



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



Neil Abercrombie
Governor

Brian Lee
Chairperson

Anthony J. H. Ching
Executive Director

461 Cooke Street
Honolulu, Hawaii
96813

Telephone
(808) 594-0300

Facsimile
(808) 594-0299

E-Mail
contact@hcdaweb.org

Web site
www.hcdaweb.org

Ref. No.: KAL 14-001

September 16, 2014

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Crystal K. Rose, Esq. 3242-0
Matthew C. Shannon, Esq. 9043-0
Attorneys at Law
Bays Lung Rose & Holma
A Law Corporation
Topa Financial Center
700 Bishop Street, Suite 900
Honolulu, Hawaii 96813

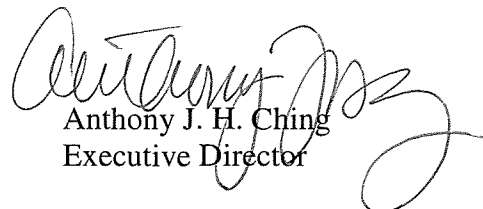
Dear Ms. Rose and Mr. Shannon:

Re: Application No. KAL 14-001, Kalaeloa BOQ, LLC,
Applicant, for a Development Permit

Enclosed for your files is a full, true, and correct copy of the original Findings of Fact, Conclusions of Law, and Decision and Order for a Development Permit on file at the Hawaii Community Development Authority for the above-referenced application.

If you should have any questions regarding this matter, please contact me at 594-0300.

Sincerely,


Anthony J. H. Ching
Executive Director

AJHC/DN/ST:ak

Enc.

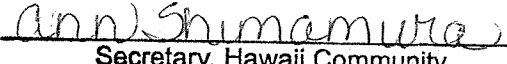
c: Ms. Tesha Malama, HCDA
Mr. Blair Suzuki
(Hunt Development Group)

EXHIBIT 4

ORDER
OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

STATE OF HAWAII

September 9, 2014

In re the Application of	)	APPLICATION NO. KAL 14-001
	)	
KALAELOA BOQ, LLC,	)	
	)	
Applicant,	)	<i>I do hereby certify that this is a full, true, and correct copy of the original on file in this office.</i>
	)	
For a Development Permit,	)	
	)	Secretary, Hawaii Community
	)	Development Authority
_____	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER FOR A DEVELOPMENT PERMIT**

On May 15, 2014, Applicant Kalaeloa BOQ, LLC (“Applicant” or “KBOQ”), a wholly owned affiliate of Hunt Companies, Inc. (“Hunt Companies”), filed a Development Permit Application pursuant to Chapter 206E of the Hawaii Revised Statutes (“HRS”) and Chapters 15-215, 15-216, and 15-219 of the Hawaii Administrative Rules (“HAR”) for the renovation of Building 77, a 100-unit rental Reserved Housing Project located at 91-1245 Franklin D. Roosevelt Avenue, Kapolei, Hawaii 96707, identified as Tax Map Key (1) 9-1-013:011 (“Project” or “Building 77”).

The Hawaii Community Development Authority (“HCDA”), having heard and examined the testimony, evidence, and arguments of Applicant KBOQ, which were presented during the hearings, along with its respective pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

FINDINGS OF FACT

JURISDICTION:

1. Applicant voluntarily submitted the Project and the corresponding Development Permit Application to jurisdiction before the HCDA, and agrees to allow HCDA to maintain jurisdiction over this specific Project into the indefinite future.

2. Applicant's voluntary submission of the Project to the HCDA's jurisdiction is narrowly limited to the Building 77 project, and does not extend to any of Hunt Companies' other holdings on the Island of Oahu.

PROCEDURAL MATTERS:

3. On May 15, 2014, Applicant filed its Development Permit Application dated May 15, 2014.

4. On May 30, 2014, the Notice of Public Hearings for the Project was published in the Honolulu Star-Advertiser.

5. On June 10, 2014, in accordance with the provisions of HRS § 206E-5.6, the President of the Senate and the Speaker of the House of Representatives were notified upon publication and posting of the hearing notice.

6. On June 10, 2014, property owners and lessees of record located within 300 feet of the Project site were notified of the Public Hearings. The Kalaeloa Neighborhood Board, Ewa Neighborhood Board, Waianae Coast Neighborhood Board, Makakilo/Kapolei/Honokai Hale Neighborhood Board, and Nanakuli-Maili Neighborhood Board were also notified of the Public Hearings on this date.

7. Further, the Applicant implemented a community outreach program for the proposed Project prior to filing the Development Permit Application. The Applicant

formally presented the Project to the following groups: (a) Kalaeloa Community Network; (b) Kalaeloa Public Safety; (c) Kapolei Neighborhood Board; and (d) Kalaeloa Advisory Team.

8. The deadline for interested individuals or organizations to file a petition for intervention was June 19, 2014. No petitions for intervention were filed.

9. On June 26, 2014, a prehearing conference was held at the HCDA office located at 461 Cooke Street, Honolulu, Hawaii 96813.

10. On July 15, 2014, Applicant filed its Witness List, Affidavit of Alan Ong, Affidavit of Blair Suzuki, Affidavit of Phil Camp, Exhibit List, and Exhibits 1-25.

11. On July 23, 2013, HCDA submitted its Staff Report that describes the Applicant's proposed Project.

12. On July 23, 2014, HCDA held a public hearing, which was conducted as a contested case hearing, on the Development Permit Application for the Project, in Kapolei, Oahu, Hawaii.

13. At the hearing, the HCDA accepted into the record the Application, Applicant's Exhibits 1-25, the Staff Report, HCDA's Exhibit A, and Applicant's Exhibits 26 and 27.

14. HCDA conducted supplemental public comment sessions at the Barber's Point Bowling Center on August 12, 2014 at 5:30 p.m. and August 30, 2014 at 9:30 a.m.

KALAELOA MASTER PLAN:

15. On March 1, 2006, the HCDA adopted the Kalaeloa Master Plan ("KMP" or "Master Plan") to administer redevelopment of the Kalaeloa Community Development District ("CDD" or "District") in accordance with the Kalaeloa Strategic Plan.

16. Section 3.1 of the KMP encourages the development of housing with an affordable component in mixed-use neighborhoods that includes offices, live-work, and commercial spaces, built at densities that can support and increase ridership on the City's planned public transit system.

17. Section 3.3.3 of the KMP also notes that interim, temporary land uses are acceptable and that allowing interim land uses offers the potential for short- to medium-term benefits to Kalaeloa while reserving maximum benefit for future uses.

18. Section 3.4 of the Master Plan promotes pedestrian oriented growth in the District that allows for public transit, pedestrian and bicycle access, and walkable subdivided lots with intersecting streets.

19. Section 3.4.1 of the KMP proposes improvements to the road networking within and adjacent to the District as part of the long term development of the District. Specifically, Section 3.4.2 anticipates extending Wakea Street as a thoroughfare that transects the District. Hawaii Administrative Rules, Title 15, Chapter 215 (Kalaeloa Community Development District Rules) Figure 1.4B-Thoroughfare Sections specifies a right-of-way for the extension of Wakea Street at the project site.

20. Section 3.5 of the Master Plan encourages open space, recreation space, and public amenities that can be utilized by residents, guests and employees.

BUILDING 77 PROJECT DESCRIPTION:

21. The United States Navy ("Navy") is the current fee simple owner of the property that is subject to this Development Permit Application. Hunt Companies' Kalaeloa properties are held by a wholly owned subsidiary, Kalaeloa Ventures, LLC, which is the current

lessee of approximately 484 acres within the District pursuant to a long term 40-year ground lease with the Navy.

22. Kalaeloa Ventures, LLC is owned by Ford Island Ventures, LLC, which is a division of Hunt Companies. The Applicant is wholly owned by Kalaeloa Ventures, LLC.

23. The Navy began taking steps to convey its holdings within the District to Kalaeloa Ventures, LLC and its predecessor Ford Island Ventures, LLC in 2009 as part of the Ford Island Master Development Agreement. Kalaeloa Ventures, LLC expects to begin taking fee simple ownership of these holdings sometime in the first half of 2015.

24. As the current fee simple owner, the Navy's consent to the Project is indicated in the Project Authorization which was attached to the Development Permit Application.

25. Applicant has the authority pursuant to the existing ground lease to proceed with the Project and renovation of Building 77.

26. Kalaeloa Ventures, LLC executed a Letter of Intent, dated, April 2, 2014, to Sublease the subject property for the proposed Building 77 Project to Applicant.

27. Applicant proposes to renovate Building 77 into a privately operated 100-unit Reserved Housing rental development. The Project will not receive any federal or state funding.

28. The Project is located on a 4.403 acre lot, pursuant to that Order of Subdivision dated April 28, 2014, which was filed in the Land Court of the State of Hawaii on June 16, 2014 as Document No. T-8932121 on Certificate of Title No. 529,664.

29. Building 77 was constructed in 1959 and used by the Navy to house bachelor officers. It was occupied until 1999. The existing three-story building's original configuration consists of 200 units with shared bathrooms, administration and storage space.

30. The proposed Project will convert the original 200-units into 100 one-bedroom, one-bathroom Reserved Housing rental apartments. Interior modifications will be made to convert every two rooms into a single stand-alone, one-bedroom apartment. Each unit will be approximately 500 square feet.

BUILDING CODE COMPLIANCE:

31. Applicant has retained Bureau Veritas North America, Inc. ("Bureau Veritas") to ensure the Project's design and construction complies with all applicable building codes and regulations.

32. Applicant intends to fully comply with all applicable building codes and regulations, as instructed by Bureau Veritas.

33. Applicant will comply with Bureau Veritas' conclusion that the leasing and management office, as well as any other amenities on the first floor of the Project, must conform to the Americans with Disabilities Act.

34. Additional exterior egress stairs will be constructed to the west end of each wing to comply with life safety requirements. The Project does not require fire sprinklers.

RESERVED RENTAL HOUSING:

35. Building 77 will be entirely Reserved Housing rentals, consisting of 100 units with associated amenities.

36. Reserved Housing units will be rented to persons in compliance with HAR § 15-216 of the Kalaeloa Reserved Housing Rules.

37. In compliance with HAR § 15-216-32, the Project will provide rental housing for residents earning up to one hundred forty percent (140%) of the area median income. Also, per HAR § 15-216-35, the monthly rent and all utilities and other building operating costs will not exceed thirty-three percent (33%) of the renter's gross monthly income.

38. The anticipated rent for each Project unit will be \$1,300 per month, which will comply with HAR § 15-216-subchapter 3.

39. There is sufficient demand for the Project given the supply constraints for similar unit type and price in the surrounding area.

40. Applicant intends to transfer the Reserved Housing credits above the fifteen percent (15%) threshold to other future developments within the District, or elsewhere on the island of Oahu in compliance with applicable rules and regulations. HAR § 15-216-17(b) states in part, "Such reserved housing units shall be sold or rented to persons qualifying under the terms and conditions set forth under subchapter 3. The developer shall execute agreements with the authority as are appropriate to conform to this requirement and subject to the authority's approval, and such agreements shall be binding upon the developer and any successors in interest, and shall run with the land."

NONCONFORMING STRUCTURE:

41. Building 77 qualifies as a nonconformity pursuant to HAR § 15-215-89.

42. The existing Building 77 structure was lawfully constructed in accordance with the applicable regulations at the time of construction in 1959.

43. The cost to repair the Project from damage caused by spall and fire is less than fifty percent (50%) of the total replacement cost of the structure.

44. The Project's size, building floor area, envelope, and setbacks will remain unchanged, with the exception of the newly added egress stairs on the exterior of the structure. The renovated Building 77 will not encroach into a frontage area or affect neighborhood properties.

45. The Project will also maintain the same use and occupancy as the existing building, which is multi-family apartment residence.

46. As a qualified nonconforming structure, the Project is exempt from the Building Type standards set forth in HAR §15-215-38 and Figures BT.1 through BT.9, which specify lot width, open space, frontage types and building mass.

47. As a qualified nonconforming structure, the Project is exempt from the Frontage Type standards set forth in HAR § 15-215-39 and Figure 1.6.

48. As a qualified nonconforming structure, the Project is exempt from the Building Placement standards set forth in HAR § 15-215-41 and Figure 1.3.

49. As a qualified nonconforming structure, the Project is exempt from the Building Form standards set forth in HAR § 15-215-42 and Figure 1.8. Regardless, the Project will be in compliance with the maximum height limit and view line setbacks.

50. As a qualified nonconforming structure, the Project is exempt from the Green Building standards set forth in HAR § 15-215-48. However, Applicant's proposed design will incorporate green building initiatives where feasible. Where feasible, Applicant will pursue energy-efficient appliances, double insulated low E glass windows, solar water heating for laundry, photovoltaic system, and other Green Building features.

51. As a qualified nonconforming structure, the Project is exempt from the Large Lot Development standards set forth in HAR § 15-215-62. Regardless, the Project

promotes walkability by providing pedestrian routes to either side of the existing building with the option of connectivity to future intra-block walkways.

PARKING:

52. As a qualified nonconforming structure, the Project is exempt from the Parking and Loading standards set forth in HAR § 15-215-47 and Figure 1.9 because the building renovation does not increase the existing floor plan by twenty-five percent (25%).

53. However, Applicant will comply with number of parking stalls required under HAR § 15-216-18(a)(3). Applicant intends to resurface and repaint two parking lots for a total of 157 parking stalls to be provided for the Project. These parking lots will be located directly north and directly east of the Project.

54. Pursuant to that certain License Agreement between Kalaeloa Ventures, LLC and Applicant, dated July 9, 2014, Applicant is permitted to resurface and use the existing parking lot directly east of Building 77 currently located on property leased by Kalealoha Ventures, LLC.

55. In the event Wakea Street is extended in the future, Applicant will construct a new parking lot to the southwest of Building 77 within the existing subdivided property.

56. Therefore, in compliance with HAR § 15-216-18(a)(3), the Project will have more than 100 parking stalls, regardless of the potential extension of Wakea Street.

TRAFFIC ACCOMMODATIONS:

57. Applicant contracted a Traffic Study from traffic engineer Michael Packard, P.E. with SSFM International, Inc. to evaluate the traffic impacts associated with the proposed Project. The traffic study concludes that the addition of the Project will have a

minimal, insignificant impact on traffic in the area. The Applicant will provide the State Department of Transportation Highways Division with this study for their review and approval.

58. The Project is able to accommodate adequate traffic volume either with or without the future extension of Wakea Street.

59. Consistent with the Thoroughfare Plan width listed in Figure 1.4 of the District Rules, the current right of way width for Franklin D. Roosevelt Avenue is 60 feet.

LAND USE:

60. The Project complies with the land use requirements set forth in HAR § 15-215-40.

61. Per Figure 1.2 of the Kalaeloa Community Development District Rules, the Project is categorized as T4 Urban Center Zone. Per Figure 1.7 of the Kalaeloa Community Development District Rules, multi-family Residential is a permitted land use in T4 Urban. Per Figure 1.3 of the Kalaeloa Community Development District Rules, the T4 Urban density for Residential is 20-40 units per acre.

62. Building 77 will include 100 units on the subdivided 4.403 acre parcel, for a density of 22 units per acre, which complies with the minimum and maximum density requirements set forth in Figure 1.3.

ARCHITECTURAL STANDARDS:

63. The Project is a nonconforming structure and is exempt from the Kalaeloa Community Development District's architectural standards listed in HAR § 15-215-43(a), (b), and (e).

64. However, Applicant intends to satisfy many of the Kalaeloa Community Development District's architectural standards.

65. Applicant's design for the Project's lighting will comply with HAR § 15-215-43(d). The Project's entrances will be illuminated, and the central courtyard, walkways, and other landscaped areas will provide pedestrian scaled, tamper proof lighting. Appropriate shields and downward orientation will be employed to address light not spilling onto adjacent properties.

66. The Project's service enclosures will comply with HAR § 15-215-43(f). Trash/recycling enclosures will not be constructed with prohibited materials, and will be constructed of similar material and color to the building. The enclosures will be located on a service road off of Horner Avenue. Further, air conditioning compressors located at grade adjacent to the building will be screened from view with landscaping or enclosures of a similar material and color to the building.

67. The Project's windows will comply with HAR § 15-215-43(h) because new windows will be installed in the Project to comply with at least seventy percent (70%) Visible Light Transmittance (VLT) for first floor units and at least fifty percent (50%) VLT for upper floors.

68. Per HAR § 15-215-43(g), Applicant intends that any signage for the Project will comply with applicable rules and regulations administered by the City and County of Honolulu.

69. The building façade will remain "as is" per Applicant's efforts to comply with all historical guidelines for development of the Project as discussed herein. The Project design does not include any balconies. Any potential fences, hedges or walls added to the Project will be intended to comply with HAR § 15-215-43(c).

RECREATIONAL AND OPEN SPACE:

70. The Project complies with the recreation space requirements in HAR § 15-215-45 and the open space requirements in HAR § 15-215-46.

71. HAR § 15-215-45(a)(3) requires 55 square feet of recreation space per dwelling unit. The Project contains 100 dwelling units, therefore, the recreation space requirement is 5,500 square feet.

72. The Project will provide 20,088 square feet of recreation space, which exceeds the requirement of 5,500 square feet set forth in HAR § 15-215-45.

73. HAR § 15-215-46(c) requires that twenty percent (20%) of the lot area be provided as open space. The total Project lot area is 191,813 square feet, therefore, the open space minimum requirement is 38,363 square feet.

74. The Project will provide 124,091 square feet of open space, which exceeds the 38,363 square feet minimum requirement per HAR § 15-215-46.

75. Pursuant to the Landscaping Standards set forth in HAR § 15-215-44, the Project's recreation and open spaces will be landscaped taking into consideration plantings and irrigation consistent with Figure 1.10. Landscape improvements will include appropriate recreation and open space to be used by residents, employees or visitors of the Project. Applicant retained Landscape Planting Plans from Irvin Higashi & Associates, Inc. and intends to comply with HAR § 15-215-44.

HISTORICAL AND CULTURAL SITES:

76. A review by the Navy found that Building 77 is eligible for the National Register of Historic Places under Criteria A for its association with the history of the modern housing provided for the officers at the Naval Air Station during the Cold War period. The Navy

concluded that under 36 CFR § 800.4(d)(1), the proposed Project will have “no adverse effect” on the National Register eligible property.

77. Similarly, a review by the State of Hawaii, Historic Preservation Division, dated February 26, 2014 concluded that the proposed Project will have “no adverse effect” to a historic place under HRS § 6E-42.

78. In accordance with the Secretary of Interior’s Treatment of Historic Properties with Guidelines for Rehabilitation, Applicant intends to preserve and maintain the historic character of Building 77 to the extent possible.

79. Pursuant to previous studies commissioned by the Department of Navy, the Project area indicates a low probability of cultural findings during renovation or construction.

80. Further, Applicant has taken various steps to accommodate potential cultural impacts of the Project. Applicant conducted two separate cultural stakeholder meetings to assist in generating draft cultural protocols, which provide for specific procedures pre-construction and during construction in the event of any inadvertent archeological findings.

81. Applicant also intends to have a botanist survey the Project site and identify any potential threatened or endangered species or habitat that may be impacted by the Project. If any such species or habitat are located on the Project site, Applicant intends to work with U.S. Fish and Wildlife Service to remediate any potential impact.

INFRASTRUCTURE:

82. Electrical power and water and sewer services will be provided to the Project via the existing systems located at the Project. The Project will utilize a Navy drinking water system and will not use the Board of Water Supply.

83. The Applicant has entered into a Utilities Sales Agreement with the Navy for the sale of electricity, water and wastewater utility services between the Government, as service supplier, and Hunt affiliate Ford Island Ventures, LLC, as service purchaser. Building 77 is covered under the Utilities Sales Agreement.

84. The water, sewer, drainage, electrical, and other utilities infrastructure is adequate to accommodate and service the Project.

85. The Project is located within the Leeward Oahu School Impact Fee District and will be required to comply with applicable provisions of Chapter 302A, Hawaii Revised Statutes. Pursuant to this chapter, the State of Hawaii Department of Education (“DOE”) has determined that the project is subject to paying an impact fee of \$4,334 per unit. Applicant has met with representatives of the DOE and discussed how school impact fees will be assessed for this Project and for all other residential development proposed by Hunt Companies for their lands within the District. Developers of residential projects of 50 units or more are required to meet with the DOE to determine if school impact fees for the project will take the form of land contribution for future school sites, cash, or a combination of both in accordance with any agreement reached with the DOE. Any agreement of the impact fee shall be accomplished to the satisfaction of the DOE pursuant to Act 245, SLH 2007, as amended by Act 188, SLH 2010.

U.S. Fish and Wildlife Service:

86. In accordance with the recommendations contained the U.S. Fish and Wildlife Service letter of July 9, 2014 addressed to Susan Tamura, Hawaii Community Development Authority, the Applicant represented that the Applicant will hire a knowledgeable botanist to survey for federally listed plant species during the wettest period of the year

(November – April) with the proposed project area. If federally listed endangered plant species are present, including reintroduced species, they should be included in analysis to determine if these species may be impacted from construction of the project.

Federal Aviation Administration (“FAA”):

87. The Project lies within the approach to surface to Honolulu International Airport and will be subject to aircraft overflights and noise. The Department of Transportation (“DOT”) requested that the Applicant disclose this condition to prospective tenants and give the DOT Airports Division an aviation easement allowing such overflights and aircraft noise.

88. FAA regulations require the submittal of FAA form 7460-1 “Notice of Proposed Construction or Alteration” if construction or alteration is within 20,000 feet of a public use or military airport or exceeds a slope of 100:1 surface from any point on the runway of each airport with its longest runway more than 3,200 feet. As the Project is less than 5,000 feet from the runway at the Kalaeloa Airport, the developer is required to file FAA Form 7460-1.

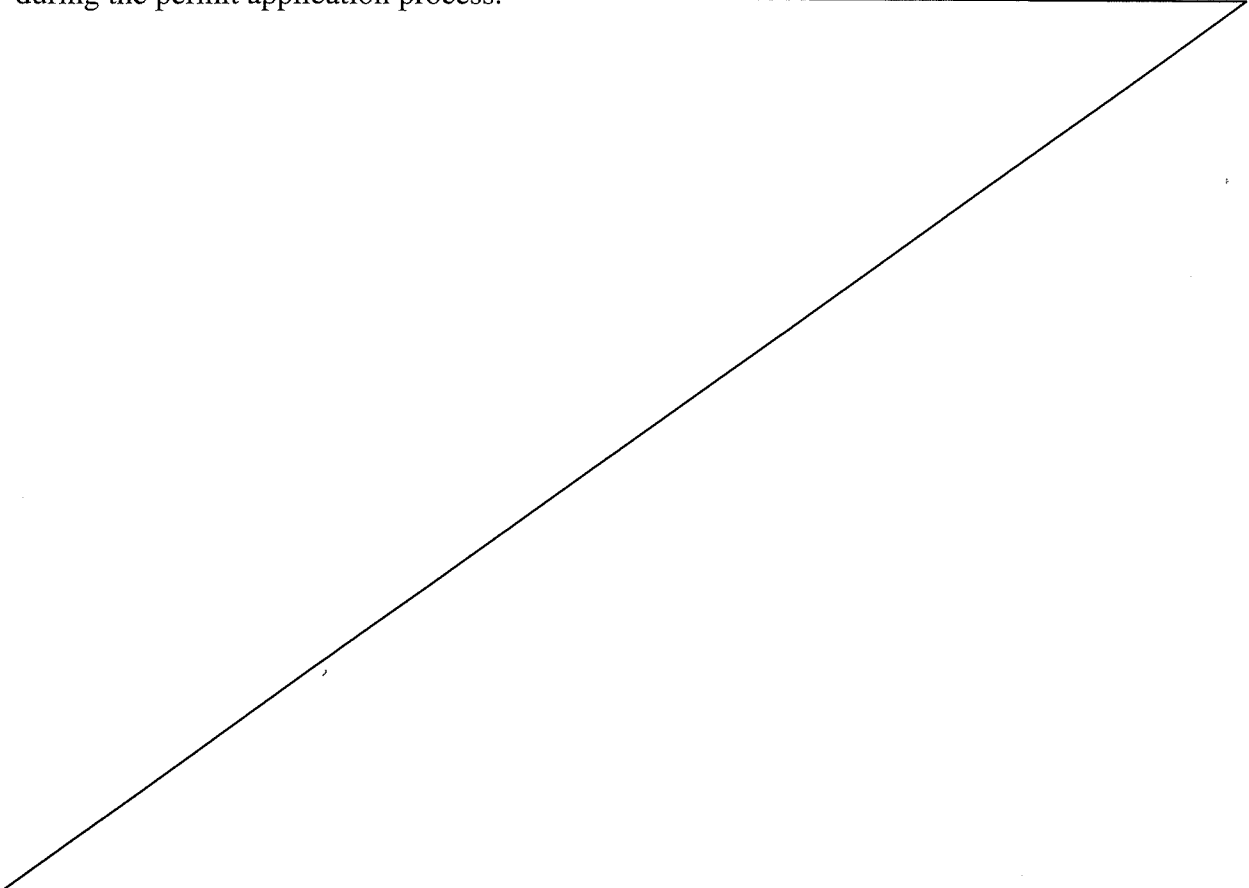
ACT 61, SLH 2014:

89. Applicant submitted evidence showing the extent to which the Project advances the goals, policies, and objectives of the Kalaeloa Community Development District Master Plan. The Project also protects, preserves, and enhances the desirable neighborhood characteristics through compliance with the standards and guidelines of the Kalaeloa Community Development District Rules. Further, the Project avoids an adverse effect on the surrounding land uses because it is compatible with the existing and planned land use character of the area. The Project provides housing opportunities for qualified income groups per the Kalaeloa Reserved Housing Rules, HAR § 15-216-subchapter 3.

90. The Applicant submitted evidence showing the positive impact of the Project on pedestrian oriented development, transit oriented development, and community amenities such as open and recreation space.

91. The Applicant submitted evidence that the Project would further areas of state concern, including the preservation of important natural systems and habitats, maintenance of valued historical and cultural resources, maintenance of other resources relevant to the State's economy, furtherance of employment opportunities and economic development, and the maintenance and improvement of the quality of educational program and services provided by schools.

92. The Applicant intends to comply with all of its representations to HCDA during the permit application process.



RULINGS ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. HCDA has jurisdiction to approve the planned development permit pursuant to HRS Sections 206E-4 and 206E-5.6 and HAR § 15-215-78.
2. The Applicant has committed to fulfilling the requirements of HAR Chapters 15-215 and 15-216.
3. Pursuant to HAR § 15-215-78(e)(1), the Project complies with and advances the goals, policies and objectives of the Kalaeloa Master Plan.
4. Pursuant to HAR § 15-215-78(e)(2), the Project complies with the Kalaeloa District Rules.
5. Pursuant to HAR § 15-215-78(e)(3), the Project will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.
6. The Project qualifies as a Reserved Housing rental development pursuant to HAR § 15-216-subchapter 3. Accordingly, Applicant shall be permitted to transfer any credit for Reserved Housing units that exceed the fifteen percent (15%) requirement for the Project to other future projects within the Kalaeloa Community Development District, or elsewhere on the

island of Oahu subject to the determination of the Authority in compliance with all applicable rules and regulations.

7. The Project qualifies as a nonconformity pursuant to HAR § 15-215-89.

As a qualified nonconforming structure, the Project is exempt from the development standards set forth in the following District Rules:

- (a) HAR § 15-215-38 and Figures BT.1 through BT.9;
- (b) HAR § 15-215-39 and Figure 1.6.;
- (c) HAR § 15-215-41 and Figure 1.3;
- (d) HAR § 15-215-42 and Figure 1.8;
- (e) HAR § 15-215-48;
- (f) HAR § 15-215-62; and
- (g) HAR § 15-215-43(a), (b), (e).

8. Act 61 SLH 2014 does not apply to this Project because the proceedings on the Project Development Permit Application commenced prior to July 1, 2014, the effective date of Act 61.

9. Regardless, the Proceedings on the Project Development Permit Application followed by the HCDA comply with the specifications of Act 61. Applicant provided substantial evidence at the hearing that the Project is reasonable and consistent with the development rules and policies of the Kalaeloa Community Development District.

10. Provisions of Hawaii Revised Statutes, Chapter 302A are allocable to the Project.

11. 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 descendents 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 Hawaiians rights to the extent feasible. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, 79 Hawaii 425, 903 P.2d 1246, *certiorari denied*, 517 U.S. 1163 (1996).

12. 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 Hawaii 31, 7 P.3d 1068 (2000).

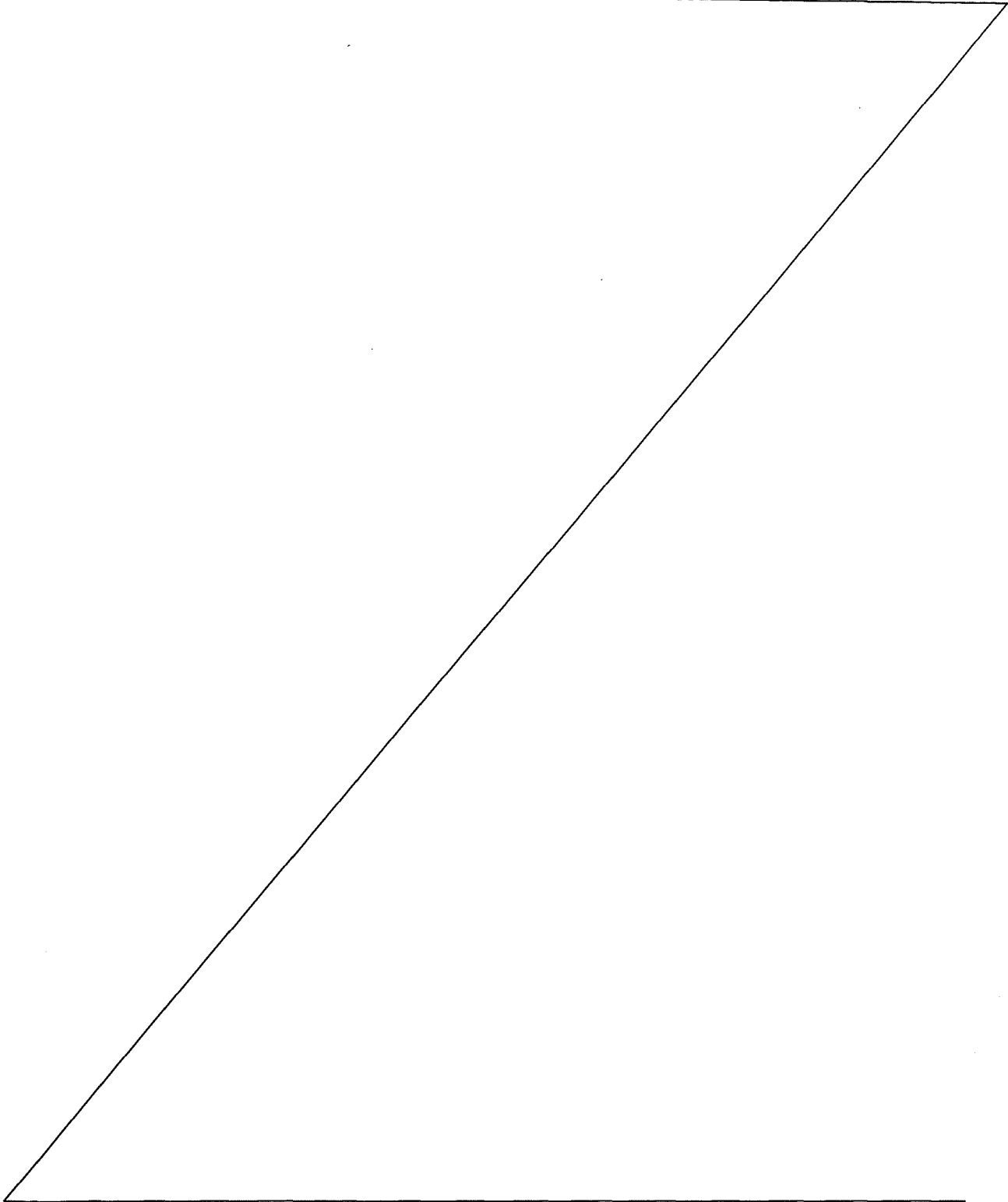
13. In the event any human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential historic site shall cease. The discovery shall be reported as soon as possible to a government authority with appropriate jurisdiction.

14. The Project will have “no adverse effect” to a historic place under HRS § 6E-42 or 36 CFR § 800.4(d)(1).

15. Applicant has provided for the Authority’s consideration of the nature of the proposed development in terms of size, use, density, general bulk and height of structures, setbacks, required open space and recreation areas, traffic impacts, the location and amount of residential reserved housing units, and on-site parking.

16. Upon consideration of Chapter 206E, HRS, and Chapter 15-216, HAR, and the facts contained in this Order, the Authority finds upon the clear preponderance of the evidence, that the Development Permit Application is consistent with the provisions of the

Kalaeloa Community Development District Rules and the Kalaeloa Community Development
District Master Plan.



DECISION AND ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED AND ADJUDGED that the Building 77 Project, on land parcel identified as 13051-A-2, consisting of approximately 191,813 square feet, located at 91-1245 Franklin D. Roosevelt Avenue, Kapolei, Hawaii 96707, Tax Map Key (1) 9-1-013:011, is hereby approved for a planned development permit, subject to the following conditions:

1. Nonconformity. The Building 77 Project qualifies as a nonconformity pursuant to HAR § 15-215-89. Accordingly, the Project is exempt from the development standards set forth in the following District Rules:

- (a) HAR § 15-215-38 and Figures BT.1 through BT.9;
- (b) HAR § 15-215-39 and Figure 1.6.;
- (c) HAR § 15-215-41 and Figure 1.3;
- (d) HAR § 15-215-42 and Figure 1.8;
- (e) HAR § 15-215-48;
- (f) HAR § 15-215-62; and
- (g) HAR § 15-215-43(a), (b), (e).

2. Compliance with Rules. Applicant shall comply with all applicable requirements of the Kalaeloa Reserved Housing Rules, HAR Chapter 216 of Title 15, and the Kalaeloa Community Development District Rules, HAR Chapter 215 of Title 15.

3. Compliance with Building Codes. Applicant shall comply with all applicable building codes and regulations.

4. Reserved Housing. Applicant shall be permitted to transfer credit for any Reserved Housing rental units constructed within the Project that exceed its fifteen percent

(15%) reserved housing rental unit requirements to other future projects within the District, or elsewhere on the island of Oahu in compliance with all applicable rules and regulations and pursuant to an agreement with the Authority. Applicant or its successors in interest shall submit an annual report showing the disposition, location within the Kalaeloa Community Development District or Oahu approved by the Authority and the number of reserved housing rental units maintained within the Project.

5. Binding of Successors and Assigns. Applicant shall enter into a 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 Kalaeloa Community Development District Rules. This Agreement shall be recorded as a covenant running with the land with the Bureau of Conveyances or the Assistant Registrar of the Land Court. Proof of such recordation in the form of copies of the covenants certified by the appropriate agency shall be submitted to the HCDA.

6. Historic and Cultural Resources. The Applicant shall comply with all applicable rules governing historic preservation and procedures for inadvertent discoveries pursuant to HAR § 13-280.

7. Infrastructure. Infrastructure improvements can be divided into two categories: (1) infrastructure improvements or requirements that are immediately necessary to proceed with the Building 77 Project, and (2) improvements which are necessary to improve and upgrade the vicinity in total through the HCDA District-Wide Improvement Program.

8. Improvements Necessary to Proceed with the Building 77 Project: With regard to infrastructure improvements or requirements that are necessary to proceed with the

Building 77 Project, the Applicants shall be responsible for providing necessary developer improvements.

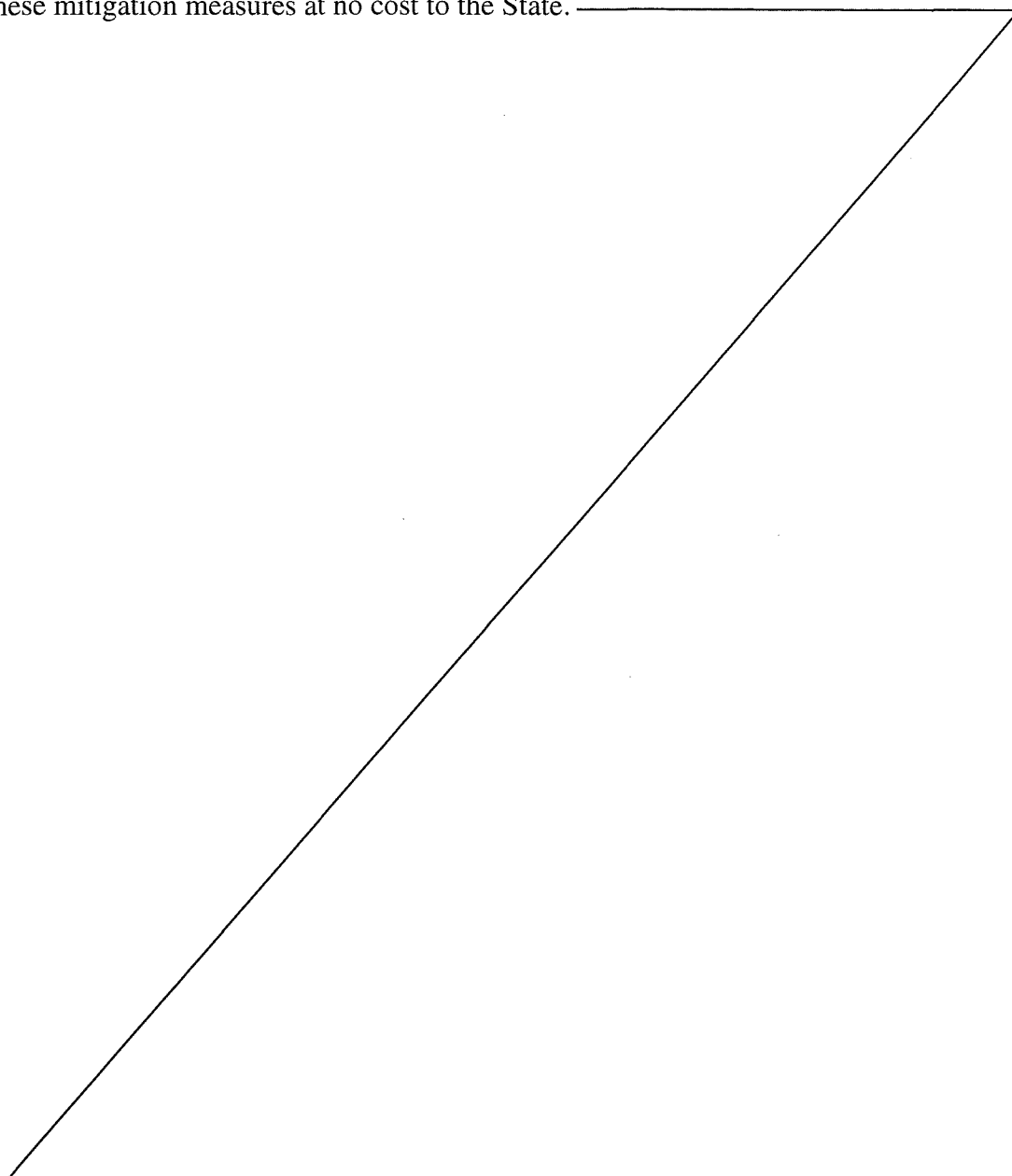
9. Improvements Proposed for the HCDA District-Wide Infrastructure Improvement Program: As part of the HCDA District-Wide Improvement Program, road and utility improvements may be undertaken in increments throughout the Kalaeloa Community Development District, financed in part through an Improvement District Program. In this regard, the Building 77 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 Building 77 Project under 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. Applicant, and its successors and assigns, shall agree to participate in the HCDA District-Wide Improvement Program at the time said program is implemented. In the event the Building 77 Project is converted to a condominium after the expiration of the Reserved Housing regulated term, the terms specified in the agreement shall be made a part of all condominium and conveyance documents for the Building 77 Project and said documents shall be reviewed and approved by HCDA prior to submission to the Real Estate Commission for execution.

10. The Development Permit Application for the Project is hereby included as part of this Decision and Order by reference and may be utilized in confirming compliance with the applicable District Rules and Reserved Housing Rules, except where modifications have been granted by this Decision and Order.

11. Applicant shall disclose to prospective tenants that the Project lies within approach surface to Honolulu International Airport and will be subject to aircraft overflights and

noise. Applicant shall give the DOT Airports Division an avigation easement allowing such overflights and aircraft noise.

12. Applicant shall prepare and submit to DOT Highways division a traffic assessment for review and approval. The assessment will determine the extent of traffic impact generated by the project and propose appropriate mitigation measures. The Applicant will provide these mitigation measures at no cost to the State.



ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 9th day of September, 2014. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

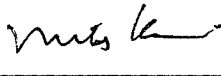
Done at Honolulu, Hawaii, this 9th day of September, 2014.

Hawaii Community Development
Authority (Kalaeloa Members)

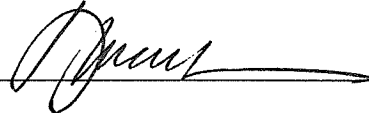


Rodney Funakoshi, as designated
representative of Director of Department of
Business, Economic Development and
Tourism

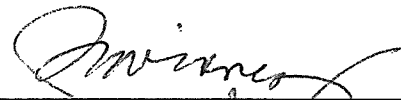
Randy Grune, as designated representative of
Director of Department of Transportation



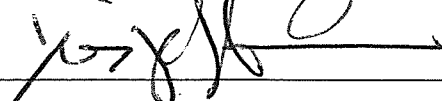
Miles Kamimura



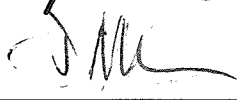
Linda Chinn, as designated representative of
Office of the Chair of Department of
Hawaiian Home Lands



Shirley Swinney



Luis Salaveria, as designated representative of
Director of Department of Budget and Finance

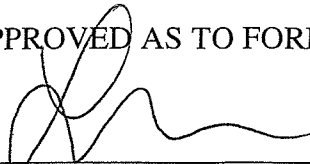


Dean H. Seki

Vacant

Vacant

APPROVED AS TO FORM:



Lori Tanigawa, Deputy Attorney General