

"TITLE 15 DEPARTMENT OF BUSINESS AND ECONOMIC
DEVELOPMENT

SUBTITLE 5 ALOHA TOWER DEVELOPMENT CORPORATION

CHAPTER 26
ALOHA TOWER DEVELOPMENT CORPORATION

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SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-26-1 Purpose. This chapter governs procedures before the aloha tower development corporation under chapter 206J, HRS, and shall be construed to effectuate the purpose of the chapter and to secure the just and efficient determination of every proceeding. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5(5))

§15-26-2 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Aloha Tower complex" means that parcel of land described by section 206J- 3, HRS;

"Board" means the board of directors who constitute the governing body of the development corporation, as provided by section 206J-4 (b), HRS;

"Bonds" means revenue bonds, special facilities revenue bonds, notes or other instruments of indebtedness of the development corporation issued under this chapter and shall include refunding bonds.

"Chairperson" means the state director of business and economic development or his designee, who is designated as chairperson of the board by section 206J-4 (b), HRS;

"Designated representative" means any person designated in writing by the state director of business and economic development, the state director of transportation, the chairperson of the state board of land and natural resources, or the mayor of the city and county of Honolulu, to represent the designator as an ex officio voting member of the board.

"Developer-lessee" means the entity selected to enter into the development agreement and lease with the development corporation and/or the development corporation's public sector joint venturers.

"Development agreement" means the plan for development of the project as agreed upon by the board and the developer-lessee after the developer's selection and as authorized by section 206J-5(7), HRS.

"Development area" means the geographic area on which a project will be developed, which area may include all or any part of the Aloha Tower complex and any property outside the Aloha Tower complex that is under the jurisdiction of public sector joint venturers.

"Development corporation" means the Aloha Tower development corporation established by section 206J-4.

"Ex officio member" means the state director of business and economic development, state director of transportation, the chairperson of the state board of land and natural resources, or the mayor of the city and county of Honolulu.

"Executive officer" means the chief administrative officer of the development corporation appointed by the board pursuant to section §206J-4 (d), HRS.

"HRS" means the Hawaii Revised Statutes.

"Maritime" means the administration of chapter 266 by the department of transportation.

"Meeting" means the convening of the board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter under the supervision or control of the board.

"Petitioner" means any person or agency that petitions the board, or on whose behalf a petition is made to the board, and concerning which the board may take action under statutory or other powers granted to it.

"Proceeding" means any matter brought before the board which is given consideration in light of the powers and duties of the board as provided by law.

"Project" means an undertaking of work or improvement of public or private real or personal property or any interest therein, developed, acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the development corporation, by itself or in conjunction with qualified persons, and including public facilities and, any law to the contrary notwithstanding, facilities for and functionally related and subordinate to maritime purposes.

"Project cost" means the total cost in carrying out all undertakings that the development corporation deems reasonable and necessary for the development of a project, including but not limited to the cost of studies, surveys, plans and specifications, architectural, design, engineering, or any other special related services; the cost of site preparation and development, demolition, construction, reconstruction, rehabilitation, and improvement; the cost of financing such project, including interest on bonds issued to finance such project from the date thereof to the estimated date of completion of such project as determined by the board; the cost of an allocable portion of the administrative and operating expenses of the development corporation related to the development of such project; and the cost of any indemnity and surety bonds, premiums on policies of insurance, legal fees, and fees and expenses of trustees, depositories, and paying agents for the bonds; all as the development corporation shall deem necessary.

"Public agency" means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of the federal, state, or county government.

"Public facilities" means streets, utility and service corridors, and utility lines where applicable, sufficient to adequately service developable improvements in the area, parking garages, sidewalks, pedestrian ways, parks and other community facilities.

"Public sector joint venturer" shall mean any public agency with which the development corporation enters into a joint venture or other cooperative arrangement to develop a project which encompasses the Aloha Tower complex and such other property as may be under the jurisdiction of such agency.

"Qualified person" means any individual, partnership, corporation, or any public agency, possessing the competence, expertise, experience and resources, including financial, personnel, and tangible resources, required for the purposes of the project and such other qualifications as may be deemed desirable by the development corporation in administering this chapter.

"Real property" means lands, structures, and interests therein and natural resources including water, minerals, and all such things connected with land, including lands under water and riparian rights, space rights, and air rights and any and all other things and rights usually included within the term. Real property also means any and all interests in such property less than fee title, such as leasehold interests, easements, incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgements, mortgages, or otherwise [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §206J-2, as amended, 206J-5(5))

§15-26-3 Grammatical usage. (a) Words used in the present tense include the future tense.

(b) The singular number includes the plural; and the plural, the singular.

(c) The word "shall" is always mandatory.

(d) The word "may" is always permissive.

(e) Terms not defined in this chapter shall have the meanings customarily assigned to them. [Eff FEB 09 1989] (Auth: HRS §206J-5) (Imp: HRS §91-2, § 206J-5)

§15-26-4 Office and office hours. (a) The office of the development corporation is in Honolulu, Hawaii. All communications to the development corporation shall be addressed to Room 410, State Capitol, Honolulu, Hawaii 96813, unless otherwise directed by the development corporation.

(b) The office of the development corporation shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by statute or executive order. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §§91-2, 206J-5)

§15-26-5 Executive officer. (a) An executive officer shall be appointed by the board. The executive officer shall be directly responsible to the board, and shall have control over and responsibility for the execution of the board's policies, the administration of its affairs, and the supervision of its staff.

(b) The executive officer shall prepare a hearing calendar and the agenda for all meetings, under the direction of the chairperson.

(c) The executive officer shall prepare for the development corporation the draft of an annual report of the board's activities, accomplishments, and recommendations for submission to the governor and to the legislature through the governor.

(d) The executive officer may be appointed by the board to serve as hearing officer.

(e) The executive officer in conjunction with and as directed by the board shall evaluate proposals to develop projects on all or any part of the Aloha Tower complex pursuant to subchapter 3.

(f) The executive officer may employ planning, financial, economic, legal, architectural and other consultants as the board may decide in its sole discretion to help it carry out the statutory purposes of the development corporation.

(g) The executive officer shall, with the board's approval, appoint such officers, agents, and employees as are necessary to fulfill the purposes of chapter 206J, HRS, and shall prescribe their duties and qualifications, and fix their salaries, consistent with chapters 76 and 77, HRS. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §§91-2, 206J-5)

§15-26-6 Public records. The term "public records" shall have the same meaning as is defined in chapter 92, HRS, and shall include maps, rules, written statements of policy or interpretation formulated, adopted, or used by the board in its functions, all decision, orders, minutes of board meetings, and records of any docket on file with the board, but shall not include records which invade the right of privacy of an individual. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §§91-2, 92-21, 92-50, 92-51, 206J-5)

§15-26-7 Meetings; generally. (a) The board may meet and exercise its powers in any part of the State of Hawaii. Except as provided in sections 92-4 and 92-5, HRS, all of the board meetings are open to the public. The parliamentary procedure to be utilized by the board in the conduct of its meetings shall be based on the current edition of Robert's Rules of Order, Newly Revised, only if it does not conflict with chapter 91, HRS, or these rules.

(b) The board shall allow all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting. The board may provide for the recordation of all oral testimony presented.

(c) The board shall comply with the provisions of section 92-7, HRS, by providing the required written public notice of any meeting. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §§91-2, 92-3)

§15-26-8 Executive Meetings. (a) The board may hold an executive meeting from which the public may be excluded pursuant to section 92-4, HRS.

(b) The board shall not finally act upon any ruling, rule, contract, appointment, or decision in an executive meeting, except as provided in section 92-5 (a) (1) to (6), HRS. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §§91-2, 92-4, 92-5, 206J-5)

§15-26-9 Emergency meetings. The board may hold not an emergency meeting that does comply with the notice requirement of section 92-7, HRS, under conditions specified in section 92-8, HRS. [Eff FEB 09 1989] (Auth: §§91-2, 206J-5) (Imp: HRS §92- 8)

§15-26-10 Quorum and number of votes necessary for a decision; designated representatives. (a) Unless otherwise provided by law, a majority of all the members to which the board is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the board is entitled also shall be necessary to make a board decision valid.

(b) A designated representative shall serve as a voting member when representing an ex officio member. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §92-15)

§15-26-11 Removal of persons from meetings. The presiding officer may remove any person who willfully disrupts a meeting. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §92-3)

§15-26-12 Minutes of meetings. (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting shall be required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where the disclosure would be inconsistent with section 92-5, HRS. The board may withhold publication of the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §92-9)

§15-26-13 Computation of time. In computing any period of time under the rules as provided in this chapter, by notice, or by any order, or rule of the board, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the prescribed period of time is not more than ten days, Saturdays, Sundays or legal holidays within the designated period shall be excluded in the computation. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5) (Imp: HRS §91-2)

§15-26-14 Authentication of board actions. All actions, decisions, and orders of the board requiring authentication shall be signed by the chairperson, or in the chairperson's absence, by the executive officer of the development corporation. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5(5))

§15-26-15 Submittals and requests of petitioners. All submittals and requests requiring action by the board shall be made in writing and filed with the office of the development corporation at least ten calendar days before the date of a scheduled meeting. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5(5))

§15-26-16 Inspection of public records; requests for public information.

All public records of the development corporation shall be available for inspection by any person during office hours unless public inspection of such records is in violation of any state or federal law, or of any court order. Requests for inspection of public records and for public information shall be referred to the executive officer, or to a subordinate staff member designated by the executive officer. As used in this section, the term "public records" shall be as defined by section 92-50, HRS. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5(5))

§15-26-17 Delegation of administrative duties. (a) The board may delegate to the executive officer any power or authority vested in the board as it deems reasonable and proper for the effective administration of chapter 206J, HRS, except the power to adopt, amend, or repeal rules; and any power or authority expressly reserved to the board by statute or rule.

(b) The board may appoint a hearing officer to conduct a proceeding as provided in this chapter and pursuant to the requirements of chapter 91, HRS. [Eff FEB 09 1989] (Auth: HRS §206J-5 (5)) (Imp: HRS §206J-5(5))

§15-26-18 to 15-26-20 (Reserved).

SUBCHAPTER 2

PROCEEDINGS BEFORE THE DEVELOPMENT CORPORATION

§15-26-21 General rule. All petitioners shall comply with these rules of practice and procedures when appearing before the board. Procedures to be followed by the board, unless specifically prescribed in this chapter or by chapter 91, HRS, shall be those which, in the opinion of the board, will best serve the purposes of the proceeding. The board may waive or suspend the provisions of this chapter. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5 (5))

§15-26-22 Appearances before the board. (a) Any party to any proceeding before the board may appear pro se or be represented by an authorized representative.

(b) When an individual acting in a representative capacity appears in person or signs a paper submitted to the board, the personal appearance or signature of that individual shall constitute a representation to the board that under the provisions of this chapter and the applicable statute, the individual is authorized and qualified to represent that particular person or entity. The board, at any time, may require any person transacting business with the development corporation in a representative capacity to authenticate the person's authority and qualification to act. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5(5))

§15-26-23 Disqualification of board members. Up to five calendar days before the proceeding a petitioner may file an affidavit alleging that one or more of the board members has a personal bias or prejudice. Every such affidavit shall state the facts and reasons for the belief that bias or prejudice exists. Any member against whom the affidavit is filed may answer the affidavit in which case the chairperson shall decide whether that member should be disqualified from the proceeding. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J0-5(5)) (Imp: HRS §§ 91-2, 206J-5(5))

§15-26-24 Filing of papers. (a) All requests, submittals, petitions, reports, maps, exceptions, plans, memoranda, and other papers required to be filed with the development corporation pursuant to any proceeding shall be filed within the time limits prescribed by law, rules, or by order of the board. The date on which the papers are received by personal service or by mail shall be regarded as the date of filing.

(b) All papers filed with the development corporation shall be:

(1) Written in black ink, typewritten, mimeographed, or printed;

(2) Plainly legible; and,

(3) On strong, durable paper no larger than 8-1/2" x 14" in size, except that maps, charts, tables, and other like documents may be larger, folded to the size of the papers to which they are attached.

(c) Reproduction may be by any process, provided all copies are clear and permanently legible.

(d) The original of each paper shall be signed in ink by the party.

(e) All papers shall be signed by the petitioner. The signature shall constitute a verification that the paper has been read and that to the best knowledge, information, and belief of that person:

(1) Every statement contained therein is true;

(2) No statement is misleading; and,

(3) That the paper is not interposed for delay.

(f) Unless otherwise required by this chapter or the board, there shall be filed with the development corporation an original and seven copies of each paper. Additional copies shall be promptly provided if requested by the chairperson or executive officer.

(g) If any paper filed with the development corporation is not in substantial conformity with the applicable rules of the development corporation, on its own motion or on motion of any party, the board may strike the paper or require its amendment. If amended, the paper shall be effective as of the date of the receipt of the amendment.

(h) All papers filed with the development corporation shall be retained for a reasonable time by the board in its files. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91-2, 206J-5(5))

§15-26-25 Continuances or extensions of time. Whenever a person or agency is required to take action within the period prescribed or allowed by this chapter, or by notice given under this chapter, or by an order, the chairperson may:

- (1) With or without notice, extend the period before the expiration of the prescribed period; or
- (2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff FEB 09 1989] (Auth: HRS §§91-2, 206J-5(5)) (Imp: HRS §§91- 2, 206J-5 (5))

§§15-26-26 and 15-26-27 (Reserved).

SUBCHAPTER 3

RULEMAKING PROCEDURE

§15-26-28 Initiation of rulemaking procedure. (a) The adoption, amendment, or repeal of any rule of the development corporation may be made by the board on its own motion, or by petition of any interested person or agency.

(b) Petitions for rulemaking shall conform to the requirements of §15-26-17 and shall contain:

- (1) The name, address, and telephone number of each petitioner;
- (2) The signature of each petitioner;
- (3) A draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired;
- (4) A statement of the petitioner's interest in the subject matter; and
- (5) A statement of the reasons in support of the proposed rule, amendment, or repeal.

(c) Within thirty days after the filing of a petition for rulemaking, the board shall either deny the petition or initiate rulemaking proceedings. [Eff FEB 09 1989] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

§15-26-29 Denial of petition. Any petition that fails in any material respect to comply with the requirements of this chapter or fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings shall not be considered by the board. The board shall notify the petitioner in writing of the denial, stating the reasons therefor. Denial of a petition shall not operate to prevent the board from acting, on its own motion, upon any matter disclosed in the petition. [Eff FEB 09 1989] (Auth: HRS §91-6) (Imp: HRS §91-6)

§15-26-30 Acceptance of petition. If the board determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in this chapter and the applicable

provisions of chapter 91, HRS. [Eff FEB 09 1989] (Auth: HRS §91-6) (Imp: HRS §91-6)

§15-26-31 Notice of public hearing. (a) Whenever, pursuant to a petition or upon its own motion, the board proposes to adopt, amend, or repeal any rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State. The notice shall also be mailed to all agencies or persons who have made timely written requests for advance notice of the development corporation's rulemaking proceedings. All notices shall be published at least twenty days prior to the date set for public hearing.

(b) A notice of the proposed adoption, amendment, or repeal of any rule shall include:

- (1) A statement of the date, time, and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of the rule is proposed; and
- (3) A statement of the substance of the proposed rule. [Eff FEB 09 1989] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§ 91-3, 91-6, 92-41)

§15-26-32 Hearing procedures. (a) The public hearing before the development corporation shall be presided over by the chairperson, or, in the chairperson's absence, by another board member or hearing officer designated by the board. A quorum of the board shall not be required in the conduct of a hearing. Interested individuals and agencies shall have a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. A clear and orderly record shall be obtained. The presiding officer shall be authorized to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in the order the presiding officer prescribes.

(d) To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue.

(e) The presiding officer shall have any person who wilfully disrupts a hearing to prevent or compromise the conduct of the hearing removed from the hearing room.

(f) Before proceeding to testify, witnesses shall state their name, address, and whom they represent at the hearing, and shall give any information respecting their appearance as the presiding officer may request. The presiding

officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Witnesses shall be subject to questioning by the members of the board or by any other representative of the board.

(g) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. An original and seven copies shall be required when submitting written comments, recommendations, or replies.

(h) Unless otherwise specifically ordered by the board, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that furnishing copies is impracticable, eight copies of the exhibits shall be submitted. [Eff FEB 09 1989] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

§15-26-33 Board action. The board shall consider all relevant comments and materials of record before taking final action in a rulemaking proceeding. Final action shall be taken within a reasonable amount of time following:

- (1) The final public hearing; or
- (2) The expiration of any extension period for submission of written comments or recommendations, whichever occurs later. [Eff FEB 09 1989] (Auth: HRS §§91-2, 91-6) (Imp: HRS §§91-3, 91-6)

§15-26-34 Emergency rulemaking. The board may adopt emergency rules pursuant to the requirements of section 91-3(B), HRS. [Eff FEB 09 1989] (Auth: HRS §91-2) (Imp: HRS §91-3)

§§15-26-35 and 15-26-36 (Reserved).

SUBCHAPTER 4

DEVELOPMENT GUIDELINES

§15-26-37 Statutory purpose. The development corporation was established for the purpose of undertaking the redevelopment of the Aloha Tower complex in order to strengthen the international economic base of the community in trade activities, to enhance the beautification of the waterfront, to better serve modern maritime uses, and to provide for public access and use of the waterfront property, all of which are intended to further serve as a stimulant to the commercial activities of the downtown business community and help transform the waterfront into a people place. The development corporation may act alone or

enter into any form of joint venture or other undertaking with any other governmental agency for the purpose of meeting its purpose of redeveloping the Aloha Tower and adjoining waterfront areas. [Eff FEB 09 1989] (Auth: HRS §206J-5 (a) (5)) (Imp: HRS §§206J-1, 206J-5(9))

§15-26-38 Development objectives. In order to achieve its statutory purposes, the development corporation shall be guided by the following development objectives in formulating a development plan for the Aloha Tower complex and in selecting any proposal submitted by any qualified person for the development of all or any part of the Aloha Tower complex or related areas.

- (1) Ensure the project is capable of integration into any overall development plan which may be adopted for the Honolulu waterfront.
- (2) Maintain passenger ship operations in a manner compatible with the development of the downtown waterfront as a people place and in conformity to the maritime requirements of the department of transportation.
- (3) Balance practical economic and market realities with a vision of what can be created.
- (4) Provide ease of pedestrian access to the project and waterfront, and generous open spaces for public enjoyment by eliminating visual and physical barriers between the waterfront and downtown, and by creating strong pedestrian links between downtown and Aloha Tower, particularly along Fort and Bishop streets.
- (5) Improve view corridors down Fort street, Bishop street and Alakea street.
- (6) Expand and improve Irwin park while maintaining its rich vegetation.
- (7) Create a homogeneous project that avoids fragmentation.
- (8) Feature and enhance the physical, public use and visual characteristics of the historic Aloha Tower.
- (9) Minimize unattractive physical facilities (e.g. parking, utilities, service and back-of-house operations).
- (10) Plan buildings and project features to attract people to the waterfront and create a major public gathering place at the Aloha Tower complex by enhancing public access to and along the water's edge and by creating opportunities for a variety of water's-edge experiences appropriate to the downtown waterfront.
- (11) Develop uses which would stimulate and be compatible with the commercial activities of the downtown business community, which may include, but need not be limited to, retail, restaurant, office, hotel, condominium, recreational, historical and cultural uses; and create new activities to assist in bringing people to the waterfront.

- (12) Provide accessible vehicular ingress and egress, and create a parking strategy which minimizes both the cost and impact of parking on the Aloha Tower complex.
- (13) Establish a construction phasing strategy which will minimize disruption of maritime operations and achieve planned development of the Aloha Tower in the earliest practicable time.
- (14) Create a financially feasible and aesthetically creative project which can be initiated at the earliest practicable time.
- (15) Encourage, to the extent possible, development of the Aloha Tower complex and adjoining areas by a qualified private sector developer who will provide all or substantially all of the costs of development.
- (16) Utilize the powers of the development corporation to transcend, as necessary, zoning, density and height limitations in an aesthetically pleasing manner to accomplish the goals of the development corporation and to encourage private sector developers to undertake development plan solutions which will satisfy the foregoing development objectives. [Eff FEB 09 1989] (Auth: HRS §206J-5) (Imp: HRS §§206J-1, 206J-5, 206J-6, 206J- 7)

§§15-26-39 and 15-26-40 (Reserved).

SUBCHAPTER 5

SELECTION OF DEVELOPERS

§15-26-41 Authority to select developers. Except to the extent it may be limited by the terms of any joint venture agreement with a public agency, the development corporation has sole authority to select any qualified person to be a developer-lessee. [Eff FEB 09 1989] (Auth: HRS §206J-5) (Imp: HRS §§206J-5, 206J-11)

§15-26-42 Selection process. The development corporation, by itself or in conjunction with any public sector joint venturer, may select qualified persons to develop a development area pursuant to a process of direct negotiation, a request for proposals, a competitive bidding process, or a combination of any or all of the above. The development corporation shall determine the method for pursuing its objectives, either alone or in conjunction with a joint venturer, or through a cooperative arrangement with other governmental agencies. [Eff FEB 09 1989] (Auth: HRS §206J-5 (a)(5)) (Imp: HRS §§206J-5, 206J-10, 206J-11)

§15-26-43 Environmental assessment. Either before or after select, on of a qualified person to develop a development area and prior to any actual construction or alteration of the Aloha Tower complex or related areas, the development corporation, by itself or in conjunction with any public sector joint

venturer, shall cause an environmental assessment or environmental impact statement to be prepared in compliance with chapter 343, HRS. In the case where developer selection is accomplished through a request-for-proposal process or a process of direct negotiation, preparation of an environmental assessment or environmental impact statement may be one of the selection criteria. Where a developer is selected by competitive bidding, preparation of an environmental assessment or environmental impact statement may be a part of the subject matter of the bid, or may be accomplished by the development corporation alone or in conjunction with a public sector joint venturer at public expense, provided appropriations are available. [Eff FEB 09 1989] (Auth: HRS §206J-5) (Imp: HRS §343-5)

§15-26-44 Request for proposals. Should the development corporation and any joint venturer determine to select a developer for a project through a request for proposals, the process shall encompass a publicly advertised request for proposals, an evaluation of submitted proposals, selection of a qualified person based upon its submitted proposals, and finally, direct negotiation for a development agreement. The selection process shall be as follows:

- (1) The RFP may be developed and prepared by the executive officer in conjunction with any public sector joint venturer, and shall generally delineate the scope of the development area geographically and in terms consistent with the objectives of the development corporation as set forth herein.
- (2) After approval of the board and of the head or governing body of any public sector joint venturer, the development corporation and any joint venturer shall issue a request for proposal (hereinafter "RFP") covering a proposed development area.
- (3) Notice for the RFP shall be published not less than three times in the two major Honolulu newspapers. No more than one of these publications shall be made on any one day or on two consecutive days. Notice for the RFP shall also be published in the wall street journal once a week for a two-week period. Additional publication may be accomplished in the board's discretion.
- (4) The executive officer shall hold a pre-presentation briefing for interested parties as soon as practicable following the last publication of the notice of the RFP to discuss the development objectives of the specific project in the development area, the selection process, and the selection criteria.
- (5) The RFP shall require that any party interested in being a developer-lessee of the proposed development area shall submit a detailed proposal inclusive of, but not limited to, a description of the developer, its experience and its basic development team, architecturally prepared schematic drawings, proposed footprints of the buildings, preliminary traffic studies and solutions prepared by certified engineers and designers, feasibility studies, anticipated

benefit to the State of Hawaii, and timetable for construction as set forth in more detail in §15-26-45 below. Each candidate must submit market studies or other satisfactory evidence to support the financial feasibility of its proposal.

- (6) All responses to the RFP must be submitted within the time set forth in the RFP after the date of final publication of the notice of the RFP, and only those parties submitting responses that meet the minimum submission requirements and qualifications as set forth in §15-26-45 and § 15-26-46 below shall be considered as the potential developer-lessee of the project as described in the RFP. The contents of any proposals received shall be kept confidential and shall not be distributed in any case to other parties who are participating in the RFP process until after a long term lease and development agreement are executed.
- (7) The development corporation by itself, or in conjunction with any public joint venturer, shall review all responses to the RFP and may require each party who has submitted a response to make a presentation of its proposal to the development corporation and its public sector joint venturer, if any. These presentations and interviews shall be timed, scheduled, and otherwise organized at the sole discretion of the board. Because responders may be required to disseminate proprietary or other confidential information during such presentations, the presentations will be limited to members of the board, officers, and staff of the development corporation and their counsel, and corresponding board members, officers, staff and counsel of any public sector joint venturer; and the substance of such presentations shall be kept private and confidential until after a long term lease and development agreement are executed. The presentations shall be exclusively for purposes of fact-finding and investigation, and in no case shall the board make any decisions or deliberate toward any decision regarding selection of a developer or development proposal at presentation sessions.
- (8) As soon as practicable following the final presentation, the development corporation and any public sector joint venturer shall publicly announce the selection of the developer-lessee and shall then enter into negotiations for a development agreement for development of the project and for issuance of a long-term lease for the development area. The development corporation and the selected developer-lessee shall conclude their negotiations and execute said document as soon as practicable after announcement of selection of the developer-lessee. Failure to enter into a long-term lease and development agreement within six months may disqualify the selected developer, and the board may select developers from the remaining proposals or may repeat the RFP

process from the first step. [Eff 02/09/89; Am OCT 06 1989]
(Auth: HRS §206J-5) (Imp: HRS §§2065-5, 2065-11)

§15-26-45 Submission requirements. Any interested person wishing to respond to a request for proposals shall submit 20 copies of the following information and material as part of its proposal:

- (1) Qualifications of developer-lessee
 - (A) Identification of the type of any legal entity with whom the development corporation might enter into a long-term lease and development agreement.
 - (B) Identification of the developer-lessee and its project team, including key design consultants, including all joint venture or limited partners and their respective percentage of interest in the developer-lessee, if any.
 - (C) The previous relevant project experience of the developer-lessee and its project team (including joint venture partners); photographs, brief description of projects (date, location, concept, land uses, size, construction cost, role of development entity, etc.)
 - (D) The previous experience of the developer-lessee and its project team in on-going management and operation of facilities with uses similar to those proposed in the RFP and relevant experience, description of previous projects and role of consultants in the developer-lessee's proposal.
 - (E) Satisfactory evidence from the developer-lessee (including its joint venture partners) to support the financial feasibility of the developer-lessee's proposal.
 - (F) Three copies of the developer-lessee's most recent audited financial statements must be submitted confidentially under separate cover.
 - (G) Organizational and management approach, and role of each development partner and major consultant, in the development.
 - (H) Developer-lessee references.
- (2) Description of proposal
 - (A) Identification of the complete development team.
 - (B) A complete description of the proposed development including:
 - (i) Narrative description of the development plan, design concepts and buildings' orientation.
 - (ii) Complete preliminary building floor plans, illustrating the proposed project, individual buildings, parking systems and service facilities.

- Organizational schemes of ground floor activities and roof top treatments.
- (iii) Elevations, indicating building materials, longitudinal and cross sections, sketches of major interior spaces, edge conditions and site perspective drawings and/or building mass model.
- (C) Financial pro forma and development schedule, consisting of:
 - (i) Summary pro forma, during construction and for the first ten operating years of the proposed project, including specific estimates of development and construction costs.
 - (ii) Proposed development schedule and project phasing, including supportive, technical and logical rationale for such schedule and phasing. [Eff FEB 09 1989] (Auth: HRS §206J-5) (Imp: HRS §§206J-5, 206J-11)

§15-26-46 Selection criteria. In selecting qualified persons to be the developer-lessee of all or any part of the Aloha Tower complex, the development corporation, through its board, shall be guided by the following criteria:

- (1) Qualifications of developer-lessee:
 - (A) Developer experience:
 - (i) Major urban projects involving:
 - a. Hotel developments;
 - b. Office buildings and complexes;
 - c. Retail facilities and centers;
 - d. Recreation/entertainment uses with large public open spaces;
 - e. Waterfront locations.
 - (ii) Success of comparable undertakings related to the following:
 - a. Economic success (high occupancy, high quality tenancies, favorable refinancing experience, etc.);
 - b. Overall design quality;
 - c. Successful operation in urban and waterfront settings, with emphasis on quality maintenance.
 - (iii) Working relationships with and personal contacts with major hotel operators;
 - (iv) Timeliness of performance;
 - (v) Demonstrated ability to undertake redevelopment projects and to respond to public objectives.
 - (B) Management experience of the key use categories:

- (i) Success of major projects involving one or more similar uses;
 - (ii) Experience in operating developments in urban settings;
 - (iii) Success in achieving high quality project maintenance standards.
- (C) Project architecture and design experience:
- (i) Major mixed-use projects;
 - (ii) Waterfront projects;
 - (iii) Projects in urban settings;
 - (iv) Overall architectural and landscape design quality;
 - (v) Joint public/private projects.
- (D) Financial capability of developer:
- (i) Ability to raise equity/debt funds including current relationship with major lenders;
 - (ii) Ability to provide for operation and maintenance;
 - (iii) Resources and tenacity ("staying power").
- (E) Organization/management approach:
- (i) Clear lines of responsibility within the developer's organization that the development corporation can rely on to be responsive and effective;
 - (ii) Track record in real estate development;
 - (iii) Availability of a full-time representative of the developer in Honolulu during the development of the project.
- (F) Qualifications of key personnel:
- (i) Qualifications and experience of key persons and entities associated with the developer.
- (G) Other factors as appropriate for specific development information submitted.
- (2) Merits of proposal:
- (A) Fulfillment of and responsiveness to project objectives as outlined in § 15-26-38 above;
- (B) Overall strength of development team:
- (i) Economic and management strength of the developer-lessee and development team and quality of guarantee of land lease rent payable to the development corporation;
 - (ii) Experience of designated architectural consultants in major hotel, mixed-use and waterfront projects in a downtown setting as evidenced by overall architectural and urban design quality in previous projects;

- (iii) Experience and strength of other key consultants/specialists designated to be part of the development.
 - (C) Project economics:
 - (i) Development feasibility and likelihood of orderly and rapid implementation;
 - (ii) Responsiveness to economic factors affecting key components of the proposal;
 - (iii) Quality of development components.
 - (D) Architectural and design quality:
 - (i) Overall quality of design;
 - (ii) Ability of design concept to reinforce public improvements;
 - (iii) Conformance with development objectives and the design manual;
 - (iv) Imagination and creativity in the organization of components;
 - (v) Appropriateness of image and character.
 - (E) Ability to conform with development schedule:
 - (i) Date of project financing;
 - (ii) Date for start of construction;
 - (iii) Development construction and schedule;
 - (iv) Anticipated date of completion.
- (3) Benefits to State of Hawaii:
 - (A) Project revenue;
 - (B) Tax revenue;
 - (C) Public improvements such as open space, infrastructure and other amenities;
 - (D) Other benefits. [Eff FEB 09 1989] (Auth: HRS §206J-5 (a) (5)) (Imp: HRS §206J-5 (a) (8) & (9), HRS §206J-11))

§15-26-47 Direct negotiation. Should the development corporation and any joint venturer determine to select a developer-lessee by direct negotiation, the board shall prepare or cause to be prepared a development plan for the Aloha Tower complex which incorporates the needs of the department of transportation and which accommodates the plans, specifications, designs, or estimates of any project the board finds acceptable and advisable to carry out the intent of chapter 206J, HRS.

(a) In selecting a qualified person to be the developer-lessee of all or any part of the Aloha Tower complex, the development corporation, through its board, shall be guided by the criteria listed in §15-26-46 of these rules. [Eff FEB 09 1989] (Auth: HRS §206J-5(a)(5)) (Imp: HRS §§206J-5 (a) and (b))

§15-26-48 Competitive bidding. (a) Should the development corporation and any joint venturer determine to select a developer-lessee by

competitive bidding, the board and any joint venturer shall prepare or cause to be prepared a development plan for the Aloha Tower complex which incorporates the needs of the department of transportation, and which will implement the intent of chapter 206J, HRS.

(b) The development plan will be prepared in sufficient detail and with the specificity which will enable qualified bidders to submit competitive priced tenders based on definitive requirements. Terms will be set forth generally in the advertisement for sealed tenders.

(c) Notice of the request for bids shall be published not less than three times in the two major Honolulu newspapers. No more than one of these publications shall be made on any one day or on two consecutive days.

(d) Leases will be awarded on the basis of the highest return to the State and joint venturer. [Eff FEB 09 1989] (Auth: HRS §206J-5) (Imp: HRS §§206J- 5, 206J-9, 206J-10, 206J-11)

§§15-26-49 and 15-26-50 (Reserved).

Subchapter 6 [Reserved]

Subchapter 7 [Reserved]

Subchapter 8 [Reserved]

Subchapter 9 [Reserved]

Subchapter 10 [Reserved]