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SCWC NO. 30484

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Application)	PETITIONER SCENIC HAWAI'I, INC.'S
	)	APPLICATION FOR WRIT OF CERTIORARI
of	)	REGARDING THE FINAL JUDGMENT
	)	FILED ON JANUARY 18, 2013
HONOLULU CONSTRUCTION AND	)	(CAAP 30484, CIVIL NO. 01-1-0007)
DRAYING COMPANY, LIMITED,)	
to register title to land situate at Honolulu,)	
City and County of Honolulu, State of)	
Hawai'i.	)	(Caption continued on next page)
_____)	

PETITIONER SCENIC HAWAI'I, INC.'S REPLY TO ALOHA
TOWER DEVELOPMENT CORPORATION'S OPPOSITION TO
APPLICATION FOR WRIT OF CERTIORARI FILED APRIL 3, 2013

DECLARATION OF JOHN T. HOSHIBATA

EXHIBITS 1-2

CERTIFICATE OF SERVICE

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SCENIC HAWAI'I, INC.

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

ALOHA TOWER DEVELOPMENT CORPORATION,

Petitioner,

vs.

STATE OF HAWAI‘I, DEPARTMENT OF LAND AND NATURAL RESOURCES, TRUSTEES OF WILLIAM G. IRWIN CHARITY FOUNDATION, SCENIC HAWAI‘I, INC., THE OUTDOOR CIRCLE, HISTORIC HAWAI‘I FOUNDATION, HAWAI‘I’S THOUSAND FRIENDS, LIFE OF THE LAND, AND INTERVENOR, CITY AND COUNTY OF HONOLULU,

Respondents.

and

SCENIC HAWAI‘I, INC.

Respondent/Cross-Appellee,

vs.

ALOHA TOWER DEVELOPMENT CORPORATION,

Petitioner/Cross-Appellant.

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Application)	PETITIONER SCENIC HAWAI'I, INC.'S
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LAND AND NATURAL RESOURCES,)	
TRUSTEES OF WILLIAM G. IRWIN)	
CHARITY FOUNDATION, SCENIC)	
HAWAI'I, INC., THE OUTDOOR CIRCLE,)	
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OF THE LAND, AND INTERVENOR,)	
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Respondent/Cross-Appellee,)	
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ALOHA TOWER DEVELOPMENT)	
CORPORATION,)	
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Petitioner/Cross-Appellant.)	
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PETITIONER SCENIC HAWAI‘I, INC.’S REPLY TO ALOHA
TOWER DEVELOPMENT CORPORATION’S OPPOSITION TO
APPLICATION FOR WRIT OF CERTIORARI FILED APRIL 3, 2013

The Land Court correctly applied the Private Attorney General Doctrine (“PAGD”) to Scenic Hawai‘i in awarding fees and costs. Because the Intermediate Court of Appeals (“ICA”) incorrectly decided that the Land Court abused its discretion, *certiorari* is appropriate and should be granted. Scenic Hawai‘i satisfied the three prongs of the PAGD, as established by this court in *Sierra Club v. Dep’t of Transp. Of State of Hawai‘i*, 120 Hawai‘i 181, 202 P.3d 1226 (2009) (“Sierra Club II”): it vindicated an important public interest, its involvement was necessary to the resolution of the case, and the entire state and its visitors have benefitted from the decision.

I. Scenic Hawai‘i Met the First Prong of the PAGD In That It Vindicated An Important Public Interest.

Scenic Hawai‘i has met Prong One of the PAGD. There is no question that it vindicated an important public interest, regardless of the styling of ATDC’s Land Court Petition (“Petition”).

ATDC argues and the ICA agrees, that this case is not about public policy, but simply about a deed - that the underlying issue before the Land Court was “whether the (Fagan) deed restriction had been waived” and that “[n]othing about this decision turns on ATDC’s statutory obligations or on any public interest in open spaces . . . the only question the land court resolved was a factual one: whether the deed restriction had been waived.” *Opposition*, p. 3. This argument is shallow, myopic and disingenuous. It is the clearest example of elevating form over substance. This argument was erroneously adopted by the ICA. The initial Petition was simply the first and procedurally necessary filing, the focus, intent and end result of which was not to expunge deed restrictions, but to eviscerate HRS § 206-J, Executive Order No. 472, and the Park’s designation as a Hawai‘i Historic Place. 15 ROA 5381-5389.

From the very beginning, no matter how ATDC's petition was titled or articulated, the Petition immediately, directly and necessarily implicated the public policy issue of the preservation of Irwin Park. Public policy was unquestionably under attack immediately upon the filing of the Petition, even though the text of the Petition itself did not specifically address "public policy". 1ROA 1. Indeed, the Land Court acknowledged the inherent public policy implications and stated "[t]he first prong is met because the public policy at stake is the public's right to maintain Irwin Park as a public memorial park in its current form instead of erecting a multiple level parking structure upon it." See Order Granting in Part and Denying in Part Respondent Scenic Hawai'i's Motion for Attorneys Fees and Costs Filed on August 28, 2008 (emphasis added), 15 ROA 5556-62, attached as Exhibit "1". Declaration of John T. Hoshibata ("Hoshibata Declaration").

ATDC blithely states, in its opposition, that "[n]othing about this decision turns on ATDC's statutory obligations or any public interest in open spaces." *Opposition* p. 3. Nothing is farther from the facts, the law and the truth. ATDC's agenda was to replace the Park with a parking lot. It chose not to attempt to repeal HRS § 206-J. It chose not to attempt to rescind Executive Order No. 472. It chose not to attempt to rescind the Park's Historic Place status. The easiest and likely the only way for ATDC to get what it wanted was to file the Petition. This was also the easiest way to avoid unwanted publicity and certain public outcry.

Furthermore, the intentions of the State to condemn the Park, which was completed in 1994 (see "Aloha Tower Development Corporation Annual Report 2005", Exhibit "2" at p. 8; Hoshibata Declaration), began in the 1998-99 session of the State Legislature, during which ATDC introduced bills to condemn the Park. 14 ROA at 5317. On August 30, 1999, representatives of ATDC, the office of the Governor, the Department of Business Economic Development and Tourism, and Aloha Tower, L.L.P., met with Respondents Olds and Bogart

and requested that they consent to the construction of a parking garage which would replace Irwin Park. 14 ROA at 5378. Olds and Bogart did not consent to the proposal, but did not reject it. *Id.*

On May 15, 2001, ATDC filed its Petition. 1 ROA 1-96. What ATDC and the ICA has failed to acknowledge is that *on the same date, May 15, 2001, ATDC also filed, concurrently with its Petition, its “Ex Parte Application for an Order to Show Cause Why Petition of Aloha Tower Development Corporation to Expunge Deed Restrictions from Land Court Certificate of Title No. 310,513 Should Not be Granted and for Publication of Citation, and for Order to Show Cause”* (“Ex Parte Application to Show Cause”) 1 ROA 97-107. These are facts and circumstances which are critical for the Supreme Court to recognize in the context of the facts and circumstances of Scenic Hawai‘i’s intervention. Scenic Hawai‘i had to intervene immediately, not only because of its opposition to the Petition, but because of the *Ex Parte* Application to Show Cause which (a) accelerated the pace of the litigation and (b) caused great concern that the named Respondents would not timely appear (or decide what position they would take).

ATDC’s Petition, with its attack on the deed restrictions, was the only way the State could have reached its ultimate goal of tearing down Irwin Park. The ICA failed to consider the inherent impact of the Petition on public policy. ATDC could not have filed a “Petition to raze Irwin Park in order to replace it with a multi-deck parking lot in violation of a deed restriction, a statutory provision, an executive order, and a Historic Place designation.”

II. Scenic Hawai‘i Met the Second Prong of the PAGD: Its Immediate Involvement Was Necessary Despite the Subsequent Appearance of Other Respondents.

The ICA opinion regarding Prong Two focuses too narrowly on the involvement of the City & County of Honolulu and the Olds and Bogart respondents, subsequent to Scenic

Hawai‘i’s intervention. When Scenic Hawai‘i sought to intervene, it was under the pressure of an unexpected Petition which sought the ultimate goal of destroying Irwin Park after seventy years of continuous existence and use as a free and public park. More importantly, ATDC had also filed, concurrently with its Petition, an Ex Parte Application for Order to Show Cause why the Petition should not be granted, which included an Order to be signed by the Land Court. 1 ROA 97-107. It was problematic whether any of the Respondents would oppose the Petition and the *Ex Parte* Application, either at all or in a timely manner since the named Respondents did not live in Hawai‘i and had no known opinions or intentions concerning the preservation of the Park. 14 ROA at 5074, 15 ROA at 5299-5488. These are significant and essential facts and circumstances that ATDC and the ICA did not recognize and acknowledge. The ICA mentioned nothing about the critical timing of the Petition and the *Ex Parte Application to Show Cause*. Obviously, any doubt as to whether the California respondents would receive proper notice, would care about the Park’s historic significance and the preservation of the Park in the name of the public interest, and would retain counsel to oppose the Petition especially in light of ATDC’s *Ex Parte Application to Show Cause* had to be resolved in favor of immediate intervention.

Additionally, the ICA opined that because the City & County of Honolulu opposed ATDC’s Petition, Scenic Hawai‘i’s argument that its involvement was necessary is incorrect and not relevant. *Opposition, p. 10*. Scenic Hawai‘i intervened before any party had answered and while it was unclear what position Fagan’s heirs would take. 14 ROA 116-139. The City and County only intervened *after* Scenic Hawai‘i did. *Id.* at 390-392. Furthermore, the State and DLNR only intervened after the Court ordered it to do so, and then did not oppose the Petition because they actually agreed with and supported the ATDC. 4 ROA 1316-1387. Under the circumstances, Scenic Hawai‘i’s participation was entirely necessary at the time.

With respect to Scenic Hawai‘i’s continued participation in the case, it would be unprofessional and a violation of the principles underpinning the *Hawai‘i Rules of Professional Conduct* for Scenic Hawai‘i’s counsel to withdrawal even after the other parties’ appearance and opposition. A cursory review of the entire Record on Appeal demonstrates that Scenic Hawai‘i played an active and significant role throughout the litigation.

ATDC also argues that Scenic Hawai‘i’s characterization of ATDC’s involvement is “misplaced and inappropriate.” *Opposition*, FN 10. In that same footnote, ATDC argues it is the legislature’s prerogative to set public policy priorities and that Scenic Hawai‘i’s differing priorities does not justify commentary about ATDC. *Id.* ATDC did not follow the instructions given by the legislature: “Irwin Memorial Park shall be retained as a public park subject to the reservations and conditions set forth in the deed of Helene Irwin Fagan to the Territory of Hawai‘i.” Haw. Rev. Stat. § 206J-6(c) (emphasis added). It is not only appropriate, but necessary, for Scenic Hawai‘i to remind the Court of the ATDC’s failure and the ICA’s failure to fully appreciate the timing, intent and necessity of Scenic Hawai‘i’s intervention and efforts.

The ICA’s holding that Prong Two of the PAGD was not met in this case is wrong, is taken out of context, and also exalts form over substance. The ICA cited language from Waiahole II which imported the cited language from the 1977 case of Serrano v. Priest, 20 Cal. 3d 25, 569 P.2d 1303 (1977). The Serrano case upheld the PAGD and awarded attorneys’ fees and costs. ATDC took a portion of the Serrano opinion out of context in order to characterize Serrano as standing for the proposition that only “a single individual” opposing ATDC would qualify for its attorneys’ fees and costs. The complete text concerning Serrano’s holding and public policy arguments in favor of the application of the PAGD was not cited by ATDC or the ICA.

It is with this consideration foremost in mind that we must assess the arguments advanced by plaintiffs and *amici curiae* in support of our adoption of the “Private attorney general” concept in our state. Those arguments may be briefly summarized as follows: In the complex society in which we live it frequently occurs that citizens in great numbers and across a broad spectrum have interests in common. *These, while of enormous significance to the society as a whole, do not involve the fortunes of a single individual to the extent necessary to encourage their private vindication in the courts.* Although there are within the executive branch of the government offices and institutions (exemplified by the Attorney General) whose function it is to represent the general public in such matters and to ensure proper enforcement, for various reasons the burden of enforcement is not always adequately carried out by those offices and institutions, rendering some sort of private action imperative. Because the issues involved in such litigation are often extremely complex and their presentation time-consuming and costly, the availability of representation of such public interests by private attorneys acting *pro bono public* is limited. Only through the appearance of “public interest” law firms funded by public and foundation monies, argue plaintiffs and *amici*, has it been possible to secure representation on any large scale. The firms in question, however, are not funded to the extent necessary for the representation of all deserving interests, and as a result many worthy causes of this nature are without adequate representation under present circumstances. One solution, so the argument goes, is the award of substantial attorneys’ fees to those public-interest litigants and their attorneys (whether private attorneys acting *pro bono public* or members of “public interest” law firms) who are successful in such cases, to the end that support may be provided for the representation of interests of similar character in future litigation.

20 Cal. 3d at 44. (Italicized sentence cited by ATDC and the ICA; underscored text is “emphasis added”).)

The Waiahole II decision is clearly consistent with the Serrano rationale that the purpose of the private attorney doctrine “is to promote vindication of important private rights.” 120 Hawai‘i at 219, 202 P.3d at 1264. The ICA’s reliance on Serrano is misplaced and its opinion clearly is contrary to the evolution of the PAGD by the Supreme Court in Waiahole II, Maui Tomorrow, and Sierra Club II. If the ICA’s decision is upheld, the willingness of private interest

and historic preservation groups to stand up to governmental excesses will certainly be chilled to the detriment of the State and society at large.

Furthermore, the ICA failed to recognize the need for chronically underfunded public interest groups to intervene and participate against the State in cases where the State, with all of its resources, has ignored its public duty and has affirmatively attacked that which it is sworn to protect. The fact that the ICA has made it extremely difficult, if not impossible, for public interest groups like Scenic Hawai‘i, the Outdoor Circle, Historic Hawaii Foundation, Hawai‘i’s Thousand Friends and Life of the Land to actively participate in protecting the public interest is not only narrow minded, but will have a definite chilling effect upon the public interest and public interest organizations in future cases. The precedent which will result if the ICA opinion is allowed to stand would be disastrous.

III. Scenic Hawai‘i Met Prong Three of the ATDC.

The ICA did not reach the question of whether Scenic Hawai‘i met Prong Three of the PAGD. Scenic Hawai‘i relies on its opening brief in this matter to demonstrate that it did, in fact, meet Prong Three. Scenic Hawai‘i believes that the number of people standing to benefit from the Land Court’s decision would be enormous, including local residents from all over the State as well as mainland and foreign visitors.

IV. The State’s Improper Discussion Of Sovereign Immunity Should Be Stricken.

In its opinion, the ICA correctly states that “none of the State parties argued that sovereign immunity bars an award of attorney’s fees against a State agency herein (or attempted to distinguish this case from the statutory waiver of sovereign immunity that was held to apply in Sierra Club II. . . Therefore, we do not address these issues and this opinion should be construed accordingly.” *Opinion*, FN 5. ATDC nevertheless addressed this issue, *Opposition*, FN 6, and attached four cases dealing with sovereign immunity. “The general rule provides that ‘[i]ssues

not properly raised on appeal will be deemed to be waived.” *Bitney v. Honolulu Police Dept.*, 96 Haw. 243, 251, 30 P.3d 257, 265 (2001) (internal quotations and citations omitted); *see also* Haw. R. App. P. Rule 28(b)(4) (“points of error not presented [in the opening brief] in accordance with this section will be disregarded, except that the appellate court, at its option, may notice a plain error not presented.”). ATDC acknowledged that the ICA was correct in noting that sovereign immunity was NOT raised by ATDC as a defense in this case and thus, ATDC’s argument and the attachments should be stricken.

V. Conclusion.

The ICA’s holding that Prong One of the PAGD was not met in this case is wrong and clearly elevates form over substance. For its efforts beginning with ATDC’s Petition and *Ex Parte* Application to Show Cause to its successful conclusion years later which clearly vindicated the public trust and the public interest, Scenic Hawai‘i’s victory in fact established the validity and primacy of HRS § 206-J, Executive Order No. 472, and the status of Irwin Park as a Historic Place under HRS § 6-J. The actions of Scenic Hawai‘i involved constitutional¹, statutory, legislative, executive and administrative rights granted to Irwin Park, such that the ICA’s pronouncement that “whether the Petition was granted or denied, the Land Court’s ruling on the Petition was only tangential to the ultimate disposition and future use of Irwin Park”, *Opinion* at 12, is simply wrong. Had ATDC prevailed in its Land Court *Petition*, Irwin Park would now be a multi-deck parking lot. Moreover, the ICA’s statement that the litigation “did not include any determination as to whether ATDC’s intended use was a violation of HRS § 206-J or in contravention of Hawai‘i Historic Preservation Law, Chapter 6-E”, *Id.*, is inherently

¹ The constitutional infirmities of ATDC’s position are clear: by seeking relief through the Land Court and not through the legislature, the Governor and the Historic Places Review Board, Article III and Article V would have been violated.

wrong. The Land Court clearly based its decision on the continued validity of these laws and rules.

Based on the foregoing, Scenic Hawai‘i respectfully requests that this Court grant its *Writ of Certiorari* and proceed under its rules to review the matters complained of; to reverse the decision of the ICA, and to grant it its reasonable attorneys’ fees and costs pursuant to the PAGD and the Land Court’s *Findings of Fact, Conclusions of Law and Order filed November 3, 2008*; its *Minute Order filed May 9, 2009*, its *Order Granting/Denying in Part Respondent Scenic Hawai‘i’s Motion for Attorneys’ Fees and Costs filed August 28, 2008*; its *Order Granting Scenic Hawai‘i’s Renewed Motion for Attorneys’ Fees filed December 23, 2009*; and its *Final Judgment filed March 29, 2010*.

DATED: Honolulu, Hawai‘i, April 10, 2013.

/S/ JOHN T. HOSHIBATA

JOHN T. HOSHIBATA
REX Y. FUJICHAKU
DANA A. BARBATA
Attorneys for Petitioner
SCENIC HAWAI‘I, INC.

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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CHARITY FOUNDATION, SCENIC)	
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HISTORIC HAWAI'I FOUNDATION,)	
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Respondent/Cross-Appellee,)	
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ALOHA TOWER DEVELOPMENT)	
CORPORATION,)	
)	
Petitioner/Cross-Appellant.)	
)	

DECLARATION OF JOHN T. HOSHIBATA

I, John T. Hoshibata, under penalty of law attest as follows:

1. I am a Partner at Bronster Hoshibata and am one of the attorneys representing Petitioner Scenic Hawai‘i, Inc.

2. Except where indicated that a statement is made on information and belief, I make the following statements based on my personal knowledge and am competent to testify as to the matters set forth herein.

3. I make this statement in support of *Petitioner Scenic Hawaii, Inc.’s Reply To Aloha Tower Development Corporation’s Opposition To Application For Writ Of Certiorari Filed April 10, 2013*.

4. The documents referred to herein are kept by my office in the ordinary course of business.

5. Attached as Exhibit “1” is a true and correct copy of the *Order Granting In Part And Denying In Part Respondent Scenic Hawaii, Inc.’s Motion For Attorneys’ Fees And Costs Filed On August 28, 2008*, filed on June 26, 2009.

6. Attached as Exhibit “2” is, upon information and belief, a true and correct copy of the Aloha Tower Development Corporations Annual Report 2005. The document was posted on the website of the Aloha Tower Development Corporation.

I declare under penalty of law that the foregoing is true and correct.

Executed: Honolulu, Hawai‘i, April 10, 2013.

/S/ JOHN T. HOSHIBATA

JOHN T. HOSHIBATA

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**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT SCENIC
HAWAII, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS
FILED ON AUGUST 28, 2008**

On November 10, 2008, Respondent Scenic Hawaii, Inc.'s Motion for Attorneys' Fees and Costs ("Motion") came on for hearing before the Honorable Gary W.B. Chang. John T. Hoshibata, Esq. and Jeannette H. Castagnetti, Esq. appeared for Respondent Scenic Hawaii, Inc., Susan Ichinose, Esq. appeared for Respondents William L. Olds, Jr. and Jane Olds Bogart, Kelvin Kaneshiro, Esq. appeared for Respondent William G. Irwin Foundation, and Gregg Kinkley, Esq. appeared for Petitioner Aloha Tower Development Corporation ("ATDC").

Pursuant to the Court's request at the November 10, 2008 hearing, the parties submitted supplemental briefs on the issue of the private attorney general doctrine, and the matter came on for continued hearing on March 27, 2009. Linda L.W. Chow, Esq. submitted a Statement of No Position and Non-Appearance on October 31, 2009 for the State of Hawaii and Department of Land and Natural Resources, and Don S. Kitaoka submitted the same on January 7, 2009 for the City & County of Honolulu. The Court has reviewed the briefs and heard the arguments of counsel, and

IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN PART as follows:

1. Respondent Scenic Hawaii has satisfied the three-prong test of the *private attorney general doctrine*. Therefore, the Court finds and concludes that Respondent is entitled to an award of its reasonable attorney's fees and costs.

2. Respondent Scenic Hawaii's Motion for Attorneys' Fees and Costs filed on August 28, 2008, is denied without prejudice to allow Respondent to re-file a motion which

presents billing entries for attorneys' fees to which Scenic Hawaii is entitled, that do not violate the prohibition against block billing and are not unduly vague.

3. Respondent Scenic Hawaii's motion for its costs, in the amount of \$4,963.60, is granted.

4. Respondent Scenic Hawaii may resubmit its Motion with billing entries consistent with the Court's Minute Order dated June 4, 2009. Petitioner ATDC shall have an opportunity to file and clearly articulate an objection to any resubmitted billing entry. Should Petitioner ATDC not object to a specific billing entry, the Court will consider any objection to that billing entry as being waived.

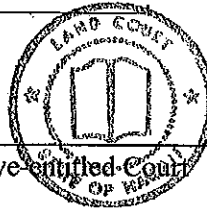
This Order may be signed in counterparts.

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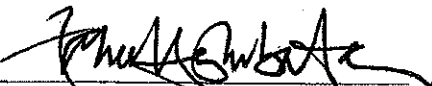
DATED: Honolulu, Hawaii, _____

GARY W.B. CHANG

Judge of the Above-entitled Court



APPROVED AS TO FORM:


John T. Hoshibata, Esq.
Attorney for Respondent/
Scenic Hawaii, Inc.

Gregg Kinkley, Esq.
Attorney for Petitioner Aloha Tower
Development Corporation

In the Matter of the Application of HONOLULU CONSTRUCTION AND DRAYING COMPANY, LIMITED, et al.;
Application No. 787; ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT SCENIC
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This Order may be signed in counterparts.

DATED: Honolulu, Hawaii, _____.

Judge of the Above-entitled Court

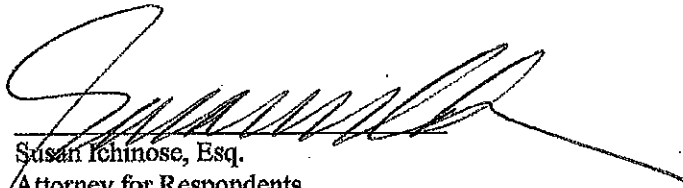
APPROVED AS TO FORM:

John T. Hoshibata, Esq.
Attorney for Respondent/
Scenic Hawaii, Inc.



Gregg Kirkley, Esq.
Attorney for Petitioner Aloha Tower
Development Corporation

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Susan Ichinose, Esq.
Attorney for Respondents
William L. Olds, Jr. and Jane Olds Bogart

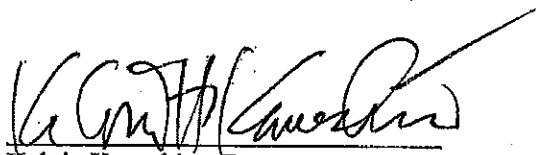
Kelvin Kaneshiro, Esq.
Attorney for Respondent
William G. Irwin Foundation

Linda L.W. Chow, Esq.
Attorney for Respondent
State of Hawaii and Department of
Land and Natural Resources

Don S. Kitaoka, Esq.
Attorney for Respondent
City & County of Honolulu

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Attorney for Respondents
William L. Irwin and Jane Olds Bogart



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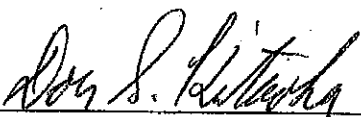
Don S. Kitaoka, Esq.
Attorney for Respondent
City & County of Honolulu

In the Matter of the Application of HONOLULU CONSTRUCTION AND DRAYING COMPANY, LIMITED, et al.;
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Susan Ichinose, Esq.
Attorney for Respondents
William L. Irwin and Jane Olds Bogart

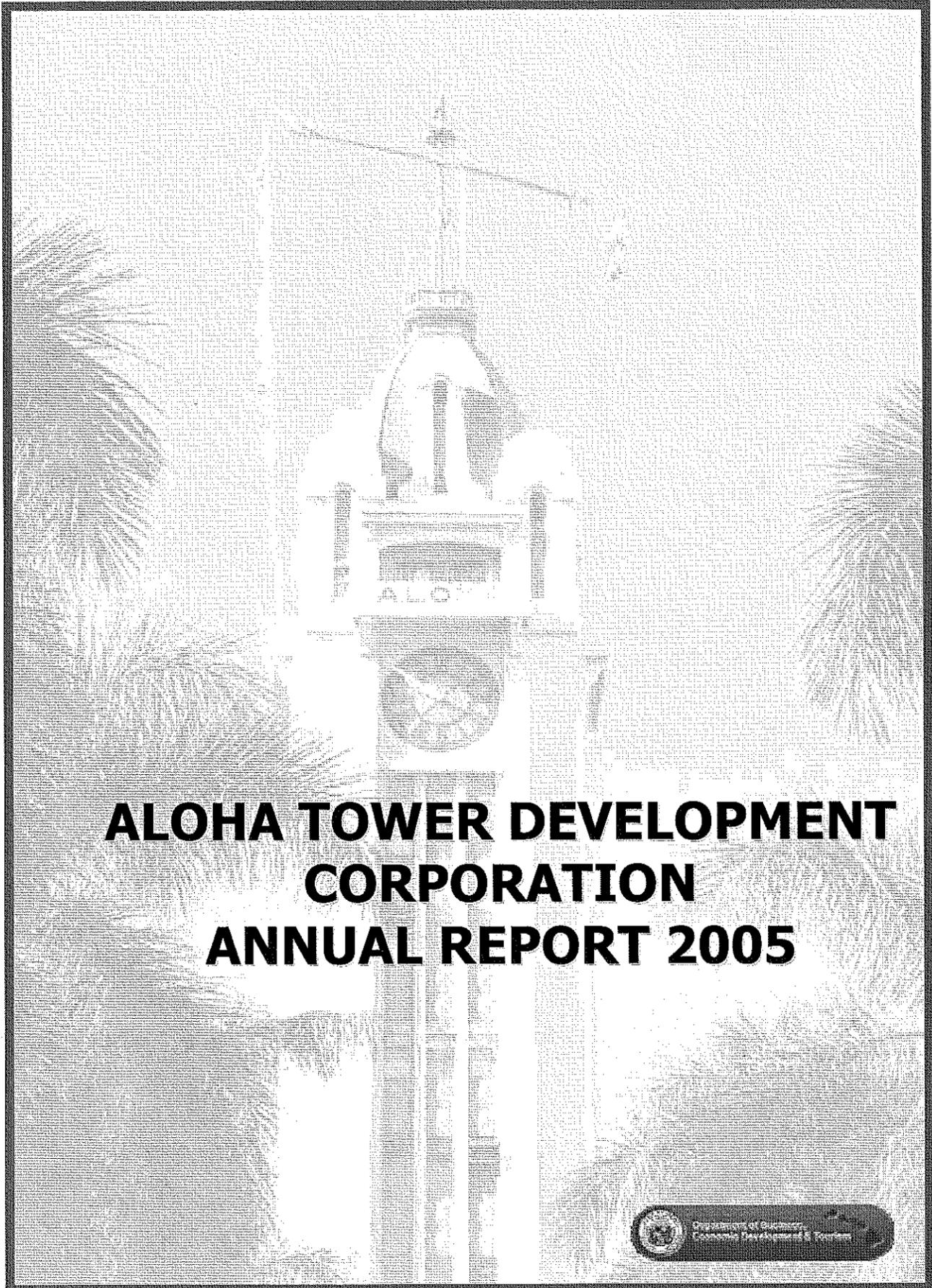
Kelvin Kaneshiro, Esq.
Attorney for Respondent
William G. Irwin Foundation

Linda L.W. Chow, Esq.
Attorney for Respondent
State of Hawaii and Department of
Land and Natural Resources



Don S. Kitaoka, Esq.
Attorney for Respondent
City & County of Honolulu

In the Matter of the Application of HONOLULU CONSTRUCTION AND DRAYING COMPANY, LIMITED, et al.;
Application No. 787; ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT SCENIC
HAWAII, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS FILED ON AUGUST 28, 2008



**ALOHA TOWER DEVELOPMENT
CORPORATION
ANNUAL REPORT 2005**



EXHIBIT "2"

①



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LETTER FROM THE CHAIRPERSON

I am pleased to present you with this Aloha Tower Development Corporation (ATDC) Annual Report for the year 2005. Since its establishment in 1981, the ATDC has experienced years of great productivity as well as years of challenge as the State economy experienced cyclical changes that affected ATDC's development objectives. This year, the robust State economy has resulted in the receipt of some exciting development proposals and opportunities. We hope you find this report interesting and informative.



The ATDC has completed a busy year in which the agency considered various development proposals by private developers for the Aloha Tower Project Area. The ATDC continues to remain focused on moving forward with quality projects that will enhance the viability and success of the Aloha Tower Marketplace.

The ATDC also began a new phase of meeting its mission by partnering with the Department of Transportation – Harbors Division to expedite the development of maritime improvements for Honolulu Harbor. We are very excited to play a part in this vital endeavor to upgrade and enhance our State's commercial hub.

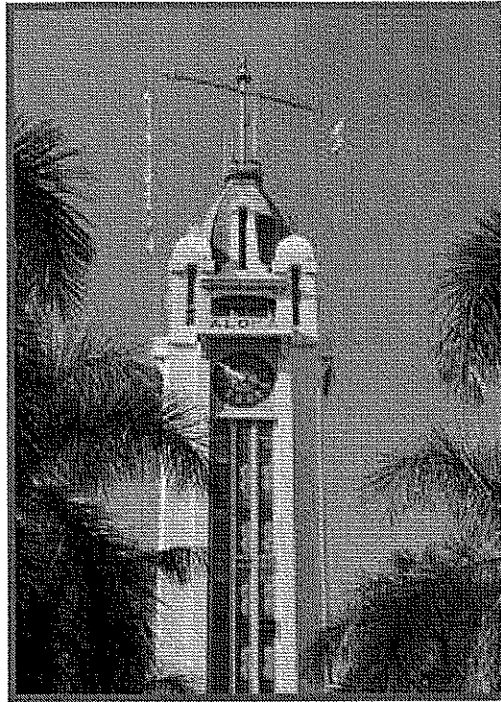
Many individuals and organizations have contributed greatly to the work at ATDC. On behalf of the Board of Directors, I would like to take this opportunity to express our appreciation to all who have helped to further our mission.

As always, we welcome your feedback and look forward to working responsibly to achieve the program objectives of ATDC.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melissa T. Pavlicek". The signature is fluid and cursive, with a long horizontal stroke at the end.

MELISSA T. PAVLICEK
Chairperson
Aloha Tower Development Corporation



MISSION STATEMENT

- **Strengthen the international economic base of the community in trade activities;**
- **Enhance the beautification of the waterfront;**
- **Improve modern maritime uses in concert with the Department of Transportation; and**
- **Provide for public access and use of the waterfront property.**

ALOHA TOWER DEVELOPMENT CORPORATION

JURISDICTION

The Aloha Tower Development Corporation (ATDC) was established in 1981 to oversee the redevelopment of State-owned properties located along the Downtown Honolulu Waterfront. The boundaries of the project area, called the Aloha Tower Complex, include land areas makai of Nimitz Highway from Piers 4 through 6, Piers 8 through 23, and portions of Nimitz Highway and Iwilei.

ORGANIZATION

The ATDC is managed by a Board of Directors. The composition of the seven-member Board as described in its enabling statute, consists of three ex-officio state members from the Department of Business, Economic Development & Tourism, Department of Land and Natural Resources and the Department of Transportation, the Mayor of the City and County of Honolulu or his representative, and three citizens from the community.

The 2005 Board of Directors:

Chairperson

MELISSA T. PAVLICEK

Attorney

Hawaii Public Policy Advocates
(July 1, 2005 to Present)

THEODORE E. LIU

Director

Department of Business, Economic
Development & Tourism

Vice-Chairperson

SIDNEY A. QUINTAL

Director

Department of Enterprise Services
City & County of Honolulu
Mayor's Representative

BARRY FUKUNAGA

Deputy Director, Harbors Division
Department of Transportation

DAVID M. LOUIE

Attorney

Roeca Louie & Hiraoka
(Chairperson to June 30, 2005)

ROBERT MASUDA

Deputy Director

Department of Land & Natural Resources

NEAL M. OTANI

President

Y. Fukunaga Products, Ltd.

STAFF

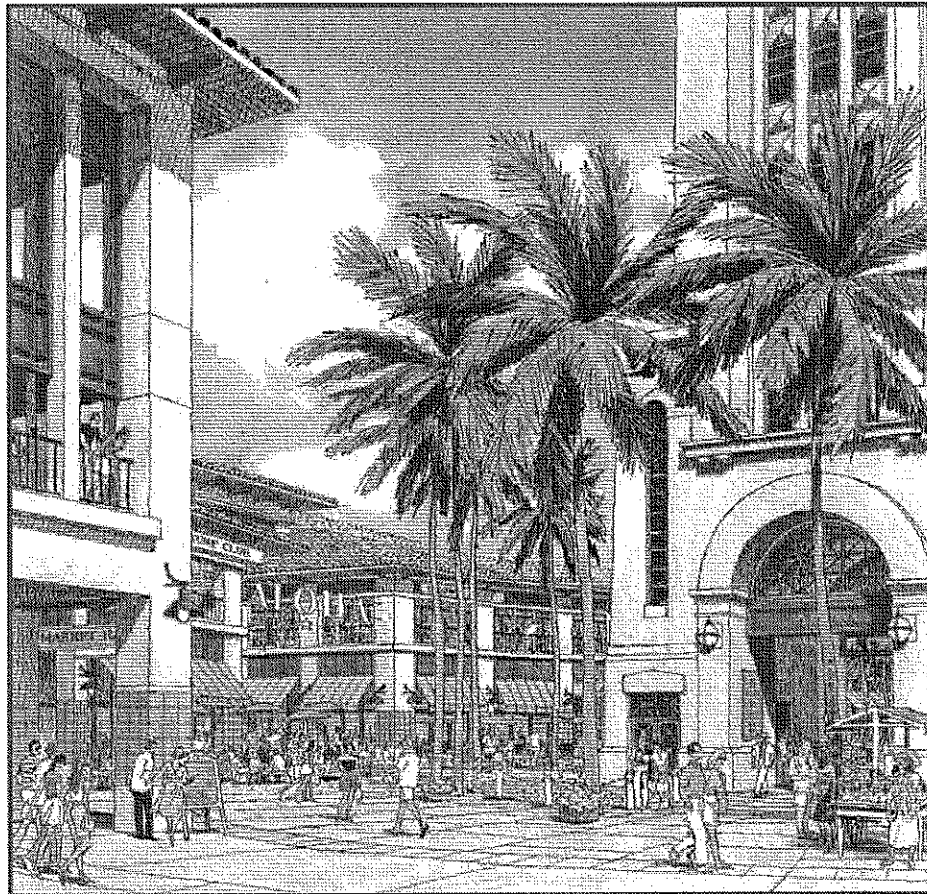
DANIEL ORODENKER
Acting Executive Officer
(to June 30, 2005)

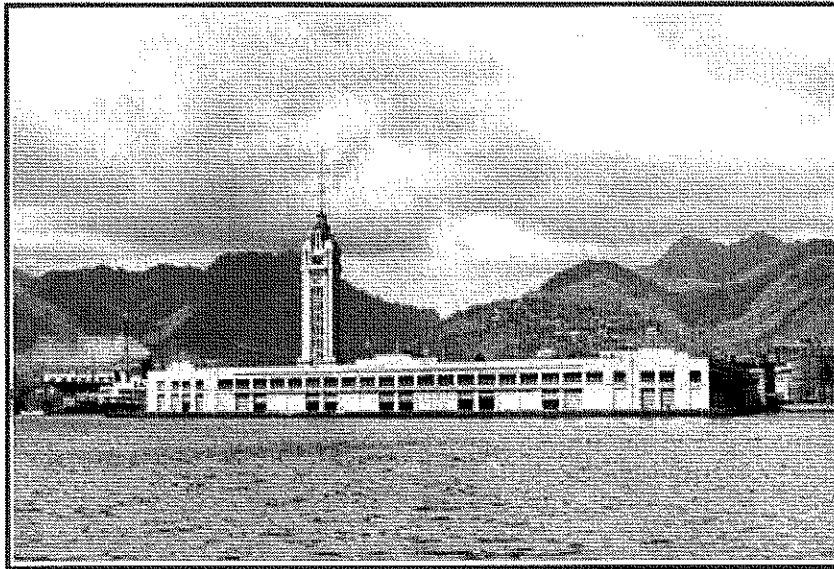
SANDRA S. PFUND
Acting Executive Officer
(July 1, 2005 to present)

CLEIGHTON GOO
Development Manager

DANA YOSHIMURA
Development Manager

HARUMI LEONG
Administrative Assistant





HISTORY OF THE ALOHA TOWER

The Aloha Tower is one of Honolulu's oldest and most recognizable landmarks. It symbolizes hospitality and memories of the old "Boat Days" when passenger ships were welcomed warmly to Honolulu Harbor.

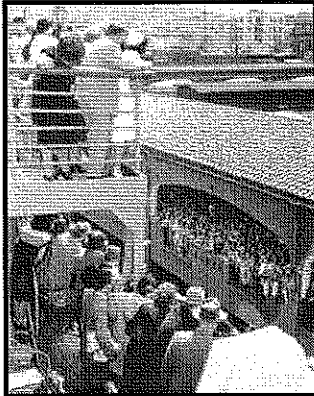
During the 19th century, Honolulu Harbor was a gathering place for whaling and merchant ships. The 20th century saw sailing ships rapidly replaced by steamships and piers and warehouses began springing up all along the waterfront. The city decided it was time to come up with an appropriate iconic structure to create a memorable impression of aloha to its visitors.

Piers 8, 9 and 10 were completed in April 1918 and were made of concrete cylinders. Freight and passenger sheds were constructed shortly before completion of the Tower.

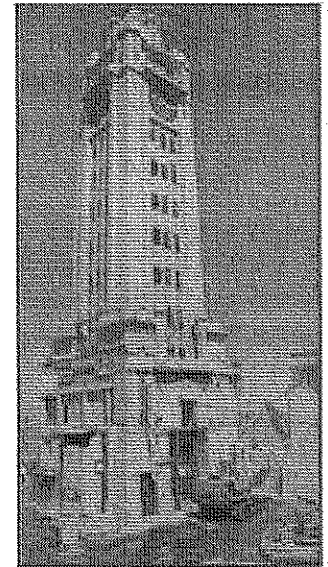
In 1924, C.W. Winstedt and the National Construction Company began construction on the Tower. The project took a year and a half to complete at a cost of \$351,053. At 184 feet, 2 inches tall, it was the most imposing building in the Territory of Hawaii and offered a spectacular view of Honolulu Harbor.

The Aloha Tower was designed with modern Spanish architecture. The exterior involved 6,000 barrels of cement, 15 gallons of light green paint and 1,400 gallons of white paint. On the roof of the Aloha Tower is a 40 foot mast with a cross arm and cables which are used to hang flags and triangles to guide ships.

Aloha Tower opened in 1926. The first occupants were local artist James A. Wilder and Aloha Tower architect, Arthur Reynolds. The first floor contained Customs offices. The second floor was the arrival and departure space for passenger steamships. The Harbor Master and his staff were housed on the 3rd floor and the Harbor pilots on the 4th floor. Floors 5 through 9 were planned for office rental. The 10th floor housed the great clock which weighed seven tons and was manufactured by E. Howard Clock Company of Boston. The 11th floor was designed for the pilots lookout and public viewing balconies.



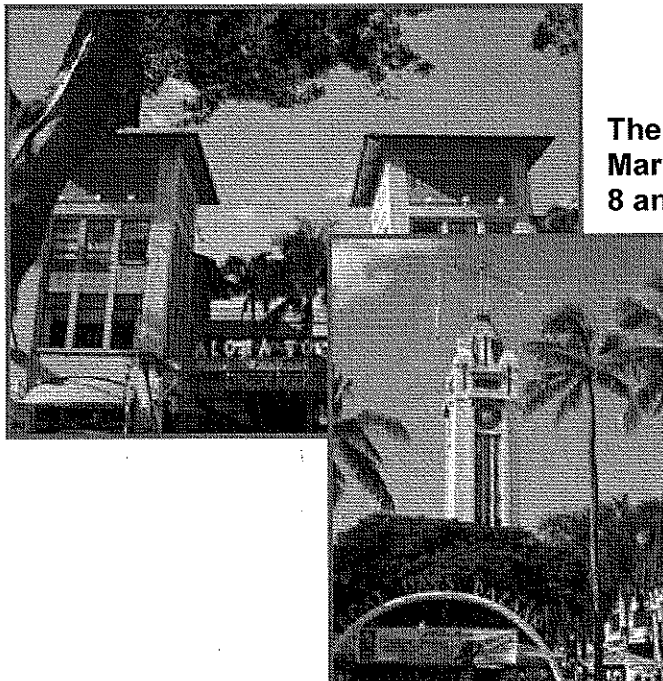
By the 1930's, luxury liners like Matson's Lurline and S.S. Monterey were bringing visitors by the thousands to Honolulu. "Boat Days" symbolized the romance of the era and had all the pageantry of a Hawaiian holiday. On these festive occasions, crowds gathered, the Royal Hawaiian Band played, graceful hula dancers swayed, colorful streamers flowed, and youngsters dove into the harbor to seek coins tossed by arriving passengers on cruise ships.



Source: Honolulu Star-Bulletin - July 14, 1994

World War II resulted in the complete camouflaging of the Tower with netting and khaki green paint. The tower was closed to the public during the war and reopened in 1948.

In July 1994, a 30-foot high wall connecting the Pier 10 Terminal to the Aloha Tower was torn down and the landmark stood alone for the first time. The action marked the start of the construction of the present day Aloha Tower Marketplace.



The first phase of the Aloha Tower Marketplace was the Marketplace at Piers 8 and 9. The Marketplace, together with interim cruise ship terminals at Piers 9, 10 and 11, and the refurbished Aloha Tower, opened in November 1994. The Marketplace is a simple, but elegant structure, offering a two-story mix of retail specialty shops and restaurants.

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Application	)	PETITIONER SCENIC HAWAI'I, INC.'S
	)	APPLICATION FOR WRIT OF CERTIORARI
of	)	REGARDING THE FINAL JUDGMENT
	)	FILED ON JANUARY 18, 2013
HONOLULU CONSTRUCTION AND	)	(CAAP 30484, CIVIL NO. 01-1-0007)
DRAYING COMPANY, LIMITED,)	
to register title to land situate at Honolulu,)	
City and County of Honolulu, State of)	
Hawai'i.)	
<hr/>		
ALOHA TOWER DEVELOPMENT)	
CORPORATION,)	
)	
Petitioner,)	
)	
vs.)	
)	
STATE OF HAWAI'I, DEPARTMENT OF)	
LAND AND NATURAL RESOURCES,)	
TRUSTEES OF WILLIAM G. IRWIN)	
CHARITY FOUNDATION, SCENIC)	
HAWAI'I, INC., THE OUTDOOR CIRCLE,)	
HISTORIC HAWAI'I FOUNDATION,)	
HAWAI'I'S THOUSAND FRIENDS, LIFE)	
OF THE LAND, AND INTERVENOR,)	
CITY AND COUNTY OF HONOLULU,)	
)	
Respondents.)	
)	
and)	
)	
SCENIC HAWAI'I, INC.)	
)	
Respondent/Cross-Appellee,)	
)	
vs.)	
)	
ALOHA TOWER DEVELOPMENT)	
CORPORATION,)	
)	
Petitioner/Cross-Appellant.)	
<hr/>		

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2013, a copy of the foregoing document was duly served by electronic means upon the following parties to their last known addresses as indicated below:

Served Electronically through JEFS:

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and STATE OF HAWAI'I DEPT. OF LAND &
NATURAL RESOURCES

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DATED: Honolulu, Hawai'i, April 10, 2013.

/S/ JOHN T. HOSHIBATA

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DANA A. BARBATA
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Attorneys for Petitioner
SCENIC HAWAI'I, INC.