requiring the

submission of witness lists, exhibit lists and exhibits by the close of business on February 18, 2021.

17. On February 18, 2021, VWL filed its witness list, exhibit list, and exhibits pursuant to the Pre-Hearing Order.

18. On February 26, 2021, VWL filed a First Amended Exhibit List and additional and amended exhibits noted therein.

19. The following government agencies submitted comments regarding the Project to HCDA:

- a. City and County of Honolulu Board of Water Supply ("BWS") via its letter dated February 24, 2021;
- b. City and County of Honolulu Department of Transportation Services ("DTS") via its letter dated February 22, 2021;
- c. State of Hawaii Department of Transportation ("DOT") via its letter dated February 11, 2021;

- d. City and County of Honolulu Fire Department (“HFD”) via its letter dated February 10, 2021;
- e. City and County of Honolulu Police Department (“HPD”) via its letter dated February 5, 2021; and
- f. Honolulu Authority for Rapid Transportation (“HART”) via its letter dated March 2, 2021.

20. **The March 3, 2021 Presentation Hearing.** On March 3, 2021, pursuant to the Notice, HCDA held the presentation hearing on the Application virtually via Zoom (“Presentation Hearing”).

21. At the Presentation Hearing, HCDA afforded VWL an opportunity to present information and other evidence regarding the Project.

22. At the Presentation Hearing, HCDA afforded the public an opportunity to present testimony on the Project.

23. At the Presentation Hearing, HCDA admitted into evidence all of the following exhibits, including written direct testimony, offered and presented by VWL in its First Amended Exhibit List filed on February 26, 2021:

Exhibit	Exhibit Description
U-1	Permit Application, Exhibits and Appendices
	Appendix A – LEED Checklist
	Appendix B – SHPD Letter
	Appendix C – Traffic Impact Report
	Appendix D – Infrastructure Availability Report
	Appendix E – Shadow and Wind Studies
	Appendix F – Wind Consultant Letter
	Appendix G – Acoustical Consultant Letter

Exhibit	Exhibit Description
U-2	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
U-3	Public Facilities Agreement for Land Block 5, Project 2 (Ulana Ward Village)
U-4	Race Randle Written Direct Testimony (Presentation Hearing)
U-5	Race Randle Written Direct Testimony (Modification Hearing)
U-6	Kimi Yuen, LEED AP BD+C Written Direct Testimony (Presentation Hearing)
U-7	Kimi Yuen, LEED AP BD+C Written Direct Testimony (Modification Hearing)
U-8	Kimi Yuen, LEED AP BD+C Curriculum Vitae
U-9	Sumner J. La Croix, Ph.D. Written Direct Testimony (Presentation Hearing)
U-10	Sumner J. La Croix, Ph.D. Report
U-11	Sumner J. La Croix, Ph.D. Curriculum Vitae
U-12	Paul Brewbaker, Ph.D., CBE Written Direct Testimony (Presentation Hearing)
U-13	Paul Brewbaker, Ph.D., CBE Report
U-14	Paul Brewbaker, Ph.D., CBE Curriculum Vitae
U-15	Ann Bouslog, Ph.D. Written Direct Testimony (Presentation Hearing)
U-16	Ann Bouslog, Ph.D. Report
U-17	Ann Bouslog, Ph.D. Curriculum Vitae
U-18	Frederick Hong, AIA, NCARB, LEED AP Written Direct Testimony (Presentation Hearing)
U-19	Frederick Hong, AIA, NCARB, LEED AP Written Direct Testimony (Modification Hearing)
U-20	Frederick Hong, AIA, NCARB, LEED AP Curriculum Vitae
U-21	Lee Cranmer Written Direct Testimony (Presentation Hearing)
U-22	Kevin Goto, P.E., LEED AP Written Direct Testimony (Presentation Hearing)
U-23	Kevin Goto, P.E., LEED AP Curriculum Vitae
U-24	Pete Pascua, P.E. Written Direct Testimony (Presentation Hearing)
U-25	Pete Pascua, P.E. Curriculum Vitae
U-26	Amended Markle Written Direct Testimony (Presentation Hearing)
U-26A	Exhibits to Robin Markle Written Direct Testimony (Presentation Hearing)
U-27	Robin Markle Curriculum Vitae
U-28	Mike Hamasu Written Direct Testimony (Presentation Hearing)

Exhibit	Exhibit Description
U-29	Mike Hamasu Curriculum Vitae
U-30	Matt McDermott, M.A. Written Direct Testimony (Presentation Hearing)
U-31	Matt McDermott, M.A. Curriculum Vitae
U-32	Malia Kaaihue Written Direct Testimony (Presentation Hearing)
U-33	Malia Kaaihue, Ph.D. Curriculum Vitae
U-34	Permit Application Amended Figure 5-2 (P. 29)
U-35	Presentation Hearing Slides Set No. 1
U-36	Modification Hearing Slides Set No. 1
U-37	Email from Honolulu Fire Department to Wilson Okamoto Corporation, February 22, 2021 (and related email string), Re: Honolulu Fire Department's Comments
U-38	State Auditor's Executive Summaries of Report Nos. 19-03 and 19-04 and Audit of the Honolulu Authority for Rapid Transportation: Report 1 (Report No. 19-03), January, 2019
U-39	Excerpts of Ward Neighborhood Master Plan, Re: Modification to Podium Heights and Setbacks
U-40	Excerpts of 2005 Mauka Area Rules, Re: Modifications

24. At the Presentation Hearing, VWL presented the testimony of the following witnesses orally and/or through written testimony:

	Witness	Affiliation
1.	Race Randle	Vice President, Victoria Ward, Ltd.
2.	Kimi Yuen, LEED AP BD+C	Principal PBR Hawaii & Associates, Inc.
3.	Sumner J. La Croix, Ph.D.	Professor Emeritus, Department of Economics, University of Hawaii at Manoa; Research Fellow, University of Hawaii Economic Research Organization (UHERO)
4.	Paul Brewbaker, Ph.D., CBE	Principal and Economist TZ Economics
5.	Ann Bouslog, Ph.D.	Project Director, PBR Hawaii & Associates, Inc.
6.	Frederick Hong, AIA, NCARB, LEED AP	Associate and Project Architect, Architects Hawaii Limited

	Witness	Affiliation
7.	Lee Cranmer	Senior Director, Development, Victoria Ward, Ltd.
8.	Kevin Goto, P.E., LEED AP	Associate Director of Civil Engineering / Project Manager, Wilson Okamoto Corporation
9.	Pete Pascua, P.E.	Vice President & Director of Traffic Engineering, Wilson Okamoto Corporation
10.	Robin Markle	Realtor-Associate, Vice President Projects, Locations Hawaii
11.	Mike Hamasu	Research and Consulting Director, Colliers International, Hawaii
12.	Matt McDermott, M.A.	Project Manager / Principal Investigator Cultural Surveys Hawaii, Inc.
13.	Malia Kaaihue, Ph.D.	Partner and President of Strategy, DTL

25. HCDA qualified the following witnesses as experts in their designated areas of expertise, as follows:

- a. Kimi Yuen, LEED AP BD+C - urban planning;
- b. Sumner La Croix, Ph.D. - economics;
- c. Paul Brewbaker, Ph.D., CBE - economics;
- d. Ann Bouslog, Ph.D. - reserved housing development, market assessment and strategic planning;
- e. Frederick Hong, AIA, NCARB, LEED AP - architecture.
- f. Kevin Goto, P.E., LEED AP - civil engineering;
- g. Pete Pascua, P.E. - traffic engineering;
- h. Robin Markle - residential real estate marketing, supply and demand;
- i. Mike Hamasu - commercial real estate marketing, supply and demand;

- j. Matt McDermott, M.A. - archeology; and
 - k. Malia Kaaihue, Ph.D. - Hawaiian culture, history, and language.
26. Prior to the Presentation Hearing, HCDA received a total of 26 written comments from the public for both Ulana Ward Village and The Park Ward Village.
27. At the Presentation Hearing, five members of the public provided oral comments.
28. **March 10, 2021 Modification Hearing.** On March 10, 2021, pursuant to the Notice, HCDA held the modification hearing on the Application virtually via Zoom (“Modification Hearing”).
29. At the Modification Hearing, HCDA afforded VWL an opportunity to present information and other evidence regarding the requested Project modification to the platform height and related matters.
30. At the Modification Hearing, HCDA afforded the public an opportunity to present testimony on the Project.
31. On March 8, 2021, VWL filed a First Amended Witness List designating the following additional expert witnesses for the modification hearing: Robin Markle and Ann Bouslog, Ph.D.
32. HCDA qualified these additional witnesses as experts in their designated areas of expertise for purposes of the Modification Hearing as follows:
- a. Robin Markle - residential real estate marketing, supply and demand; benefits of Ulana Ward Village inclusive of modification; and

b. Ann Bouslog, Ph.D. - reserved housing development, market assessment and strategic planning; benefits of Ulana Ward Village inclusive of modification.

33. At the Modification Hearing, HCDA admitted into evidence all of the following amended and supplemental exhibits, including written direct testimony, offered and presented by VWL in its Second Amended Exhibit List filed on March 8, 2021

Exhibit	Exhibit Description
U-7	Amended Kimi Yuen, LEED AP BD+C Written Direct Testimony (Modification Hearing)
U-41	Robin Markle Written Direct Testimony (Modification Hearing)
U-42	Robin Markle Slides (Modification Hearing)
U-43	Kimi Yuen, LEED AP BD+C Slides (Modification Hearing)
U-44	Excerpts of Reserved Housing Provisions

34. At the Modification Hearing, VWL presented the testimony of the following witnesses orally and/or through written testimony:

	Witness	Affiliation
1.	Race Randle	Vice President, Victoria Ward, Ltd.
2.	Kimi Yuen, LEED AP BD+C	Principal, PBR Hawaii & Associates, Inc.
3.	Robin Markle	Realtor-Associate, Vice President Projects, Locations Hawaii
4.	Cord Anderson	Director, Development, Victoria Ward, Ltd.
5.	Lee Cranmer	Vice President, Planning and Development, Victoria Ward, Ltd.
6.	Frederick Hong, AIA, NCARB, LEED AP	Architects Hawaii Limited
7.	Joseph Ferraro, FAIA, LEED AP	Founding Principal / Chairman of the Board, Ferraro Choi and Associates, Ltd.

35. Following the March 3, 2021 Presentation Hearing, and prior to the Modification Hearing, HCDA received 15 additional written comments from the public.

36. At the Modification Hearing, seven members of the public provided oral comments.

37. At the conclusion of the Modification Hearing, HCDA closed the evidentiary record of this proceeding.

WARD NEIGHBORHOOD MASTER PLAN OVERVIEW

38. **Approval of the Ward Master Plan.** On April 2, 2008, VWL submitted an application for a master plan permit, pursuant to the Vested Rules, to obtain a master plan permit for approximately 60 acres of land in the KCDD.

39. The master plan provisions of the Vested Rules were intended to “encourage timely development, reduce the economic cost of development, allow for the orderly planning and implementation of public and private development projects, and provide a reasonable degree of certainty in the development approval process.” HAR §15-22-200(a).

40. A further purpose under the Vested Rules was to “derive public benefits, such as affordable housing, relocation assistance, public parking, off-site infrastructure and other public facility improvements, which are generally provided by government and would not otherwise be required from private developers.” HAR §15-22-200(b).

41. As set forth in the Vested Rules, “[a]n approved master plan will provide assurances to landowners, developers and investors that projects proposed within a master planned area that are in accordance with the applicable mauka area rules in effect at the time the

master plan is approved will not be restricted or prohibited at the permit stage by subsequent changes to those rules.” HAR §15-22-200(c).

42. Furthermore, “once [the landowners or developers] have met or agreed to meet all of the terms and conditions of the master plan approval, their rights to development permit approval in accordance with the development rules in effect at the time of master plan approval shall be vested for a specified period.” HAR § 15-22-200(c).

43. The Vested Rules also provide that master planning allows “greater flexibility in the development of lots within master planned areas than would otherwise be possible through the normal lot-by-lot development approach.” HAR §15-22-200(d).

44. On January 14, 2009, pursuant to the Vested Rules, HCDA approved the Ward MP, subject to 16 conditions (“Ward MP D&O”).

45. On May 6, 2009, a Nunc Pro Tunc Order was approved to resolve a clerical error in the Ward MP D&O. Subsequently, and as required by Condition No. 2 of the Ward MP D&O, HCDA and VWL executed a Master Plan Development Agreement for the Ward Master Plan, effective December 30, 2010.

46. **Ward Master Plan area, vision and flexibility of phasing**. The approved Ward MP and Development Agreement cover approximately 60 acres of land within the KCDD, including the Project area. Development under the Ward MP is to proceed in phases through planned developments. Phases are to occur by and within the various identified Land Blocks, labeled one (1) through six (6), each of which form “development lots” pursuant to the Vested Rules.

47. While the Ward MP identified “potential phasing strategies,” “no specific phasing sequence is defined” in the Ward MP in order to allow development to be “implemented in response to market opportunities.” This was also set forth in the Development Agreement, which provides that “the phasing and timing of development under the Ward Master Plan is intended to be flexible to give VWL the ability to adapt to economic and market conditions.”

48. On October 10, 2012, HCDA issued the Declaratory Order Re: Applicability of Condition No. 4 of Nunc Pro Tunc Order Re: Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, Issued January 14, 2009 (“2012 Declaratory Order”).

49. The Ward MP envisioned the revitalization of Kakaako and the transformation of the Ward MP area into a vibrant, mixed-use neighborhood. The Ward MP offered significant public benefits including:

- a. Development of a range of housing opportunities, including reserved housing, in the urban core, close to the Honolulu business district, the Capitol district, and Waikiki;
- b. Creation of a pedestrian friendly street network, with canopy trees, and re-designed streets as landscaped promenades;
- c. Creation of a smart growth community, where residents can live, work, and play, and where the general public can enjoy street level activities nearby various modes of transportation systems;

- d. Provision of over 5.5 acres of open space and nearly 5.2 acres of public facilities maintained and secured without expense to the public, including the Central Plaza (now known as Victoria Ward Park), which creates open space in the neighborhood, is available for community gatherings and celebrations, and will be further defined by appropriate landscaping and walkways;
- e. An infusion of approximately \$11.8 billion in economic value during development, \$701.1 million of State tax revenues and over 4,250 jobs created;
- f. Investment of approximately \$300 million in street, infrastructure, and utilities improvements; and
- g. Preservation and advancement of culture, community, and the environment in the heart of Honolulu.

50. **Fulfillment of Ward Master Plan pre-development conditions.** VWL has fulfilled the pre-development conditions of the Ward MP D&O, which required submission of the following documents prior to its initial development permit application:

- a. The Development Agreement;
- b. 2012 Declaratory Order, which fulfilled Condition No. 4 of the Master Plan Permit regarding amendments to the existing Mauka Area Plan;
- c. Historic building inventory (Fung Associates, June 2012);
- d. Cultural impact assessment (Cultural Surveys Hawaii, May 2012);
- e. Predictive archaeological model (Cultural Surveys Hawaii, May 2012);

- f. Archaeological inventory survey plan (Cultural Surveys Hawaii, December 2012);
- g. Regional traffic study (Wilson Okamoto Corporation, October 2012); and
- h. Sustainability guidelines (April 2013).

51. In addition to preparing the sustainability guidelines, VWL entered the Ward MP into the US Green Building Council's program LEED for Neighborhood Development ("LEED-ND"). The LEED-ND criteria awards credits for a neighborhood's integration and sustainability through pedestrian orientation, efficient land use, and transportation infrastructure. As a result of its many inherently sustainable attributes and commitments made to make all future projects sustainable, the Ward MP was awarded a Platinum pre-certification rating.

52. The Project site currently accommodates Pohukaina Center, which consists of three warehouses flanked by parking stalls. VWL committed to fulfill its requirements under the Ward MP D&O regarding tenant relocation. Relocation assistance is required to be provided to affected tenants, first by looking for opportunities within the Ward MP area to the extent feasible, and by working with a commercial brokerage for alternative spaces. Ultimately, the redevelopment of the Ward MP area is intended to benefit existing and future tenants.

53. **Ward Master Plan projects.** To date, the following projects and associated planned development permits have been approved by HCDA under the Ward MP:

- a. Land Block 5, Project 1 (KAK 13-038; July 17, 2013) Ke Kilohana (completed);
- b. Land Block 2, Project 1 (KAK 13-036; August 21, 2013) Waiea (completed);

- c. Land Block 3, Project 1 (KAK 13-037; August 21, 2013) Anaha (completed);
 - d. Land Block 1, Project 2 (KAK 14-074; February 4, 2015) Aeo (completed);
 - e. Land Block 1, Project 3 (KAK 16-075; January 13, 2017) Aalii (permitted; construction completion scheduled for 2021);
 - f. Land Block 1, Project 4 (KAK 18-038; August 9, 2018) Koula (permitted; construction completion scheduled for 2022); and
 - g. Land Block 2, Project 3 (KAK 19-069; October 2, 2019) Victoria Place (permitted; construction scheduled to commence in 2021).
54. Advancements under the Ward MP to date also include:
- a. The completion of the retail construction at Ward Village Shops adjacent to its district parking structure;
 - b. The renovation of the IBM building to create a master plan information center and courtyard;
 - c. The opening of Victoria Ward Park (formerly known as the Central Plaza);
 - d. The Whole Foods Market grocery store; and
 - e. The newly-opened Longs Drug Store in Ke Kilohana.
55. VWL is now seeking a planned development permit for Land Block 5, Project 2 (Ulana Ward Village), which is the subject of this proceeding.

PROJECT DESCRIPTION

56. **Project name.** The Hawaiian word ulana describes the act of plaiting or weaving. Makaloa grass was an important crop grown at the Ward Estate, and was woven into makaloa mats, which provided comfort, rest and relaxation.

57. The name of the project, Ulana Ward Village, pays respect to the story and history of the Ward Estate, and is designed to provide a productive place of rest that connects to its surroundings. The adjacent planned park, Ka Lai o Kukuluao Park, means the calm of Kukuluao, and reflects the traditional place name for the area where Ulana Ward Village will stand.

58. **Location.** Ulana Ward Village is located on Land Block 5 of the Ward MP. Land Block 5 is bound by the private Pohukaina Street to the north; the proposed Ka Lai o Kukuluao Park (the former Ewa Plaza) to the east; Auahi Street to the south; and lands owned by Kamehameha Schools to the west.

59. The Ulana Ward Village site is currently on TMK (1) 2-1-053:001. The parcel will be re-subdivided to create a separate TMK parcel of approximately 104,030 square feet for the Ulana Ward Village site, and a parcel of approximately 30,000 square feet for the Ka Lai o Kukuluao Park, which will be open to the public.

60. The Ulana Ward Village site currently accommodates Pohukaina Center, which consists of three warehouses flanked by parking stalls. Section 4.15 of the Application identifies the existing tenants and outlines the VWL's tenant relocation plan. VWL will provide notice and relocation assistance to the affected tenants as required.

61. **Land use and zoning.** Pursuant to the Ward MP D&O and the 2012 Declaratory Order, the Project site has a single mixed-use zoning designation, MUZ, which allows flexibility in designing and developing the mixed-use community that was approved under the Ward MP.

62. **Residential tower and mixed-use platform.** Ulana Ward Village proposes approximately 622,679 square feet of new floor area, including a residential tower and a parking and mixed-use platform. The residential tower footprint of approximately 13,800 square feet over a site of approximately 104,030 square feet complies with HAR §15-22-116.

63. The residential tower will be oriented in a mauka-makai direction to preserve public view planes pursuant to HAR § 15-22-143(a).

64. The residential tower complies with the 400 feet height limit set forth in HAR §15-22-116, with a proposed height of approximately 375 feet (plus rooftop elements).

65. In total, the residential tower will provide 697 reserved housing homes. It will provide approximately 40,708 square feet of indoor and outdoor recreation space, which exceeds the 55 square foot per unit requirement set forth in HAR §15-22-65.

66. The platform is designed for parking and mixed-uses, including light industrial and commercial use. Applicant seeks one modification of the Vested Rules to increase the platform height from forty-five (45) feet to seventy-five (75) feet as contemplated in the Ward MP and permitted by HAR § 15-22-120(7).

67. **Floor area / density.** The following table is a summary of the floor area allocations and projected floor area ratio (“FAR”) for Land Block 5:

Floor Area Allocation for Land Block 5	
Development Lot Area for Land Block 5	621,871 (SF)
Projected Floor Area for Land Block 5	1,931,246 (SF)
Projected Floor Area Ratio for Land Block 5	3.11
Floor Area Allocation on Land Block 5	
Ke Kilohana (Completed)	506,770 (SF)
Land Block 5, Project 2 (Ulana Ward Village) (Proposed)	622,679 (SF)
Subtotal of Floor Area Allocated on Land Block 5 to Date	1,129,449 (SF)
Remaining Floor Area on Land Block 5 without bonus	801,797 (SF)

68. Land Block 5 totals approximately 14.27 acres and comprises one development lot, which is governed by a joint development agreement recorded March 18, 2014 (DOC A-51900681) (“JDA”). Therefore, all the parcels included within the JDA will be considered and treated as one development lot under the Vested Rules.

69. Land Block 5 has an effective development lot area of 621,871 square feet. The Project development lot is approximately 104,030 square feet (approximately 2.39 acres).

70. The Ward MP establishes a FAR of 3.8 (inclusive of the industrial bonus of 0.3 FAR). In addition, HAR §15-22-203(b)(1) allows for the transfer of floor area and land uses from one development lot to one or more development lots within the master planned areas as long as the FAR for any lot to which floor area has been transferred to shall not be increased by more than twenty-five percent (25%) of the FAR otherwise allowed for the size of the development lot.

71. Therefore, with the permitted twenty-five percent (25%) transfer, the maximum allowable FAR for Land Block 5 could be up to 4.75 $[(0.25 * 3.8) + 3.8]$ or 2,953,888 square feet (621,871 square feet * 4.75) of floor area.

72. As such, the projected floor area of 1,931,246 square feet (inclusive of this proposed Project) and FAR of 3.11 (1,931,246 square feet / 621,871 square feet) for Land Block 5 is consistent with the provisions of the Vested Rules as approved under the Ward MP.

73. With the Project, which has a floor area of 622,679 square feet, the total floor area approved and pending within the Ward MP area (including The Park Ward Village) will be approximately 5,842,169 square feet.

74. After the development of the Project, VWL will have planned and forecast remaining floor area of approximately 3,492,071 square feet.

75. The Project has industrial floor area of approximately 34,501 square feet. Additional industrial area is currently planned for Land Block 5 and Land Block 6 of the Ward MP.

76. **Building orientation and tower spacing.** Section 15-22-143(a)(2) of the Vested Rules requires that to the extent practicable, the tower portion of the structure be oriented between thirty-five and sixty-five degrees west of south.

77. The long axis of the Project tower is approximately 52 degrees west of south in a mauka-makai orientation.

78. Section 15-22-143(b)(1) of the Vested Rules requires that to the extent practicable, the parallel sides of adjacent towers shall be separated by a distance of at least 300

feet. Section 15-22-143(b)(2) of the Vested Rules requires that to the extent practicable there should be at least 200 feet between the short side of the towers.

79. The long side of the Project tower is at least 300 feet from the nearest tower, and the short side of the Project is at least 200 feet from the nearest tower.

80. **Archaeological and historic resources.** Cultural Surveys Hawai'i ("CSH") conducted an archaeological inventory survey ("AIS") for the area of Land Block 5 that includes the Ulana Ward Village site.

81. The AIS documented two archaeological historic properties in the Project area:

a. SIHP # 50-80-14-8790 consists of historical buried surfaces associated with early to mid-twentieth century industrial/commercial development.

Components identified include prepared coral surfaces (e.g., coral slabs, cemented coral aggregate surfaces, compacted crushed coral surfaces, oil-rolled crushed coral surfaces) and A horizons that developed atop crushed coral early twentieth century reclamation fill; and

b. SIHP # 50-80-14-8791 consists of subsurface historical salt pan remnants.

Identified components consist of man-made berms and level basins containing laminated deposits comprised of organic material and clay.

82. The State Historic Preservation Division (SHPD) accepted the AIS report on June 9, 2020. In the letter, SHPD concurred with the CSH's recommended mitigation of archaeological monitoring.

83. Subsequent to the AIS report, CSH prepared an archaeological monitoring plan (AMP) addressing the area of the Ulana Ward Village site. SHPD accepted the AMP on June 23, 2020.

84. Appendix B of the Application contains the AMP acceptance letter from SHPD. The letter reiterates acceptance of the AIS, notes that the AMP meets applicable requirements, and confirms that the permit issuance process may proceed.

85. **Open space.** Open space for the Project shall be the lower of either ten percent (10%) of the lot area or twenty-five percent (25%) of the lot area less the required yards as provided in §15-22-64(c)(1) of the Vested Rules.

86. Within the Ward MP, the Applicant proposes to provide 62,187 square feet of open space for Land Block 5, which is equal to approximately ten percent (10%) of the total development lot area, before the end of the last phase of development for the development lot.

87. The open space required for the Project is 10,403 square feet (104,030 square feet * 10 percent). The Project proposes to provide approximately 26,597 square feet of open space on site, or approximately 25.6 percent of the lot area.

Summary of the Ward Neighborhood Master Plan Open Space (To Date)	
Open Space for Existing & Approved Projects	
MUZ 16-00 [LB1] Ward Entertainment Center	2,859 sf
KAK 14-074 [LB1-P2] Aeo	5,047 sf
KAK 16-075 [LB1-P3] Aalii	9,905 sf
Victoria Ward Park – Mauka [LB1] (fmr. Central Plaza)	55,263 sf
KAK 18-038 [LB1-P4] Koula	10,800 sf
KAK 13-036 [LB2-P1] Waica	13,667 sf
MUZ 93-04 [LB3] Ward Village Shops	32,988 sf
KAK 13-037 [LB3-P1] Anaha	10,907 sf
KAK 12-137 [LB4] IBM Building	9,695 sf
KAK 13-038 [LB5-P1] Ke Kilohana	1,323 sf
KAK 19-096 [LB2-P3] Victoria Place	17,403 sf
Victoria Ward Park – Makai [LB2]	63,665 sf
Subtotal Open Space for Existing & Approved Projects	233,522 sf
Open Space for Pending Projects	
KAK 21-001 [LB5-P2] Ulana Ward Village	26,597 sf
Ka Lai O Kukuluaeo Park [LB5] (Fmr. Ewa Plaza)	30,000 sf
KAK 21-002 [LB1-P5] The Park Ward Village	22,198 sf
Victoria Ward Park – Mauka Expansion [LB1]	37,166 sf
Subtotal Open Space for Pending Projects	115,961 sf
Total Open Space of Existing/Approved/Pending Projects	
Land Block 1	143,238 sf
Land Block 2	94,735 sf
Land Block 3	43,895 sf
Land Block 4	9,695 sf
Land Block 5	57,920 sf
Total Opens Space of Existing/Approved/Pending Projects	349,483 sf
Minimum Total Open Space required for Master Plan	245,638 sf
Existing/Approved/Pending Open Space Surplus	102,032 sf

88. In addition, the adjacent Ka Lai o Kukuluaeo Park (formerly known as the Ewa Plaza) will provide an additional 30,000 square feet of open space in Block 5.

89. **Off street parking.** Pursuant to HAR §15-22-67, the Project is required to provide a total minimum of 798 off-street parking spaces, including 740 spaces for residential use, 19 spaces for commercial use, and 39 spaces for light industrial use.

90. The Project will include approximately 1,235 off-street parking spaces for these uses, inclusive of parking for the commercial and light industrial use patrons, residential guests, and district parking for Ward Village and the Kakaako community.

Land Use	Requirement	Unit or Floor Area	Minimum Required	Provided
Residential				
600 SF or less	0.9 stall / unit	328 units	296	
Between 600 SF to 800 SF	1.13 stall / unit	246 units	278	
800 SF or more	1.35 stall / unit	123 units	166	
Commercial				
Eating/Drinking Area	1/ 333 SF	3,458 SF	11	
Kitchen/Accessory/Other	1/444 SF	3,458 SF	8	
Industrial	1 per 889 SF	34,501	39	
TOTAL			798	1,235

91. VWL provided that the number of off-street parking stalls at Ulana Ward Village is set by residential and commercial market demand, and is also part of an area-wide parking strategy.

92. Accordingly, reducing the proposed number of off-street parking spaces to the minimum requirement or the typical market requirement at Ulana Ward Village would significantly and adversely affect, among other factors, the marketing and usefulness of the commercial and light industrial spaces within the Project, as well as accessibility to nearby parks (including the public Ka Lai o Kukuluaeo Kukuluaeo Park) and nearby businesses.

93. The off-street parking at Ulana Ward Village is an integral part of an area-wide parking strategy within Ward Village based upon specific land uses.

94. Parking for residential uses is provided within each development block, and parking for commercial uses is provided not only within the localized block, but also in regional district parking areas, which supports complementary uses as the need arises.

95. Ward Village currently has approximately 4,100 parking spaces, including parking to accommodate various commercial tenants including Whole Foods, CVS and others. Upon the completion of Ulana Ward Village and The Park Ward Village, total district parking will be reduced by several hundred spaces, and at ultimate build-out, total district parking within Ward Village will be further reduced to approximately 2,700 parking spaces subject to market demand.

96. This area-wide parking strategy and regional district parking for commercial uses fosters the “park-once” concept, in which patrons will park once and use different modes of travel to access shopping, dining, entertainment and other venues within Ward Village.

97. **Off-street loading.** The Project is required to provide four off-street loading spaces that meet or exceed the minimum dimensions as provided in the Vested Rules. The Project will provide two loading spaces with dimensions of 12 feet by 35 feet, and two loading spaces with dimensions of 8-1/2 feet by 19 feet.

98. **Bicycles.** The Ward MP envisions an interconnected bicycle network linked to the City and County of Honolulu system, with the improved bicycle environment being an integral component to the overall transportation management strategy.

99. Short-term bicycle parking for customers, employees and guests of Ulana Ward Village will be provided on the ground level near commercial spaces and in Ka Lai o Kukuluaeo Park. Long-term bicycle parking for residents will be provided on the ground floor adjacent to the parking structure.

100. Ulana Ward Village will provide bicycle parking using the City and County of Honolulu Land Use Ordinance (“LUO”) § 21-6.150, as a general recommendation.

101. Bikeshare stations are also at various convenient locations throughout Ward Village.

102. **Front, side and rear yards.** The Vested Rules require a front yard setback of fifteen feet, and a minimum side and rear yard setback of ten (10) feet for structures containing windows and opening facing side or rear property lines. HAR §§ 15-22-63.1, 15-22-63.2.

103. The Project site is bounded to the north by Pohukaina Street, on the east and west sides by a privately owned parcel, and is partially bounded on the south by an adjacent City-owned parcel and Auahi Street.

104. A front yard setback is required along the north and south portions of the property that are immediately adjacent to streets.

105. A ten-foot side yard is provided along the south facing façade of the Project parking structure (adjacent to the City-owned parcel), because there are openings on that side of the parking structure. There are no openings on the west facing wall of the parking structure; accordingly, there is no rear yard required along the east lot line shared with the privately owned parcel.

106. **Public facilities**. Section 15-22-73 of the Vested Rules establishes requirements for public facilities dedication. The public facilities dedication requirement for residential floor area is four percent (4%) of the total residential floor area exclusive of floor area devoted to reserved housing units and their associated common areas, and the public facilities dedication requirement for commercial floor area is three percent (3%) of the total commercial floor area. No public facilities dedication is required for industrial floor area.

107. Since the total residential floor area of 581,262 square feet in the Project is devoted to reserved housing and associated common areas, in accordance with § 15-22-73(c)(2), no public facilities dedication is required for the residential floor area. The Project's proposed commercial floor area of 6,916 square feet triggers a public dedication requirement of 207 square feet.

108. As noted in the public facilities dedication letter dated February 19, 2021, given the provided and pending public facilities dedications in Ward Village to date, VWL will generate public facilities credits in conjunction with the Ward MP, which upon acceptance will be sufficient to meet the public facilities dedication requirement for the Project (and The Park Ward Village), and will leave a remaining balance of approximately 160,972 square feet.

109. A summary of public facilities dedication requirements for the various development projects under the Ward MP that have been approved by the Authority, public facilities dedication credits accumulated by the Applicant, and approximate public facilities dedications that are proposed and pending is provided in the following table:

WARD VILLAGE PUBLIC FACILITIES DEDICATION	
Credit from Pre-Ward Village MP Projects [a]	39,581 sf
Public Facilities Dedications (To Date)	
<i>Projects</i>	<i>Area</i>
KAK 13-036 [LB2-P1] Waiea [Doc A-52480775] - Sidewalk along Ala Moana Blvd	521 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480776] - Sidewalk along Queen St.	353 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480777] - Sidewalk along Auahi St.	496 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480777] - Sidewalk along Auahi St.	431 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480779] - midblock	902 sf
KAK 13-038 [LB5-P1] Ke Kilohana [Doc A-52480780] - R.O.W. along Ilaniwai St.	1,785 sf
Halekauwila Street Dedication to HCDA [Doc A-55070352]	37,261 sf
LB1: 2017/SUB-40 Lot D, Esmt A-7 [Doc A-68720531] - Roadway Easement	53,062 sf
KAK 16-075 [LB1-P3] Aalii [Doc A-69270954] - Sidewalk Easement P-3A	6,034 sf
LB1: 2017/SUB-40 Lot B [Doc A-68720628] - Sidewalk Easement P-4	5,773 sf
KAK 18-038 [LB1-P4] Kō'ula [Doc A-74390207] - Sidewalk Easement P-5	2,186 sf
KAK 14-074 [LB1-P2] Aeo [Doc A-75230480] - Sidewalk Easement A-1	6,387 sf
KAK 14-074 [LB1-P2] Aeo [Doc A-75230480] - Sidewalk Easement P-1	5,992 sf
KAK 14-074 [LB1-P2] Aeo [Doc A-75230480] - Sidewalk Easement P-2	312 sf
Subtotal of Public Facilities Dedication Provided to Date [b]	121,495 sf
Total Credits & Dedications Provided to Date [a + b]	161,076 sf
Proposed (Pending) Public Facilities Dedications (To Date)	
LB1: 2019/SUB-109, Lot D-2 [unrecorded] - Halekauwila Roadway Easement A-8	10,241 sf
LB1: 2019/SUB-109, Lot E [unrecorded] - The Park on Ward Sidewalk Easement P-10	2,566 sf
LB1: 2020/SUB-92 Lot 39-F [unrecorded] - Victoria Ward Park - Makai	63,665 sf
LB1: 2019/SUB-109, Lot D-2, Esmt B [unrecorded] - Victoria Ward Park - Mauka	92,429 sf
LB1: 2019/SUB-109, Lot F, Esmt P-9 [unrecorded] - N-West Sidewalk Easement	2,547 sf
Subtotal of Pending Public Facilities Dedication [c]	171,448 sf
Total Dedications Provided / Pending [a + b + c]	332,524 sf
Required Public Facilities Dedication (To Date)	
<i>Project</i>	<i>Dedication Area</i>
KAK 13-036 [LB2-P1] Waiea	20,831 sf
KAK 13-037 [LB3-P1] Anaha	25,796 sf
KAK 13-038 [LB5-P1] Ke Kilohana	3,009 sf
KAK 14-074 [LB1-P2] Aeo	24,107 sf
KAK 16-075 [LB1-P3] Aalii	21,653 sf
KAK 18-038 [LB1-P4] Koula	26,713 sf
KAK 19-069 [LB2-P3] Victoria Place	22,252 sf
Subtotal	144,361 sf
Block F [LB5-P2] Ulana Ward Village	207 sf
Block H [LB1-P5] The Park on Ward	26,983 sf
Subtotal of Required Public Facilities Dedication to Date	171,552 sf
Remaining Balance Not Including Pending Public Facilities Dedications	(10,476 sf)
Remaining Balance after Pending Public Facilities Dedications	160,972 sf

110. **Reserved housing delivery.** Pursuant to HAR §15-22-115(a), the Project is required to provide “at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons”.

111. Hawaii Administrative Rules § 15-22-203(b) gives HCDA the authority, as part of a master plan approval, to permit reserved housing units to be transferred from one development lot to one or more development lots within the master plan area.

112. HCDA made several findings in the Ward MP D&O addressing the Ward MP reserved housing proposals, including that:

- a. HCDA considered the “location . . . of residential uses including reserved housing units.”;
- b. HCDA determined that: “Petitioner has proposed to meet the 20% reserved housing requirement by providing the units on- or off-site within Kakaako, or elsewhere as permitted”; and
- c. “Petitioner has provided for the Authority’s consideration the nature of the proposed master planned area and proposed developments therein in terms of size, use . . . [and] the location . . . of residential uses including reserved housing units[.]”

113. As noted in the Ward MP D&O FOF 75, the Authority provided that the reserved housing unit mix, as well as the provisions for delivery of the reserved housing, need not be determined at the master planning stage; instead, the HCDA determined that these issues are more appropriately determined at the project development stage.

114. **Reserved housing credit system.** As noted, the Ward MP D&O required the execution of the Development Agreement. Specifically, Condition No. 2 of the Ward MP D&O provided that:

Petitioner shall execute a Master Plan Development Agreement to the satisfaction of the Authority. . . . Pursuant to HRS Chapter 206E-4, the Authority is authorized to enter into a development agreement to provide parties to the development agreement with assurances of the following . . . descriptions of the delivery, manner and timing of reserved housing.

115. As required by Condition No. 2, the Development Agreement documented HCDA's and VWL's agreement regarding the "delivery, manner and timing of reserved housing" within Ward Village.

116. Under Hawaii Revised Statutes § 206E-7(b), the development of lands under a master plan permit are governed by both the master plan permit and the master plan development agreement; therefore, both of these documents govern VWL's rights, which are vested with respect to the flexibility in the manner of delivery and timing of reserved housing within Ward Village.

117. Under the terms of the Development Agreement, HCDA sought to incentivize the early delivery of reserved housing in Ward Village in advance of market housing.

118. Specifically, Section V.B.4. of the Development Agreement provided that:

To encourage the early delivery of reserved housing within the Kakaako Community Development District in advance of the construction of market housing, the HCDA will effectuate a reserved housing credit process that will apply to the Ward MP under the following circumstances:

* * *

[I]f VWL . . . construct[s] more reserved housing for any
planned development in the Master Plan Area than is
required for that project;”

* * *

VWL . . . may use [its] reserved housing credits to satisfy
all or part of the Ward MP reserved housing
requirements[.]

* * *

The reserved housing credits shall be applied on a one-for-
one basis.

119. Under this credit system, HCDA agreed that it would allow VWL to build reserved housing units in advance and off-site, and it would allow VWL to accrue credits for reserved housing built in excess of current requirements.

120. HCDA further agreed that it would allow VWL to use its credits, at its option (and on a one-for-one basis), to satisfy “all or part” of the Ward MP reserved housing requirements for future developments.

121. The Development Agreement credit system, which documents and recognizes VWL’s right to exercise the option to construct reserved housing units in advance and off-site , is consistent with HCDA’s recognition that “[t]he phasing and timing of development under the Ward MP is intended to be flexible to give VWL the ability to adapt to economic and market conditions.”

122. The Development Agreement credit system is also consistent with the provisions HAR § 15-22-115(c), which provides that “[i]f the authority so determines, it may require that, instead of providing reserved housing units within the development . . . the applicant may meet

the requirement . . . [b]y providing such reserved housing units elsewhere within the mauka area.”

123. Pursuant to the planned development permits for KAK 18-038 (Koula) and KAK 19-069 (Victoria Place), VWL is currently required to provide a minimum of 108 reserved housing units within Ward Village.

124. Condition No. 4 of the planned development permit for KAK 19-069 (Victoria Place) confirmed, in part, that “VWL shall have the right to utilize any excess reserved housing units [*i.e.* in excess of the 108 reserved housing units required for KAK 18-038 (Koula) and KAK 19-069 (Victoria Place)] as credits to fulfill reserved housing requirements for other planned development projects within the Ward Master Plan.”

125. The 697 reserved housing units proposed at Ulana Ward Village will exceed this current 108 unit requirement, and proposes to provide the early delivery of reserved housing in advance of market housing in Ward Village, which is consistent with the Development Agreement.

126. As provided in the Ward MP, and as with other VWL reserved housing communities, at least ten percent (10%) of the reserved housing homes at Ulana Ward Village will be offered at or below one hundred percent (100%) of the Area Median Income (“AMI”).

127. Under the terms of the Development Agreement, upon approval and after the delivery of Ulana Ward Village and The Park Ward Village, VWL will have approximately 362 reserved housing credits that VWL may, in the exercise of its vested rights, use in order to satisfy, at its option, all or part of the Ward MP reserved housing requirements for future developments and/or to true up the reserved housing mix upon completion of all projects within the Ward MP as summarized in the table below:

Reserved Housing		
Project	Residential Units	Reserved Housing Units Provided
<i>KAK 13-036 [LB2-P1] Waiea</i>	*177	0
<i>KAK 13-037 [LB3-P1] Anaha</i>	318	0
<i>KAK 13-038 [LB5-P1] Ke Kilohana</i>	424	375
<i>KAK 14-074 [LB1-P2] Ae'o</i>	466	0
<i>KAK 16-075 [LB1-P3] 'A'ali'i</i>	751	150
<i>KAK 18-038 [LB1-P4] Kō'ula</i>	570	0
<i>KAK 19-069 [LB2-P3] Victoria Place</i>	350	0
<i>Block F [LB5-P2] Ulana Ward Village</i>	697	697
<i>Block H [LB1-P5] The Park Ward Village</i>	546	0
Total Residential Units	4299	1222
Reserved Housing Units Required (20%)	860	
Reserved Housing Units Balance - exceeding requirements	362	

*The Waiea Planned Development Permit included 177 residential units, but only 174 units were constructed

128. **Location and delivery of reserved housing.** The Ward MP contemplated dedicated reserved housing developments within Ward Village.

129. Under current plans, Ulana Ward Village will bring to market 697 reserved housing units by approximately 2024. There is a significant, unmet demand for reserved housing in urban Honolulu, and the development will provide numerous reserved housing units at once.

130. Dr. Bouslog stated that although maintenance fees and other housing expenses are of concern to both reserved housing and market-priced purchasers, long-term maintenance fees can be better managed through the dedicated reserved housing model, and issues of association governance and control to mitigate such risks are also more efficiently handled through the dedicated reserved housing model.

131. VWL is implementing various measures at Ulana Ward Village to address maintenance costs, including separately metering utilities in various areas and considering how various services can be efficiently managed.

132. Dr. Bouslog states that her experience in Ward Village and other communities demonstrates that the dedicated reserved housing model can also be conducive to fostering a sense of community and shared interests within the developments, thus contributing to a vibrant and healthy neighborhood.

133. **Flood hazard district.** Pursuant to HAR § 15-22-82, the applicable provisions of the Honolulu Land Use Ordinance (LUO) relating to flood hazard districts apply to all properties within the mauka area.

134. The Project site is located in the Federal Emergency Management Agency Flood Insurance Rate Map as Zone AE, in which the annual chance of flooding for a 100 year flood is determined as one percent. The property's flood base elevation is 7 feet, and the proposed finish floor elevation at Level 1 for the Project is 7.25 feet.

MODIFICATION

135. **Description of modification.** As proposed by the Ward MP and implemented in previously-approved developments in Ward Village, VWL requests one modification to HAR § 15-22-62(a) to increase the mixed-use platform height from forty-five (45) feet to seventy-five (75) feet, with an additional twelve (12) feet of height for accessory use structures with a total area less than fifteen percent (15%) of the platform roof area, and eighteen (18) feet of height for structures housing elevator machinery on the platform roof.

136. **Flexibility in design.** The Mauka Area Plan and Vested Rules provide flexibility for large developments and adopt an approach that departs from the rigidities of lot-by-lot development, allowing the community to receive public amenities that would otherwise be unavailable.

137. Hawaii Administrative Rules § 15-22-1 provides that “the authority shall interpret these rules to encourage flexibility of design.” The Mauka Area Plan provides that its vision is to create the vertical mixing of uses, locate commercial at grade, and create pedestrian-oriented residential, commercial, social and recreational activities.

138. To create the vision and meet the goals identified in the Mauka Area Plan, the plan described and encouraged the following elements:

- a. “Commercial uses requiring easy access to automotive traffic could also locate at grade”;
- b. “Large scale developments or superblocks are proposed to make the mixed-use concept work most efficiently”;

- c. “Most developments in the Mauka Area will be encouraged to have common urban design features for the purpose of creating a desirable and functional community. These features are tastefully designed platforms, decks, and towers”; and
- d. The creation of a level “with pedestrian-oriented residential, commercial, social and recreational activities. . . .”

139. Consistent with the foregoing, the Ward MP identified modifications that VWL would be seeking to implement the vision of the Mauka Area Plan and the master plan. As stated in FOF No. 62 of the Decision and Order approving the Ward MP, the master plan proposed:

Incras[ing] the maximum podium or street front element height from 45 feet to 65 feet for parcels fronting Ala Moana Boulevard and to 75 feet for all other parcels not directly fronting Ala Moana Boulevard, which will allow retail, restaurants and residential units to be built within the podium and parking structures to be moved up and away from the street, creating a more aesthetically pleasing and pedestrian friendly façade.

140. The Authority reviewed the proposed platform height modification at the time of the Ward MP approval and provided in FOF 103 that: “increasing the podium height allows for retail, restaurants, office, and residential units to be built within the podium” and the “additional podium height offers the opportunity to move a parking structure up and away from the street, occupying a smaller floor plate and making room for alternative uses,” which uses “can then surround the garages.”

141. **HAR § 15-22-22 criteria.** HCDA further determined that the modification to the platform height would satisfy the standard for granting modifications under HAR § 15-22-22.

This is set forth in FOF No. 106 of the Decision and Order approving the Ward MP, which provides that the modification:

(a) will result in a development that is consistent with the intent of the Mauka Area Plan and Rules; (b) will provide flexibility for different uses and various design strategies noted in the Master Plan, including concealed parking structures and pedestrian-friendly facades, which will result in a development that is practically and aesthetically superior to one which could be accomplished without such modifications; (c) will not adversely affect adjacent developments or uses; and (d) are necessary to implement the mixed-use, live-work-play neighborhood vision of the Master Plan and Mauka Area Plan.”

142. As envisioned by the Mauka Area Plan, the Ward MP, and the Ward MP D&O, the requested modification for Ulana Ward Village will allow for commercial and light industrial space to be built within the ground floor of the parking and mixed-use platform. The additional height also provides an opportunity to move the bulk of parking uses up and away from the street level, thereby dramatically increasing the open and recreation spaces at ground level and improving the street environment.

143. Other resident, community and public benefits facilitated by the modification include the 30,000 square foot Ka Lai o Kukuluao Park, and the provision of additional district parking.

144. The ground level open and green spaces created by the modification will create a walkable and active streetscape that Ulana Ward Village residents and the community will value and will enjoy.

145. The modification is consistent with other developments in Ward Village. Accordingly, the modification will not adversely affect adjacent developments or uses, but

instead will enhance and provide uniformity with neighboring developments within the community.

146. In particular, the modification facilitates the development of a superior development for this area.

147. Thus, as noted in the Ward MP D&O, the modification meets the criteria of HAR § 15-22-22, which provides that:

- (1) The modification would provide flexibility and result in a development that is practically and aesthetically superior to that which could be accomplished with the rigid enforcement of this chapter;
- (2) The modification would not adversely affect adjacent developments or uses; and
- (3) The resulting development will be consistent with the intent of the mauka area plan.

148. **HAR § 15-22-120(7) criteria.** In addition, Hawaii Administrative Rules § 15-22-120(7), which permits the Authority to grant modifications for platform heights, states:

Platform heights may be commensurately modified to exceed forty-five feet where:

- (A) Subsurface construction is infeasible;
- (B) Design requirements for ceiling height clearances require height adjustment;
- (C) Industrial, commercial, residential or community service uses are substantially located within the platform, especially along streets or public spaces; or
- (D) Significant public facilities or pedestrian features are provided at the street level, especially arcades or publicly accessible open space in excess of the minimum grade-level open space.

149. Although the Ulana Ward Village platform is only required to meet one of the criteria of HAR § 15-22-120(7), VWL provides that the modification request meets all four criteria.

150. **HAR § 15-22-120(7)(A) - Subsurface construction is infeasible.** The proposed modification for Ulana Ward Village, consistent with the Mauka Area Plan, avoids subsurface excavation activities associated with an underground parking structure. Keeping the parking structure above ground for the development, where there are potential cultural subsurface sensitivities and the proximity to the water table, is an important consideration and benefit.

151. **HAR § 15-22-120(7)(B) – Design requirements for ceiling height clearances require height adjustment.** In order to facilitate ceiling heights for off-street loading vehicles, commercial uses, and industrial uses, an increase in the ground floor level ceiling height is necessary, and therefore requires an increase in the platform height.

152. **HAR § 15-22-120(7)(C) - Industrial, commercial, residential or community service uses are substantially located within the platform, especially along streets or public spaces.** Ulana Ward Village will include approximately 34,501 square feet of light industrial space and 6,916 square feet of ground floor commercial space in the platform, which will serve the Ulana Ward Village residents and the broader Ward Village community. These uses propose to provide a more aesthetically pleasing and pedestrian-friendly façade on the mauka side of the development.

153. **HAR § 15-22-120(7)(D) - Significant public facilities or pedestrian features are provided at the street level, especially arcades or publicly accessible open space in**

excess of the minimum grade level open space. The proposed modification also facilitates the provision of substantial ground floor open and recreational space at Ulana Ward Village. As Exhibit 20 to the Application illustrates, increasing the platform height, thereby pulling the parking up and away from the street, not only results in space for the commercial and light industrial uses, but also dramatically increases the open space at ground level. Depictions of the street-level pedestrian activation and aesthetic benefits arising from the modification are also illustrated in Exhibits 21A, 21B, 21C, and 21D of the Application.

154. As a result, Ulana Ward Village provides approximately 26,597 square feet of ground floor open space , and approximately 40,708 square feet of ground floor resident recreation space . This open and recreational space is in addition to the adjacent Ka Lai o Kukuluaeo Park, which will provide a 30,000 square foot park area for residents and the community to enjoy in the heart of Kakaako.

HRS CHAPTER 206E REQUIREMENTS

155. Pursuant to HRS § 206E-5.6(j), HCDA is required to consider the following criteria in evaluating whether a developer’s proposal to develop lands under HCDA’s control is reasonable and is consistent with the development rules and policies of the relevant development district:

- a. The extent to which the proposed project:
 - i. Advances the goals, policies, and objectives of the applicable district plan;

- ii. Protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the applicable district rules;
 - iii. Avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area; and
 - iv. Provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups;
- b. The impact of the proposed project on the following areas of urban design, as applicable:
- i. Pedestrian oriented development, including complete streets design;
 - ii. Transit oriented development, including rail, bus, and other modes of rapid transit; and
 - iii. Community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector;
- c. The impact of the proposed project on the following areas of state concern:
- i. Preservation of important natural systems or habitats;
 - ii. Maintenance of valued cultural, historical, or natural resources;

- iii. Maintenance of other resources relevant to the State's economy;
 - iv. Commitment of state funds and resources;
 - v. Employment opportunities and economic development; and
 - vi. Maintenance and improvement of the quality of educational programs and services provided by schools;
- d. The representations and commitments made by the developer in the permit application process.

156. **Extent to which the Project advances the goals, policies, and objectives of the applicable district plan.** The Project has been designed consistently with the goals of the Ward MP, the Vested Rules, the Authority's development guidance policies, and the district wide plan for the Kakaako mauka area.

157. The applicable district plan is the Mauka Area Plan adopted by HCDA in June 2005. The Mauka Area Plan provides a framework for public-private sector cooperation to develop the Mauka Area into a vibrant, mixed-use community with a variety of housing types in Honolulu's urban core.

158. From the housing perspective, Ulana Ward Village will add 697 reserved housing homes in the urban core.

159. Ulana Ward Village is located in the core of Honolulu and Kakaako, in close proximity to the central business district, the government center, and commercial, and industrial facilities, along with recreational areas such as Ala Moana Beach Park and Kewalo Basin

Harbor. Its central location provides convenient access to the services and amenities throughout Kakaako and Ward Village, including through the planned Auahi Street pedestrian promenade.

160. A key aspect of the Mauka Area Plan is its open space and recreation plan, which prioritizes the creation of open space systems, as well as on-site recreation and open spaces. This “systems” approach recognizes that residents benefit from community-wide as well as site-specific open space and recreational spaces.

161. Ulana Ward Village and the adjacent Ka Lai o Kukuluaeo Park significantly advance the open space and recreational aspects of the Mauka Area Plan. The development provides extensive open and recreation space on-site, including over 26,000 square feet of open space and over 40,000 square feet of recreation space. This recreation space includes over 31,000 square feet of ground floor, outdoor landscaped recreation space exclusively for residents, which will provide a lush, green, street-level recreation area in the heart of an urban community.

162. The 30,000 square foot Ka Lai o Kukuluaeo Park will be adjacent to the development. The park (previously known as the Ewa Plaza), is an important component of the system of connected open spaces contemplated by the Ward MP, which also includes Victoria Ward Park and the future Diamond Head Plaza on the east side of Ward Village. All of these open spaces will be connected through the Auahi Street pedestrian promenade.

163. In addition, Ulana Ward Village has been coordinated with major existing and contemplated transportation routes, recreational and service areas, and has elements that are consistent with transit-oriented development principles.

164. Ulana Ward Village will provide pedestrian and multi-modal connectivity for residents and visitors, and is located near jobs, recreational areas, retail, dining, and transportation services.

165. **Extent to which the Project protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the applicable district rules.** The applicable district rules for Ulana Ward Village are the Vested Rules. Section 5.2 and Table 5-2 of the Application shows Ulana Ward Village's conformance with the Vested Rules and Ward MP.

166. Specific rules with which Ulana Ward Village complies include: method of development, land use zone, density, heights, bicycle parking, front yard, side yard, open space, recreation space, view corridors, off street parking and loading, architectural criteria, dedication of public facilities, utilities required to be underground, performance standards, joint development, flood hazard district, reserved housing, FAR and FAR transfers, building height, tower footprint, view corridor setback, streetscapes, building orientation, tower spacing, and landscaping.

167. Both the City and the HCDA have also encouraged the implementation of the "complete streets" development model, which emphasizes the development of safe, multi-modal, and pedestrian-oriented streetscapes and connectivity.

168. The location and design of Ulana Ward Village enhances, promotes and preserves these desirable neighborhood characteristics.

169. Ulana Ward Village will be in close proximity to services and amenities throughout the area.

170. The Project is adjacent to two key elements of the Ward Master Plan:

- a. The Auahi Street Pedestrian Promenade will extend Ewa of Ward Avenue through the realignment of Auahi Street with Pohukaina Street. The planned promenade will be just mauka of the development; and
- b. The 30,000 square foot Ka Lai o Kukuluaeo Park, the former Ewa Plaza envisioned in the Ward Master Plan, will be on the Diamond Head side of the residential tower.

171. Both the Auahi Street pedestrian promenade and the park will encourage pedestrian activation and interaction in and around Ulana Ward Village, and the promenade will provide a convenient, landscaped and shaded pedestrian-oriented streetscape and connectivity to the open spaces, services and amenities throughout Ward Village and beyond.

172. The design of the development enhances the neighborhood and the larger Ward Village community. The development's tower is oriented in a mauka-makai direction, which preserves city-wide views while maintaining a view corridor to the ocean. The platform design (including the modification of the platform height) permits the inclusion of significant additional open and recreation space in and around Ulana Ward Village.

173. The development features a ground floor, landscaped recreation area exclusively for Ulana Ward Village residents, which complements the public use Ka Lai o Kukuluaeo Park, and adds additional green open space to the urban landscape.

174. The development's platform is also designed to enhance pedestrian and community activation. The platform (with the height modification) is designed to accommodate nearly 7,000 square feet of street-level commercial space at the ground level, and over 34,500 square feet of light industrial space. These spaces will be accessible to Ulana Ward Village residents and visitors to Ka Lai o Kukuluaeo Park.

175. The commercial spaces will also face the Auahi Street pedestrian promenade, thus further increasing and enhancing pedestrian access and activation along this major corridor connecting the open spaces, retail services and amenities throughout Ward Village.

176. Ulana Ward Village also includes district parking. Placing these off-street parking spaces in a central location allows visitors who utilize the district parking at Ulana Ward Village to walk or bicycle to other areas within the community, thus helping to alleviate the congestion of the limited on-street parking within Kakaako and encouraging pedestrians to park once and explore the multi-modal and pedestrian-oriented neighborhood.

177. As with all areas of the Ward MP, on completion, the Ulana Ward Village site will be integrated into VWL's existing operations team that professionally oversees management, maintenance and security throughout the Ward MP area at no cost to the public.

178. **Extent to which the Project avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area.** The surrounding uses and urban areas were taken into consideration during the planning of Ulana Ward Village. Development permits approved under the Ward MP for Waiea, Anaha, Aeo, Ke Kilohana, Aalii, Koula and Victoria Place have

brought mixed-use residential buildings, commercial frontage, shopping destinations, and sizeable outdoor areas and seating along Kamakee Street and Auahi Street.

179. Ulana Ward Village integrates with these existing and planned conditions by, among other design strategies, transitioning to the ground level open space at Ka Lai o Kukuluao Park, providing commercial and light industrial services at ground level with extensive landscaping, and facilitating convenient access to the planned Auahi Street pedestrian promenade. All of these elements, as with the other developments in Ward Village area, create a vibrant streetscape, desired urban form, and pedestrian activation and connectivity.

180. Ulana Ward Village is also compatible with surrounding areas in downtown Honolulu, Kakaako and Ala Moana. The addition of residences from Ulana Ward Village and other existing nearby projects, within a few minutes of the central business district and existing transportation options, creates the opportunity to shorten commuting times and alleviate traffic in urban Honolulu.

181. **Extent to which the Project provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups.** VWL's decision to prioritize the construction of approximately 697 reserved housing homes in Ward Village prior to the construction of future developments in Ward Village helps to meet a present, critical need to provide timely housing opportunities for local reserved housing purchasers in urban Honolulu during a period of historically low interest rates and strong demand for housing on Oahu.

182. Ulana Ward Village has features and amenities, including those created and facilitated by the platform height modification, that many local reserved housing purchasers seek

when buying a home, including its central location, convenient access to commercial and light industrial spaces, and extensive public and open spaces at ground level.

183. The housing mix at Ulana Ward Village will be responsive to the demand for reserved housing by local individuals and families, and will include studios / one-bedroom units and up to three bedroom units.

184. Pursuant to the planned development permits for Koula (KAK 18-038) and Victoria Place (KAK 19-069), 108 reserved housing homes are currently required. Consistent with the Ward MP, Ward MP D&O and Development Agreement, following the completion of Ulana Ward Village and The Park Ward Village, approximately 362 reserved housing homes will be available, once approved, to offset the reserved housing requirements for future projects in Ward Village.

185. **Impact of the Project on pedestrian oriented development, including complete streets design.** Ulana Ward Village's location, orientation and design were carefully chosen to accommodate the pattern of a connected and walkable community coming to life at Ward Village.

186. As noted, both the City and the HCDA have also encouraged the implementation of the "complete streets" development model, which emphasizes the development of safe, multi-modal, and pedestrian-oriented streetscapes and connectivity.

187. The Ulana Ward Village design provides a pedestrian oriented environment by creating and transitioning to street-level commercial, light industrial and open and recreational spaces.

188. The Ulana Ward Village ground level will provide approximately 26,597 square feet of open space (156 percent more than required) and 40,708 square feet of resident recreation space (six percent more than required). This is in addition to the 30,000 square foot Ka Lai o Kukuluaeo Park, approximately 6,916 square feet of commercial space, and 34,501 square feet of light industrial space.

189. As also noted, Ulana Ward Village is adjacent to the Auahi Street pedestrian promenade, which will provide convenient pedestrian access to all of the amenities and services of Ward Village and beyond.

190. Ulana Ward Village also facilitates the complete streets design features of Ward Village by accommodating both short- and long-term bicycle parking in the residential structure and within the parking structure, respectively.

191. The bicycle facility plans are guided by Revised Ordinances of Honolulu (“ROH”) Section 21-6.150, as a general recommendation. Exhibits 4 through 7 of the Application show the location of public short-term public bicycle racks.

192. Exhibits 4, 6 and 7 show the location of resident long-term bicycle parking. Exhibit 6 also illustrates the bicycle, pedestrian and vehicle access points and circulation plan. Bikeshare stations are also situated at various convenient locations throughout Ward Village.

193. **Impact of the Project on transit-oriented development, including rail, bus, and other modes of rapid transit.** Ulana Ward Village is designed in consideration of major existing and contemplated transportation routes, recreational and service areas. Consistent with certain transit-oriented development principles, Ulana Ward Village is located within walking

distance of the proposed rail station (near Ward Avenue and Queen Street) and adjacent to bus and trolley routes.

194. VWL has communicated with, and in earlier projects, engaged in construction de-confliction meetings with, HART representatives. VWL stated its commitment to continuing its communication with HART.

195. **Impact of Project on community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector.** Ulana Ward Village offers amenities and social gathering space to encourage interaction within its community of residents and visitors, and within the greater communities of Ward Village, Kakaako, and Honolulu.

196. As noted, Ulana Ward Village is conveniently situated adjacent to both the 30,000 square foot Ka Lai o Kukuluao Park, which is the second of three major connected open spaces proposed in the Ward MP (in addition to Victoria Ward Park and the Diamond Head Plaza), as well as the Auahi Street pedestrian promenade, which will visually and thematically connect the residences, amenities and major public spaces throughout Ward Village.

197. These improvements, among others, realize the vision of the Mauka Area Plan to encourage public-private sector cooperation to develop the Mauka Area into an active, mixed-use community with a full array of public and community amenities in Honolulu's urban core.

198. **Impact of the Project on the preservation of important natural systems or habitats.** Consistent with the Sustainability Framework set out in the Ward MP, Ward Village

holds Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Platinum certification, the highest rating provided.

199. According to the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) developments are designed to deliver the following benefits:

- a. Lower operating costs and increased value;
- b. Reduced waste;
- c. Energy and water conservation;
- d. More healthful and productive environments; and
- e. Reductions in greenhouse gas emissions.

200. The project team for Ulana Ward Village is using an integrative design process to identify and use opportunities to employ sustainable strategies across disciplines and building systems. VWL plans to employ the following sustainable practices at Ulana Ward Village:

- a. Location and Transportation: There are community services within walking distance of the property, and multiple opportunities for public transit. Bike facilities will be provided on site. Ulana Ward Village is directly tied into the planned Auahi Street promenade, which will realign Auahi Street with Pohukaina Street. This will provide essential east-west connectivity for residents, ensure greater neighborhood walkability, and will contribute to the pedestrian network within Kakaako.
- b. Sustainable Sites: To foster a healthy outdoor environment, VWL is committed to minimizing erosion and sedimentation during construction.

Landscaping will capture rainwater, encourage time spent outdoors, and cool outdoor spaces. Ulana Ward Village will feature indigenous plantings to embrace Hawaiian ecosystems and avoid contributing to invasive plant populations.

- c. Water Efficiency: A number of water-conserving measures will be employed at Ulana Ward Village.
- d. Energy and Atmosphere, Indoor Environmental Quality: Ulana Ward Village will optimize energy performance. Renewable energy sources will be considered, and mechanical systems will be kept clean.
- e. Materials and Resources: Ulana Ward Village will responsibly manage construction waste, recycling at least as much waste as possible at the construction site. The building itself will have recycling facilities and recycling will be encouraged.
- f. Indoor Environmental Quality: Ulana Ward Village will create sensitive indoor environments with adjustable lighting and cooling systems, and will provide substantial outdoor views. The building will use materials that meet requirements for indoor environmental air quality.
- g. Innovation: Ulana Ward Village is considering a range of sustainability measures to support a comfortable and sustainable environment. Consistent with the inspiration for its name, Ulana Ward Village will also weave together a mix of uses -- including recreational, commercial and light industrial -- at a

key location that will have exceptional pedestrian connectivity with the services and amenities of Ward Village, as well as the neighborhoods further Ewa within Kakaako.

- h. Regional Priority: Ulana Ward Village will pursue sustainability opportunities that specifically address local priorities with regard to environment, social equity, and/or public health. Ulana Ward Village will address issues including responsible waste management and strategies for energy performance and indoor water conservation.

201. The Application at Appendix A contains the LEED-NC checklist.

202. **Impact of the Project on maintenance of valued cultural, historical, or natural resources.** VWL completed the following studies prior to its submission of the first development permit under the Ward MP:

- a. Historic building inventory (Fung Associates June 2012);
- b. Cultural impact assessment (Cultural Surveys Hawaii May 2012);
- c. Predictive archaeological model (Cultural Surveys Hawaii May 2012); and
- d. Archaeological Inventory Survey Plan (Cultural Surveys Hawaii December 2012).

203. In addition to the foregoing, VWL has complied with HRS Chapter 6E and SHPD's rules including HAR Chapter 13-284 in preparing the necessary archaeological inventory surveys and mitigation documents specific to the Project.

204. The letter from the State Historic Preservation Division dated June 23, 2020 confirming that SHPD accepted the project archaeological monitoring plan and that the permit issuance process may proceed, is attached to the Application at Appendix B.

205. VWL has completed cultural consultation efforts, and will continue to engage with state agencies and cultural stakeholders.

206. Beyond the statutory consultation requirements, VWL has proactively consulted with families who have a connection to the Kakaako area during the planning, designing, and archaeological inventory survey process for the Ward MP.

207. VWL engaged DTL Hawaii, a multidisciplinary Hawaiian strategy design studio, to assist with name candidates and recommendations for the Project and the nearby park.

208. After careful thought and consultation, the names that were eventually chosen for the Project and the park, Ulana Ward Village and Ka Lai o Kukuluaeo Park, reflect the deep significance of the naming process, and the historical connections to the Ward Village and Kakaako community.

209. The naming of Ulana Ward Village and Ka Lai o Kukuluaeo Park reflect the deep respect for the story and rich cultural history of the lands that underlie the Ward Village neighborhood, and these names are part of VWL's integration of culture and Hawaiian sense of place within the Project and associated spaces.

210. VWL has committed to maintaining valued historical and cultural resources; has complied with applicable laws to ensure that any impacts the Project will have on cultural resources are mitigated in compliance with approved mitigation and protection plans; and has

sought to engage in cultural consultation to ensure that Ward Village properly respects and reflects the valued cultural, historical and natural resources of the Kakaako area.

211. **Impact of the Project on maintenance of other resources relevant to the State's economy.** The design of Ulana Ward Village facilitates access for residents, locals, and visitors alike, by providing connection to critical centers of commerce, industry, employment, and tourism.

212. Ulana Ward Village is located in the core of Honolulu, in close proximity to the central business district, the government center, and commercial, and industrial facilities, along with recreational areas such as Ala Moana Beach Park and Kewalo Basin Harbor.

213. The design of Ulana Ward Village recognizes the strong potential for increased growth and development in this area. There is convenient access to mass transit throughout Ward Village, and Ulana Ward Village has been coordinated with major existing and contemplated transportation routes, recreational and service areas, and is consistent with transit-oriented development principles.

214. Ulana Ward Village is located near jobs, recreational areas, retail, dining, and transportation services, which are all critical to the State's economy.

215. **Impact of the Project on the commitment of state funds and resources.** Ulana Ward Village does not require State funds.

216. Existing and planned infrastructure is adequate to support the Project, and Ulana Ward Village will not consume additional State resources. Major community amenities,

including the Ka Lai o Kukuluaeo Park, will be constructed, maintained and secured without government funding and at no cost to the public.

217. Wilson Okamoto Corporation (“WOC”) prepared a Traffic Impact Report (“TIR”) for Ulana Ward Village dated December, 2020. Appendix C of the Application contains: (1) the TIR; and (2) an email from the City and County of Honolulu Department of Planning and Permitting Traffic Review Branch dated December 14, 2020 stating that the Traffic Review Branch accepted the TIR.

218. In October, 2018, WOC completed a Transportation Master Plan and Assessment for the Ward Village Master Plan (“Ward Village Traffic Assessment”), which included what eventually would become the Ulana Ward Village development, but looked more broadly at regional transportation systems.

219. Since a transportation assessment looks at the performance of transportation modal systems on a regional scale, it does not address project-specific impacts. Therefore, VWL commissioned WOC to conduct a traffic impact report to specifically study the traffic-related impacts of Ulana Ward Village and recommend project-specific measures to address the impacts.

220. As with all developments, there are anticipated traffic-related impacts from Ulana Ward Village; however, as summarized in the TIR, the level of service operating conditions at the intersections in the vicinity of the Project are, with few exceptions, expected to remain similar to baseline and with and without the Project.

221. In addition, WOC made 17 recommendations in the report to mitigate the traffic impact of the Project, and VWL will be implementing those recommendations in the Ulana Ward Village project design.

222. VWL is also committed to implementing the roadway improvements planned in the Ward Village Master Plan. As noted in the TIR, for example, in connection with The Park Ward Village development, VWL is planning to proceed with the de facto Halekauwila Street extension to provide an additional east-west connection between Ward Avenue and Kamakee Street, and VWL also plans to proceed with the Auahi Street realignment to connect with Pohukaina Street.

223. As noted in the TIR, these improvements are expected to provide improved mobility within the area. VWL is also continuing to work with the City and County of Honolulu to incorporate bicycle and pedestrian facilities to encourage other modes of travel within Ward Village.

224. WOC also prepared an Infrastructure Availability Report (IAR) for Ulana Ward Village dated July 2020. WOC anticipates that available or planned infrastructure will be adequate to accommodate Ulana Ward Village, and has taken steps well ahead of the PDP application to confirm availability of utilities. Section 6.3 of the Application shows a list of utility providers that WOC contacted to confirm infrastructure availability. Appendix D of the Application contains the IAR.

225. **Impact of the Project on employment opportunities and economic development.** Beyond enhancing the lives of its residents and the Ward Village community,

Ulana Ward Village will have a direct, positive impact on the state economy at a time when private investment is urgently needed to help address the current economic crisis precipitated by the broad effects of the Covid-19 pandemic.

226. Sumner La Croix, Ph.D., Professor Emeritus in the Department of Economics at the University of Hawaii at Manoa and a research fellow with the University of Hawaii Economic Research Organization (UHERO), and Paul Brewbaker, Ph.D., economist and principal of TZ Economics and a former economist for Bank of Hawaii, provided testimony on the positive short- and long-term economic impacts of Ulana Ward Village at the hearing.

227. With approximately 697 reserved housing homes and approximately 41,000 square feet of commercial and light industrial space, Ulana Ward Village will generate substantial short-term benefits by bolstering the Hawaii economy during its long recovery from the COVID-19 epidemic, and will generate long-term benefits by increasing the Honolulu stock of housing, Honolulu income and employment, and state and city and county of Honolulu tax revenues.

228. The tourism industry on Oahu, the island's largest industry, has been recovering slowly from its sharp decline in spring 2020, but as of February 4, 2021 visitor arrivals are still down more than 70 percent from 2019 levels.

229. UHERO does not expect a full recovery to 2017 visitor arrival levels until 2026 even in its most optimistic forecast scenario.

230. Honolulu lost more than 60,000 jobs in 2020, and new economic activity is needed to fill the gap left by the decline of Oahu's largest industry.

231. The residential construction industry stands out as an industry with the potential to be more elastic in its immediate response to Honolulu's economic downturn. This is particularly the case in winter 2021 given record low interest rates which allow for low-cost builder financing and cheaper mortgage financing for potential home buyers.

232. Honolulu labor markets are far from full employment, and this should help to facilitate rapid expansion of new projects. Additional timely construction spending in Honolulu could generate additional output, income, and state-county taxes when it is most needed over the next several years.

233. Key economic impacts of the Ulana Ward Village project include:

- a. Spending on the Ulana Ward Village project would offset some of the decline in spending on public projects in FY2023 and prevent the decline in Hawaii gross domestic product (GDP) and jobs that would otherwise occur.
- b. The value of Honolulu residential building permits fell by more than 50 percent between 2017: Q1 and 2020: Q4. Following a similar time path, the number of private residential units authorized also fell by more than 50 percent between 2015: Q4 and 2020: Q3. Additional spending by the Ulana Ward Village project would help to stem these declines in construction of residential homes on Oahu.
- c. The Ulana Ward Village project would help to offset declines in Honolulu construction jobs since they peaked in 2016. Although jobs in the construction-mining sector increased in 2020, the number of jobs is still below

the 2016 peak which indicates that construction and other workers looking for work should be available to take the annual average 171 jobs expected to be created by this project's direct and indirect spending during the 2018-2025 period.

- d. Spending by VWL on the Ulana Ward Village project generates additional spending by workers directly employed on the project by VWL and by indirectly employed workers, *i.e.*, workers hired by Hawaii subcontractors and project suppliers. Follow-on spending by both directly and indirectly employed workers creates multiplier output and additional jobs at Hawaii firms where they spend their money. Multiplier spending tends to be larger when the economy is in recession and unemployment is relatively high. The December 2020 UHERO forecast expects unemployment to remain above full employment into 2025.
- e. The additional workers directly and indirectly employed on the Ulana Ward Village project as well as additional workers employed via multiplier spending will contribute more to Hawaii GET tax collections and to Hawaii income tax collections. Tax receipts generated by the project will help the state and City and County of Honolulu fill a 3-4 year shortfall in tax revenues below 2019 levels and will reduce the need for tax increases or cuts to spending on vital state and county services.

234. The longer-term benefits expected from the Ulana Ward Village project include:

- a. The project adds 697 reserved housing units to the Oahu housing stock. The reserved units allow middle-income Honolulu households to obtain access to high-quality, diverse new housing in a neighborhood close to the downtown business center. When middle-income households occupy the Ulana Ward Village reserved housing units, this frees up housing elsewhere on Oahu for occupancy by middle-income households and contributes to lower prices of middle-income housing throughout Oahu. Early provision of the reserved housing units not only provides earlier benefits to the Oahu middle-income housing market but also ensures that required reserve housing units will be constructed well in advance of the full implementation of the Ward Neighborhood Master Plan area.
- b. Ulana Ward Village adds to the overall supply of housing on Oahu. Any additions to the stock of housing on Oahu will help to bring down or hold down housing prices generally and will contribute to the modernization of Hawaii's overall housing stock.
- c. This project also helps to ensure a basis for commercial success of new and existing businesses in Kakaako, the downtown business district, and Ala Moana, as these nearby businesses are likely to be patronized by residents of Ulana Ward Village.
- d. The provision of more housing close to the downtown business district, UH medical school, Ala Moana Center and near transit is important in helping to

manage future traffic flows in Honolulu, which is a key ingredient to future economic growth on Oahu.

- e. Once this project is completed, it will employ staff and hire local firms for administration, operations, and maintenance. This will increase Oahu output, employment, and state and city-county tax collections.
- f. There will be a permanent boost to property tax collections by the City and County of Honolulu that will commence during project construction and when the new units are ready for occupancy.

235. The estimated project economic stimulus includes \$409.3 million in development / construction output; \$25.9 million in state taxes during construction; over \$1 million in conveyance taxes; and approximately \$2.7 million in school impact fees. In addition, VWL plans to use local construction labor, and the development will create an average of 246 jobs annually during construction (with approximately 512 jobs during the peak of construction in approximately 2023).

236. Over a 30-year period, the development is projected to generate (in 2020 dollars) \$337.7 million in economic output for operations and maintenance; \$5.5 million in annual retail / industrial output; and \$20.8 million in state taxes for building operations and maintenance. The development is also projected to create 41 long-term jobs for building operations and amenities, as well as 35 long-term light industrial and retail jobs combined.

237. **Impact of the Project on maintenance and improvement of educational programs and services provided by schools.** HRS §§ 302A-1601 to 320A-1612, regarding

School Impact Fees, establish a structure for assessing school impact fees for residential development.

238. Pursuant to this law, the State of Hawaii Department of Education is administering a school impact fee district from Kalihi to Ala Moana, an area that includes the Ulana Ward Village site. VWL will comply with all applicable laws regarding school impact fees.

SHADOW, WIND AND NOISE STUDIES

239. **Shadow Study.** In compliance with the Vested Rules and the Ward MP, Ulana Ward Village was designed and sited preserved Mauka-Makai views and minimize shadow effects on neighboring buildings. A shadow study is included in the Application as Appendix E. The shadow study indicates that there will be no substantially adverse impacts upon adjacent buildings from Ulana Ward Village.

240. **Wind study.** Rowan Williams Davies & Irwin Inc. ("RWDI") is preparing a detailed wind analysis study for Ulana Ward Village. The wind study will focus on frequently used pedestrian areas such as main entrances, sidewalks, and outdoor seating areas at both street and platform level.

241. Wind tunnel measurements for multiple wind directions will be combined with long-term weather data to predict wind speeds and frequencies. This data will then be compared with wind comfort and safety criteria to determine if they are appropriate for the intended use of the pedestrian areas on and around Ulana Ward Village.

242. VWL will review the wind tunnel test results and any suggested mitigation measures for areas where higher-than-desired wind speeds are detected. RWDI's letter describing its study is attached to the Application as Appendix F.

243. **Noise impact analysis.** Censeo AV+Acoustics conducted a noise impact analysis for Ulana Ward Village.

244. As noted in Censeo AV+Acoustic's letter as revised October 26, 2020 (included in the Application as Appendix G), the noise impact analysis included anticipated noise mitigation recommendations. VWL plans to address those recommendations as follows:

- a. Construction Noise: VWL will comply with all noise permit regulations.
- b. Building Operational and Mechanical Noise: Mitigation of building mechanical and operational noise will be incorporated into the project design. A range of measures to reduce mechanical sound is being considered. Stationary mechanical equipment will be designed to comply with applicable noise limits.
- c. Parking Structure and Loading Area Noise: To mitigate parking and loading noise, noise mitigation will be considered in the design of the parking area and selection of materials. If needed, weather-resistant acoustical panels or spray-on treatments can be added for sound absorption.
- d. Commercial and light industrial uses noise: Proper management practices and possible mitigation measures may be taken as necessary.

- e. Transit Noise: The sound isolation performance of the building shell will be evaluated during the design phase to determine the most effective mitigation measures for transit noise.

INFRASTRUCTURE

245. Utilities and government agencies have confirmed the current availability of infrastructure to support the Project.

246. Potable water service is available from the municipal water system operated by the City and County of Honolulu's Board of Water Supply. The BWS confirmed in its letter dated December 20, 2019 that the existing water system can accommodate the Project.

247. Sewer service is available from the municipal sewer system operated by the City and County of Honolulu, Department of Environmental Services. The Sewer Connection Application for the project was approved by the Department of Planning and Permitting (DPP) on January 25, 2020.

248. The Honolulu Fire Department was consulted on June 24, 2020 to discuss the project and proposed fire protection methods for the Project. The Project will be protected by public fire hydrants. A fire sprinkler system will also be provided within the building. Plans for fire protection measures based on recommendations by the Honolulu Fire Department will be implemented during the final design phase.

249. Drainage runoff from the Project will not increase the peak flow rate and volume. Runoff from the project site will be collected within a private drainage system owned and

maintained by VWL, and the Project will not adversely impact the existing performance of the City system.

250. The Project will treat the overall storm water quality with vegetated buffer strips surrounding the drain inlets located in the parks that are in and adjacent to the property. The majority of the storm water will be directed to an existing catch basin between Auahi Street and Kamani Street.

251. In the course of schematic design, WOC determined that some small portions of the site will also discharge directly onto Pohukaina Street. The City and County of Honolulu Department of Planning & Permitting indicated that the proposed low impact development strategy will meet City storm water quality requirements.

252. Hawaiian Electric, in a May 29, 2020 letter, stated that proposed circuits that will be installed to serve The Park Ward Village development will also be used to serve Ulana Ward Village and other developments in the area.

253. Hawaiian Telecom, Charter Communications, and Hawaii Gas have all confirmed that their existing systems have capacity to serve the project.

254. WOC also evaluated the impact of sea level rise on the Project. The Pacific Islands Ocean Observing System Hawaii Sea Level Rise Viewer shows that while the northeastern side of the Project area will be affected by a 3.2 foot sea level rise by the year 2100 due to passive flooding and annual high wave flooding, the proposed finish floor of the Project is above the property's flood base elevation, and therefore, the Project site is not projected to be impacted by the 3.2 foot projected sea level rise.

GOVERNMENT AGENCY COMMENTS

255. **State of Hawaii Department of Transportation (“DOT”)**. The DOT Highways Division submitted comments regarding the Project in a letter to HCDA dated February 11, 2021. WOC addressed the DOT’s TIR-related comments at the hearing as follows:

- a. Regional traffic study: WOC provided a copy of the 2018 regional traffic study as requested by DOT.
- b. Requesting TIR to include Cooke Street and Coral Street intersections with Ala Moana Boulevard: the subject intersections were included in the overall field investigations for the TIR for purposes of identifying traffic distribution in the region. The intersections were not considered part of the primary distribution route associated with the Project, and the level of influence to change the level of service is minimal.
- c. Requesting TIR to include Ala Moana Boulevard intersections with Kamakee Street, Ward Avenue, Cooke Street and Coral Street: similar to the Cooke Street and Coral Street intersections discussed above, the intersections were not considered part of the primary distribution route associated with the Project, and the level of influence to change the level of service is minimal. The cumulative amount of traffic for Ulana Ward Village and The Park Ward Village will be less than the daily fluctuations that will occur in traffic demands along Ala Moana Boulevard.

- d. Suggestion to prepare one TIR applicable to both Ulana Ward Village and The Park Ward Village applications: Each project's traffic generation is incorporated into the other project's TIR, and studies for both Ulana Ward Village and The Park Ward Village looked at the cumulative effects of both projects. The studies are prepared as separate documents because the City and County of Honolulu requested that a separate TIR document be prepared for each project.
- e. Requesting explanation of TIR reduction of forecasted peak traffic hour trip generation to include multi-modal transportation and the number of off-street parking spaces proposed: The off-street parking at Ulana Ward Village is an integral part of an area-wide parking strategy within Ward Village based upon specific land uses.
- i. Parking for commercial uses is provided not only within the localized block, but also in regional district parking areas, which supports complementary uses as the need arises.
 - ii. Ward Village currently has approximately 4,100 residential and public parking spaces. Upon the completion of Ulana Ward Village and The Park Ward Village, total district parking will be reduced by several hundred spaces, and at ultimate build-out, total district parking within Ward Village will be further reduced to approximately 2,700 parking spaces.

- iii. This area-wide parking strategy and regional district parking for commercial uses fosters multi-modal travel by utilizing and encouraging the “park-once” concept, in which patrons will park once and use different modes of travel to access shopping, dining, entertainment and other venues within Ward Village.

256. **Honolulu Fire Department (“HFD”)**. HFD submitted comments regarding the Project in a letter to HCDA dated February 10, 2021. WOC confirmed with HFD that its comment letter contained standard language, and that the Project complies with all HFD requirements.

257. **City and County of Honolulu Department of Transportation Services (“DTS”)**. DTS submitted comments regarding the Project TIR in a letter to HCDA dated February 22, 2021. VWL and WOC addressed DTS’s comments (to the extent not addressed in connection with the DOT comments) at the hearing as follows:

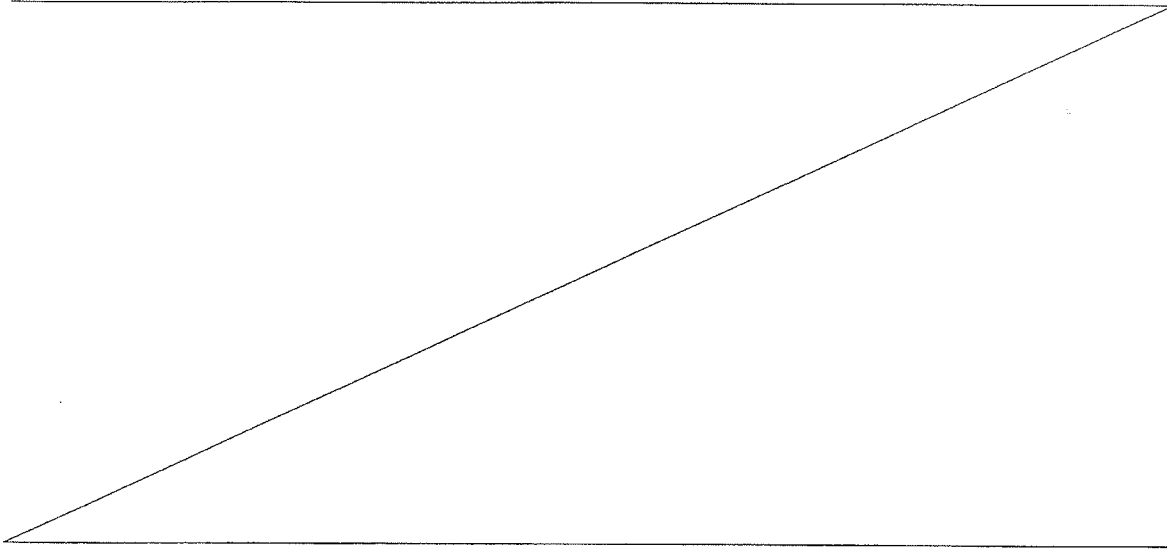
- a. **Parking:** As noted through other evidence, incorporated by reference, parking counts for Ulana Ward Village are required based on present, actual market demand for residential and commercial regional needs (as well as part of an area-wide parking strategy), and not based on future speculative projections of the completion of the rail system.
- b. **HRS § 296-71 requirement for electric vehicle space and charging system:**
WOC is aware of the requirement.

- c. TIR should identify an appropriate speed limit for streets adjacent to the Project: WOC will be conducting a speed study for the region and include the regional information in an updated Ward Village Traffic Assessment.
- d. Bicycle storage facilities: WOC will work with the Project architect to identify appropriate locations for bike storage areas / racks and provide recommendations.
- e. Loading zones: The recommendation to actively monitor and manage all street loading operations is already included in the TIR.
- f. Street usage permit: As typically required, WOC will obtain a street usage permit from DTS for construction-related work that may require temporary street closures.
- g. Neighborhood impacts: WOC's regular practice is to inform area representatives, the neighborhood board, government agencies and others about the details and status of the Project.
- h. Disability and Communication Access Board ("DCAB"): WOC will comply with the requirement to submit Project plans to DCAB for review.

258. **Honolulu Police Department ("HPD").** HPD submitted comments regarding the Project in a letter to HCDA dated February 5, 2021. HPD recommended that all necessary signs, lights and other safety equipment and measures be taken by the Project contractor during construction, and suggested various measures to address public safety for the Project after completion.

259. **Board of Water Supply (“BWS”)**. BWS submitted comments regarding the Project in a letter to HCDA dated February 22, 2021. Ulana Ward Village is part of Phase 3 of the Ward MP. VWL will comply with BWS’s request that VWL shall complete the upgrade of the 6-inch water main on Queen Street, from Cooke Street up to the existing 12-inch water main located between Cummins and Kamakee Streets, to a 12-inch water main prior to the commencement of Phase 3 of the Ward MP.

260. **Honolulu Authority for Rapid Transportation (“HART”)**. HART submitted comments regarding the Project in a letter to HCDA dated March 2, 2021. HART noted that it has conducted, and is willing to share, its extensive technical research on the historic resources and themes in the area and the history of the ahupuaa. In addition, HART requested that VWL continue to communicate and coordinate with HART on any issues related to the Project that may affect HART’s easement or plans for its system and station. VWL is committed to continuing its communications with HART.



CONCLUSIONS OF LAW

1. If any conclusions of law shall be determined to be findings of fact, it is intended that every such conclusion of law shall be construed as a finding of fact. Conversely, if any of the above findings of fact shall be determined to be conclusions of law, it is intended that every such finding of fact shall be construed as a conclusion of law.

2. Certain facts or findings set forth within the specified criteria addressed herein may apply to one or more criteria, issue, or legal standard under the Vested Rules, HRS Chapter 206E and other applicable law. To the extent such facts or findings are addressed within a particular heading or section herein does not limit it to that heading or section, but instead all such facts or findings are incorporated by reference for each applicable criteria, issue or legal standard as if specifically set forth within that heading or section.

3. HCDA has exclusive jurisdiction to approve and issue planned development permits within the KCDD pursuant to HRS §§ 206E-4 and 206E-5.6.

4. Pursuant to the Ward MP, approved by HCDA on January 14, 2009, the rules applicable to this planned development permit are those contained in HAR Chapter 15-22 (dated June, 2005), also referred to herein as the “Vested Rules.”

5. Pursuant to HRS § 206E-5.6(g), proceedings regarding the acceptance of a developer’s proposal to develop lands under the Authority’s control shall be considered a contested case hearing.

6. The modification proposed for the Project meets the standards set forth under the Vested Rules, including HAR § 15-22-22 and HAR § 15-22-120 (7).

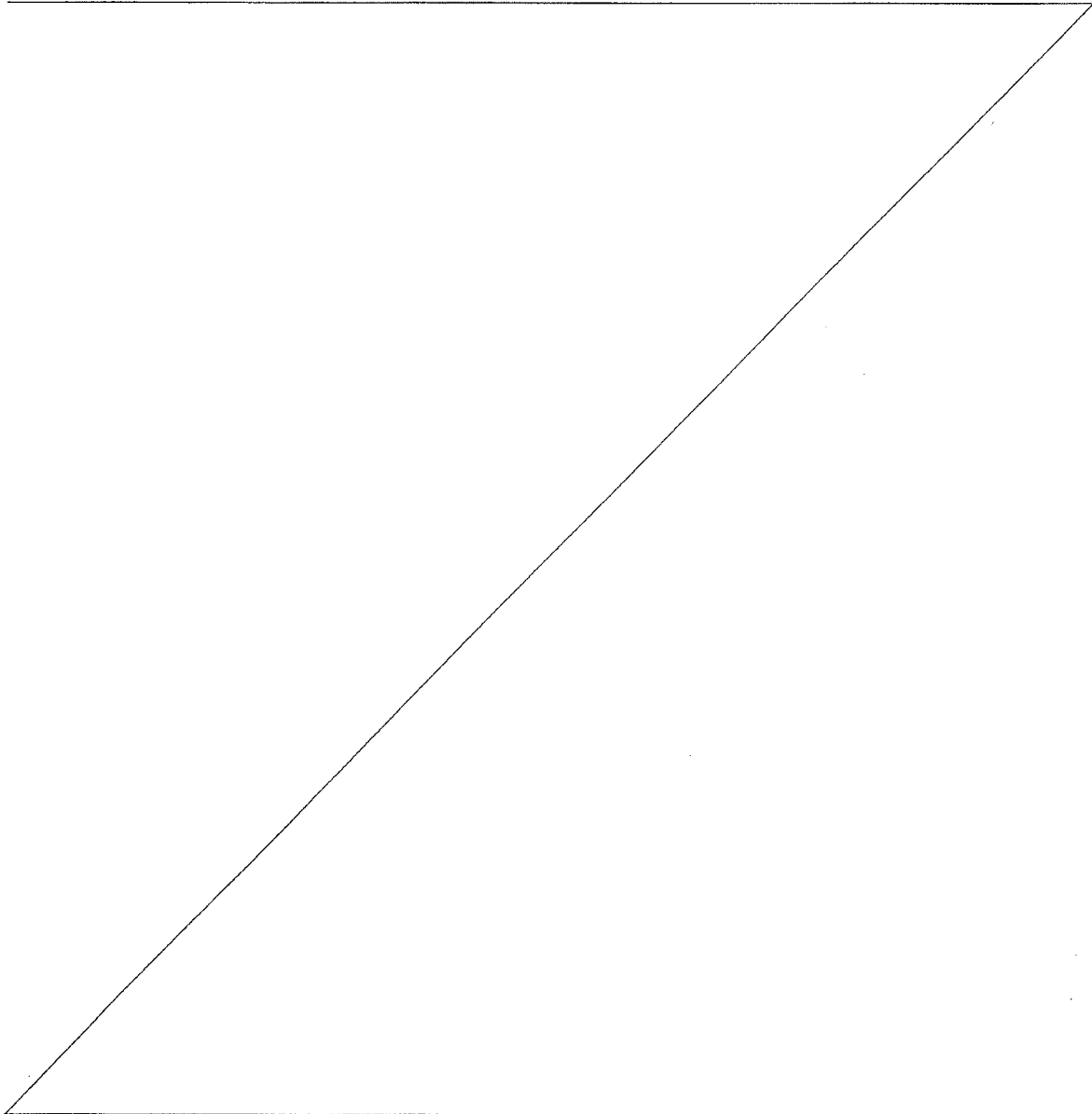
7. SHPD has exercised its responsibility and has met its obligations pursuant to HRS §6E-42 and HAR Chapter 13-284 to review and comment on the Project impacts and mitigation of these impacts on significant historic properties and burial sites.

8. Article XII, Section 7 of the Hawaii State Constitution requires the State to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupuaa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. Haw. Const. art. XII, § 7.

9. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawaii County Planning Commission*, 79 Hawaii 425, 903 P.2d 1246 (1996); *Ka Paakai O Ka Aina v. Land Use Commission*, 94 Hawaii 31, 7 P.3d 1068 (2000).

10. Through its consideration of the record and the evidence presented by VWL, including, but not limited to, the evidence related to cultural and historical preservation noted in the FOF above, HCDA, through its findings, conclusions and conditions has: a) identified and has determined the scope of valued cultural, historical, or natural resources in the application area, including the extent to which traditional and customary native Hawaiian rights are exercised in the application area; b) has considered the extent to which those resources will be affected or impaired by the proposed action; and c) has considered the feasible action to be taken

by HCDA to reasonably protect native Hawaiian rights. *See Ka Paakai*, 94 Hawaii at 47, 7 P.3d at 1084.



RULINGS ON PROPOSED FOF AND COL

Any proposed FOF or COL not already ruled upon by HCDA by adoption herein, or rejected by clearly contrary FOF or COL herein, is hereby denied and rejected.

DECISION AND ORDER

Based on the foregoing FOF and COL, and upon consideration of all applicable statutes, rules and regulations; the evidence, testimony and argument presented by VWL; and all other evidence appearing in the record, the Authority concludes that the Project, including the proposed modification, satisfies the requirements of HRS Chapter 206E, HRS Chapter 6E, the Vested Rules, HAR Chapter 13-284, the Ward MP, the Ward MP D&O, the Development Agreement, and the vision and intent of the applicable Mauka Area Plan for a development permit.

IT IS HEREBY ORDERED that the planned development permit for the Project, including the proposed modification to increase the mixed-use platform height from forty-five (45) to seventy-five (75) feet including an additional 12 feet of height for accessory use and elevator machinery structures with a total area less than 15% of the platform roof area, is APPROVED, subject to the following conditions:

1. Reserved housing shall be required pursuant to the Vested Rules. Pursuant to the planned development permits for Koula (KAK 18-038) and Victoria Place (KAK 19-069), VWL is currently required to provide a minimum of 108 reserved housing units within Ward Village (the "Required Reserved Housing Units"). The 697 reserved housing units at Ulana Ward Village exceeds this requirement. Accordingly, pursuant to the terms of the Development

Agreement (and as confirmed by Condition No. 4 of the planned development permit for Victoria Place), after the approval and delivery of Ulana Ward Village and The Park Ward Village (KAK 21-002), VWL shall have the right to use, at its option, 362 reserved housing unit credits to satisfy all or part of the Ward MP reserved housing requirements for future developments on a one-for-one basis and/or to true up the reserved housing mix upon completion of all projects within the Ward MP.

Reserved Housing		
Project	Residential Units	Reserved Housing Units Provided
<i>KAK 13-036 [LB2-P1] Waiea</i>	*177	0
<i>KAK 13-037 [LB3-P1] Anaha</i>	318	0
<i>KAK 13-038 [LB5-P1] Ke Kilohana</i>	424	375
<i>KAK 14-074 [LB1-P2] Aeo</i>	466	0
<i>KAK 16-075 [LB1-P3] Aalii</i>	751	150
<i>KAK 18-038 [LB1-P4] Koula</i>	570	0
<i>KAK 19-069 [LB2-P3] Victoria Place</i>	350	0
<i>KAK 21-001 [LB5-P2] Ulana Ward Village</i>	697	697
<i>KAK 21-002 [LB1-P5] The Park Ward Village</i>	<u>546</u>	<u>0</u>
Total Residential Units	4299	1222
Reserved Housing Units Required (20%)		860
Projected Reserved Housing Units Surplus Balance		362

*The Waiea Planned Development Permit included 177 units, but only 174 units were constructed

2. Prior to the staff approval of the foundation permit for the Project, VWL shall provide to the HCDA staff: 1) a financial guaranty bond from a surety company authorized to do business in Hawaii; 2) an acceptable construction set-aside letter; or 3) other forms of financial assurance based upon the public disclosure statements of VWL's parent company reasonably acceptable to the HCDA Executive Director, that evidences financing or available funds for the construction of the Required Reserved Housing Units.

3. The sale of all reserved housing units in the Project shall be consistent with the Vested Rules. Within 180 calendar days of the issuance of this FOF, COL, and D&O for the Project, VWL shall provide a development plan and program for the sale of reserved housing units in the Project, which shall include a statement that:
- a. The weighted average price of reserved housing units shall be one hundred twenty percent (120%) of area median income (“AMI”); and
 - b. The mix of reserved housing units provided by all projects within the Ward MP shall contain a similarly representative mix of market-priced units planned for all projects within the Ward MP.

VWL shall provide a reserves study to the HCDA staff as a part of the reserved housing development plan.

4. Once a construction contract and performance and payment bond for the construction of the Required Reserved Housing Units for the Project is executed, VWL shall submit a copy of the construction contract and bond to the HCDA staff.
5. As provided in the Ward MP D&O, a minimum of ten percent (10%) of the reserved housing units at the Project shall be offered at or below one hundred percent (100%) of AMI.
6. VWL may designate more than the 697 units planned for the Project as reserved housing units and no amendment of this Decision and Order shall be necessary; provided, however, that such additional units shall also be subject to the Vested Rules; and provided,

further, that in the event of any such designation, VWL shall submit a program for sale of such additional reserved housing units acceptable to the HCDA Executive Director.

7. The timing of the commencement of construction of the Required Reserved Housing Units for the Project (and any extensions thereof) shall be governed by Condition No. 3 of the Victoria Place D&O (KAK 19-069) (“VP Condition No. 3”), which states:

In accordance with §15-22-81, construction shall commence on the reserved housing requirement for Koula and Victoria Place within two years after the development is completed on the Project, provided that the executive director may grant up to two (2) extensions of one hundred eighty (180) days each if the developer can demonstrate that building the reserved housing units will be satisfied without commencing construction within two years.

8. The timing of foundation permit approval for the Project is governed by Condition No. 5 of the Victoria Place D&O (KAK 19-069) (“VP Condition No. 5”), which states:

No foundation permits shall be approved for future projects on Land Block 1 and 2 of the Ward Neighborhood Master Plan until and unless construction commences on the reserved housing requirement for Koula and Victoria Place in accordance with HAR §15-22-81.

For avoidance of doubt, the word “commence” in VP Condition No. 3 and VP Condition No. 5 means execution of a construction contract(s) for the entirety of the project and the issuance of the foundation permit for the construction of the Required Reserved Housing Units, and the word

“completed” in VP Condition No. 3 means the date that the temporary certificate of occupancy is issued for Victoria Place or Koula, whichever comes first.

9. Prior to the HCDA staff approval of a foundation permit for the Project, VWL shall submit for review by the HCDA Executive Director a detailed site plan for the Project that clearly depicts the Project’s front and side yard(s), including the respective dimensions for those areas.

10. Prior to the HCDA staff approval of the foundation permit for the Project, VWL shall submit for review by the HCDA Executive Director a landscape plan for the Project. The landscape plan shall be inclusive of the Ka Lai o Kukuluaeo Park, which shall be approximately 30,000 square feet and generally consistent with the conceptual landscape plan shown in Exhibit U-1 at Exhibit 5. Upon staff approval of the foundation permit for the Project, VWL shall be authorized to proceed with construction of Ka Lai o Kukuluaeo Park.

11. Fence(s) adjacent to the Ka Lai o Kukuluaeo Park and streets shall not exceed four feet in height.

12. Prior to HCDA approval of the foundation permit for the Project, VWL shall submit for review and acceptance by the HCDA Executive Director documentation indicating the final long-term and temporary bicycle storage capacity, location and access design.

13. Prior to HCDA approval of the foundation permit for the Project, VWL shall submit for review and acceptance by the HCDA Executive Director documentation indicating that the proposed Project design meets the applicable Ward MP sustainability guidelines. The

HCDA Executive Director's review and acceptance shall be limited to ensuring the proposed design meets applicable Ward MP standards and representations made within the Application.

14. Prior to the HCDA staff approval of the foundation permit for the Project, VWL shall submit the wind study required to be conducted for review by the HCDA Executive Director. The wind study shall include the impact of wind on frequently used pedestrian areas such as main entrances, sidewalks, and outdoor seating areas at both street and platform level. The HCDA Executive Director's review and acceptance will be limited to ensuring the proposed design does not propose any uncomfortable wind conditions in those areas of the Project.

15. Prior to the HCDA staff approval of a building permit for the Project, VWL shall submit to the HCDA Executive Director documentation verifying that VWL has met with the DOE and will satisfy state statutory school impact fee requirements.

16. VWL shall comply with any applicable school impact fee program adopted by the State of Hawaii Department of Education pursuant to HRS § 302A-1601 to HRS § 302A-1612.

17. Prior to the HCDA staff approval of the superstructure permit for the Project, VWL shall submit proof of compliance with HAR § 15-22-77(a), which provides that, "[n]o building wall shall contain a reflective surface for more than thirty percent of the wall's surface area." Per HAR § 15-22-5, "Reflective Surface means any glass or other surface, such as polished metal, specified in the manufacturer's literature having reflectance (designed by such terminology as average daylight reflectance, visible light reflectance, visible outdoor reflectance, and comparable terms) of over thirty percent."

18. Prior to the HCDA staff approval of the initial residential temporary certificate of occupancy for the Project, VWL shall complete the construction of Ka Lai o Kukuluao Park, which shall satisfy the 2012 Declaratory Order requirement for not more than 30,000 square feet of park space to be located in the open space of the Ewa Plaza located in Block 5 of the Ward MP.

19. Prior to the HCDA staff's approval of the initial residential temporary certificate of occupancy for the Project, VWL shall complete the construction of the Auahi Street promenade extension connecting Auahi Street with Pohukaina Street.

20. Prior to the installation of any photovoltaic panels, or any other components of the Project that have a glint and glare or may emit radio frequency interference to aviation-dedicated radio signals, VWL shall request approval from the State of Hawaii Department of Transportation Airports Division as may be required.

21. VWL shall implement all applicable traffic mitigation measures and recommendations identified in the TIR for the Project.

22. VWL shall implement all traffic mitigation measures and recommendations in the updated Ward Village Traffic Assessment applicable to the Project.

23. Except as otherwise provided herein (and to the extent such comments and recommendations are not otherwise in conflict with this Decision and Order, the Vested Rules or other applicable law), VWL (to the extent it has not previously done so) shall address the comments and recommendations provided by the following governmental agencies:

- a. City and County of Honolulu Board of Water Supply.

- b. State of Hawaii Department of Transportation;
- c. City and County of Honolulu Department of Transportation Services;
- d. City and County of Honolulu Fire Department; and
- e. City and County of Honolulu Police Department.

24. VWL shall implement the noise mitigation measures outlined in the noise impact analysis for the Project.

25. VWL shall plan, design, implement, and maintain the Project site in accordance with the following City and County of Honolulu and State of Hawaii Requirements and Guidelines, as applicable:

- a. “Best Management Practices (BMP) Manual for Construction Sites,” November 2011;
- b. “Rules Relating to Water Quality,” December 2018;
- c. “Storm Drainage Standards,” August 2017;
- d. The Revised Ordinances of Honolulu (ROH) – for grading, specifically Chapter 14, “Public Works Infrastructure Requirements Including Fees and Services,” 1990 as amended;
- e. Hawaii Administrative Rules, Title 11, Chapter 54 (11-54), “Water Quality Standards”; and
- f. Hawaii Administrative Rules, Title 11, Chapter 55, “Water Pollution Control” – for construction runoff, specifically Appendix C, National Pollutant Discharge Elimination System (NPDES) “General Permit Authorizing

Discharges of Storm Water Associated with Construction Activities” (expires February 8, 2024).

26. VWL shall comply with SHPD mitigation plans, and all applicable laws regarding historic and cultural properties and burial sites, including, but not limited to, the provisions of HRS Chapter 6E.

27. In the event any human skeletal remains are inadvertently discovered in the Project area, any activity in the immediate area that could damage the remains or the potential historic site shall cease.

28. The discovery shall be reported as soon as possible to the Department of Land and Natural Resources, the appropriate medical examiner or coroner, and the Honolulu Police Department pursuant to HRS § 6E-43.6. The Department of Land and Natural Resources has jurisdiction over any inadvertent discovery of human skeletal remains over fifty-years old, and the protocol to be followed is set forth in HAR § 13-300-40.

29. Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements which are immediately necessary to proceed with the Project; and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program as follows:

- a. Improvements Necessary to Proceed with the Project: With regard to infrastructure improvements or requirements that are necessary to proceed with the Project, VWL shall be responsible for providing necessary developer improvements.

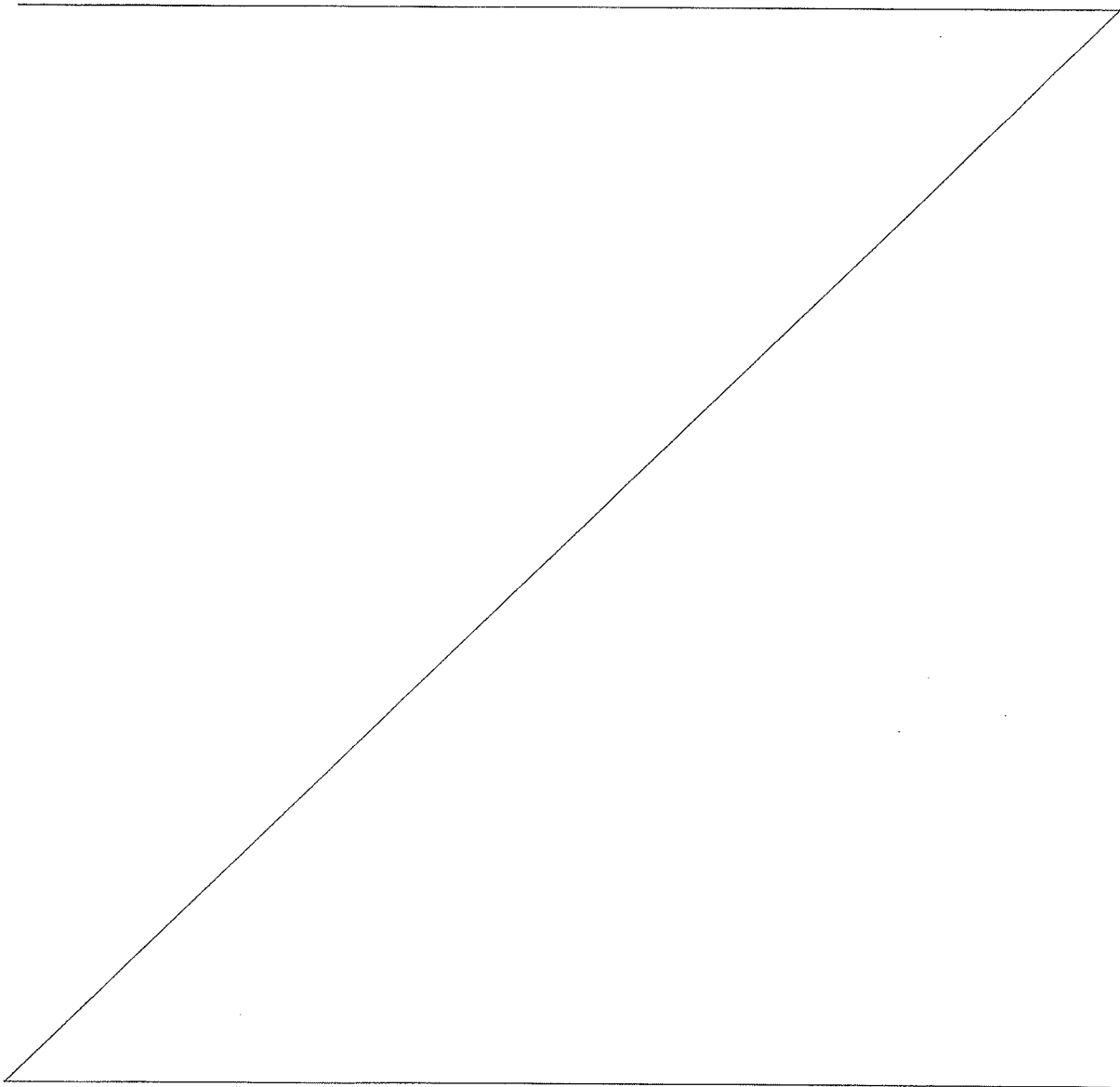
b. Improvements Proposed for the HCDA District-Wide Infrastructure

Improvement Program: As a part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the Kakaako Community Development District, financed in part through an Improvement District Program. In this regard, the Project shall be subject to assessments for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective projects under the HCDA or other government agencies' improvement programs. The Project will be assessed under the same methods and in the same manner as other properties in the area. In order to ensure the participation of the Project, VWL, and its successors and assigns, shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented. The terms specified in the agreement shall be made a part of all condominium and conveyance documents for the Project and said documents shall be submitted to HCDA prior to submission to the Real Estate Commission and execution.

30. VWL shall comply with all material representations and commitments regarding the Project made to HCDA in the permit application process.

31. Except as otherwise provided herein, VWL shall comply with all applicable requirements of the Vested Rules.

32. Prior to approval of the foundation permit for the Project, VWL shall record a memorandum of this Decision and Order with the Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. Proof of such filing in the form of copies of the covenants certified by the appropriate agency shall be submitted to HCDA.



ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings,
hereby adopt and approve the foregoing ORDER this May 5, 2021. This ORDER and its
ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawaii, May 5, 2021.

Hawaii Community Development Authority
(Kakaako Members)



Jason T Okuhama

Chason Ishii

weifang

Jason Okuhama

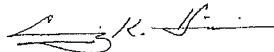
Daniel I. Ito

Wei Fang

David Rodriguez

Daniel Ito

David Rodriguez, Designated Representative of
the Director of Department of Transportation



Craig Hirai, Director of Finance
Department of Budget and Finance

Kevin J Sakoda

Kevin Sakoda

John P Whalen

John Whalen, Chairperson

_____ **Excused**

Phillip Hasha

APPROVED AS TO FORM:

Kelly Suzuka

Deputy Attorney General

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re Application of

VICTORIA WARD, LIMITED,

Applicant

For a Planned Development Permit for Land
Block 5, Project 2 (Ulana Ward Village).

Application No. KAK 21-001

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document will be served on the parties below by hand delivery or by certified mail with return receipt requested, as noted:

CERTIFIED J. DOUGLAS ING, Esq.
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HAND: BRYAN C. YEE, Esq.
Supervising Deputy Attorney General
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Honolulu, Hawaii, May 5, 2021



Deepak Neupane, P.E., AIA
Executive Director



THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re Application of

Application No. KAK 21-002

VICTORIA WARD, LIMITED,

Applicant

For a Planned Development Permit for Land
Block 1, Project 5 (The Park Ward Village).

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

On December 20, 2020, VICTORIA WARD, LIMITED (“VWL”) submitted an application (“Application”) for a planned development permit pursuant to Hawaii Revised Statutes (“HRS”) Chapter 206E, Hawaii Administrative Rules (“HAR”) Chapter 15-22 (“Vested Rules”), and HAR Chapter 15-219, for a proposed mixed use, reserved housing high-rise condominium project known as Land Block 1, Project 5 of the Ward Neighborhood Master Plan (Master Plan Permit No. PL MASP 13.1.3) (“Ward MP”) (the “Project” or “The Park Ward Village”).

The Park Ward Village is located within the Kakaako Community Development District (“KCDD”) on Land Block 1 bound by Queen Street to the north (Mauka), Kamakee Street to the east (Diamond Head), Auahi Street to the south (Makai), and Ward Avenue to the west Ewa, further currently identified as Tax Map Key No. (“TMK”) 2-3-002:059 (por.).

The Hawaii Community Development Authority (“HCDA” or the “Authority”) having heard and examined the testimony, evidence, related pleadings, and argument of counsel presented during the hearings, hereby makes the following Findings of Fact (“FOF”), Conclusions of Law (“COL”), and Decision and Order (“D&O”).

MAY 18 2021

FINDINGS OF FACT

PROCEDURAL HISTORY

1. On December 21, 2020, VWL submitted the Application to the Authority.
2. On January 14, 2021, HCDA deemed the Application complete.
3. On January 15, 2021, HCDA posted the Application on its website in accordance with HRS § 206E-5.5(2), and HCDA encouraged the public to provide comments on the Project.
4. On January 15, 2021, pursuant to the provisions of HAR Chapters 15-22 and 15-219, and HRS § 206E-5.6, HCDA published a notice of public hearings for the Project in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald and Maui News (the “Notice of Public Hearings” or the “Notice”).
5. The Notice stated that, in accordance with the Governor’s December 16, 2020 Seventeenth Proclamation Related to the COVID-19 Emergency (“Seventeenth Emergency Proclamation”), specifically Section VI (B), ordering the suspension of specific provisions of certain laws including HRS Chapter 92, “public agency meetings and records” and social distancing guidelines issued by state and federal public health agencies in an effort to contain community spread of the ongoing COVID-19 Virus, the public hearings would be convened virtually via Zoom.
6. The Notice further stated that pursuant to HAR § 15-219-30, the hearings for the Project would be consolidated with the hearings for VWL’s planned development permit application for Land Block 5, Project 2 (KAK 21-001) (“Ulana Ward Village”).

7. In accordance with the provisions of HRS § 206E-5.6(d), HCDA notified the President of the Senate and Speaker of the House of Representatives of the Hawaii State Legislature of the public hearings.

8. HCDA notified the associations of apartment owners of residential buildings in the KCDD adjacent to the Project, surrounding landowners and businesses, the Ala Moana/Kakaako Neighborhood Board, the Kakaako Business and Landowners Association and the Kakaako Improvement Association of the Application and the public hearings. HCDA also notified various elected officials and state and county agencies of the Application and the public hearings.

9. HCDA also notified individuals and organizations that have shown interest in development in Kakaako in the past and who have requested that they be kept informed of development activities in the KCDD.

10. On January 15, 2021, via first class United States mail postage prepaid, VWL notified owners and lessees of record of real property located within a three hundred foot radius of the perimeter of the Project, identified from the most current list available from the City and County of Honolulu Real Property Assessment Division, of the Application and the hearings.

11. The mailed notifications included, without limitation, (a) project specifications; (b) requests for variance, exemption, or modification of a community development plan or the Authority's community development rules; and (c) procedures for intervention and a contested case hearing.

12. The Notice stated that the deadline to intervene was February 4, 2021.

13. No parties petitioned to intervene in this proceeding.
14. On February 8, 2021, HCDA held a pre-hearing conference virtually via Zoom.
15. In addition to HCDA's staff, VWL attended the pre-hearing conference.
16. On February 10, 2021, HCDA issued a pre-hearing order, requiring the submission of witness lists, exhibit lists and exhibits by the close of business on February 18, 2021.
17. On February 18, 2021, VWL filed its witness list, exhibit list, and exhibits pursuant to the Pre-Hearing Order.
18. On February 26, 2021, VWL filed a First Amended Exhibit List and additional and amended exhibits noted therein.
19. The following government agencies submitted comments regarding the Project to HCDA:
 - a. City and County of Honolulu Board of Water Supply ("BWS") via its letter dated February 22, 2021;
 - b. City and County of Honolulu Department of Transportation Services ("DTS") via its letter dated February 22, 2021;
 - c. State of Hawaii Department of Transportation ("DOT") via its letter dated February 11, 2021;
 - d. City and County of Honolulu Department of Planning and Permitting ("DPP") via its letter dated February 18, 2021;

- e. City and County of Honolulu Fire Department (“HFD”) via its letter dated February 10, 2021;
- f. City and County of Honolulu Police Department (“HPD”) via its letter dated February 5, 2021; and
- g. Honolulu Authority for Rapid Transportation (“HART”) via its letter dated March 2, 2021.

20. **The March 3, 2021 Presentation Hearing.** On March 3, 2021, pursuant to the Notice, HCDA held the presentation hearing on the Application virtually via Zoom (“Presentation Hearing”).

21. At the Presentation Hearing, HCDA afforded VWL an opportunity to present information and other evidence regarding the Project.

22. At the Presentation Hearing, HCDA afforded the public an opportunity to present testimony on the Project.

23. At the Presentation Hearing, HCDA admitted into evidence all of the following exhibits, including written direct testimony, offered and presented by VWL in its First Amended Exhibit List filed on February 26, 2021:

Exhibit	Exhibit Description
P-1	Permit Application, Exhibits and Appendices
	Appendix A – LEED Checklist
	Appendix B – SHPD Letter
	Appendix C – Traffic Impact Report
	Appendix D – Infrastructure Availability Report
	Appendix E – Shadow and Wind Studies
	Appendix F – Wind Consultant Letter

Exhibit	Exhibit Description
	Appendix G – Acoustical Consultant Letter
P-2	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
P-3	Public Facilities Agreement for Land Block 1, Project 5 (The Park Ward Village)
P-4	Race Randle Written Direct Testimony (Presentation Hearing)
P-5	Race Randle Written Direct Testimony (Modification Hearing)
P-6	Kimi Yuen, LEED AP BD+C Written Direct Testimony (Presentation Hearing)
P-7	Kimi Yuen, LEED AP BD+C Written Direct Testimony (Modification Hearing)
P-8	Kimi Yuen, LEED AP BD+C Curriculum Vitae
P-9	Sumner J. La Croix, Ph.D. Written Direct Testimony (Presentation Hearing)
P-10	Sumner J. La Croix, Ph.D. Report
P-11	Sumner J. La Croix, Ph.D. Curriculum Vitae
P-12	Paul Brewbaker, Ph.D., CBE Written Direct Testimony (Presentation Hearing)
P-13	Paul Brewbaker, Ph.D., CBE Report
P-14	Paul Brewbaker, Ph.D., CBE Curriculum Vitae
P-15	Joseph Ferraro, FAIA, LEED AP Written Direct Testimony (Presentation Hearing)
P-16	Joseph Ferraro, FAIA, LEED AP Written Direct Testimony (Modification Hearing)
P-17	Joseph Ferraro, FAIA, LEED AP Curriculum Vitae
P-18	Lee Cranmer Written Direct Testimony (Presentation Hearing)
P-19	Brett Kuamoo, P.E. Written Direct Testimony (Presentation Hearing)
P-20	Brett Kuamoo, P.E. Curriculum Vitae
P-21	Pete Pascua, P.E. Written Direct Testimony (Presentation Hearing)
P-22	Pete Pascua, P.E. Curriculum Vitae
P-23	Robin Markle Written Direct Testimony (Presentation Hearing)
P-23A	Exhibits to Robin Markle Written Direct Testimony (Presentation Hearing)
P-24	Robin Markle Curriculum Vitae
P-25	Mike Hamasu Written Direct Testimony (Presentation Hearing)
P-26	Mike Hamasu Curriculum Vitae
P-27	Matt McDermott, M.A. Written Direct Testimony (Presentation Hearing)
P-28	Matt McDermott, M.A. Curriculum Vitae
P-29	Malia Kaaihue, Ph.D. Written Direct Testimony (Presentation Hearing)
P-30	Malia Kaaihue, Ph.D. Curriculum Vitae
P-31	Presentation Hearing Slides Set No. 1
P-32	Modification Hearing Slides Set No. 1
P-33	Email from Honolulu Fire Department to Wilson Okamoto Corporation, February 22, 2021 (and related email string), Re: Honolulu Fire Department's Comments

P-34	State Auditor's Executive Summaries of Report Nos. 19-03 and 19-04 and Audit of the Honolulu Authority for Rapid Transportation: Report 1 (Report No. 19-03), January, 2019
P-35	Excerpts of Ward Neighborhood Master Plan, Re: Modification to Podium Heights and Setbacks
P-36	Excerpts of 2005 Mauka Area Rules, Re: Modifications

24. At the Presentation Hearing, VWL presented the testimony of the following witnesses orally and/or through written testimony:

	Witness	Affiliation
1.	Race Randle	Vice President, Victoria Ward, Ltd.
2.	Kimi Yuen, LEED AP BD+C	Principal PBR HAWAII & Associates, Inc.
3.	Sumner J. La Croix, Ph.D.	Professor Emeritus, Department of Economics, University of Hawaii – Manoa; Research Fellow, University of Hawaii Economic Research Organization (UHERO)
4.	Paul Brewbaker, Ph.D., CBE	Principal and Economist TZ Economics
5.	Joseph Ferraro, FAIA, LEED AP	Founding Principal / Chairman of the Board Ferraro Choi and Associates Ltd.
6.	Lee Cranmer	Senior Director, Development Victoria Ward, Ltd.
7.	Brett Kuamoo, P.E.	Project Manager / Senior Civil Engineer Wilson Okamoto Corporation
8.	Pete Pascua, P.E.	Vice President & Director of Traffic Engineering Wilson Okamoto Corporation
9.	Robin Markle	Realtor-Associate, Vice President Projects Locations
10.	Mike Hamasu	Research and Consulting Director Colliers International
11.	Matt McDermott, M.A.	Project Manager / Principal Investigator Cultural Surveys Hawaii, Inc.
12.	Malia Kaaihue, Ph.D.	Partner and President of Strategy DTL

25. HCDA qualified the following witnesses as experts in their designated areas of expertise, as follows:

- a. Kimi Yuen, LEED AP BD+C - urban planning;
- b. Sumner La Croix, Ph.D. - economics;
- c. Paul Brewbaker, Ph.D., CBE - economics;
- d. Joseph Ferraro, FAIA, LEED AP – architecture;
- e. Brett Kuamoo, P.E. - civil engineering;
- f. Pete Pascua, P.E. - traffic engineering;
- g. Robin Markle - residential real estate marketing, supply and demand;
- h. Mike Hamasu - commercial real estate marketing, supply and demand;
- i. Matt McDermott, M.A. - archeology; and
- j. Malia Kaaihue, Ph.D. - Hawaiian culture, history, and language.

26. Prior to the Presentation Hearing, HCDA received a total of 26 written comments from the public for both Ulana Ward Village and The Park Ward Village.

27. At the Presentation Hearing, five members of the public provided oral comments.

28. **March 10, 2021 Modification Hearing.** On March 10, 2021, pursuant to the Notice, HCDA held the modification hearing on the Application virtually via Zoom (“Modification Hearing”).

29. At the Modification Hearing, HCDA afforded VWL an opportunity to present information and other evidence regarding the requested Project modification to the platform height and related matters.

30. At the Modification Hearing, HCDA afforded the public an opportunity to present testimony on the Project.

31. On March 8, 2021, VWL filed a First Amended Witness List designating the following additional expert witness for the modification hearing: Robin Markle.

32. HCDA qualified the following additional witness as an expert in her designated areas of expertise for purposes of the Modification Hearing as follows:

- a. Robin Markle - residential real estate marketing, supply and demand; benefits of The Park Ward Village inclusive of modification.

33. At the Modification Hearing, VWL presented the testimony of the following witnesses orally and/or through written testimony:

	Witness	Affiliation
1.	Race Randle	Vice President, Victoria Ward, Ltd.
2.	Kimi Yuen, LEED AP BD+C	Principal, PBR Hawaii & Associates, Inc.
3.	Robin Markle	Realtor-Associate, Vice President Projects, Locations Hawaii
4.	Cord Anderson	Director, Development, Victoria Ward, Ltd.
5.	Lee Cranmer	Vice President, Planning and Development, Victoria Ward, Ltd.
6.	Joseph Ferraro, FAIA, LEED AP	Founding Principal / Chairman of the Board, Ferraro Choi and Associates, Ltd.

34. Following the March 3, 2021 Presentation Hearing, and prior to the Modification Hearing, HCDA received 15 additional written comments from the public.

35. At the Modification Hearing, seven members of the public provided oral comments.

36. At the conclusion of the Modification Hearing, HCDA closed the evidentiary record of this proceeding.

WARD NEIGHBORHOOD MASTER PLAN OVERVIEW

37. **Approval of the Ward Master Plan.** On April 2, 2008, VWL submitted an application for a master plan permit, pursuant to the Vested Rules, to obtain a master plan permit for approximately 60 acres of land in the KCDD.

38. The master plan provisions of the Vested Rules were intended to “encourage timely development, reduce the economic cost of development, allow for the orderly planning and implementation of public and private development projects, and provide a reasonable degree of certainty in the development approval process.”

39. A further purpose under the Vested Rules was to “derive public benefits, such as affordable housing, relocation assistance, public parking, off-site infrastructure and other public facility improvements, which are generally provided by government and would not otherwise be required from private developers.”

40. As set forth in the Vested Rules, “[a]n approved master plan will provide assurances to landowners, developers and investors that projects proposed within a master planned area that are in accordance with the applicable mauka area rules in effect at the time the master plan is approved will not be restricted or prohibited at the permit stage by subsequent changes to those rules.”

41. Furthermore, “once [the landowners or developers] have met or agreed to meet all of the terms and conditions of the master plan approval, their rights to development permit

approval in accordance with the development rules in effect at the time of master plan approval shall be vested for a specified period.”

42. The Vested Rules also provide that master planning allows “greater flexibility in the development of lots within master planned areas than would otherwise be possible through the normal lot-by-lot development approach.”

43. On January 14, 2009, pursuant to the Vested Rules, HCDA approved the Ward MP, subject to 16 conditions (“Ward MP D&O”).

44. On May 6, 2009, a Nunc Pro Tunc Order was approved to resolve a clerical error in the Ward MP D&O. Subsequently, and as required by Condition No. 2 of the Ward MP D&O, HCDA and VWL executed a Master Plan Development Agreement for the Ward Master Plan, effective December 30, 2010. *See* Ward MP D&O; Master Plan Development Agreement for the Ward Neighborhood Master Plan (December 30, 2010) (“Development Agreement”).

45. **Ward Master Plan area, vision and flexibility of phasing.** The approved Ward MP and Development Agreement cover approximately 60 acres of land within the KCDD, including the Project area. Development under the Ward MP is to proceed in phases through planned developments. Phases are to occur by and within the various identified Land Blocks, labeled one (1) through six (6), each of which form “development lots” pursuant to the Vested Rules.

46. While the Ward MP identified “potential phasing strategies,” “no specific phasing sequence is defined” in the Ward MP in order to allow development to be “implemented in response to market opportunities.” This was also set forth in the Development Agreement,

which provides that “the phasing and timing of development under the Ward Master Plan is intended to be flexible to give VWL the ability to adapt to economic and market conditions.”

47. On October 10, 2012, HCDA issued the Declaratory Order Re: Applicability of Condition No. 4 of Nunc Pro Tunc Order Re: Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, Issued January 14, 2009 (“2012 Declaratory Order”).

48. The Ward MP envisioned the revitalization of Kakaako and the transformation of the Ward MP area into a vibrant, mixed-use neighborhood. The Ward MP offered significant public benefits including:

- a. Development of a range of housing opportunities, including reserved housing, in the urban core, close to the Honolulu business district, the Capitol district, and Waikiki;
- b. Creation of a pedestrian friendly street network, with canopy trees, and re-designed streets as landscaped promenades;
- c. Creation of a smart growth community, where residents can live, work, and play, and where the general public can enjoy street level activities nearby various modes of transportation systems;
- d. Provision of over 5.5 acres of open space and nearly 5.2 acres of public facilities maintained and secured without expense to the public, including the Central Plaza (now known as Victoria Ward Park), which creates open space

- in the neighborhood, is available for community gatherings and celebrations,
and will be further defined by appropriate landscaping and walkways;
- c. An infusion of approximately \$11.8 billion in economic value during development, \$701.1 million of State tax revenues and over 4,250 jobs created;
 - f. Investment of approximately \$300 million in street, infrastructure, and utilities improvements; and
 - g. Preservation and advancement of culture, community, and the environment in the heart of Honolulu.

49. **Fulfillment of Ward Master Plan pre-development conditions.** VWL has fulfilled the pre-development conditions of the Ward MP D&O, which required submission of the following documents prior to its initial development permit application:

- a. The Development Agreement;
- b. 2012 Declaratory Order, which fulfilled Condition No. 4 of the Master Plan Permit regarding amendments to the existing Mauka Area Plan;
- c. Historic building inventory (Fung Associates, June 2012);
- d. Cultural impact assessment (Cultural Surveys Hawaii, May 2012);
- e. Predictive archaeological model (Cultural Surveys Hawaii, May 2012);
- f. Archaeological inventory survey plan (Cultural Surveys Hawaii, December 2012);
- g. Regional traffic study (Wilson Okamoto Corporation, October 2012); and

h. Sustainability guidelines (April 2013).

50. In addition to preparing the sustainability guidelines, VWL entered the Ward MP into the US Green Building Council's program LEED for Neighborhood Development ("LEED-ND"). The LEED-ND criteria awards credits for a neighborhood's integration and sustainability through pedestrian orientation, efficient land use, and transportation infrastructure. As a result of its many inherently sustainable attributes and commitments made to make all future projects sustainable, the Ward MP was awarded a Platinum pre-certification rating.

51. The Project site currently accommodates Ward Gateway Center which consists of a one-story commercial building and parking, and a smaller commercial building at the corner of Ward Avenue and Auahi Street. VWL committed to fulfill its requirements under the Ward MP D&O regarding tenant relocation. Relocation assistance is required to be provided to affected tenants, first by looking for opportunities within the Ward MP area to the extent feasible, and by working with a commercial brokerage for alternative spaces. Ultimately, the redevelopment of the Ward MP area is intended to benefit existing and future tenants.

52. **Ward Master Plan projects.** To date, the following projects and associated planned development permits have been approved by HCDA under the Ward MP:

- a. Land Block 5, Project 1 (KAK 13-038; July 17, 2013) Ke Kilohana (completed);
- b. Land Block 2, Project 1 (KAK 13-036; August 21, 2013) Waiea (completed);
- c. Land Block 3, Project 1 (KAK 13-037; August 21, 2013) Anaha (completed);
- d. Land Block 1, Project 2 (KAK 14-074; February 4, 2015) Aeo (completed);

- e. Land Block 1, Project 3 (KAK 16-075; January 13, 2017) Aalii (permitted; construction completion scheduled for 2021);
 - f. Land Block 1, Project 4 (KAK 18-038; August 9, 2018) Koula (permitted; construction completion scheduled for 2022); and
 - g. Land Block 2, Project 3 (KAK 19-069; October 2, 2019) Victoria Place (permitted; construction scheduled to commence in 2021).
53. Advancements under the Ward MP to date also include:
- a. The completion of the retail construction at Ward Village Shops adjacent to its district parking structure;
 - b. The renovation of the IBM building to create a master plan information center and courtyard;
 - c. The opening of Victoria Ward Park (formerly known as the Central Plaza);
 - d. The Whole Foods Market grocery store; and
 - e. The newly-opened Longs Drug Store in Ke Kilohana.
54. VWL is now seeking a planned development permit for Land Block 1, Project 5 (The Park Ward Village), which is the subject of this proceeding.

PROJECT DESCRIPTION

55. **Project name.** The Park Ward Village is located at a unique intersection of Ward Village's defining landmark – Ward Avenue, which provides key mauka-makai connectivity, and the vibrant Victoria Ward Park mauka area. A focus of The Park Ward Village will be its connection to the outdoors and broader Ward neighborhood, with an abundance of amenities that prioritize activity, convenience, and community.

56. **Location.** The Park Ward Village is located on Land Block 1 of the Ward MP. Land Block 1 is bound by Queen Street to the north (Mauka), Kamakee Street to the east (Diamond Head), Auahi Street to the south (Makai), and Ward Avenue to the west (Ewa).

57. The Park Ward Village site is currently on TMK 2-3-002:059 (por.).

58. The Park Ward Village site currently accommodates Ward Gateway Center which consists of a one-story commercial building and parking, and a smaller commercial building at the corner of Ward Avenue and Auahi Street. Section 4.15 of the Application identifies the existing tenants and outlines the VWL's tenant relocation plan. VWL will provide notice and relocation assistance to the affected tenants as required.

59. **Land use and zoning.** Pursuant to the Ward MP D&O and the 2012 Declaratory Order, the Project site has a single "mixed-use" zoning designation, MUZ, which allows flexibility in designing and developing the mixed-use community that was approved under the Ward MP.

60. **Residential tower and mixed-use platform.** The Park Ward Village proposes approximately 683,896 square feet of new floor area, including a residential tower and a parking

and mixed-use platform. The residential tower footprint of approximately 15,978 square feet over a site of approximately 131,695 square feet complies with HAR § 15-22-116.

61. The residential tower will be oriented in a mauka-makai direction to preserve public view planes pursuant to HAR § 15-22-143(a).

62. The residential tower complies with the height limit set forth in HAR § 15-22-116, with a proposed height of approximately 400 feet (plus rooftop elements).

63. In total, the residential tower will provide 546 residential units. It will provide approximately 75,659 square feet of indoor and outdoor recreation space, which exceeds the 55 square foot per unit requirement set forth in HAR § 15-22-65.

64. The platform is designed for parking and mixed-uses, including light industrial and commercial use. Applicant seeks two modifications of the Vested Rules: (1) to increase the platform height from forty-five (45) feet to seventy-five (75) feet as contemplated in the Ward MP and permitted by HAR § 15-22-120(7), and (2) to eliminate the 1:1 setback above twenty (20) feet to accommodate a continuous building facade that better defines the edge of the street and allows for more interesting articulation of the building facade at the corners and mid-block along Ward Avenue, which design is consistent with the Ward MP and permitted by HAR § 15-22-120(1) and HAR § 15-22-22.

65. **Floor area / density.** The following table is a summary of the floor area allocations and projected floor area ratio (“FAR”) for Land Block 1:

Floor Area Allocation for Land Block 1	
Development Lot Area for Land Block 1	911,887 (SF)
Projected Floor Area for Land Block 1	3,293,281 (SF)
Projected Floor Area Ratio for Land Block 1	3.61
Floor Area Allocation on Land Block 1	
Ward Entertainment Center (Completed)	213,840 (SF)
Aeo	624,701 (SF)
Aalii	600,321 (SF)
Koula	682,391 (SF)
Land Block 1, Project 5 (The Park Ward Village) (Proposed)	683,896 (SF)
Subtotal of Floor Area Allocated on Land Block 1 to Date	2,805,149 (SF)
Remaining Floor Area on Land Block 1 without bonus	488,132 (SF)

66. Land Block 1 totals approximately 20.93 acres (911,887 SF) and comprises one development lot, which is governed by a joint development agreement recorded May 11, 2015 (DOC A-56090748) (“JDA”). Therefore, all the parcels included within the JDA will be considered and treated as one development lot under the Vested Rules.

67. Land Block 1 has an effective development lot area of 911,887 square feet. The Project development lot is approximately 131,695 square feet.

68. The Ward MP establishes a FAR of 3.8 (inclusive of the industrial bonus of 0.3 FAR). In addition, HAR §15-22-203(b)(1) allows for the transfer of floor area and land uses from one development lot to one or more development lots within the master planned areas as long as the FAR for any lot to which floor area has been transferred to shall not be increased by

more than twenty-five percent (25%) of the FAR otherwise allowed for the size of the development lot.

69. Therefore, with the permitted twenty-five percent (25%) transfer, the maximum allowable FAR for Land Block 1 could be up to 4.75 $[(0.25 * 3.8) + 3.8]$ or 4,331,463 square feet (911,887 square feet * 4.75) of floor area.

70. As such, the projected floor area of 3,293,281 square feet (inclusive of this proposed Project) and FAR of 3.61 (3,293,281 square feet / 911,887 square feet) for Land Block I is consistent with the provisions of the Vested Rules as approved under the Ward MP.

71. With the Project, which has a floor area of 683,896 square feet, the total floor area approved and pending within the Ward MP area (including The Ulana Ward Village) will be approximately 5,842,169 square feet.

72. After the development of the Project, VWL will have planned and forecast remaining floor area of approximately 3,492,071 square feet.

73. **Building orientation and tower spacing.** Section 15-22-143(a)(2) of the Vested Rules requires that to the extent practicable, the tower portion of the structure be oriented between thirty-five and sixty-five degrees west of south.

74. The long axis of the Project tower is approximately 53 degrees west of south in a mauka-makai orientation.

75. Section 15-22-143(b)(1) of the Vested Rules requires that to the extent practicable, the parallel sides of adjacent towers shall be separated by a distance of at least 300

feet. Section 15-22-143(b)(2) of the Vested Rules requires that to the extent practicable there should be at least 200 feet between the short side of the towers.

76. The long side of the Project tower is at least 300 feet from the nearest tower, and the short side of the Project is at least 200 feet from the nearest tower.

77. **Archaeological and historic resources.** Cultural Surveys Hawaii (“CSH”) conducted an archaeological inventory survey (“AIS”) for the area of Land Block 1 that includes The Park Ward Village site.

78. The AIS documented three archaeological historic properties in the Project area:
- a. State Inventory of Historic Places (SIHP) # 50-80-14-7429 consists of pre- and post- Contact cultural deposits with associated features.
 - b. SIHP # 50-80-14-7686 consists of subsurface historic infrastructure remnants and associated deposits.
 - c. SIHP # 50-80-14-7655 consists of historic salt pan remnants with associated subsurface cultural deposits.

79. Although SIHP # -7429, 7686, and 7655 also encompass areas outside of the Project (Block H) area (including Block I, in which human burial sites were located and were subject to an approved burial treatment plan), no human burial sites were found within the Project area itself.

80. The State Historic Preservation Division (SHPD) accepted the AIS report on January 19, 2018. In the letter, SHPD concurred with the CSH’s recommended mitigation of archaeological monitoring.

81. Subsequent to the AIS report, CSH prepared an archaeological monitoring plan (AMP) addressing the area of The Park Ward Village site. SHPD accepted the AMP on February 5, 2020.

82. Appendix B of the Application contains the AMP acceptance letter from SHPD. The letter reiterates acceptance of the AIS, notes that the AMP meets applicable requirements, and confirms that the permit issuance process may proceed.

83. **Open space.** Open space for the Project shall be the lower of either ten percent (10%) of the lot area or twenty-five percent (25%) of the lot area less the required yards as provided in HAR § 15-22-64(c)(1) of the Vested Rules.

84. Within the Ward MP, the Applicant proposes to provide 121,040 square feet of open space for Land Block 1, which is equal to approximately thirteen percent (13%) of the total development lot area, before the end of the last phase of development for the development lot.

85. The open space required for the Project is 13,170 square feet (131,695 square feet * 10 percent). The Project proposes to provide approximately 22,198 square feet of open space on site, or approximately 16.8 percent of the lot area (22,198 square feet / 131,695 square feet).

86. In addition, the mauka area of Victoria Ward Park will be renovated and expanded by 37,166 square feet, totaling 92,429 square feet or 67% more area than the existing Victoria Ward Park.

Summary of the Ward Neighborhood Master Plan Open Space (To Date)	
Open Space for Existing & Approved Projects	
MUZ 16-00 [LB1] Ward Entertainment Center	2,859 sf
KAK 14-074 [LB1-P2] Aeo	5,047 sf
KAK 16-075 [LB1-P3] Aalii	9,905 sf
Victoria Ward Park – Mauka [LB1] (fmr. Central Plaza)	55,263 sf
KAK 18-038 [LB1-P4] Koula	10,800 sf
KAK 13-036 [LB2-P1] Waiea	13,667 sf
MUZ 93-04 [LB3] Ward Village Shops	32,988 sf
KAK 13-037 [LB3-P1] Anaha	10,907 sf
KAK 12-137 [LB4] IBM Building	9,695 sf
KAK 13-038 [LB5-P1] Ke Kilohana	1,323 sf
KAK 19-096 [LB2-P3] Victoria Place	17,403 sf
Victoria Ward Park – Makai [LB2]	63,665 sf
Subtotal Open Space for Existing & Approved Projects	233,522 sf
Open Space for Pending Projects	
KAK 21-001 [LB5-P2] Ulana Ward Village	26,597 sf
Ka Lai O Kukuluao Park [LB5] (Fmr. Ewa Plaza)	30,000 sf
KAK 21-002 [LB1-P5] The Park Ward Village	22,198 sf
Victoria Ward Park – Mauka Expansion [LB1]	37,166 sf
Subtotal Open Space for Pending Projects	115,961 sf
Total Open Space of Existing/Approved/Pending Projects	
Land Block 1	143,238 sf
Land Block 2	94,735 sf
Land Block 3	43,895 sf
Land Block 4	9,695 sf
Land Block 5	57,920 sf
Total Opens Space of Existing/Approved/Pending Projects	349,483 sf
Minimum Total Open Space required for Master Plan	245,638 sf
Existing/Approved/Pending Open Space Surplus	102,032 sf

87. **Off street parking.** Pursuant to HAR § 15-22-67, the Project is required to provide a total minimum of 736 off-street parking spaces, including 640 spaces for residential use and 96 spaces for commercial use.

88. The Project will include approximately 960 off-street parking spaces for these uses, inclusive of parking for the commercial patrons, residential guests, and district parking for Ward Village and the Kakaako community.

Land Use	Requirement	Unit or Floor Area	Minimum Required	Provided
Residential				831
600 SF or Less	0.9 stall / unit	135 units	122	
Between 600 to 800 SF	1.13 stall / unit	171 units	194	
800 SF or More	1.35 stall / unit	240 units	324	
Commercial				129
Eating/Drinking Area	.9 stall / 300 SF	13,033 SF	40	
Eating/Drinking Access.	1 stall / 444 SF	13,777 SF	32	
Commercial/Other	1 stall / 444 SF	10,426 SF	24	
TOTAL			736	960

89. VWL provided that the number of off-street parking stalls at The Park Ward Village is set by residential and commercial market demand, and is also part of an area-wide parking strategy.

90. The off-street parking at The Park Ward Village is an integral part of an area-wide parking strategy within Ward Village based upon specific land uses.

91. Parking for residential uses is provided within each development block, and parking for commercial uses is provided not only within the localized block, but also in regional district parking areas, which supports complementary uses as the need arises.

92. Ward Village currently has approximately 4,100 parking spaces, including parking to accommodate various commercial tenants including Whole Foods, CVS and others. Upon the completion of Ulana Ward Village and The Park Ward Village, total district parking will be reduced by several hundred spaces, and at ultimate build-out, total district parking within

Ward Village will be further reduced to approximately 2,700 parking spaces subject to market demand.

93. This area-wide parking strategy and regional district parking for commercial uses fosters the “park-once” concept, in which patrons will park once and use different modes of travel to access shopping, dining, entertainment and other venues within Ward Village.

94. **Off-street loading.** The Project is required to provide four off-street loading spaces that meet or exceed the minimum dimensions as provided in the Vested Rules. The Project will provide four loading spaces sized a minimum of 12 feet by 35 feet.

95. **Bicycles.** The Ward MP envisions an interconnected bicycle network linked to the City and County of Honolulu system, with the improved bicycle environment being an integral component to the overall transportation management strategy.

96. The Park Ward Village will include bicycle parking at the street level in both public areas and within the parking structure. Public short-term bicycle parking will be provided at the street level, and long-term bicycle parking for residents will be provided on the ground floor adjacent to commercial spaces.

97. The Park Ward Village will provide bicycle parking using the City and County of Honolulu Land Use Ordinance (“LUO”) § 21-6.150, as a general recommendation.

98. Bikeshare stations are also at various convenient locations throughout Ward Village.

99. **Front, side and rear yards.** The Vested Rules require a front yard setback of fifteen (15) feet, and a minimum side and rear yard setback of ten (10) feet for structures containing windows and opening facing side or rear property lines.

100. The Project site is bounded to the northeast by the future de facto Halekauwila Street extension, by the northwest by Ward Avenue, to the southeast by Victoria Ward Park, and to the southwest by the future Auahi Street realignment.

101. A front yard setback is required along the northwest and south portions of the property that are immediately adjacent to streets.

102. The Park Ward Village is a portion of the single development lot created by the Land Block I Joint Development Agreement recorded May 11, 2015 (DOC A-56090748). The Land Block I development lot is bound by Queen Street, Kamakee Street, Auahi Street, and Ward Avenue. The Park Ward Village is partially bound by Auahi Street (front yard) and Ward Avenue (front yard). The balance of The Park Ward Village is bounded by a continuation of the Land Block I development lot, as such, no side or rear yards are present.

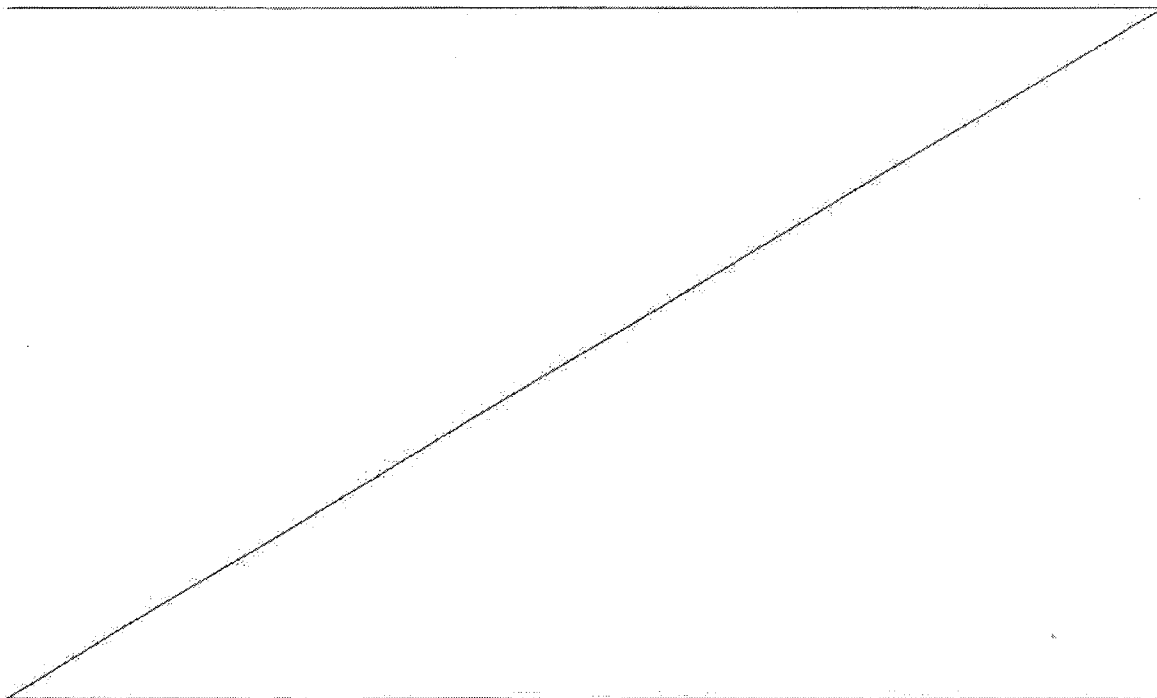
103. **Public facilities.** Section 15-22-73 of the Vested Rules establishes requirements for public facilities dedication. The public facilities dedication requirement for residential floor area is four percent (4%) of the total residential floor area exclusive of floor area devoted to reserved housing units and their associated common areas, and the public facilities dedication requirement for commercial floor area is three percent (3%) of the total commercial floor area.

104. The Project's proposed residential floor area of 646,660 square feet triggers a public facilities dedication requirement of 25,866 square feet. The Project's proposed

commercial floor area of 37,236 square feet triggers a public facilities dedication requirement of 1,117 square feet.

105. As noted in the public facilities dedication letter dated February 19, 2021, given the provided and pending public facilities dedications in Ward Village to date, VWL will generate public facilities credits in conjunction with the Ward MP, which upon acceptance will be sufficient to meet the public facilities dedication requirement for the Project (and Ulana Ward Village), and will leave a remaining balance of approximately 160,972 square feet.

106. A summary of public facilities dedication requirements for the various development projects under the Ward MP that have been approved by the Authority, public facilities dedication credits accumulated by the Applicant, and approximate public facilities dedications that are proposed and pending is provided in the following table:



WARD VILLAGE PUBLIC FACILITIES DEDICATION	
Credit from Pre-Ward Village MP Projects [a]	39,581 sf
Public Facilities Dedications (To Date)	
<i>Projects</i>	<i>Area</i>
KAK 13-036 [LB2-P1] Waiea [Doc A-52480775] - Sidewalk along Ala Moana Blvd	521 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480776] - Sidewalk along Queen St.	353 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480777] - Sidewalk along Auahi St.	496 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480777] - Sidewalk along Auahi St.	431 sf
KAK 13-037 [LB3-P1] Anaha [Doc A-52480779] - midblock	902 sf
KAK 13-038 [LB5-P1] Ke Kilohana [Doc A-52480780] - R.O.W. along Ilaniwai St.	1,785 sf
Halekauwila Street Dedication to HCDA [Doc A-55070352]	37,261 sf
LB1: 2017/SUB-40 Lot D, Esmt A-7 [Doc A-68720531] - Roadway Easement	53,062 sf
KAK 16-075 [LB1-P3] Aalii [Doc A-69270954] - Sidewalk Easement P-3A	6,034 sf
LB1: 2017/SUB-40 Lot B [Doc A-68720628] - Sidewalk Easement P-4	5,773 sf
KAK 18-038 [LB1-P4] Koula [Doc A-74390207] - Sidewalk Easement P-5	2,186 sf
KAK 14-074 [LB1-P2] Aeo [Doc A-75230480] - Sidewalk Easement A-1	6,387 sf
KAK 14-074 [LB1-P2] Aeo [Doc A-75230480] - Sidewalk Easement P-1	5,992 sf
KAK 14-074 [LB1-P2] Aeo [Doc A-75230480] - Sidewalk Easement P-2	312 sf
Subtotal of Public Facilities Dedication Provided to Date [b]	121,495 sf
Total Credits & Dedications Provided to Date [a + b]	161,076 sf
Proposed (Pending) Public Facilities Dedications (To Date)	
LB1: 2019/SUB-109, Lot D-2 [unrecorded] - Halekauwila Roadway Easement A-8	10,241 sf
LB1: 2019/SUB-109, Lot E [unrecorded] - The Park on Ward Sidewalk Easement P-10	2,566 sf
LB1: 2020/SUB-92 Lot 39-F [unrecorded] - Victoria Ward Park - Makai	63,665 sf
LB1: 2019/SUB-109, Lot D-2, Esmt B [unrecorded] - Victoria Ward Park - Mauka	92,429 sf
LB1: 2019/SUB-109, Lot F, Esmt P-9 [unrecorded] - N-West Sidewalk Easement	2,547 sf
Subtotal of Pending Public Facilities Dedication [c]	171,448 sf
Total Dedications Provided / Pending [a + b + c]	332,524 sf
Required Public Facilities Dedication (To Date)	
<i>Project</i>	<i>Dedication Area</i>
KAK 13-036 [LB2-P1] Waiea	20,831 sf
KAK 13-037 [LB3-P1] Anaha	25,796 sf
KAK 13-038 [LB5-P1] Ke Kilohana	3,009 sf
KAK 14-074 [LB1-P2] Aeo	24,107 sf
KAK 16-075 [LB1-P3] Aalii	21,653 sf
KAK 18-038 [LB1-P4] Koula	26,713 sf
KAK 19-069 [LB2-P3] Victoria Place	22,252 sf
Subtotal	144,361 sf
Block F [LB5-P2] Ulana Ward Village	207 sf
Block H [LB1-P5] The Park on Ward	26,983 sf
Subtotal of Required Public Facilities Dedication to Date	171,552 sf
Remaining Balance Not Including Pending Public Facilities Dedications	(10,476 sf)
Remaining Balance after Pending Public Facilities Dedications	160,972 sf

107. **Reserved housing / credit system.** Pursuant to HAR § 15-22-115(a), the Project is required to provide “at least twenty percent of the total number of dwelling units in the development for sale or rental to qualified persons”.

108. Hawaii Administrative Rules § 15-22-203(b) gives HCDA the authority, as part of a master plan approval, to permit reserved housing units to be transferred from one development lot to one or more development lots within the master plan area.

109. Pursuant to the Planned Development Permits for KAK 18-038 (Koula) and KAK 19-069 (Victoria Place), VWL is currently required to provide a minimum of 108 reserved housing units within Ward Village.

110. Condition No. 4 of the planned development permit for KAK 19-069 (Victoria Place) confirmed, in part, that “VWL shall have the right to utilize any excess reserved housing units [*i.e.* in excess of the 108 reserved housing units required for KAK 18-038 (Koula) and KAK 19-069 (Victoria Place)] as credits to fulfill reserved housing requirements for other planned development projects within the Ward Master Plan.”

111. As noted in the Ward MP D&O FOF 75, the Authority provided that the reserved housing unit mix, as well as the provisions for delivery of the reserved housing, need not be determined at the master planning stage; instead, the HCDA determined that these issues are more appropriately determined at the project development stage.

112. Upon approval, the 697 reserved housing units proposed at Ulana Ward Village will exceed the current 108 unit requirement, fulfill the reserved housing requirement for the

Project, and will provide the early delivery of reserved housing in advance of market housing in Ward Village as contemplated, agreed and incentivized by the Development Agreement.

113. As provided in the Ward MP, and as with other VWL reserved housing communities, at least ten percent (10%) of the reserved housing homes at Ulana Ward Village will be offered at or below one hundred percent (100%) of the Area Median Income (“AMI”).

114. Under the terms of the Development Agreement, upon approval and after the delivery of Ulana Ward Village and The Park Ward Village, VWL will have approximately 362 reserved housing credits that VWL may, in the exercise of its vested rights, use in order to satisfy, at its option, all or part of the Ward MP reserved housing requirements for future developments and/or to true up the reserved housing mix upon completion of all projects within the Ward MP as summarized in the table below:

Reserved Housing		
Project	Residential Units	Reserved Housing Units Provided
<i>KAK 13-036 [LB2-P1] Waiea</i>	*177	0
<i>KAK 13-037 [LB3-P1] Anaha</i>	318	0
<i>KAK 13-038 [LB5-P1] Ke Kihohana</i>	424	375
<i>KAK 14-074 [LB1-P2] Ae'o</i>	466	0
<i>KAK 16-075 [LB1-P3] 'A'ali'i</i>	751	150
<i>KAK 18-038 [LB1-P4] Kō'ula</i>	570	0
<i>KAK 19-069 [LB2-P3] Victoria Place</i>	350	0
<i>Block F [LB5-P2] Ulana Ward Village</i>	697	697
<i>Block H [LB1-P5] The Park Ward Village</i>	546	0
Total Residential Units	4299	1222
Reserved Housing Units Required (20%)	860	
Reserved Housing Units Balance - exceeding requirements	362	

*The Waiea Planned Development Permit included 177 residential units, but only 174 units were constructed

115. **Flood hazard district.** Pursuant to HAR § 15-22-82, the applicable provisions of the Honolulu Land Use Ordinance (LUO) relating to flood hazard districts apply to all properties within the mauka area.

116. The Project site is located in the Federal Emergency Management Agency Flood Insurance Rate Map as Zone AE, in which the annual chance of flooding for a 100 year flood is determined as one percent. The property's flood base elevation is 8 feet, and the proposed finish floor elevation at Level 1 for the Project is 8.25 feet.

MODIFICATIONS

117. **Description of modifications.** As proposed by the Ward MP and implemented in previously-approved developments in Ward Village, VWL is requesting two modifications to the Vested Rules, including: (1) one modification to HAR § 15-22-62(a) to increase the mixed-use platform height from forty-five (45) feet to seventy-five (75) feet, with an additional twelve (12) feet of height for accessory use structures with a total area less than fifteen percent (15%) of the platform roof area, and eighteen (18) feet of height for structures housing elevator machinery on the platform roof; and (2) one modification to eliminate the 1:1 setback above twenty (20) feet to accommodate a continuous building facade that better defines the edge of the street and allows for more interesting articulation of the building facade at the corners and mid-block along Ward Avenue.

118. **Flexibility in design.** The Mauka Area Plan and Vested Rules provide flexibility for large developments and adopt an approach that departs from the rigidities of lot-by-lot

development, allowing the community to receive public amenities that would otherwise be unavailable.

119. Hawaii Administrative Rules § 15-22-1 provides that “the authority shall interpret these rules to encourage flexibility of design.” The Mauka Area Plan provides that its vision is to create the vertical mixing of uses, locate commercial at grade, and create pedestrian-oriented residential, commercial, social and recreational activities.

120. To create the vision and meet the goals identified in the Mauka Area Plan, the plan described and encouraged the following elements:

- a. “Commercial uses requiring easy access to automotive traffic could also locate at grade”;
- b. “Large scale developments or superblocks are proposed to make the mixed-use concept work most efficiently”;
- c. “Most developments in the Mauka Area will be encouraged to have common urban design features for the purpose of creating a desirable and functional community. These features are tastefully designed platforms, decks, and towers”; and
- d. The creation of a level “with pedestrian-oriented residential, commercial, social and recreational activities. . . .”

121. Consistent with the foregoing, the Ward MP identified modifications that VWL would be seeking to implement the vision of the Mauka Area Plan and the master plan. As stated in FOF No. 62 of the Decision and Order approving the Ward MP, the master plan proposed:

Increases the maximum podium or street front element height from 45 feet to 65 feet for parcels fronting Ala Moana Boulevard and to 75 feet for all other parcels not directly fronting Ala Moana Boulevard, which will allow retail, restaurants and residential units to be built within the podium and parking structures to be moved up and away from the street, creating a more aesthetically pleasing and pedestrian friendly facade.

In addition, in FOF No. 62 of the Decision and Order, HCDA also noted that the Ward MP proposed:

“Eliminate the 1:1 setback slope from 20 feet to 45 feet in the building height along Ala Moana Boulevard, Ward Avenue, Kamakee Street and Queen Street, which will allow for development of a continuous building facade that better defines the edge of the street.” The tower will also be setback further than required from Ward Avenue, expanding distant mauka-makai views that may have been blocked if the tower were built to the 75-foot allowable setback.

122. HCDA reviewed the proposed platform height modification at the time of the Ward MP approval and provided in FOF 103 that: “increasing the podium height allows for retail, restaurants, office, and residential units to be built within the podium” and the “additional podium height offers the opportunity to move a parking structure up and away from the street, occupying a smaller floor plate and making room for alternative uses,” which uses “can then surround the garages.”

123. In addition, in FOF 104 of the Decision and Order, HCDA provided that eliminating the 1:1 setback above twenty (20) feet along Ward Avenue and the other corridor streets “would allow a more continuous urban street front with greater usable building density brought closer to ground level and a facade that would better define the edge of the street.”

124. **HAR § 15-22-22 criteria.** HCDA further determined that the modification to the platform height would satisfy the standard for granting modifications under HAR § 15-22-22.

This is set forth in FOF No. 106 of the Decision and Order approving the Ward MP, which provides that the modification:

(a) will result in a development that is consistent with the intent of the Mauka Area Plan and Rules; (b) will provide flexibility for different uses and various design strategies noted in the Master Plan, including concealed parking structures and pedestrian-friendly facades, which will result in a development that is practically and aesthetically superior to one which could be accomplished without such modifications; (c) will not adversely affect adjacent developments or uses; and (d) are necessary to implement the mixed-use, live-work-play neighborhood vision of the Master Plan and Mauka Area Plan.”

PLATFORM HEIGHT MODIFICATION

125. As envisioned by the Mauka Area Plan, the Ward MP, and the Ward MP D&O, the requested modification to increase the platform height will allow for commercial space to be built within the ground floor of the parking and mixed-use platform. The additional height also provides an opportunity to move the bulk of parking uses up and away from the street level, thereby dramatically increasing the open and recreation spaces at ground level and improving the street environment.

126. The ground level open and green spaces created by the platform height modification will create a walkable and active streetscape that The Park Ward Village residents and the community will value and will enjoy.

127. This open and recreational space is in addition to the adjacent Victoria Ward Park, which will be expanded by over 37,000 square feet (adding 67 percent more open space to the

park), which will provide a larger, green area for residents and the community to enjoy in the heart of Kakaako.

128. The platform height modification is consistent with other developments in Ward Village. Accordingly, the modification will not adversely affect adjacent developments or uses, but instead will enhance and provide uniformity with neighboring developments within the community.

129. Thus, as noted in the Ward MP D&O, the platform height modification meets the criteria of HAR § 15-22-22, which provides that:

- (1) The modification would provide flexibility and result in a development that is practically and aesthetically superior to that which could be accomplished with the rigid enforcement of this chapter;
- (2) The modification would not adversely affect adjacent developments or uses; and
- (3) The resulting development will be consistent with the intent of the mauka area plan.

130. **HAR § 15-22-120(7) criteria.** In addition, Hawaii Administrative Rules § 15-22-120(7), which permits the Authority to grant modifications for platform heights, states:

Platform heights may be commensurately modified to exceed forty-five feet where:

- (A) Subsurface construction is infeasible;
- (B) Design requirements for ceiling height clearances require height adjustment;
- (C) Industrial, commercial, residential or community service uses are substantially located within the platform, especially along streets or public spaces; or

(D) Significant public facilities or pedestrian features are provided at the street level, especially arcades or publicly accessible open space in excess of the minimum grade-level open space.

131. Although The Park Ward Village platform is only required to meet one of the criteria of HAR § 15-22-120(7), VWL provides that the modification request to increase the platform height meets all four criteria.

132. HAR § 15-22-120(7)(A) - Subsurface construction is infeasible. The proposed modification for The Park Ward Village's platform height, consistent with the Mauka Area Plan, avoids subsurface excavation activities associated with an underground parking structure. Keeping the parking structure above ground for the development, where there are potential cultural subsurface sensitivities and the proximity to the water table, is an important consideration and benefit.

133. HAR § 15-22-120(7)(B) - Design requirements for ceiling height clearances require height adjustment. In order to facilitate ceiling heights for off-street loading vehicles, commercial uses, and industrial uses, an increase in the ground floor level ceiling height is necessary, and therefore requires an increase in the platform height.

134. HAR § 15-22-120(7)(C) - Industrial, commercial, residential or community service uses are substantially located within the platform, especially along streets or public spaces. The Park Ward Village will include approximately 37,206 square feet of ground floor commercial space in and around the platform, which will serve The Park Ward Village residents and the broader Ward Village community. These uses, propose to provide a more aesthetically pleasing and pedestrian-friendly facade, will be easily accessible from the planned Auahi Street

pedestrian promenade on the makai side of the development and the expanded Victoria Ward Park.

135. **HAR § 15-22-120(7)(D) - Significant public facilities or pedestrian features are provided at the street level, especially arcades or publicly accessible open space in excess of the minimum grade level open space.** The proposed modification also facilitates the provision of substantial ground floor open and recreational space at The Park Ward Village. As Exhibit 22 to the Application illustrates, increasing the platform height, thereby pulling the parking up and away from the street, not only results in space for the commercial uses, but also dramatically increases the open space at ground level. Depictions of the street-level pedestrian activation and aesthetic benefits arising from the modification are also illustrated in Exhibits 23A, 23B, 23C, and 23D of the Application.

136. As a result, The Park Ward Village provides approximately 22,198 square feet of ground floor open space, and approximately 75,659 square feet of resident recreation space. This open and recreational space is in addition to the adjacent Victoria Ward Park, which will be expanded by over 37,000 square feet (adding 67 percent more open space to the park), which will provide a larger, green area for residents and the community to enjoy in the heart of Kakaako.

1:1 SETBACK SLOPE MODIFICATION

137. As considered in the Ward MP and the Ward MP D&O, the requested modification to eliminate the 1:1 setback slope from 20 feet to 45 feet in the building height along Ala Moana Boulevard, Ward Avenue, Kamakee Street and Queen Street will allow for

development of a continuous building facade that better defines the edge of the street. The tower will also be set back significantly further than the required seventy-five (75) feet from Ward Avenue, expanding distant mauka-makai views.

138. The modification will also increase available space within the platform and provide more flexibility in designing an interesting and aesthetically superior platform that The Park Ward Village residents and the community will value and will enjoy.

139. The Park Ward Village, for example, provides approximately 22,198 square feet of ground floor open space, and approximately 75,659 square feet of resident recreation space.

140. Importantly, and as noted, VWL is not requesting a modification of the seventy-five (75) foot tower setback required on view corridor streets, and The Park Ward Village will comply with both the tower setback and the fifteen (15) foot front yard setback required by the Vested Rules. The front yard and tower setback along Ward Avenue (along with the mauka-makai orientation of the long side of the building tower) will maintain the expansive view corridor along Ward Avenue as the Mauka Area Plan and the Ward MP both envisioned.

141. The modification is also consistent with other developments in Ward Village. Accordingly, the modification will not adversely affect adjacent developments or uses, but instead will enhance and provide uniformity with neighboring developments within the community.

142. Thus, as noted in the Ward MP D&O, the modification meets the criteria of HAR § 15-22-22, which provides that:

- (1) The modification would provide flexibility and result in a development that is practically and aesthetically superior to

that which could be accomplished with the rigid enforcement of this chapter;

- (2) The modification would not adversely affect adjacent developments or uses; and
- (3) The resulting development will be consistent with the intent of the mauka area plan.

143. HAR § 15-22-120(1) permits the Authority to grant modifications for view corridor setbacks.

144. Notably, while the Vested Rules provide for the 1:1 setback slope from 20 feet to 45 feet in the view corridor, which setback slope may be modified pursuant to HAR § 15-22-120(1), the current Mauka Area Rules applicable to projects that are not subject to the Vested Rules do not include the 1:1 setback slope from 20 feet to 45 feet in the view corridor.

HRS CHAPTER 206E REQUIREMENTS

145. Pursuant to HRS § 206E-5.6(j), HCDA is required to consider the following criteria in evaluating whether a developer's proposal to develop lands under HCDA's control is reasonable and is consistent with the development rules and policies of the relevant development district:

- a. The extent to which the proposed project:
 - i. Advances the goals, policies, and objectives of the applicable district plan;
 - ii. Protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the applicable district rules;

- iii. Avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area; and
 - iv. Provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups;
- b. The impact of the proposed project on the following areas of urban design, as applicable:
- i. Pedestrian oriented development, including complete streets design;
 - ii. Transit oriented development, including rail, bus, and other modes of rapid transit; and
 - iii. Community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector;
- c. The impact of the proposed project on the following areas of state concern:
- i. Preservation of important natural systems or habitats;
 - ii. Maintenance of valued cultural, historical, or natural resources;
 - iii. Maintenance of other resources relevant to the State's economy;
 - iv. Commitment of state funds and resources;
 - v. Employment opportunities and economic development; and

- vi. Maintenance and improvement of the quality of educational programs and services provided by schools;
- d. The representations and commitments made by the developer in the permit application process.

146. **Extent to which the Project advances the goals, policies, and objectives of the applicable district plan.** The Project has been designed consistently with the goals of the Ward MP, the Vested Rules, the Authority's development guidance policies, and the district wide plan for the Kakaako mauka area.

147. The applicable district plan is the Mauka Area Plan adopted by HCDA in June 2005. The Mauka Area Plan provides a framework for public-private sector cooperation to develop the Mauka Area into a vibrant, mixed-use community with a variety of housing types in Honolulu's urban core.

148. From the housing perspective, The Park Ward Village will add approximately 546 homes in the urban core.

149. The Park Ward Village is located in the core of Honolulu and Kakaako, in close proximity to the central business district, the government center, and commercial, and industrial facilities, along with recreational areas such as Ala Moana Beach Park and Kewalo Basin Harbor. Its central location provides convenient access to the services and amenities throughout Kakaako and Ward Village, including through the planned Auahi Street pedestrian promenade.

150. As its name suggests, The Park Ward Village will serve as a community focal point to bring together the area and amenities encompassed by Ward Avenue, the expanded

Victoria Ward Park, and the planned Auahi Street pedestrian promenade. The Park Ward Village will focus on the connection between the outdoors and the broader Ward Village neighborhood by providing extensive ground floor retail space, pedestrian activation, and ease of access to the green expanse of Victoria Ward Park.

151. A key aspect of the Mauka Area Plan is its open space and recreation plan, which prioritizes the creation of open space systems, as well as on-site recreation and open spaces. This “systems” approach recognizes that residents benefit from community-wide as well as site-specific open space and recreational spaces.

152. The Park Ward Village and the adjacent expanded Victoria Ward Park significantly advance the open space and recreational aspects of the Mauka Area Plan. The development provides over 22,000 square feet of ground floor open space, and the development will include over 75,000 square feet of resident indoor and outdoor recreation space which will provide a lush, green, street-level recreation area in the heart of an urban community.

153. When completed, the renovated and expanded Victoria Ward Park will be nearly 92,500 square feet (67 percent larger than it is today), which will provide additional space for the popular community gatherings, classes and events that residents and visitors have come to enjoy in this central location within Ward Village. Other planned community amenities and public benefits include public restrooms and off-street public parking within The Park Ward Village platform.

154. In addition, The Park Ward Village has been coordinated with major existing and contemplated transportation routes, recreational and service areas, and has elements that are consistent with transit-oriented development principles.

155. The goals of The Park Ward Village include creating a livable, walkable environment envisioned for the district decades ago. The Park Ward Village, along with other phases of the Ward MP, will bring housing, parks, open space, retail and commercial facilities to the urban core in a compatibly planned, smart growth way.

156. The Park Ward Village will provide pedestrian and multi-modal connectivity for residents and visitors, and is located near jobs, recreational areas, retail, dining, and transportation services.

157. **Extent to which the Project protects, preserves, or enhances desirable neighborhood characteristics through compliance with the standards and guidelines of the applicable district rules.** The applicable district rules for The Park Ward Village are the Vested Rules. Section 5.2 and Table 5-2 of the Application shows The Park Ward Village's conformance with the Vested Rules and Ward MP.

158. Specific rules with which The Park Ward Village complies include: method of development, land use zone, density, heights, bicycle parking, front yard, side yard, open space, recreation space, view corridors, off street parking and loading, architectural criteria, dedication of public facilities, utilities required to be underground, performance standards, joint development, flood hazard district, reserved housing, FAR and FAR transfers, building height,

tower footprint, view corridor setback, streetscapes, building orientation, tower spacing, and landscaping.

159. Both the City and the HCDA have also encouraged the implementation of the “complete streets” development model, which emphasizes the development of safe, multi-modal, and pedestrian-oriented streetscapes and connectivity.

160. The location and design of The Park Ward Village enhances, promotes and preserves these desirable neighborhood characteristics.

161. The Park Ward Village will be in close proximity to services and amenities throughout the area.

162. The Ward Master Plan has four principal design strategies: connected public spaces; Auahi Street as a pedestrian promenade; mauka-makai view corridors; and enhanced streetscape design. The Park Ward Village implements all four of these design strategies:

- a. The Park Ward Village seamlessly integrates with the expanded Victoria Ward Park. Specifically, the ground floor retail space adjacent to the 37,000 square foot expansion of Victoria Ward Park on the Diamond Head side of the building, and the transition to the Auahi Street pedestrian promenade on the makai side of the building greatly enhances the connectivity between public spaces. Victoria Ward Park is becoming a major community gathering place for events, classes, and concerts. The expansion of the park, in conjunction with the plans to create a seamless transition between the park and the indoor / outdoor ground floor retail space of the development, will significantly

enhance pedestrian access to, and experiences within, the park. The Park Ward Village is also designed to complement Koula, which will be across the park and will also feature ground floor commercial space;

- b. On the makai side of the building, The Park Ward Village's integration with the Auahi Street pedestrian promenade -- a major component of the Ward Master Plan -- will further the plan's goal of creating a connected, active and walkable community, where residents and visitors will have convenient, shaded and landscaped access to the services and amenities of Ward Village and beyond;
- c. The design of other elements of The Park Ward Village also enhance desirable neighborhood characteristics in Ward Village and Kakaako. The design of the development's tower, which includes architectural elements of Hawaii's mid-century modern architecture, complements the architecture of its neighboring developments within Ward Village. To preserve city-wide views while helping to maintain the view corridor to the ocean, the tower is purposely oriented in a mauka-makai direction, and is set back from Ward Avenue more than required; and
- d. The development features a shaded, ground floor retail space that will wrap around the entire platform and be accessible from all four sides of the building. This indoor / outdoor space, will significantly enhance pedestrian activation and facilitate accessibility to and from the expanded Victoria Ward

Park, the Auahi Street pedestrian promenade, Ward Avenue and the new Halekauwila Street extension, all of which are (and will be) major pedestrian thoroughfares.

163. Both the Auahi Street pedestrian promenade and the park will encourage pedestrian activation and interaction in and around The Park Ward Village, and the promenade will provide a convenient, landscaped and shaded pedestrian-oriented streetscape and connectivity to the open spaces, services and amenities throughout Ward Village and beyond.

164. The commercial spaces that wrap around all four sides of the building include spaces that will face the Auahi Street pedestrian promenade, thus further increasing and enhancing pedestrian access and activation along this major corridor connecting the open spaces, retail services and amenities throughout Ward Village.

165. Approximately 129 off-street public parking spaces will be available at The Park Ward Village to serve the needs of visitors to the building, as well as to serve the needs of the surrounding community by providing a central, off-street parking location to help alleviate the congestion of on-street parking within Kakaako.

166. As with all areas of the Ward MP, on completion, The Park Ward Village site will be integrated into VWL's existing operations team that professionally oversees management, maintenance and security throughout the Ward MP area at no cost to the public.

167. **Extent to which the Project avoids a substantially adverse effect on surrounding land uses through compatibility with the existing and planned land use character of the surrounding area.** The surrounding uses and urban areas were taken into

consideration during the planning of The Park Ward Village. Development permits approved under the Ward MP for Waiea, Anaha, Aeo, Ke Kilohana, Aalii, Koula and Victoria Place have brought mixed-use residential buildings, commercial frontage, shopping destinations, and sizeable outdoor areas and seating along Kamakee Street and Auahi Street.

168. The Park Ward Village integrates with these existing and planned conditions by, among other design strategies, transitioning to the ground level open space at the expanded Victoria Ward Park, providing extensive commercial services on all four sides of the building at ground level, and facilitating convenient access to the planned Auahi Street pedestrian promenade. All of these elements, as with the other developments in Ward Village area, create a vibrant streetscape, desired urban form, and pedestrian activation and connectivity.

169. The Park Ward Village is also compatible with surrounding areas in downtown Honolulu, Kakaako and Ala Moana. The addition of residences from The Park Ward Village and other existing nearby projects, within a few minutes of the central business district and existing transportation options, creates the opportunity to significantly shorten one's daily commute, alleviating traffic in urban Honolulu.

170. **Extent to which the Project provides housing opportunities for all income groups, particularly low, moderate, and other qualified income groups.** The Park Ward Village will help to fulfill a continued market demand for residential housing in urban Honolulu close to employment centers, commercial services, entertainment and open spaces as envisioned by both the Mauka Area Plan and the Ward MP.

171. The Ward MP establishes a reserved housing requirement of 20 percent of the total number of residential units within the Ward MP area. Pursuant to the planned development permits for Koula (KAK 18-038) and Victoria Place (KAK 19-069), 108 reserved housing homes are currently required. Consistent with the Ward MP, and following the completion of The Park Ward Village and Ulana Ward Village, approximately 362 reserved housing homes, once approved, will be available to offset the reserved housing requirements for future projects in Ward Village.

172. VWL's decision to prioritize the construction of 697 reserved housing homes in Ward Village prior to the construction of future developments in Ward Village helps to meet a present, critical need to provide timely housing opportunities for local reserved housing purchasers in urban Honolulu.

173. **Impact of the Project on pedestrian oriented development, including complete streets design.** The Park Ward Village's location, orientation and design were carefully chosen to accommodate the pattern of a connected and walkable community coming to life at Ward Village.

174. As noted, both the City and the HCDA have also encouraged the implementation of the "complete streets" development model, which emphasizes the development of safe, multi-modal, and pedestrian-oriented streetscapes and connectivity.

175. The Park Ward Village design provides an outstanding pedestrian environment at a key location within Ward Village through its pedestrian accessibility to commercial spaces from all four sides of the platform, seamless transitions between active retail areas and generous

outdoor spaces, and ease of access to the adjacent expanded Victoria Ward Park and the Auahi Street pedestrian promenade. The Park Ward Village's location and amenities will particularly complement Koula, which will also have ground floor commercial spaces on the Diamond Head side of Victoria Ward Park.

176. The Park Ward Village ground level will provide approximately 22,198 square feet of open space and 37,236 square feet of commercial space. The adjacent Victoria Ward Park will be expanded by over 37,000 square feet, bringing this active community gathering place to 92,429 square feet (and adding 67 percent more open space to the park). The Park Ward Village will also include 75,659 square feet of resident recreation space (52 percent more than required).

177. As also noted, The Park Ward Village is adjacent to the Auahi Street pedestrian promenade, which will provide pedestrian access to all of the amenities and services of Ward Village and beyond.

178. The Park Ward Village also facilitates the complete streets design features of Ward Village by accommodating both short- and long-term bicycle parking in the residential structure and within the parking structure, respectively.

179. The bicycle facility plans are guided by Revised Ordinances of Honolulu ("ROH") Section 21-6.150, as a general recommendation. Exhibit 6 of the Application illustrates the bicycle parking areas, as well as the pedestrian and vehicle access points and circulation plan. Bikeshare stations are also situated at various convenient locations throughout Ward Village.

180. **Impact of the Project on transit-oriented development, including rail, bus, and other modes of rapid transit.** The Park Ward Village is designed in consideration of major

existing and contemplated transportation routes, recreational and service areas. Consistent with certain transit-oriented development principles, The Park Ward Village is located within walking distance of the proposed rail station (near Ward Avenue and Queen Street) and adjacent to bus and trolley routes.

181. VWL has communicated with, and in earlier projects, engaged in construction de-confliction meetings with, HART representatives. VWL stated its commitment to continuing its communication with HART.

182. **Impact of Project on community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector.** The Park Ward Village offers amenities and social gathering space to encourage interaction within its community of residents and visitors, and within the greater communities of Ward Village, Kakaako, and Honolulu.

183. As noted, The Park Ward Village is conveniently situated adjacent to the expanded Victoria Ward Park (which, along with the makai portion of the park), is a central component of the three major connected open spaces proposed in the Ward MP (in addition to the Ka Lai o Kukuluaeo Park (formerly known as the Ewa Plaza) adjacent to Ulana Ward Village and the future Diamond Head Plaza). Victoria Ward Park will continue as a community gathering place for numerous outdoor cultural and entertainment events in urban Honolulu. In addition, the Auahi Street pedestrian promenade on the makai side of The Park Ward Village will visually and thematically connect the residences, amenities and major public spaces throughout Ward Village.

184. These improvements, among others, realize the vision of the Mauka Area Plan to encourage public-private sector cooperation to develop the Mauka Area into an active, mixed-use community with a full array of public and community amenities in Honolulu's urban core.

185. **Impact of the Project on the preservation of important natural systems or habitats.** Consistent with the Sustainability Framework set out in the Ward MP, Ward Village holds Leadership in Energy and Environmental Design-Neighborhood Development (LEED-ND) Platinum certification, the highest rating provided.

186. According to the U.S. Green Building Council, Leadership in Energy and Environmental Design (LEED) developments are designed to deliver the following benefits:

- a. Lower operating costs and increased value;
- b. Reduced waste;
- c. Energy and water conservation;
- d. More healthful and productive environments; and
- e. Reductions in greenhouse gas emissions.

187. The project team for The Park Ward Village is using an integrative design process to identify and use opportunities to employ sustainable strategies across disciplines and building systems. VWL plans to employ the following sustainable practices at The Park Ward Village:

- a. **Location and Transportation:** There are community services within walking distance of the property, and multiple opportunities for public transit. Bike facilities will be provided on site. The Park Ward Village is directly tied into the planned Auahi Street promenade, which will realign Auahi Street with

Pohukaina Street. This will provide essential east-west connectivity for residents, ensure greater neighborhood walkability, and will contribute to the pedestrian network within Kakaako.

- b. Sustainable Sites: To foster a healthy outdoor environment, VWL is committed to minimizing erosion and sedimentation during construction. Landscaping will capture rainwater, encourage time spent outdoors, and cool outdoor spaces. The Park Ward Village will feature indigenous plantings to embrace Hawaiian ecosystems and avoid contributing to invasive plant populations.
- c. Water Efficiency: A number of water-conserving measures will be employed at The Park Ward Village.
- d. Energy and Atmosphere, Indoor Environmental Quality: The Park Ward Village will optimize energy performance and air filtration equipment will exceed performance standards. Outdoor airflow will be monitored, and mechanical systems will be kept clean.
- e. Materials and Resources: The Park Ward Village will responsibly manage construction waste, recycling at least as much waste as possible at the construction site. The building itself will have recycling facilities and recycling will be encouraged.
- f. Indoor Environmental Quality: The Park Ward Village will create sensitive indoor environments with adjustable lighting and cooling systems, and will

provide substantial outdoor views. The building will use materials that meet requirements for indoor environmental air quality.

- g. Innovation: The Park Ward Village is considering a range of sustainability measures that fit the LEED Innovation criteria, which are intended to support creative approaches to green building.
- h. Regional Priority: The Park Ward Village will pursue sustainability opportunities that specifically address local priorities with regard to environment, social equity, and/or public health. The Park Ward Village will address issues including responsible waste management and strategies for energy performance and indoor water conservation.

188. The Application at Appendix A contains the LEED-NC checklist.

189. **Impact of the Project on maintenance of valued cultural, historical, or natural resources.** VWL completed the following studies prior to its submission of the first development permit under the Ward MP:

- a. Historic building inventory (Fung Associates June 2012);
- b. Cultural impact assessment (Cultural Surveys Hawaii May 2012);
- c. Predictive archaeological model (Cultural Surveys Hawaii May 2012); and
- d. Archaeological Inventory Survey Plan (Cultural Surveys Hawaii December 2012).

190. In addition to the foregoing, VWL has complied with HRS Chapter 6E and SHPD's rules including HAR Chapter 13-284 in preparing the necessary archaeological inventory surveys and mitigation documents specific to the Project.

191. The letter from the State Historic Preservation Division dated February 5, 2020 confirming that SHPD accepted the project archaeological monitoring plan and that the permit issuance process may proceed, is attached to the Application at Appendix B.

192. VWL engaged DTL Hawaii, a multidisciplinary Hawaiian strategy design studio, to evaluate and describe (1) the integration of culture and Hawaiian sense of place within The Park Ward Village and associated spaces, (2) VWL's efforts to engage and obtain feedback from cultural descendants and cultural practitioners in the development of The Park Ward Village, and (3) the impacts of The Park Ward Village on community amenities such as gathering places, community centers, culture and arts facilities, and the full array of public facilities normally provided by the public sector, as well as the maintenance of valued cultural, historical, or natural resources.

193. VWL provides that The Park Ward Village was thoughtfully designed to integrate culture and Hawaiian sense of place, fostering connectivity to the aina that surrounds the buildings to allow for ohana to experience the different open green spaces and connect with the aina and one another in a way that is meaningful.

194. The building's location and orientation considered mauka-makai view preservation. Mauka-makai views are not only important for visual aesthetics, but are also

important to maintain the spiritual and metaphoric connectivity and balance that is and has been so important to Hawaiian culture and the people of Hawaii since time immemorial.

195. VWL's completed cultural consultation efforts and will continue to engage with state agencies and cultural stakeholders.

196. Beyond the statutory consultation requirements, VWL has proactively consulted with families who have a connection to the Kakaako area during the planning, designing, and archaeological inventory survey process for the Ward MP.

197. VWL has committed to maintaining valued historical and cultural resources; has complied with applicable laws to ensure that any impacts the Project will have on cultural resources are mitigated in compliance with approved mitigation and protection plans; and has sought to engage in cultural consultation to ensure that Ward Village properly respects and reflects the valued cultural, historical and natural resources of the Kakaako area.

198. **Impact of the Project on maintenance of other resources relevant to the State's economy.** The design of The Park Ward Village facilitates access for residents, locals, and visitors alike, by providing connection to critical centers of commerce, industry, employment, and tourism.

199. The Park Ward Village is located in the core of Honolulu, in close proximity to the central business district, the government center, and commercial, and industrial facilities, along with recreational areas such as Ala Moana Beach Park and Kewalo Basin Harbor.

200. The design of The Park Ward Village recognizes the strong potential for increased growth and development in this area. There is convenient access to mass transit throughout

Ward Village, and The Park Ward Village has been coordinated with major existing and contemplated transportation routes, recreational and service areas, and is consistent with transit-oriented development principles.

201. The Park Ward Village is located near jobs, recreational areas, retail, dining, and transportation services, which are all critical to the State's economy.

202. **Impact of the Project on the commitment of state funds and resources.** The Park Ward Village does not require State funds.

203. Existing and planned infrastructure is adequate to support the Project, and The Park Ward Village will not consume additional State resources. Major community amenities, including the renovated and expanded Victoria Ward Park, will be constructed, maintained and secured without government funding and at no cost to the public.

204. Wilson Okamoto Corporation ("WOC") prepared a Traffic Impact Report ("TIR") for The Park Ward Village dated August 2020. Appendix C of the Application contains: (1) the TIR; and (2) an email from the City and County of Honolulu Department of Planning and Permitting Traffic Review Branch November 24, 2020 stating that the Traffic Review Branch accepted the TIR.

205. In October 2018, WOC completed a Transportation Master Plan and Assessment for the Ward Village Master Plan ("Ward Village Traffic Assessment"), which included what eventually would become The Park Ward Village development, but looked more broadly at regional transportation systems.

206. Since a transportation assessment looks at the performance of transportation modal systems on a regional scale, it does not address project-specific impacts. Therefore, VWL commissioned WOC to conduct a traffic impact report to specifically study the traffic-related impacts of The Park Ward Village and recommend project-specific measures to address the impacts.

207. As with all developments, there are anticipated traffic-related impacts from The Park Ward Village; however, as summarized in the TIR, the level of service operating conditions at the intersections in the vicinity of the Project are, with few exceptions, expected to remain similar to baseline and with and without the Project.

208. In addition, WOC made 16 recommendations in the report to mitigate the traffic impact of the Project, and VWL will be implementing those recommendations in The Park Ward Village project design.

209. VWL is also committed to implementing the roadway improvements planned in the Ward Village Master Plan. As noted in the TIR, for example, in connection with The Park Ward Village development, VWL is planning to proceed with the de facto Halekauwila Street extension to provide an additional east-west connection between Ward Avenue and Kamakee Street, and VWL also plans to proceed with the Auahi Street realignment to connect with Pohukaina Street.

210. As noted in the TIR, these improvements are expected to provide improved mobility within the area. VWL is also continuing to work with the City and County of Honolulu

to incorporate bicycle and pedestrian facilities to encourage other modes of travel within Ward Village.

211. WOC also prepared an Infrastructure Availability Report (IAR) for The Park Ward Village dated November 2020. WOC anticipates that available or planned infrastructure will be adequate to accommodate The Park Ward Village, and has taken steps well ahead of the PDP application to confirm availability of utilities. Section 6.3 of the Application shows a list of utility providers that WOC contacted to confirm infrastructure availability. Appendix D of the Application contains the IAR.

212. **Impact of the Project on employment opportunities and economic development.** Beyond enhancing the lives of its residents and the Ward Village community, The Park Ward Village will have a direct, positive impact on the state economy at a time when private investment is urgently needed to help address the current economic crisis precipitated by the broad effects of the Covid-19 pandemic.

213. Sumner La Croix, Ph.D., Professor Emeritus in the Department of Economics at the University of Hawaii at Manoa and a research fellow with the University of Hawaii Economic Research Organization (UHERO), and Paul Brewbaker, Ph.D., economist and principal of TZ Economics and a former economist for Bank of Hawaii, provided testimony on the positive short- and long-term economic impacts of The Park Ward Village at the hearing.

214. With approximately 546 homes and approximately 22,198 square feet of commercial space, The Park Ward Village will generate substantial short-term benefits by bolstering the Hawaii economy during its long recovery from the COVID-19 epidemic, and will

generate long-term benefits by increasing the Honolulu stock of housing, Honolulu income and employment, and state and city and county of Honolulu tax revenues.

215. The tourism industry on Oahu, the island's largest industry, has been recovering slowly from its sharp decline in spring 2020, but as of February 4, 2021 visitor arrivals are still down more than 70 percent from 2019 levels.

216. UHERO does not expect a full recovery to 2017 visitor arrival levels until 2026 even in its most optimistic forecast scenario.

217. Honolulu lost more than 60,000 jobs in 2020, and new economic activity is needed to fill the gap left by the decline of Oahu's largest industry.

218. The residential construction industry stands out as an industry with the potential to be more elastic in its immediate response to Honolulu's economic downturn. This is particularly the case in winter 2021 given record low interest rates which allow for low-cost builder financing and cheaper mortgage financing for potential home buyers.

219. Honolulu labor markets are far from full employment, and this should help to facilitate rapid expansion of new projects. Additional timely construction spending in Honolulu could generate additional output, income, and state-county taxes when it is most needed over the next several years.

220. Key economic impacts of The Park Ward Village project include:

- a. Spending on The Park Ward Village project would offset some of the decline in spending on public projects in FY2023 and prevent the decline in Hawaii gross domestic product (GDP) and jobs that would otherwise occur.

- b. The value of Honolulu residential building permits fell by more than 50 percent between 2017: Q1 and 2020: Q4. Following a similar time path, the number of private residential units authorized also fell by more than 50 percent between 2015: Q4 and 2020: Q3. Additional spending by The Park Ward Village project would help to stem these declines in construction of residential homes on Oahu.
- c. The Park Ward Village project would help to offset declines in Honolulu construction jobs since they peaked in 2016. Although jobs in the construction-mining sector increased in 2020, the number of jobs is still below the 2016 peak which indicates that construction and other workers looking for work should be available to take the annual average 313 jobs expected to be created by this project's direct and indirect spending through 2025.
- d. Spending by VWL on The Park Ward Village project generates additional spending by workers directly employed on the project by VWL and by indirectly employed workers, *i.e.*, workers hired by Hawaii subcontractors and project suppliers. Follow-on spending by both directly and indirectly employed workers creates multiplier output and additional jobs at Hawaii firms where they spend their money. Multiplier spending tends to be larger when the economy is in recession and unemployment is relatively high. The December 2020 UHERO forecast expects unemployment to remain above full employment into 2025.

- e. The additional workers directly and indirectly employed on The Park Ward Village project as well as additional workers employed via multiplier spending will contribute more to Hawaii GET tax collections and to Hawaii income tax collections. Tax receipts generated by the project will help the state and City and County of Honolulu fill a 3-4 year shortfall in tax revenues below 2019 levels and will reduce the need for tax increases or cuts to spending on vital state and county services.
221. The longer-term benefits expected from The Park Ward Village project include:
- a. The project adds to the overall supply of housing on Oahu. Any additions to the stock of housing on Oahu will help to bring down or hold down housing prices generally and will contribute to the modernization of Hawaii's overall housing stock. Lower overall housing prices will help to keep highly educated Hawaii people who are needed to run and staff new and existing Hawaii businesses in the state.
 - b. This project also helps to ensure a basis for commercial success of new and existing businesses in Kakaako, the downtown business district, and Ala Moana, as these nearby businesses are likely to be patronized by residents of The Park Ward Village. In addition, the convenient location of The Park Ward Village and inclusion of adequate parking for the commercial and retail businesses to be located therein, is likely to draw patrons from the broader Kaka'ako neighborhood and Honolulu urban core.

- c. The provision of more housing close to the downtown business district, UH medical school, Ala Moana Center and near transit is important in helping to manage future traffic flows in Honolulu, which is a key ingredient to future economic growth on Oahu.
- d. Once this project is completed, it will employ staff and hire local firms for administration, operations, and maintenance. This will increase Oahu output, employment, and state and city-county tax collections.
- e. There will be a permanent boost to property tax collections by the City and County of Honolulu that will commence during project construction and when the new units are ready for occupancy.

222. The estimated project economic stimulus includes \$620 million in development / construction output; \$39 million in state taxes during construction; \$3.2 million in conveyance taxes; and approximately \$2.2 million in school impact fees. In addition, VWL plans to use local construction labor, and the development will create an average of 441 jobs annually during construction (with approximately 789 jobs during the peak of construction in approximately 2023).

223. Over a 30-year period, the development is projected to generate (in 2020 dollars) \$500.1 million in economic output for operations and maintenance; \$15 million in annual retail output; and \$30.8 million in state taxes for building operations and maintenance. The development is also projected to create 49 long-term jobs for building operations and amenities, as well as 127 long-term retail jobs combined.

224. **Impact of the Project on maintenance and improvement of educational programs and services provided by schools.** HRS §§ 302A-1601 to 320A-1612, regarding School Impact Fees, establish a structure for assessing school impact fees for residential development.

225. Pursuant to this law, the State of Hawaii Department of Education is administering a school impact fee district from Kalihi to Ala Moana, an area that includes The Park Ward Village site. VWL will comply with all applicable laws regarding school impact fees.

SHADOW, WIND AND NOISE STUDIES

226. **Shadow Study.** In compliance with the Vested Rules and the Ward MP, The Park Ward Village was designed and sited to preserve Mauka-Makai views and minimize shadow effects on neighboring buildings. A shadow study is included in the Application as Appendix E. The shadow study indicates that there will be no substantially adverse impacts upon adjacent buildings from The Park Ward Village.

227. **Wind Study.** Rowan Williams Davies & Irwin Inc. ("RWDI") prepared a detailed wind analysis study for The Park Ward Village. The wind study focused on frequently used pedestrian areas such as main entrances, sidewalks, and outdoor seating areas at both street and podium level. Wind tunnel measurements for 36 wind directions were combined with long-term weather data to predict wind speeds and frequencies. These data were then compared with wind comfort and safety criteria to determine if they are appropriate for the intended use of the pedestrian areas on and around The Park Ward Village.

228. VWL incorporated RWDI's recommendations into the design of The Park Ward Village. At ground level, landscaping will provide wind mitigation and ensure a comfortable environment, and at the amenity deck (Level 8 of the platform), wind mitigation elements and landscaping will mitigate wind conditions. RWDI's letter describing its study is attached to the Application as Appendix F.

229. **Noise impact analysis.** Salter Inc. conducted an environmental noise study for The Park Ward Village.

230. As noted in Salter Inc.'s letter dated October 12, 2020 (included in the Application as Appendix G), the study included noise findings and mitigation recommendations. VWL plans to address those recommendations as follows:

- a. **Noise Environment:** A range of architectural and engineering recommendations to reduce noise within the tower are being considered.
- b. **Building Operational and Mechanical Noise:** Mitigation of building mechanical and operational noise will be incorporated into the project design. A range of measures to reduce mechanical sound is being considered.
- c. **Parking Structure and Loading Area Noise:** To mitigate parking and loading noise, noise mitigation will be considered in the design of the parking area and selection of materials.
- d. **Construction Noise:** VWL will comply with all noise permit regulations.

INFRASTRUCTURE

231. Utilities and government agencies have confirmed the current availability of infrastructure to support the Project.

232. Potable water service is available from the municipal water system operated by the City and County of Honolulu's Board of Water Supply. The BWS confirmed in its letter dated September 21, 2020 that the existing water system can accommodate the Project.

233. Sewer service is available from the municipal sewer system operated by the City and County of Honolulu, Department of Environmental Services. The Sewer Connection Application for the project was approved by DPP on January 25, 2020.

234. The Honolulu Fire Department was consulted on August 13, 2020 to discuss the project and proposed fire protection methods for the Project. The Project will be protected by public fire hydrants. A fire sprinkler system will also be provided within the building. Plans for fire protection measures based on recommendations by the Honolulu Fire Department will be implemented during the final design phase.

235. Drainage runoff from the Project will not increase the peak flow rate and volume. A portion of runoff from the project site will be collected within a private drainage system owned and maintained by VWL with a series of grated drain inlets and catch basins. Another portion of runoff from the project site sheet flows towards Ward Avenue and will be collected by catch basins and directed to the existing City box drain. The Project will not adversely impact the existing performance of the City system.

236. The Project will treat the overall storm water quality with retention and biofiltration practices using landscaped areas on the platform deck and the ground floor. Portions of the storm water quality that cannot be treated using the on-site retention and biofiltration will be treated by a manufactured treatment device. The City reviewed and accepted a Storm Water Quality Strategic Plan for the Project on October 23, 2019.

237. Hawaiian Electric, in a March 31, 2020 letter, confirmed its intent to work with VWL to provide service to The Park Ward Village development.

238. Hawaiian Telecom, Charter Communications, and Hawaii Gas have all confirmed that their existing systems have capacity to serve the Project.

239. WOC also evaluated the impact of sea level rise on the Project. The Pacific Islands Ocean Observing System Hawaii Sea Level Rise Viewer shows that no portion of the Project area will be affected by a 3.2 foot sea level rise by the year 2100 due to passive flooding and annual high wave flooding. The Project site is not within the projected sea level rise exposure area.

GOVERNMENT AGENCY COMMENTS

240. **State of Hawaii Department of Transportation (“DOT”)**. The DOT Highways Division submitted comments regarding the Project in a letter to HCDA dated February 11, 2021. WOC addressed the DOT’s TIR-related comments at the hearing as follows:

- a. **Regional traffic study**: WOC provided a copy of the 2018 regional traffic study as requested by DOT.

- b. Requesting TIR to include Cooke Street and Coral Street intersections with Ala Moana Boulevard: the subject intersections were included in the overall field investigations for the TIR for purposes of identifying traffic distribution in the region. The intersections were not considered part of the primary distribution route associated with the Project, and the level of influence to change the level of service is minimal.
- c. Requesting TIR to include Ala Moana Boulevard intersections with Kamakee Street, Ward Avenue, Cooke Street and Coral Street: similar to the Cooke Street and Coral Street intersections discussed above, the intersections were not considered part of the primary distribution route associated with the Project, and the level of influence to change the level of service is minimal. The cumulative amount of traffic for Ulana Ward Village and The Park Ward Village will be less than the daily fluctuations that will occur in traffic demands along Ala Moana Boulevard.
- d. Suggestion to prepare one TIR applicable to both Ulana Ward Village and The Park Ward Village applications: Each project's traffic generation is incorporated into the other project's TIR, and studies for both Ulana Ward Village and The Park Ward Village looked at the cumulative effects of both projects. The studies are prepared as separate documents because the City and County of Honolulu requested that a separate TIR document be prepared for each project.

e. Requesting explanation of TIR reduction of forecasted peak traffic hour trip generation to include multi-modal transportation and the number of off-street parking spaces proposed:

The off-street parking at The Park Ward Village is an integral part of an area-wide parking strategy within Ward Village based upon specific land uses.

- i. Parking for commercial uses is provided not only within the localized block, but also in regional district parking areas, which supports complementary uses as the need arises.
- ii. Ward Village currently has approximately 4,100 residential and public parking spaces. Upon the completion of Ulana Ward Village and The Park Ward Village, total district parking will be reduced by several hundred spaces, and at ultimate build-out, total district parking within Ward Village will be further reduced to approximately 2,700 parking spaces.
- iii. This area-wide parking strategy and regional district parking for commercial uses fosters multi-modal travel by utilizing and encouraging the “park-once” concept, in which patrons will park once and use different modes of travel to access shopping, dining, entertainment and other venues within Ward Village.

241. Honolulu Fire Department (“HFD”). HFD submitted comments regarding the Project in a letter to HCDA dated February 10, 2021. WOC confirmed with HFD that its

comment letter contained standard language, and that the Project complies with all HFD requirements.

242. City and County of Honolulu Department of Transportation Services

(“DTS”). DTS submitted comments regarding the Project TIR in a letter to HCDA dated February 22, 2021. VWL and WOC addressed DTS’s comments (to the extent not addressed in connection with the DOT comments) at the hearing as follows:

- a. Parking: As noted through other evidence, incorporated by reference, parking counts for The Park Ward Village are required based on present, actual market demand for residential and commercial regional needs (as well as part of an area-wide parking strategy), and not based on future speculative projections of the completion of the rail system.
- b. HRS § 296-71 requirement for electric vehicle space and charging system: WOC is aware of the requirement.
- c. TIR should identify an appropriate speed limit for streets adjacent to the Project: WOC will be conducting a speed study for the region and include the regional information in an updated Ward Village Traffic Assessment.
- d. Bicycle storage facilities: WOC will work with the Project architect to identify appropriate locations for bike storage areas / racks and provide recommendations.
- e. Loading zones: The recommendation to actively monitor and manage all street loading operations is already included in the TIR.

- f. Street usage permit: As typically required, WOC will obtain a street usage permit from DTS for construction-related work that may require temporary street closures.
- g. Neighborhood impacts: WOC's regular practice is to inform area representatives, the neighborhood board, government agencies and others about the details and status of the Project.
- h. Disability and Communication Access Board ("DCAB"): WOC will comply with the requirement to submit Project plans to DCAB for review.

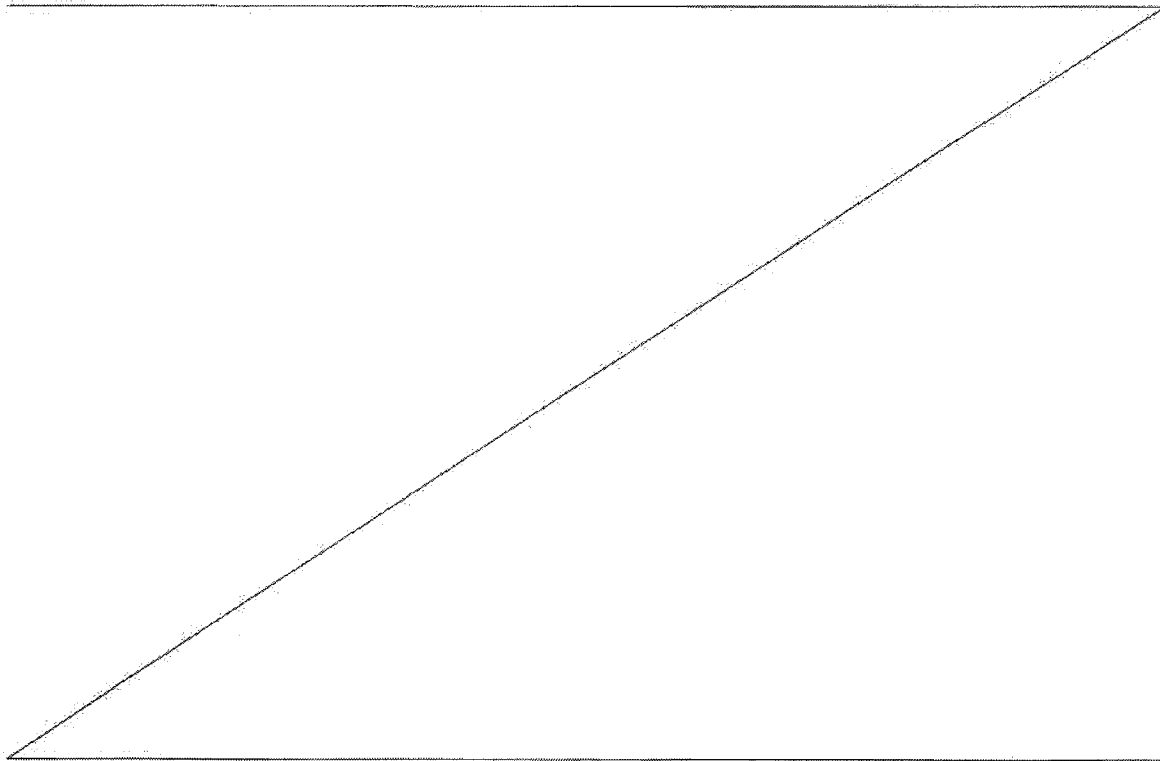
243. Honolulu Police Department ("HPD"). HPD submitted comments regarding the Project in a letter to HCDA dated February 5, 2021. HPD recommended that all necessary signs, lights, barricades, and other safety equipment and measures be taken by the Project contractor during construction, and suggested various measures to address public safety for the Project after completion.

244. Board of Water Supply ("BWS"). BWS submitted comments regarding the Project in a letter to HCDA dated February 22, 2021. The Park Ward Village is part of Phase 3 of the Ward MP. VWL will comply with BWS's request that VWL shall complete the upgrade of the 6-inch water main on Queen Street, from Cooke Street up to the existing 12-inch water main located between Cummins and Kamakee Streets, to a 12-inch water main prior to the commencement of Phase 3 of the Ward MP.

245. City and County of Honolulu Department of Planning and Permitting ("DPP"). DPP submitted comments regarding the Project in a letter to HCDA dated February

18, 2021. VWL is committed to work with DPP on the details of design to accommodate concerns as appropriate, and VWL addressed off-street parking issues in connection with the responses to DOT and DTS.

246. **Honolulu Authority for Rapid Transportation (“HART”)**. HART submitted comments regarding the Project in a letter to HCDA dated March 2, 2021. HART noted that it has conducted, and is willing to share, its extensive technical research on the historic resources and themes in the area and the history of the ahupuaa. In addition, HART requested that VWL continue to communicate and coordinate with HART on any issues related to the Project that may affect HART’s easement or plans for its system and station. VWL is committed to continuing its communications with HART.



CONCLUSIONS OF LAW

1. If any conclusions of law shall be determined to be findings of fact, it is intended that every such conclusion of law shall be construed as a finding of fact. Conversely, if any of the above findings of fact shall be determined to be conclusions of law, it is intended that every such finding of fact shall be construed as a conclusion of law.

2. Certain facts or findings set forth within the specified criteria addressed herein may apply to one or more criteria, issue, or legal standard under the Vested Rules, HRS Chapter 206E and other applicable law. To the extent such facts or findings are addressed within a particular heading or section herein does not limit it to that heading or section, but instead all such facts or findings are incorporated by reference for each applicable criteria, issue or legal standard as if specifically set forth within that heading or section.

3. HCDA has exclusive jurisdiction to approve and issue planned development permits within the KCDD pursuant to HRS §§ 206E-4 and 206E-5.6.

4. Pursuant to the Ward MP, approved by HCDA on January 14, 2009, the rules applicable to this planned development permit are those contained in HAR Chapter 15-22 (dated June 2005), also referred to herein as the "Vested Rules."

5. Pursuant to HRS § 206E-5.6(g), proceedings regarding the acceptance of a developer's proposal to develop lands under the Authority's control shall be considered a contested case hearing.

6. The modification proposed for the Project meets the standards set forth under the Vested Rules, including HAR § 15-22-22 and HAR § 15-22-120 (7).

7. SHPD has exercised its responsibility and has met its obligations pursuant to HRS § 6E-42 and HAR Chapter 13-284 to review and comment on the Project impacts and mitigation of these impacts on significant historic properties and burial sites.

8. Article XII, Section 7 of the Hawaii State Constitution requires the State to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupuaa tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. Haw. Const. art. XII, § 7.

9. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawaii County Planning Commission*, 79 Hawaii 425, 903 P.2d 1246 (1996); *Ka Paakai O Ka Aina v. Land Use Commission*, 94 Hawaii 31, 7 P.3d 1068 (2000).

10. Through its consideration of the record and the evidence presented by VWL, including, but not limited to, the evidence related to cultural and historical preservation noted in the FOF above, HCDA, through its findings, conclusions and conditions has: a) identified and has determined the scope of valued cultural, historical, or natural resources in the application area, including the extent to which traditional and customary native Hawaiian rights are exercised in the application area; b) has considered the extent to which those resources will be affected or impaired by the proposed action; and c) has considered the feasible action to be taken by HCDA to reasonably protect native Hawaiian rights. *See Ka Paakai*, 94 Hawaii at 47, 7 P.3d at 1084.

RULINGS ON PROPOSED FOF AND COL

Any proposed FOF or COL not already ruled upon by HCDA by adoption herein, or rejected by clearly contrary FOF or COL herein, is hereby denied and rejected.

DECISION AND ORDER

Based on the foregoing FOF and COL, and upon consideration of all applicable statutes, rules and regulations; the evidence, testimony and argument presented by VWL; and all other evidence appearing in the record, the Authority concludes that the Project, including the proposed modifications, satisfies the requirements of HRS Chapter 206E, HRS Chapter 6E, the Vested Rules, HAR Chapter 13-284, the Ward MP, the Ward MP D&O, the Development Agreement, and the vision and intent of the applicable Mauka Area Plan for a development permit.

IT IS HEREBY ORDERED that the planned development permit for the Project, including the proposed two modifications (1) to increase the mixed-use platform height from forty-five (45) to seventy-five (75) feet including an additional 12 feet of height for accessory use and elevator machinery structures with a total area less than 15% of the platform roof area and (2) to modify the view corridor setback on Ward Avenue to accommodate a continuous building façade, is APPROVED, subject to the following conditions:

1. Reserved housing shall be required pursuant to the Vested Rules. Pursuant to the planned development permits for Koula (KAK 18-038) and Victoria Place (KAK 19-069), VWL is currently required to provide a minimum of 108 reserved housing units within Ward Village (the "Required Reserved Housing Units"). The 697 reserved housing units at Ulana Ward

Village exceeds this requirement and will also fulfill the reserved housing unit requirement for the Project. Accordingly, pursuant to the terms of the Development Agreement (and as confirmed by Condition No. 4 of the planned development permit for Victoria Place), after the approval and delivery of the Project and Ulana Ward Village (KAK 21-001), VWL shall have the right to use, at its option, 362 reserved housing unit credits to satisfy all or part of the Ward MP reserved housing requirements for future developments on a one-for-one basis and/or to true up the reserved housing mix upon completion of all projects within the Ward MP.

Reserved Housing		
Project	Residential Units	Reserved Housing Units Provided
<i>KAK 13-036 [LB2-P1] Waiea</i>	*177	0
<i>KAK 13-037 [LB3-P1] Anaha</i>	318	0
<i>KAK 13-038 [LB5-P1] Ke Kilohana</i>	424	375
<i>KAK 14-074 [LB1-P2] Aeo</i>	466	0
<i>KAK 16-075 [LB1-P3] Aalii</i>	751	150
<i>KAK 18-038 [LB1-P4] Koula</i>	570	0
<i>KAK 19-069 [LB2-P3] Victoria Place</i>	350	0
<i>KAK 21-001 [LB5-P2] Ulana Ward Village</i>	697	697
<i>KAK 21-002 [LB1-P5] The Park Ward Village</i>	546	0
Total Residential Units	4299	1222
Reserved Housing Units Required (20%)	860	
Projected Reserved Housing Units Surplus Balance	362	

*The Waiea Planned Development Permit included 177 units, but only 174 units were constructed

2. Prior to the staff approval of the foundation permit for the Project, VWL shall provide to the HCDA staff: 1) a financial guaranty bond from a surety company authorized to do business in Hawaii; 2) an acceptable construction set-aside letter; or 3) other forms of financial assurance based upon the public disclosure statements of VWL's parent company reasonably acceptable to the HCDA Executive Director, that evidences financing or available funds for the construction of the Required Reserved Housing Units and those required for the Project.

3. The sale of the Required Reserved Housing Units and those required for the Project shall be consistent with the Vested Rules. Within 180 calendar days of the issuance of this FOF, COL, and D&O for the Project, VWL shall provide a development plan and program for the sale of the reserved housing units, which shall include a statement that:

- a. The weighted average price of reserved housing units shall be one hundred twenty percent (120%) of area median income ("AMI"); and
- b. The mix of reserved housing units provided by all projects within the Ward MP shall contain a similarly representative mix of market-priced units planned for all projects within the Ward MP.

VWL shall provide a reserves study to the HCDA staff as a part of the reserved housing development plan.

4. Once a construction contract and performance and payment bond for the construction of the Required Reserved Housing Units and those required for the Project are executed, VWL shall submit a copy of the construction contract and bond to the HCDA staff.

5. As provided in the Ward MP D&O, a minimum of ten percent (10%) of the reserved housing units at Ulana Ward Village (KAK 21-001) shall be offered at or below one hundred percent (100%) of AMI.

6. VWL may designate units planned for the Park Ward Village (KAK 21-002) as reserved housing units and no amendment of this Decision and Order shall be necessary; provided, however, that such additional units shall also be subject to the Vested Rules; and

provided, further, that in the event of any such designation, VWL shall submit a program for sale of such additional reserved housing units acceptable to the HCDA Executive Director.

7. The timing of the commencement of construction of the Required Reserved Housing Units (and any extensions thereof) shall be governed by Condition No. 3 of the Victoria Place D&O (KAK 19-069) (“VP Condition No. 3”), which states:

In accordance with §15-22-81, construction shall commence on the reserved housing requirement for Koula and Victoria Place within two years after the development is completed on the Project, provided that the executive director may grant up to two (2) extensions of one hundred eighty (180) days each if the developer can demonstrate that building the reserved housing units will be satisfied without commencing construction within two years.

8. The timing of foundation permit approval for the Project is governed by Condition No. 5 of the Victoria Place D&O (KAK 19-069) (“VP Condition No. 5”), which states:

No foundation permits shall be approved for future projects on Land Block 1 and 2 of the Ward Neighborhood Master Plan until and unless construction commences on the reserved housing requirement for Koula and Victoria Place in accordance with HAR §15-22-81.

For avoidance of doubt, the word “commence” in VP Condition No. 3 and VP Condition No. 5 means execution of a construction contract(s) for the entirety of the project and the issuance of the foundation permit for the construction of the Required Reserved Housing Units, and the word

“completed” in VP Condition No. 3 means the date that the temporary certificate of occupancy is issued for Victoria Place or Koula, whichever comes first.

9. Prior to the HCDA staff approval of the foundation permit for the Project, VWL shall submit for review by the HCDA Executive Director a landscape plan for the Project. The landscape plan shall be inclusive of the renovation and expansion of the mauka portion of Victoria Ward Park, which shall be generally consistent with the conceptual landscape plan shown in Exhibit P-1 at Exhibit 5. Upon staff approval of the foundation permit for the Project, VWL shall be authorized to proceed with construction to renovate and expand Victoria Ward Park.

10. Prior to the HCDA staff approval of the certificate of occupancy for the Project, VWL shall complete the renovation and expansion of the mauka portion of Victoria Ward Park.

11. Prior to HCDA approval of the foundation permit for the Project, VWL shall submit for review and acceptance by the HCDA Executive Director documentation indicating that the proposed Project design meets the applicable Ward MP sustainability guidelines. The HCDA Executive Director’s review and acceptance shall be limited to ensuring the proposed design meets applicable Ward MP standards.

12. Prior to the HCDA staff approval of a building permit for the Project, VWL shall submit to the HCDA Executive Director documentation verifying that VWL has met with the State of Hawaii Department of Education (“DOE”) and will satisfy state statutory school impact fee requirements.

13. VWL shall comply with any applicable school impact fee program adopted by the DOE pursuant to HRS § 302A-1601 to HRS § 302A-1612.

14. Prior to the HCDA staff approval of the superstructure permit for the Project, VWL shall submit proof of compliance with HAR § 15-22-77(a), which provides that, “[n]o building wall shall contain a reflective surface for more than thirty percent of the wall's surface area.” Per HAR § 15-22-5, “Reflective Surface means any glass or other surface, such as polished metal, specified in the manufacturer's literature having reflectance (designed by such terminology as average daylight reflectance, visible light reflectance, visible outdoor reflectance, and comparable terms) of over thirty percent.”

15. Prior to the HCDA staff approval of a certificate of occupancy for the Project, VWL shall complete the de facto Halekauwila Street extension through Land Block 1 from Ward Avenue to Kamakce Street as proposed in the Ward MP.

16. Prior to the HCDA staff approval of a certificate of occupancy for the Ulana Ward Village project, VWL shall complete the realignment of Auahi Street to connect with Pohukaina Street as part of Phase 2 of the Auahi Street pedestrian promenade design and phasing plan submitted to HCDA in connection with Condition No. 13 of the Planned Development Permit for KAK 18-038 (Koula).

17. Prior to the installation of any photovoltaic panels, or any other components of the Project that have a glint and glare or may emit radio frequency interference to aviation-dedicated radio signals, VWL shall request approval from the State of Hawaii Department of Transportation Airports Division as may be required.

18. VWL shall implement all applicable traffic mitigation measures and recommendations identified in the TIR for the Project.

19. VWL shall implement all traffic mitigation measures and recommendations in the updated Ward Village Traffic Assessment applicable to the Project.

20. Except as otherwise provided herein (and to the extent such comments and recommendations are not otherwise in conflict with this Decision and Order, the Vested Rules or other applicable law), VWL (to the extent it has not previously done so) shall address the comments and recommendations provided by the following governmental agencies:

- a. City and County of Honolulu Board of Water Supply
- b. State of Hawaii Department of Transportation;
- c. City and County of Honolulu Department of Transportation Services;
- d. City and County of Honolulu Department of Planning and Permitting;
- e. City and County of Honolulu Fire Department; and
- f. City and County of Honolulu Police Department.

21. VWL shall implement the noise mitigation measures outlined in the noise impact analysis for the Project.

22. VWL shall plan, design, implement, and maintain the Project site in accordance with the following City and County of Honolulu and State of Hawaii Requirements and Guidelines, as applicable:

- a. "Best Management Practices (BMP) Manual for Construction Sites,"
November 2011;

- b. “Rules Relating to Water Quality,” December 2018;
- c. “Storm Drainage Standards,” August 2017;
- d. The Revised Ordinances of Honolulu (ROH) – for grading, specifically Chapter 14, “Public Works Infrastructure Requirements Including Fees and Services,” 1990 as amended;
- e. Hawaii Administrative Rules, Title 11, Chapter 54 (11-54), “Water Quality Standards”; and
- f. Hawaii Administrative Rules, Title 11, Chapter 55, “Water Pollution Control” – for construction runoff, specifically Appendix C, National Pollutant Discharge Elimination System (NPDES) “General Permit Authorizing Discharges of Storm Water Associated with Construction Activities” (expires February 8, 2024).

23. VWL shall comply with SHPD mitigation plans, and all applicable laws regarding historic and cultural properties and burial sites, including, but not limited to, the provisions of HRS Chapter 6E.

24. In the event any human skeletal remains are inadvertently discovered in the Project area, any activity in the immediate area that could damage the remains or the potential historic site shall cease.

25. The discovery shall be reported as soon as possible to the Department of Land and Natural Resources, the appropriate medical examiner or coroner, and the Honolulu Police Department pursuant to HRS § 6E-43.6. The Department of Land and Natural Resources has

jurisdiction over any inadvertent discovery of human skeletal remains over fifty-years old, and the protocol to be followed is set forth in HAR § 13-300-40.

26. Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements which are immediately necessary to proceed with the Project; and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program as follows:

- a. Improvements Necessary to Proceed with the Project: With regard to infrastructure improvements or requirements that are necessary to proceed with the Project, VWL shall be responsible for providing necessary developer improvements.
- b. Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program: As part of the HCDA District-Wide Improvement Program, road and utility improvements are being undertaken in increments throughout the Kakaako Community Development District, financed in part through an Improvement District Program. In this regard, the Project shall be subject to assessments for its pro rata share of the cost of improvements which may, in the future, be necessarily undertaken in the vicinity of the respective projects under the HCDA or other government agencies' improvement programs. The Project will be assessed under the same methods and in the same manner as other properties in the area. In order to ensure the participation of the Project, VWL, and its successors and assigns, shall agree

to participate in the HCDA District-Wide Improvement Program at the time said program is implemented. The terms specified in the agreement shall be made a part of all condominium and conveyance documents for the Project and said documents shall be submitted to HCDA prior to submission to the Real Estate Commission and execution.

27. VWL shall comply with all material representations and commitments regarding the Project made to HCDA in the permit application process.

28. Except as otherwise provided herein, VWL shall comply with all applicable requirements of the Vested Rules.

29. Prior to approval of the foundation permit for the Project, VWL shall record a memorandum of this Decision and Order with the Bureau of Conveyances or the Assistant Registrar of the Land Court as a covenant running with the land. Proof of such filing in the form of copies of the covenants certified by the appropriate agency shall be submitted to HCDA.

ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this May 5, 2021. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawaii, May 5, 2021.

<u>Jason T. Okuhama</u>	Hawaii Community Development Authority (Kakaako Members)
<u>Kevin G. Sakoda</u>	Jason Okuhama
<u>CTB</u>	Kevin Sakoda
<u>Daniel I Ho</u>	Chason Ishii
<u>David Rodriguez</u>	Daniel Ito
<u>Craig Hirai</u>	David Rodriguez, Designated Representative of the Director of Department of Transportation
<u>Wei Fang</u>	Craig Hirai, Director of Finance Department of Budget and Finance
<u>John Whalen</u>	Wei Fang
<u>Abstained</u>	John Whalen, Chairperson
<u>Excused</u>	Phillip Hasha

APPROVED AS TO FORM:

Kelly Suzuki
Deputy Attorney General

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re Application of

VICTORIA WARD, LIMITED,

Applicant

For a Planned Development Permit for Land
Block 1, Project 5 (The Park Ward Village).

Application No. KAK 21-002

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document will be served on the parties below by hand delivery or by certified mail with return receipt requested, as noted:

CERTIFIED J. DOUGLAS ING, Esq.
MAIL: BRIAN A. KANG, Esq.
SUMMER H. KAIawe, Esq.
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Honolulu, Hawaii 96813

CERTIFIED DOUG JOHNSTONE
MAIL: President, Hawaii
The Howard Hughes Corporation
1240 Ala Moana Boulevard, Suite 200
Honolulu, Hawaii 96814

HAND: BRYAN C. YEE, Esq.
Supervising Deputy Attorney General
Department of the Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Honolulu, Hawaii, May 5, 2021



Deepak Neupane, P.E., AIA
Executive Director

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HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAII

In re:)
)
 The Application of)
)
 VICTORIA WARD, LIMITED,)
 a wholly owned subsidiary)
 of HOWARD HUGHES)
 CORPORATION,)
)
 Applicant,)
)
 To request development)
 permits with modifications)
 to develop residential)
 projects, Permit Number)
 KAK 21-001, aka)
 "**Ulana Ward Village**," at)
 820 Auahi Street; 831,)
 841, 851 Pohukaina Street,)
 Honolulu, Hawaii 96814,)
 TMK Number (1)2-1-053:001)
 (portion); and Permit)
 Number KAK 21-002, aka)
 "**The Park Ward Village**,")
 at 333 Ward Avenue; 940)
 Auahi Street, Honolulu,)
 Hawaii 96814, TMK Number)
 (1)2-3-002:002 & 059)
 (portion).)
 _____)

MODIFICATION HEARING
 TRANSCRIPT OF PROCEEDINGS
 WEDNESDAY, MARCH 10, 2021

Taken remotely via Zoom, commencing at 10:00 a.m.,
 before LAURA SAVO, Certified Shorthand Reporter for

the State of Hawaii. **EXHIBIT 10**

A P P E A R A N C E S

1
2 John Whalen, Chairperson

3 Deepak Neupane, Executive Director

4 Carson Schultz, Director of Planning and Development

5 Craig Nakamoto, Compliance Assurance & Community
6 Outreach Officer

7 Francine Murray, Program Specialist

8 Tommilyn Soares, Secretary to the Executive Director

9 Kelly Suzuka, Deputy Attorney General

10 BOARD MEMBERS:

11 Wei Fang

12 Chason Ishii

13 Phillip Hasha

14 Craig Hirai, B&F (Ex Officio)

15 Jason Okuhama

16 David Rodriguez, DOT (Ex Officio)

17 Kevin Sakoda

18 Dean Uchida, DPP

19 ALSO PRESENT:

20 For the Applicant:

21 J. DOUGLAS ING, ESQ.

22 BRIAN A. KANG, ESQ.

23 SUMMER H. KAIawe, ESQ.

24 Watanabe Ing LLP

25 999 Bishop Street, 23rd Floor

Honolulu, Hawaii 96813

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1 Wednesday, March 10, 2021, 10:00 a.m.

2 -o0o-

3 CHAIR WHALEN: Aloha, good morning. My
4 name is John Whalen, Chair of the Authority. In
5 accordance with social distances guidelines and
6 directives provided by the governor's emergency
7 proclamations due to the COVID-19 pandemic, we are
8 holding today's general board meeting -- Kaka'ako
9 board meeting virtually, on Zoom. The Zoom link
10 details were included on the meeting agenda.
11 Therefore, members of the public are welcome to join
12 us on Zoom. This meeting is also being live-streamed
13 on HCDA's YouTube page. HCDA communication staff is
14 hosting this Zoom meeting. Once this public hearing
15 begins, everyone will be muted for clearer audio.

16 Board members, if you have any questions
17 or comments, please unmute yourselves to speak.

18 (Brief interruption.)

19 CHAIR WHALEN: Could you please mute
20 yourself, whoever is joining?

21 This is a virtual, public meeting. So to
22 prevent any distraction, if you are not a board
23 member, staff member or HCDA's attorney general,
24 please turn off your video during the meeting.

25 If you are providing verbal, public

1 testimony, your name will be called accordingly.
2 Please turn your video on, clearly state your name
3 and affiliation and proceed with your testimony.
4 When you have finished, please turn off your video.
5 Thank you.

6 I'd like to call to order now the March
7 10, 2021 public hearing of the Hawaii Community
8 Development Authority. The time is now 10:01, I
9 believe, 10:02 a.m.

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

14 Is there anybody I have not mentioned who
15 has joined us and whose icon I can't see?

16 MEMBER HASHA: Hey, John, this is
17 Phillip.

18 CHAIR WHALEN: Phillip. Thank you.
19 Phillip Hasha has joined us.

20 Anyone else I missed on the board? I
21 don't believe I did.

22 Okay. Individuals from the public who
23 want to provide verbal, public testimony will be
24 permitted to provide testimony following the
25 applicant's presentation. If you have not already

1 signed up to testify, please submit your name and
2 affiliation to the host, using the chat function in
3 Zoom.

4 So I'd like to begin, by asking counsel
5 for the applicant to make their appearance.

6 MR. KANG: Good morning, Chair Whalen,
7 members of the board, HCDA staff. Brian Kang,
8 Douglas Ing and Summer Kaiawe, appearing on behalf of
9 applicant Victoria Ward, Limited, for both
10 applications, KAK 21-001, Ulana Ward Village, and KAK
11 21-002, The Park Ward Village.

12 CHAIR WHALEN: Okay. Thank you. Good
13 morning to all of you. So today's hearing on
14 development permit Nos. KAK 21-001 and -002, are
15 being held in accordance with Hawaii Revised Statute,
16 section 206E-5.6, subchapter 3, of Hawaii
17 Administrative Rules, Chapter 219 of Title 15 and the
18 vested HAR Chapter 15-22.

19 The nature of today's public hearing is
20 to allow the applicant to present the proposed
21 modification request as provided in section 15-22-120
22 of the vested rules, regarding the podium height and
23 view corridor setback, and to provide the general
24 public with the opportunity to present oral and/or
25 written testimony. Victoria Ward, Limited, a wholly

1 owned subsidiary of Howard Hughes Corporation, is the
2 applicant for both projects.

3 So the first of the development permits
4 is KAK 21-001, Application 1, Ulana Ward Village.
5 The tax map key for that is 20 -- 2-1-053, a portion
6 of parcel 1. And the project location is 820 Auahi
7 Street and 831, 841, 851 Pohukaina Street, Honolulu,
8 Hawaii 96814.

9 So the modification requested is from the
10 requirements of the applicable vested Mauka Area
11 Rules, HAR Chapter 15-22, in order to increase the
12 height of the parking podium from 45 feet to 75 feet,
13 with an additional 12 feet of height for
14 accessory-use structures, with a total area of less
15 than 15 percent of parking and mixed-use podium roof
16 area and 18 feet of height for structures, housing,
17 elevator machinery on the parking and mixed-use
18 podium roof. The application date was December 20,
19 2020.

20 The second permit for KAK 21-002,
21 Application 2, is for The Park Ward Village. The tax
22 map key for that project is 2-3-002 -- parcel 002 and
23 a portion of parcel 059. The project location is --
24 the address is 30- -- 330 [sic] Ward Avenue and 940
25 Auahi Street, Honolulu, Hawaii 96814.

1 So similarly, the modification of -- the
2 two modifications requested are from the view
3 corridor setback on Ward Avenue, to accommodate a
4 continuous building facade that defines the edge of
5 the street and allows for articulation of building
6 facade -- of the building facade along Ward Avenue.

7 And the second part of that modification
8 request is to -- is from the rules -- the vested
9 Mauka Area Rules, HAR Chapter 15-22, in order to
10 increase the height of the parking podium from 45
11 feet to 75 feet, with an additional 12 feet of height
12 for accessory-use structures with a total area of
13 less than 50 percent of the parking and mixed-use
14 podium roof area and 18 feet of height for structures
15 housing elevator machinery on the parking and
16 mixed-use podium roof. The application for that
17 request is also December 20, 2020.

18 So these public hearing notices were
19 published in the Honolulu Star-Advertiser, Maui News,
20 the Garden Isle, Hawaii Tribune-Herald and West
21 Hawaii Today on Friday, January 15, 2021.

22 So let me just briefly explain our
23 procedures for today's public hearing. The HCDA
24 staff will present its report, summarizing the
25 amendments -- amendments requested in the development

1 permit application. Following that presentation, we
2 will receive the presentation of the applicant and
3 testimony from the public. Only members of the
4 Authority and the executive director will be
5 permitted to ask questions of the staff, applicant or
6 individuals providing testimony.

7 Are there any questions about these
8 procedures?

9 Okay. So we can begin our proceedings.
10 First, I'll ask Carson Schultz, who is our planning
11 and development director, to present the staff
12 report. A written report was received by the board
13 members.

14 MR. SCHULTZ: Good morning, Chair Whalen
15 and Kaka'ako members. As noted, you previously
16 received the full, written HCDA staff report for this
17 modification hearing. So in the interest of time,
18 I'm just going to provide a brief summary of the
19 staff's report for the modifications that were
20 requested for both projects.

21 I'll note that the Ward Master Plan is
22 vested under Hawaii Administrative Rules, Chapter
23 15-22, Mauka Area Rules, also known as the vested
24 rules, that were in effect at the time that the
25 master plan permit was approved. And I'll note that

1 pursuant to HAR 15-22-22 of the vested rules, when
2 the Authority considers modifications of a specific
3 provision, the applicant must demonstrate to the
4 Authority that following three things: A,
5 modification would be -- would provide flexibility
6 and result in a development that is practically and
7 aesthetically superior to that which could be
8 accomplished with the rigid enforcement of the vested
9 rules; 2, the modification would not adversely affect
10 adjacent developments and uses; and 3, the resulting
11 development will be consistent with the intent of the
12 vested Mauka Area Plan.

13 So for KAK 21-001, Ulana Ward Village,
14 and KAK 21-002, The Park Ward Village, the applicant
15 is requesting the modification to the podium heights
16 for both projects, as previously mentioned. And the
17 vested rules do allow for the Authority to consider
18 platform height modifications. It's section
19 15-22-120, subsection 7, of the vested rules that
20 provides that platform or podium heights may
21 commensurately be modified to exceed 45 feet where it
22 says one or more of the following could be achieved
23 or conditions occur.

24 So first, subsurface construction isn't
25 feasible; or design requirements for ceiling height

1 clearances require height adjustments; or industrial,
2 commercial, residential or community service uses are
3 substantially located within the platform, especially
4 along streets for public spaces; or fourth,
5 significant public facilities or pedestrian features
6 are provided at the street level, especially arcades
7 and publically accessible open spaces in excess of
8 the minimum grade level open space.

9 And the applicant has presented in their
10 application that they meet these requirements and the
11 conditions for requesting these modifications.

12 I'd also like to mention that to date,
13 the HCDA has approved the 75-foot platform height
14 modification for five other Ward Master Plan
15 projects. And then now in addition to the requested
16 platform height modification, the applicant has
17 requested an additional modification for KAK 21-002,
18 The Park Ward Village project. And the modification
19 requested is asking to modify the view corridor
20 setback for the podium portion of the building. And
21 I'll note that under vested rules section 15-22-121,
22 it allows for the Authority to consider view corridor
23 setback modifications.

24 Please also note that similar view
25 corridor modifications were previously approved by

1 the Authority for three other Ward Master Plan
2 projects, and that includes the Ke Kilohana project
3 that's just up Ward Avenue from the proposed Park
4 project.

5 In regard to public testimony, written
6 public testimony for the project was previously
7 provided to the Authority prior to the March 3, 2021,
8 last week's presentation hearing. And we have
9 received additional written testimony following last
10 week's hearing, and all the testimony that we've
11 received up until yesterday's submittal deadline was
12 provided to the Authority and posted on the HCDA's
13 website. And the additional testimony includes 14
14 additional letters in support and one letter opposing
15 the project. And we'll continue to accept public
16 testimony, and anything additional we receive will be
17 shared with the Authority and posted on our website
18 prior to the decision-making hearing.

19 So thank you, Chair and board members.
20 That concludes my summary of the staff's report.

21 CHAIR WHALEN: Thank you, Carson.

22 Before I ask board members if there are
23 questions, I just want to note for the record that
24 David Rodriguez has joined the hearing, Board Member
25 Rodriguez.

1 MR. NEUPANE: Chair, if I may, Member
2 Uchida has joined the meeting too.

3 CHAIR WHALEN: I'm sorry?

4 MR. NEUPANE: Member Uchida has joined
5 the meeting too.

6 CHAIR WHALEN: Oh, okay. All right.
7 Well, thank you.

8 So board members, are there any questions
9 of staff? Questions can be raised later on too in
10 the presentation if you wish to hear the applicant's
11 presentation first, but are there any questions now
12 for staff on the staff report? Okay.

13 So let's see. So counsel for the
14 applicant, would you please introduce your party, and
15 then do you have any exhibits to admit?

16 MR. KANG: Thank you, Mr. Chairman.
17 Again, Brian Kang on behalf of Victoria Ward,
18 Limited, the applicant in this proceeding. Before we
19 proceed to the evidence, there are some exhibits we
20 would like to admit and take care of a few
21 housekeeping matters if that's acceptable.

22 First, we note for the record that
23 Victoria Ward filed a first amended witness list for
24 both Ulana Ward Village and The Park Ward Village on
25 March 8, 2021, designating additional expert

1 witnesses for this modification hearing. And that
2 would be Robin Markle for Ulana Ward Village and The
3 Park Ward Village, and Dr. Ann Bouslog for Ulana Ward
4 Village.

5 Secondly, we would request that these
6 additional modification expert witnesses be qualified
7 as experts in their fields of expertise as stated in
8 the first amended witness list. And that would be
9 Robin Markle offered as an expert witness in
10 residential real estate marketing, supply and demand
11 as well as the benefits of the developments inclusive
12 of the modifications; and for Dr. Ann Bouslog,
13 offered as an expert witness in reserved housing
14 development, market assessment and strategic planning
15 as well as the benefits of Ulana Ward Village,
16 inclusive of the modification.

17 So we would request that these witnesses
18 be qualified as experts for this proceeding.

19 CHAIR WHALEN: So their testimony would
20 be pertaining to the modification request or to --

21 MR. KANG: Yes, that's correct.

22 CHAIR WHALEN: The modification request.
23 Okay.

24 MR. KANG: That's correct.

25 CHAIR WHALEN: So members, do you have

1 any objections to the exhibits and the expert
2 witnesses being offered by the applicant?

3 Okay. Hearing no objections, a list of
4 experts and also the exhibits to be admitted are
5 approved.

6 (Applicant's First Amended Witness
7 List and Second Amended Exhibit
8 List for Ulana Ward Village, Final
9 Exhibit U-7, and Exhibits U-41
10 through U-44 are admitted for the
11 record.)

12 CHAIR WHALEN: So you can start your
13 presentation by calling your first witness, Counsel.

14 MR. KANG: Thank you, Chair Whalen. Just
15 to confirm for the record, the exhibits in the second
16 amended exhibit list for Ulana have been admitted?
17 Is my understanding correct?

18 CHAIR WHALEN: Yes.

19 MR. KANG: Thank you very much.

20 Victoria Ward, Limited calls Race Randle
21 as our first witness.

22 CHAIR WHALEN: Race, would you please
23 raise your right hand and affirm to tell the truth.

24 THE WITNESS: I do.

25 CHAIR WHALEN: Thank you.

1 MR. NEUPANE: Chair, we don't have any
2 other requests for oral testimony.

3 CHAIR WHALEN: Okay. Then that seems to
4 conclude our meeting. Counsel, do you have anything
5 else to add?

6 MR. KANG: We do not, Chair Whalen. We
7 request that the record of the hearing be closed at
8 this time. And on behalf of Victoria Ward, Limited,
9 we'd like to thank you, Chair Whalen, and the members
10 of the board and the HCDA staff, for the opportunity
11 to present the applications on the modification
12 requests in this proceeding. Thank you.

13 CHAIR WHALEN: Okay. All right. So
14 counsel, you have until the end of business day on
15 March 25, 2021 to file the applicant's Proposed
16 Findings of Fact, Conclusions of Law and Decision and
17 Order with the Authority.

18 So on behalf of HCDA Authority members
19 and its staff, thank you for your attendance and your
20 presentations today. The public hearing on the
21 applicant's requested modifications is now adjourned
22 and closed, and the decision hearing for these two
23 projects will be held on Wednesday, May 5, 2021 at
24 11:00 a.m. So the time is -- the hearing --

25 MR. NEUPANE: Chair, this is Deepak.

1 Just one question. I just wanted to make sure that
2 the hearing is closed.

3 CHAIR WHALEN: Is closed, right. Yeah.

4 MR. NEUPANE: Thank you, Chair.

5 CHAIR WHALEN: Adjourned or closed. The
6 hearing is closed --

7 MR. NEUPANE: Closed.

8 CHAIR WHALEN: -- to my --

9 MR. NEUPANE: That's good enough for the
10 record, Chair. Thank you.

11 MR. KANG: Yes, that's our understanding,
12 Chair Whalen, that the record is now closed of this
13 proceeding.

14 CHAIR WHALEN: So the time is now
15 12:50 p.m.

16 (Whereupon, the hearing adjourned
17 at 12:50 p.m.)

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