

NEIL ABERCROMBIE
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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FAX: (808) 587-0800

IN REPLY REFER TO:
12:DEV/0154

November 9, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

REQUEST FOR PUBLIC HEARING, AMENDMENT TO WAIVE STATE'S RIGHT TO USE OR OCCUPY THE SURFACE OF THE PROPERTY TO MINE AND REMOVE MINERALS DURING THE TERM OF THE GROUND LEASE OF PRIOR BOARD ACTION OF AUGUST 12, 2011, ITEM D-4, CONSENT TO LEASE OF LANDS UNDER GOVERNOR'S EXECUTIVE ORDER NO. 4345 TO HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, KAKAAKO, HONOLULU, OAHU, TAX MAP KEY: (1) 2-1-051: 042 AND 043

REQUEST:

The Hawaii Housing Finance and Development Corporation (HHFDC) is seeking the Board's consent to hold a public hearing on proposed amendments to the Minerals and Waters provision of the ground lease issued to Halekauwila Place LP.

APPLICANT/LESSEE:

HHFDC (as Lessor) on behalf of Halekauwila Place, LP, a Hawaii limited partnership (Lessee)

LEGAL REFERENCE:

Sections 182-2 and 182-4, Hawaii Revised Statutes.

LOCATION AND TAX MAP KEY:

Kakaako, Island of Oahu, State of Hawaii, identified by
TMK: 1st Division, 2-1-051: 042 and 043

CURRENT USE OF PROPERTY:

The property is currently vacant and enclosed with a perimeter fence. Other than preliminary archaeological investigation work taking place on the site, the site is used for no other purposes.

ITEM M-3

William J. Aila, Jr., chairperson and Member
October 26, 2012
Page 2

TERM OF LEASE:

75 years, commenced on August 1, 2011, and ends on July 31, 2086.

REMARKS:

Halekauwila Place is a proposed 204-unit affordable family rental housing project to be constructed on a 1.25-acre site at 655 Halekauwila Street in Kakaako, Oahu, TMK: (1) 2-1-051:042 and 043 (Exhibit A). The project site is owned by the State of Hawaii, set aside to the HHFDC by Governor's Executive Order No. 4345, and leased by the HHFDC to the project developer, Halekauwila Place LP, pursuant to a ground lease dated August 1, 2011 and recorded in the Bureau of Conveyances as Document No. 2011-142074, for the development, construction and operation of Halekauwila Place.

One of the project lenders is requesting amendments to Section 1 of the ground lease relating to Minerals and Waters which would waive the State's right to use or occupy the surface of the property to mine and remove minerals (Exhibit B). This amendment would protect the affordable housing project from any mining operations on the property during the ground lease term. The water rights provisions in the ground lease are not proposed for amendment and will remain intact.

Amendments to the minerals provision in the ground lease is subject to this Board's amendment of its prior Board action of August 12, 2011, under agenda item D-4. Comments and testimony received at the public hearing will be submitted by HHFDC to the Board for consideration prior to decision making on the amendment request.

RECOMMENDATION:

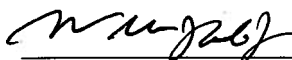
That the Board authorize the HHFDC to hold a public hearing to amend the minerals and waters provision of the ground lease for the Halekauwila Place project.

Respectfully submitted,



KAREN SEDDON
Executive Director

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson and Member

VICINITY MAP

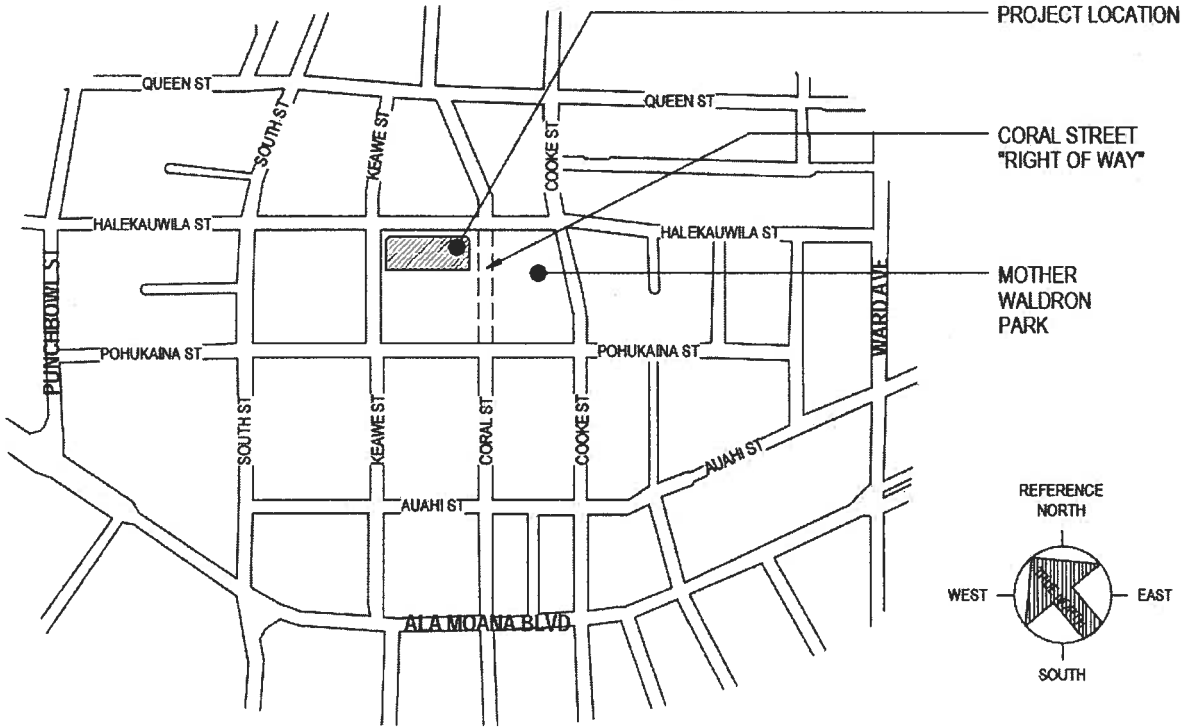


Exhibit A

1. Minerals and Waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals ~~and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining.~~ "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same ~~and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.~~ (c) Notwithstanding any other provision of the Section 1, Lessor agrees that it will not use or occupy any portion of the surface of the property for the purpose of prospecting for, mining or removing minerals or for capturing, diverting or impounding surface and ground waters.