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KEAUCO LANE, LP

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HAWAII COMMUNITY
DEVELOPMENT
AUTHORITY
RECEIVED

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of)	File No.: PL MAS 13.2.8
)	
KEAUCO LANE, LP)	FIRST AMENDED PETITION FOR
)	DECLARATORY RELIEF;
For an order of Declaratory Relief)	DECLARATION OF COUNSEL;
)	EXHIBITS A-C

FIRST AMENDED PETITION FOR DECLARATORY RELIEF

COMES NOW, Petitioner KEAUCO LANE, LP (“KLLP”), by and through its attorney, WESLEY Y. S. CHANG, and pursuant to Hawaii Administrative Rules (“HAR”) §15-219-83 hereby submits this First Amended Petition for Declaratory Relief (“Petition”) as to the applicability of Condition No. 4 – Amendments of the September 2, 2009 Findings of Fact, Conclusions of Law, Decision and Order for Kamehameha Schools Master Plan Permit (File No. MASP 13.2.8) (“Master Plan Permit”) in light of the November 11, 2011 repeal of the former Mauka Area Rules (HAR §§15-22-1 to 15-22-280) and former Mauka Area Plan (June 2005) (collectively, “2005 Mauka Area Rules/Plan”).

Condition No. 4 of the Master Plan Permit required Kamehameha Schools (“KS”) to amend the 2005 Mauka Area Rules/Plan to delete or partially delete the Park/Parking Garage (P/PG) designation on Block A.

Based upon the November 11, 2011 repeal of the 2005 Mauka Area Rules/Plan, KLLP requests that the Hawaii Community Development Authority ("HCDA") issue a declaratory order confirming the following:

- (1) that it is not administratively proper for KS to fulfill the entirety of Condition No. 4, which requires an amendment to the 2005 Mauka Area Rules/Plan that have been repealed;
- (2) to the extent that Condition No. 4 required an amendment to the 2005 Mauka Area Rules/Plan, Condition No. 4 is hereby deemed inapplicable and/or void; and
- (3) the 2011 Mauka Area Rules/Plan shall apply to the modification of the Park/Parking Garage requirement identified in Condition No. 4, effectively deleting the park/parking garage designation for the Master Plan Permit.

I. PETITIONER

Keauhou Lane, LP
1100 Alakea Street, 27th Floor
Honolulu, Hawaii 96813

KLLP is a Hawaii limited partnership registered to do business in Hawaii and, pursuant to an agreement with KS, is the Developer of Block A which is the land subject to the Master Plan Permit. Petitioner is acting on behalf of KS, the owner of Block A. The land owner's authorization for KLPP to act on its behalf is attached hereto as Exhibit A.

II. PROCEDURAL HISTORY

On September 2, 2009, HCDA approved the Master Plan Permit. A copy of the relevant portions of the Master Plan Permit are attached hereto as Exhibit B. In Finding of Fact ("FOF") No. 78, the Master Plan Permit identified the Proposed Rule/Plan Amendments as necessary to achieve the vision of the Mauka Area Plan, and required that any such amendments be processed prior to application for individual development permits. Condition No. 4 regarding the Proposed Rule/Plan Amendments stated specifically:

If Petitioner applies for a Mauka Area Plan amendment to delete or partially delete the P/PG designation on Block A, to mitigate any loss of park space, Petitioner shall (a) provide an area equal to the actual loss of park space under the revised P/PG designation (but not more than 96,000 square feet if the entire P/PG designation is deleted) for a park or parks to be located in an area or areas acceptable the HCDA within the Master Plan Area, which park or parks may include public gathering area or plazas, or (b) negotiate such other alternative arrangement acceptable to HCDA.

Accordingly, the Master Plan Permit required that the 2005 Mauka Area Rules/Plan be amended should the Petitioner choose to alter the P/PG designation on Block A.

On November 11, 2011, the 2005 Mauka Area Rules/Plan were repealed, and the 2011 Mauka Area Rules/Plan were adopted.

III. REQUEST FOR DECLARATORY RELIEF

Pursuant to HAR §15-219-83, “[a]ny interested person or governmental agency may petition the authority for a declaratory order as to the applicability of any statutory provision or rule or order of the authority.” *See also* HRS §91-8 (“Any interested person may petition an agency for a declaratory ore as the applicability of any ...order the agency.”) The declaratory ruling procedure is intended to provide means for an interested party to seek agency advice as to how a statute, rule or order may apply to particular circumstances not yet determined. *See Citizens Against Reckless Development v. Zoning Bd. Of Appeals*, 114 Hawaii 184, 197, 159 P. 3d 143, 156 (2007). Declaratory orders from administrative agencies can “remove uncertainty from legal relations and clarify, quiet and stabilize them before irretrievable acts have been undertaken, to enable an issue of questioned status or fact, on which a whole complex of rights may depend, to be expeditiously determined.” *Id.* Because declaratory orders under HRS §91-8 are a means for securing from an agency its interpretation, “the only parties necessary to a proceeding under HRS §91-8 are the petitioner and the agency.” *Fasi v. State Public Employment Relations Bd.*, 60 Haw. 436, 444, 591 P.2d 113, 118 (1979).

Pursuant to this provision, KLLP seeks a declaratory order regarding the applicability of Condition No. 4 of the Master Plan Permit. For the reasons expressed herein, KLLP requests that HCDA issue an order confirming that:

- (1) it is not administratively proper for KS to fulfill the entirety of Condition No. 4, which requires an amendment to the 2005 Mauka Area Rules/Plan that have been repealed. Since these rules have been repealed, such amendments are not administratively proper;
- (2) to the extent that Condition No. 4 required an amendment to the 2005 Mauka Area Rules/Plan, Condition No. 4 is hereby deemed inapplicable and/or void; and
- (3) the 2011 Mauka Area Rules/Plan shall apply to the Park/Parking Garage Deletion identified in Condition No. 4, effectively deleting the park/parking garage for the Master Plan Permit.

Petitioner has negotiated an arrangement acceptable to HCDA that provides equal public benefit, that is consistent with the approved Master Plan Permit, and with the Park/Parking Garage Deletion that are consistent with the 2011 Mauka Area Rules/Plan. It has been agreed in principle that the 96,000 square foot Park/Parking Garage requirement be satisfied in the following manner:

- Approximately 20,585 square feet of the requirement will be satisfied by making Lot A-1-3 available to the Honolulu Area Rapid Transit Authority for the location of its Civic Center transit station (the HART transit parcel);
- Approximately 15,130 square feet of the requirement will be satisfied by providing public use plazas and pedestrian passages over Lot A-1-2 (the Keauhou Lane mixed-use parcel);
- Approximately 12,961 square feet of the requirement will be satisfied by providing public use plazas and increased building setback from public roadways over Lot A-1-1 (the Keauhou Place tower parcel); and
- The remainder of the requirement, approximately 47,324 square feet, will be satisfied by providing any combination of (a) Public Facilities Dedication Credits, or (b) a cash payment in lieu. The cash in lieu payment shall be calculated using the underlying square foot land value divided by 3.5 (the underlying FAR) times

the number of square feet remaining to be satisfied. Before the first public hearing for the application, KS shall commit to the relative amounts of Public Facilities Dedication Credits and/or cash payment in lieu to be made to satisfy the remainder of the requirement.

A map depicting the approximate locations of areas that will be used to meet the park/parking garage requirement is attached hereto as Exhibit C.

A. It is not administratively proper to amend rules that have been repealed.

"Some authorities hold that an amendatory act which attempts to amend an act which has previously been repealed, whether by express or implied repeal, is itself void and of no effect." *State v. Taplin*, 247 A.2d 919, 926 (Maine 1968); *see also State v. Blackwell*, 99 S.E.2d 867, 868 (N.C. 1957) ("[T]he amendatory act purportedly amends a statute which had been repealed. Thus the amendatory act... is a nullity. This is so for the reason where, as here, an entire independent section of a statute is wiped out of existence by repeal, there is nothing to amend."); *Griffin Telephone Corp. v. Public Service Comm'n*, 138 N.E.2d 150, 152 (Indiana 1956) (noting the "well settled authority that an act which attempts to amend a non-existent law or section, is itself void and of no legal effect").

Other authorities hold a repealed act can be amended under certain conditions, when the amendatory act is complete, "has a clear and definite meaning," and could have been enacted independently. *See State v. Taplin*, 247 A.2d 919, 926 (Maine 1968) ("[T]he better rule seems to be that if the language..., when read alone, has a clear and definite meaning, it will be treated as a valid and effective Act as if the amendatory act were independent legislation, and the reference to the Act which it purports to amend will be regarded as surplusage.").

In this case, it is not administratively proper to amend the 2005 Mauka Area Rules/Plan that were repealed on November 11, 2011. On November 11, 2011, HCDA did not just repeal certain sections of the existing rules; instead there was a repeal of the entirety of Chapter 15-22

and the existing Mauka Area Plan. It would thus be very difficult, if not impossible, for any amendment to the repealed 2005 Mauka Area Rules/Plan to stand independently or to be complete in itself. Accordingly, pursuant to the general rule that a repealed legislative act cannot be valid to be amended, it would be administratively improper for KS to amend the 2005 Mauka Area Rules/Plan, as required under Condition No. 4 of the Master Plan Permit.

B. The 2011 Mauka Area Rules/Plan are consistent with the Park/Parking Garage Deletion.

In addition to the foregoing, there would be no reason to seek an amendment of the repealed 2005 Mauka Area Rules/Plan, considering the Park/Parking Garage Deletion is consistent with the 2011 Mauka Area Rules/Plan. In other words, there is no sound reason to enact an amendment to a repealed set of rules, which is already reflected in the current rules.

At the time the Master Plan Permit was approved, the 2005 Mauka Area Rules/Plan called for a park/parking designation on Block A. This concept was abandoned by the 2011 Mauka Area Rules/Plan in favor of street level parks and public open spaces integrated into the fabric of the development area. Such integration serves to enrich the urban streetscape by providing the opportunity for high levels of public / private interaction. The integration of parks and public open space into the various residential, commercial and retail uses planned for the area will result in a development that is practically and aesthetically superior to that envisioned by the 2005 Mauka Area Rules/Plan.

To the extent that Condition No. 4 required an amendment to the 2005 Mauka Area Rules/Plan, Condition No. 4 is therefore inapplicable and/or void, and the 2011 Mauka Area Rules/Plan should apply to the Park/Parking Garage Deletion identified in Condition No. 4 (effectively deleting the park/parking garage for the Master Plan Permit).

IV. HEARING

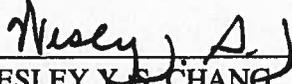
KLLP is not requesting a hearing on this Petition, and believes that HCDA can come to a fair and expeditious disposition of the Petition.

V. CONCLUSION

Based upon all of the reasons asserted herein and any reasons appearing of record, KLLP respectfully requests that HCDA issue a declaratory order consistent with the foregoing.

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DATED: Honolulu, Hawaii, December 16, 2013.



WESLEY Y.S. CHANG
Attorney for Petitioner
KEAUHOU LANE, LP

Approved and submitted by:
KEAUHOU LANE, LP,
a Hawaii limited partnership

By SCD Keauhou, LLC,
a Hawaii limited liability company,
its General Partner

By 

Name: Stanford Carr
Title: Manager

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

OF THE STATE OF HAWAII

In re the Petition of)	File No.: PL MAS 13.2.8
)	
KEAUHOU LANE, LP)	DECLARATION OF COUNSEL
)	
For an order of Declaratory Relief.)	

DECLARATION OF COUNSEL

I, WESLEY Y. S. CHANG, hereby declare as follows:

1. I am an attorney duly licensed to practice law in all of the state and federal courts in the State of Hawaii, and am one of the attorneys representing KEAUHOU LANE, LP (“KLLP”) in the above-entitled matter.

2. I make this declaration based upon personal knowledge, information, and belief, and based upon review of the files and records in this matter.

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

4. Attached hereto as Exhibit A is a true and correct copy of Kamehameha Schools’ (KS’) authorization for Petitioner KLLP to act on behalf of KS, as the land owner, herein.

5. Attached hereto as Exhibit B is a true and correct copy of the Findings of Fact, Conclusions of Law, Decision and Order for (the Kamehameha Schools) Master Plan Permit (“Master Plan Permit”).

6. Attached hereto as Exhibit C is a map depicting the approximate locations of areas that will be used to meet the park/parking garage requirement.

I declare under penalty of perjury the foregoing to be true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, December 13, 2013.

Wesley Y.S. Chang
WESLEY Y.S. CHANG
Attorney for Petitioner
KEAUHOU LANE, LP

EXHIBIT A

(Kamehameha Schools' Authorization)



KAMEHAMEHA SCHOOLS®

November 18, 2013

Mr. Anthony Ching, Executive Director
Hawaii Community Development Authority
461 Cooke Street
Honolulu, HI 96813

**Subject: Keauhou Lane, LP
First Amended Petition for Declaratory Relief
TMK: (1) 2-1-030: 001 (por.)
Kaka'ako Community Development District, Oahu, Hawaii**

Dear Tony:

This letter is to authorize Keauhou Lane, LP to submit the First Amended Petition for Declaratory Relief ("*Petition*") as to the applicability of Condition No. 4 – Amendments of the September 2, 2009 Findings of Fact, Conclusions of Law, Decision and Order for a (Kamehameha Schools) Master Plan Permit (File No. MASP 13.2.8) ("*Master Plan Permit*") in light of the November 11, 2011 repeal of the former Mauka Area Rules (HAR §§15-22-1 to 15-22-280) and former Mauka Area Plan (June 2005) (collectively, "*2005 Mauka Area Rules/Plan*"). Condition No. 4 of the Master Plan Permit required Kamehameha Schools to amend the 2005 Mauka Area Rules/Plan to delete or partially delete the P/PG designation on Block A.

Stanford Carr Development, LLC, as the manager of Keauhou Lane, LP, has entered into a Purchase and Sale Agreement to purchase the land from Kamehameha Schools for the development of Keauhou Place, provided certain conditions are met including the resolution with HCDA of the P/PG designation on Block A.

This letter has been executed by or on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

Very truly yours,

Paul J. Kay
Area Development Director
Kamehameha Schools, Commercial Real Estate Division

cc: Deepak Neupane, Daniel Simonich

EXHIBIT B

Master Plan Permit

**ORDER
OF THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
STATE OF HAWAII
September 2, 2009**

In re the Application of)
) File No.: PL MASP 13.2.8
)
THE TRUSTEES OF THE ESTATE OF)
BERNICE PAUAHI BISHOP)
)
for a Master Plan Permit)
_____)

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

On November 26, 2008, Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("Petitioner" or "KS"), submitted an application for a master plan, pursuant to Chapter 206E of the *Hawaii Revised Statutes* ("HRS") and Chapter 15-22 of the *Hawaii Administrative Rules* ("HAR"), to obtain a master plan permit for approximately 29 acres of land in the Kakaako Community Development District ("KCDD"), Oahu, Hawaii, and identified as Tax Map Key Numbers 2-1-030: 001; Halekauwila Street, Lot A-1, between South and Keawe Streets; 2-1-054: 025; 2-1-054: 027; 2-1-054: 028; 2-1-054: 032; 2-1-054: 001; 2-1-053: 004; 2-1-053: 005; 2-1-053: 027; Koula Street, Lot B, between Pohukaina and Auahi Streets; 2-1-055: 004; 2-1-055: 009; 2-1-055: 017; 2-1-055: 003; 2-1-055: 006; 2-1-055: 021; 2-1-055:026; 2-1-055: 038; 2-1-055: 001; 2-1-055: 002; 2-1-055: 018; 2-1-055: 032; 2-1-055: 033; 2-1-055: 034; 2-1-055: 035; Lana Lane between Auahi Street and Ala Moana Boulevard; 2-1-056: 003; 2-1-056: 004; Ohc Lane between Auahi Street and Ala Moana Boulevard; 2-1-056: 002; 2-1-056: 007; and 2-1-056: 008 (collectively, the "Master Plan Area") for the Kaiāulu 'O Kaka'ako Master Plan ("Master Plan").

The Hawaii Community Development Authority ("HCDA" or "Authority"), having heard and examined the testimony, evidence, and argument of counsel during the hearings, along with Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, filed on August 7, 2009, and Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, filed on August 20, 2009, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

FINDINGS OF FACT

1. On September 7, 1994, HCDA approved a master plan permit in favor of KS for the Pauahi Place Master Plan ("PPMP") for 53.8 acres located in the Mauka and Makai Areas of the KCDD.
2. On September 8, 2006, KS and HCDA executed a Termination Agreement that terminated the PPMP ("PPMP Termination Agreement"). See Petitioner's Exhibit 1 ("PPMP Termination Agreement").
3. On November 26, 2008, Petitioner submitted its application for the proposed Master Plan permit ("Master Plan Permit Application" or "Application"). See Petitioner's Exhibit 4 (Application). KS is the landowner of the properties in the Master Plan Area. See Exhibit 14 (Letter dated June 10, 2009, from KS to HCDA addressing title issues and enclosing title reports).
4. On January 8, 2009, HCDA requested the submission of additional items to complete the Application. See Petitioner's Exhibit 5 (Letter dated January 8, 2009 from HCDA to KS).
5. On March 19, 2009, Petitioner submitted the additional items to HCDA. See Petitioner's Exhibit 6 (Addendum 1).

6. As of March 23, 2009, the Master Plan Permit Application was deemed to be complete. See Petitioner's Exhibit 7 (Letter dated March 30, 2009, from HCDA to KS).
7. On April 1, 2009, HCDA issued a Staff Report that described the Master Plan Permit Application contested case hearing process, set forth the Hearing Policy and established a hearing schedule. See Petitioner's Exhibit 8 (HCDA Staff Report).
8. On April 1, 2009, by a majority vote of those members entitled to vote thereon, the Authority (a) approved holding a contested case hearing for the Master Plan Permit Application on or about July 2009 (the date thereabouts to be fixed by the Executive Director of HCDA), (b) adopted the rules and procedures for the conduct of the contested case hearing, and (c) appointed a hearing officer to conduct the hearing on the Authority's behalf and authorized the Executive Director to retain the services of a hearing officer for such contested case hearing.
9. On April 20, 2009, HCDA sent KS a letter requesting revisions to page 2-5 of the Application to correct errors relating to the description of the Master Plan Area. See Petitioner's Exhibit 9 (Letter dated April 20, 2009 from HCDA to KS).
10. On April 22, 2009, HCDA mailed approximately 11,825 flyers through its Connections mailing list to solicit comments to the Master Plan.
11. On May 5, 2009, HCDA published notice of the community meeting in the Honolulu Advertiser and Honolulu Star-Bulletin scheduled for May 7, 2009.
12. On May 7, 2009, HCDA made the proposed Master Plan publicly available on its website (www.hcdaweb.org).
13. On May 7, 2009, the Limehouse website link was activated through PBR Hawaii's website to receive comments for the Master Plan until the end of the community comment period which ended on June 5, 2009.

14. On May 7, 2009, HCDA created a telephone comment line to allow the public to call in their comments to the Master Plan.

15. On May 7, 2009, Petitioner submitted Addendum 2 to HCDA, which included additional information and clarification on certain items. See Petitioner's Exhibit 10 (Addendum 2).

16. On May 7, 2009, HCDA staff conducted a community meeting at the Honolulu Design Center, Cupola Theatre Room, where KS presented a summary of the Master Plan and attendees were given an opportunity to provide, and did provide written and oral comments. These comments were used by HCDA staff in evaluating the Master Plan application and preparing a report thereon.

17. On May 15, 2009, KS submitted to HCDA corrected pages 2-5 and 5-12 to the Application. See Petitioner's Exhibit 11 (Letter dated May 15, 2009, from KS to HCDA with the corrected pages).

18. On May 26, 2009, the Notice of Hearing for the contested case hearing and notice to potential interveners was published in the Honolulu Star-Bulletin, Hawaii-Tribune Herald, West Hawaii Today, The Maui News and Kauai Publishing Company dba The Garden Island. See Petitioner's Exhibit 12 (Notice of Contested Case Hearing).

19. On June 1, 2009, KS submitted a letter to HCDA stating that KS is not seeking to transfer excess density from Auahi Park to the Master Plan Area in connection with the Master Plan Permit Application, without waiving or relinquishing its rights and positions, including its right to pursue such a density transfer at a later time. By such letter, KS removed any issue relating to such a density transfer from this contested case hearing process and HCDA staff has

concluded with such removal. See Petitioner's Exhibit 13 (Letter dated June 1, 2009, from KS to HCDA).

20. On June 4, 2009, the deadline for filing any petition for intervention, passed with no petition for intervention being filed.

21. On June 10, 2009, KS submitted a letter to HCDA that addressed HCDA inquires regarding evidence of KS' ownership of the Master Plan Area and disclosed certain de minimis discrepancies in the square footage of parcels comprising the Master Plan Area. See Exhibit 14 (Letter dated June 10, 2009, from KS to HCDA and the enclosed title reports).

22. On June 10, 2009 a pre-hearing conference was held at the HCDA's offices at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813. William Meheula, Esq., appeared for the Petitioner. No petition for intervention had been filed, thus, no intervener was present.

23. On June 26, 2009, KS submitted to HCDA a further revised page 2-5 to the Application to correct the zoning description for two Blocks. See Exhibit 15 (Letter dated June 26, 2009, from KS to HCDA with the corrected page).

24. On June 26, 2009, KS submitted to HCDA a declaration from and curriculum vitae of Michael Dang, KS' Director of Planning & Development, to provide data on projected economic benefits from the Master Plan. See Petitioner's Exhibits 18 and 19 (Dang curriculum vitae and declaration).

25. On June 26, 2009, HCDA posted its staff's Analysis and Recommendations of the Master Plan on the HCDA website.

26. On June 30, 2009, KS submitted a letter to HCDA that addressed certain provisions in the Staff Analysis and Recommendations. See Petitioner's Exhibit 20 (Letter dated June 30, 2009, from KS to HCDA).

27. On July 7, 2009, the contested case hearing on the Master Plan Permit Application was held at the HCDA's offices at 677 Ala Moana Boulevard, Suite 1001, Honolulu, Hawaii 96813. William Meheula, Esq., appeared for the Petitioner with KS representative, Michael Dang. The hearing was closed after the Hearing Officer accepted Petitioner's Exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

28. On August 7, 2009, Petitioner filed Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

29. On August 20, 2009, the Hearing Officer filed Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

30. On August 27, 2009, the notice of public hearing to be held on September 2, 2009, pursuant to § 206E-5.6, HRS, was published in the Honolulu Star-Bulletin, Hawaii-Tribune Herald, West Hawaii Today, The Maui News, and Kauai Publishing Company dba The Garden Island.

31. On August 27, 2009, pursuant to § 206E-5.6, HRS, the President of the State Senate and the Speaker of the House of Representatives were notified of the September 2, 2009 public hearing via regular mail correspondence. A report detailing the public's reaction at the public hearing must be compiled and delivered to the Senate President and the Speaker of the House of Representative within one week after the hearing.

32. On August 28, 2009, KS filed its Exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

33. On September 2, 2009, the Authority members held its portion of the contested case hearing to consider the Proposed Findings of Fact, Conclusions of Law, and Decision and

Order for a Master Plan Permit submitted by the Hearing Officer and the Petitioner, the exceptions filed by the Petitioner, and to take action on the Application.

I. HCDA Mauka Area Plan and Rules:

34. HCDA's Mauka Area means that portion of the Kakaako Community Development District, established by § 206E-32, HRS, which is bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, exclusive, from Piikoi Street to its intersection with Punchbowl Street; and Punchbowl Street to its intersection with King Street.

35. HCDA's Mauka Area Plan means the development plan for the Mauka Area of the Kakaako Community Development District originally adopted on February 16, 1982, as amended on January 10, 1983, May 18, 1984, September 6, 1984, April 26, 1985, August 17, 1985, July 15, 1988, June 28, 1989, January 18, 1990, September 5, 1997, and August 3, 1999.

36. HCDA's Mauka Area Rules means the administrative rules originally adopted on February 24, 1990, as amended on April 16, 1990, July 26, 1990, September 15, 1990, October 3, 1994, December 15, 1994, August 4, 1995, December 2, 1995, November 25, 1996, January 25, 1997, March 27, 1997, June 13, 1997, August 1, 1997, September 1997, August 16, 1999, January 13, 2000, September 15, 2001, and June 13, 2005.

37. HCDA's master plan rules are designed to encourage investment in new development and commitment to master planning of large land holdings. See § 15-22-200(a), HAR.

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

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

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

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

A. Description of the Master Plan Area:

41. The Master Plan Area consists of approximately 29 acres of land, located in the Kakaako Community Development District, Oahu, Hawaii, and identified as Tax Map Key Numbers 2-1-030: 001; Halekauwila Street, Lot A-1, between South and Keawe Streets; 2-1-054: 025; 2-1-054: 027; 2-1-054: 028; 2-1-054: 032; 2-1-054: 001; 2-1-053: 004; 2-1-053: 005; 2-1-053: 027; Koula Street, Lot B, between Pohukaina and Auahi Streets; 2-1-055: 004; 2-1-055: 009; 2-1-055: 017; 2-1-055: 003; 2-1-055: 006; 2-1-055: 021; 2-1-055: 026; 2-1-055: 038; 2-1-055: 001; 2-1-055: 002; 2-1-055: 018; 2-1-055: 032; 2-1-055: 033; 2-1-055: 034; 2-1-055: 035; Lana Lane between Auahi Street and Ala Moana Boulevard; 2-1-056: 003; 2-1-056: 004; Ohe Lane between Auahi Street and Ala Moana Boulevard; 2-1-056: 002; 2-1-056: 007; and 2-1-056: 008.

42. The Master Plan Area is owned in fee simple by KS, subject, however, to leases, tenancies, and other encumbrances. See Petitioner's Exhibit 14 (Letter dated June 10, 2009, from KS to HCDA addressing title issues and enclosing title reports).

43. A Master Plan Boundary Map is attached hereto as Exhibit A. See Petitioner's Exhibit 4 (Application) at 2-7. As designated in Exhibit A, Blocks A through D are designated Mixed-Use Zone Residential Emphasis ("MUZ-R") and Blocks E through I are designated Mixed-Use Zone Commercial Emphasis ("MUZ-C"). The Master Plan Area is located in the southwestern quadrant of the Mauka Area, and comprises all or a portion of nine city blocks located along Ala Moana Boulevard, South, Keawe, Coral, Cooke, Auahi, Pohukaina and Halekauwila Streets. See Petitioner's Exhibit 4 (Application), at iv.

44. Urban areas adjacent to the Master Plan Area include downtown Honolulu, the Ala Moana and Kakaako Waterfront regional parks, the Ala Moana Center, Kewalo Basin, office buildings, and residential towers.

45. The Master Plan outlines several sustainability strategies. These include energy conservation, sustainable energy supply, lowering energy demand, creating a pedestrian supportive environment, reducing water consumption, and recycling. The details of Petitioner's sustainability strategy for a planned development shall be provided to the HCDA at the time that each Planned Development Permit Application for that parcel is submitted.

46. Tenants may be displaced by development within the Master Plan Area, however, it will not involve wholesale displacement because development will be phased. One of the public benefits to be derived from a master plan is the provision of relocation assistance by the developer. See § 15-22-200(b), HAR. KS proposes to actively seek to retain desirable tenants (many are vibrant small businesses that are compatible with the future neighborhood vision) as

development progresses. Potential tenant relocation sites include lands within the Master Plan Area, other KS lands or other lands. KS proposes to work closely with tenants to provide advance notice and identify alternative relocation sites. See Petitioner's Exhibit 4 (Application), at 8-2.

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

B. Land Uses/Areas:

48. The Master Plan proposes a mixed-use development including residential, retail, office, commercial, and industrial uses, for a total floor area of 4,426,197 square feet (the maximum allowed for all uses combined), with a floor area ratio ("FAR") of 3.5. See Petitioner's Exhibit 11 (Letter dated May 15, 2009, from KS to HCDA with the corrected page 5-12). It is a long-range plan that would span fifteen years, including multiple phases. The phasing and mix of uses developed under the Master Plan will depend on changing market and social conditions. Specifically, the maximum floor area that can be requested for each use is:

- Residential – 4,426,197 square feet,
- Commercial (includes Retail and Office) – 2,072,453 square feet, and
- Industrial – 126,463 square feet.

However, the maximum floor area within the Mauka Plan Area that can be developed in any situation cannot exceed 4,426,197 square feet. Although this is the maximum floor area requested for each use, Petitioner is requesting that the allocation of floor area for each use be flexible to accommodate changing market conditions and the evolving needs of the community. See Petitioner's Exhibit 4 (Application), at 8-1. With respect to planned developments, however, consistent with the Mauka Area Rules in no instance is Petitioner intending to develop all

commercial spaces without any residential components. See § 15-22-113(b), HAR. Residential use is the primary component of the Master Plan. See id., at 5-9.

C. Urban Design Objectives:

49. The Master Plan proposes a pedestrian-friendly, smart-growth community, where its residents can live, work, and play. See Petitioner's Exhibit 4 (Application), at 3-2 to 3-6 and Chapter 4.

Streetscapes

50. Major design objectives of the Master Plan include a neighborhood, pedestrian-friendly retail corridor located along Auahi Street with a central plaza, a pedestrian promenade along Cooke Street that links the Mother Waldron Park to the Makai Gateway Park along with the proposed plaza, preservation of Mauka-Makai view corridors and enhancing the existing roadway network with canopy trees and pedestrian amenities. See Petitioner's Exhibit 4 (Application), at 5-2 to 5-5, 7-2. To mitigate the unsightliness of structured parking and promote interaction with pedestrian traffic at the ground level, the Master Plan anticipates embedding parking structures within a residential, retail and/or commercial building wrap and/or using design concepts such as screening, detailing or other finish improvements where parking structures are visible. See id., at 5-8.

Open Space

51. Approximately 126,463 square feet are proposed for open space. The Planned Development Permit Application for each block will further describe the location and nature of the open space to be developed. See Petitioner's Exhibit 4 (Application), at 4-4, 5-6; and Petitioner's Exhibit 11 (corrected page 5-12).

52. A community gathering place shall be located at the crossroads of the Cooke Street park-to-park promenade and the Auahi Street retail corridor (at the corner of Block C, D, G or H), which is envisioned as a large public plaza of at least 25,000 square feet and when built will satisfy part of Petitioner's open space requirements. See Petitioner's Exhibit 11. The plaza is intended to provide both indoor and outdoor space for unique programmed activities and events that accommodate the needs and interests of the surrounding community. The plaza is planned to be paved and complemented with shade trees and landscaping. Outdoor tables and benches will be used daily and additional seating may be set up for special events such as concerts or festivals. See Petitioner's Exhibit 4 (Application), at 5-3, 5-5.

Urban Form and Building Envelopes

53. The Master Plan proposes a mix of low-rise and high-rise development ranging from a building envelope similar to a Base Zone Development with a building height of approximately 45 feet, to planned developments with podium envelopes of 45 feet in height and tower envelopes varying between 100 to 400 feet in height. See Petitioner's Exhibit 4 (Application), at 5-8, 5-9.

D. Transportation and Infrastructure Systems:

Transportation

54. Petitioner has previously contributed its allocated share towards the construction of infrastructure Improvement District Improvements ("ID Improvements") benefitting its properties within the Master Plan Area. See Petitioner's Exhibit 4 (Application), at 6-6 and 7.

55. The ID Improvements were sized to support a 3.5 FAR development density. See Petitioner's Exhibit 4 (Application), at 6-6.

56. To support the travel needs of people living in, working in, and visiting the area, the Master Plan will feature multi-modal systems, a mix of programs and infrastructure proposals to increase transit ridership, significantly improve the pedestrian and bicycle environment, and minimize traffic congestion overall. The existing public bus system will be utilized. The transportation strategy also will consider parking options such as: unbundled parking within new residential development, shared parking for complementary land uses, 'park-once' strategy, restricted surface parking lots, use of short-term parking, and referred parking for hourly car rental/car sharing programs such as zip cars and flex cars. See Petitioner's Exhibit 4 (Application), at 6-4 and 6-5; and Petitioner's Exhibit 6 (Addendum 1), at A-8 and 9.

57. The proposed roadway system seeks to utilize the existing rights-of-way with potential closure of certain privately owned rights-of-way. Streets which are not identified on Figure 9 of the Mauka Area Plan as either a major street or a local street may be closed to create larger blocks for redevelopment. See Petitioner's Exhibit 4 (Application), at 6-4. Petitioner may propose closure of certain privately owned rights-of-way, including:

- Koula Street between Pohukaina and Auahi Streets for the development of Block D;
- Lana Lane between Auahi Street and Ala Moana Boulevard for the development of Block G; and
- Ohe Lane between Auahi Street and Ala Moana Boulevard for the development of Block H. See Petitioner's Exhibit 4 (Application), at 2-4 for the location of these rights-of-way.

58. The City and County of Honolulu ("C&C") High-Capacity Transit Corridor Project could have a major impact on the proposed Master Plan. The C&C's current preferred

transit route is situated within Halekauwila Street, from Punchbowl to Ward Avenue, with the Civic Center Station located on a portion of Block A in the Master Plan Area. See Petitioner's Exhibit 4 (Application), at 6-4, and Exhibit 6 (Addendum 1) at A-5. Petitioner and the C&C have been engaged in discussions regarding the precise alignment and location for the transit station within the Master Plan Area, and will continue to do so. As part of the Planned Development Permit Application for Block A, a more detailed route and station location shall be addressed and incorporated.

E. Public Benefits, Reserved Housing and Public Facilities Dedication

Proposals:

Public Benefits

59. The Master Plan is designed to create the following public benefits as the result of implementation of the Master Plan:

- a. The creation of a vibrant living environment with energized street life and active open spaces. Petitioner's Exhibit 4 (Application) at 9-6.
- b. A community gathering place and open space connections between Makai Gateway Park and Mother Waldron Park. Id.
- c. New living options for existing residents and young people returning to Hawaii that are close to places of work and provide convenient access to recreational amenities, shopping and cultural events. Id.
- d. Beautification of Cooke Street, Ala Moana Boulevard and Auahi Street that will enhance the image of the city and its urban environs. Id.
- e. Delivery of reserved housing in accordance with the twenty percent (20%) reserved housing requirement set forth in § 15-22-115(a), HAR. Id.

- f. A commitment to and investment in sustainable development in the urban core. Id.
- g. A community that is pedestrian-friendly and designed to reduce traffic and vehicle use island-wide. Id.
- h. A reduction of urban sprawl and preservation of agricultural lands by developing a centrally located urban area. Petitioner's Exhibit 10 (Addendum 2), at A-8.
- i. Incorporation of best smart urban growth principles and practices to transform a predominantly older low-rise commercial and industrial warehouse district to a higher density neighborhood with a substantially larger residential population. Id.
- j. Improvements and appropriate additions to the built environment through the use of green building and landscaping components. Id.
- k. Well-designed and programmed open spaces, complemented by nearby indoor commercial spaces to provide open space connections and views. Id.
- l. Improvements to connectivity by the phase-out of on-street parking, reduction of auto trips, enhancing connections to adjacent districts, and improved pedestrian experience. Id., at A-9.
- m. Improvements to public facilities by previously contributing to the delivery of the equivalent of 120,514 square feet of public facilities, and by investing to improve pedestrian experience and streetscapes, and

contributing additional investment to the public facilities and infrastructure in the district. Id.

- n. A commitment to respect and protection of cultural and historic resources in the Master Plan Area demonstrated by previous, extensive consultation with recognized cultural descendants of the Master Plan Area and receipt of archaeological inventory survey plan approval on a portion of the Master Plan Area. Id.
- o. Increased real property tax and general excise tax revenues from the redevelopment and incubation of new businesses. Id.
- p. Land dedications years in advance of any redevelopment under the Master Plan to allow the early construction and public use of the Pohulani Elderly Housing Project, the Mother Waldron Park, and portion of the Makai Gateway Park. Id.
- q. Up to 2,750 new lofts, townhouses and condominium dwelling units in the KCDD. Id.
- r. Job creation for residents during and after the build-out of the project. Id.
The Master Plan over its projected fifteen-year development period is estimated to create as many as 9,291 on-site construction jobs and 10,202 off-site jobs. The total construction and off-site worker payroll for the fifteen-year development period is estimated to be approximately \$933 million dollars. At full build-out, it is estimated that the Master Plan development could generate 5,466 full-time professional and service jobs and generate approximately \$230 million dollars in annual payroll. Tax

revenue to the State from the construction phase is estimated to be approximately \$141.5 million dollars in excise tax and \$73.7 million dollars in income tax. After the development is completed, it is projected that annual revenue to the State in income tax could be upwards of \$18.1 million dollars. Additionally, the C&C could collect upwards of \$8.9 million dollars annually in the form of property taxes. See Petitioner's Exhibit 19 (Michael Dang declaration).

- s. Petitioner's agreement to work with any new tenants on short-term occupancy of the premises until redevelopment. At the time of its application for a Planned Development Permit, Petitioner or its developer intends to work with any remaining tenants to explore relocation alternatives that may be available at that time. This will include the evaluation of relocation, if possible, to other properties controlled by the Petitioner within the KCDD or other suitable locations on other lands owned by Petitioner. Given project phasing over the term of the Master Plan and potential adaptive reuse of existing buildings, mass relocation of Petitioner's tenants at one time is not anticipated. HCDA's Mauka Area Rules requires at least 60 days' prior written notice of any eviction. Petitioner intends to give at least 120 days' prior written notice to any tenant within the Master Plan Area who will be displaced. See Petitioner's Exhibit 10 (Addendum 2), at A-10. Id., see generally Petitioner's Exhibit 4 (Application), at 9-6, Petitioner's Exhibit 10

(Addendum 2), at Item C, and Petitioner's Exhibit 19 (Michael Dang declaration).

Reserved Housing

60. The Master Plan proposes to meet the reserved housing requirement as specified by the Mauka Area Rules. Under those rules, the development would deliver reserved housing in accordance with the twenty percent (20%) reserved housing requirement set forth in § 15-22-115(a), HAR. See Petitioner's Exhibit 4 (Application), at 9-5.

Public Facilities

61. § 15-22-73(a), HAR, of the HCDA's Mauka Area Rules specifies that the dedication of public facilities is required for any development within the Mauka Area that increases an existing development's floor area by more than twenty-five percent (25%) as compared to the development's floor area existing on February 27, 1982 or at the time of application for a development permit.

62. § 15-22-73(d), HAR, of the HCDA's Mauka Area Rules specifies that the amount of land required to be dedicated for public facilities shall be equal to: (1) Three percent (3%) of the total commercial and community service floor area of the development to be constructed exclusive of nursing facilities, assisted living administration, and ancillary assisted living amenities that qualify for FAR bonus under §§ 15-22-61 and 15-22-116, HAR; (2) Four percent (4%) of the total residential floor area of the development to be constructed exclusive of floor area devoted to reserved housing units and their associated common areas in proportion with the floor area of other uses.

63. § 15-22-73(e), HAR, of the HCDA's Mauka Area Rules specifies that if it is determined that dedicating land is not in the interest of the public, the developer shall pay instead

a fee in a sum equal to the fair market value of the land area otherwise required under § 15-22-73(d). The fee shall be payable prior to the issuance of the initial certificate of occupancy and secured by the applicant with a financial guaranty bond from a surety company authorized to do business in Hawaii, an acceptable construction set-aside letter, and/or other acceptable means prior to the issuance of the initial building permit.

64. § 15-22-205(f), HAR, of the HCDA's Mauka Arca Rules specifies that the public facilities dedication requirements of this chapter applicable at the time of development permit approval may be satisfied, at the election of the Authority, by either of the following methods: (1) Dedication of land areas anywhere within the Master Planned Area, provided that the total value of said land areas is equal to the total value of the land otherwise required for dedication; (2) Payment of fees in lieu of dedicating land, the sum of which shall equal the fair market value of the land area otherwise required for dedication; or (3) A combination of the foregoing, the total value of which shall not be less than the value of land otherwise required for dedication.

65. The Master Plan proposes development that may require Petitioner to dedicate up to an estimated 140,174 square feet of land for public facilities. See Petitioner's Exhibit 11 (corrected page 5-12).

66. Since 1989, Petitioner has dedicated approximately 3 acres of land in the KCDD for the HCDA to develop public projects including Pohulani Housing Development, Mother Waldron Park Expansion and a portion of Makai Gateway Park. In return, Petitioner received 123,466 square feet public facilities dedication credits ("PFD Credits") that may be applied in lieu of land dedication to satisfy the requirements of the public facilities dedication rule § 15-22-73, HAR, for new projects on Petitioner's lands. Petitioner applied 2,952 square feet of its PFD Credits to satisfy its requirements in the development of the CompUSA site in 1997,

leaving a balance at that time of 120,514 square feet of PFD Credits. See Petitioner's Exhibit 4 (Application), at 9-4, Exhibit 6 (Addendum 1), at Item I, Exhibit 10 (Addendum 2), at Items H and I, and Exhibit 11 (corrected page 5-12).

67. The September 8, 2006, PPMP Termination Agreement vested KS with 120,514 PFD Credits that is equivalent to 120,514 square feet of land. These PFD Credits may be applied by the Petitioner towards public facilities dedication requirements generated by the Master Plan subject to certain conditions. See Petitioner's Exhibit 1 (PPMP Termination Agreement).

68. KS and HCDA have disagreed as to whether KS forfeited 15,000 PFD Credits under the terms of the PPMP Termination Agreement and they will arbitrate or negotiate this dispute pursuant to the arbitration provision in the Termination Agreement. See Petitioner's Exhibits 2, 3, 16 and 17. This issue does not need to be resolved in connection with the review of the Master Plan Permit Application.

69. KS has a minimum of 105,514 square feet of PFD Credits that is not in dispute. See Petitioner's Exhibit 20 (Letter dated June 30, 2009, from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 5.

70. Petitioner proposes to apply all or some of its PFD Credits to the Master Plan, depending on when projects requiring such credits arise. If the project achieves full-build out at the maximum density proposed in the Master Plan, Petitioner will be required to dedicate between 19,660 to 34,660 additional square feet of land for public facilities. See Petitioner's Exhibit 4 (Application), at 9-4, and Exhibit 10 (Addendum 2), at Item J.

71. Petitioner proposes to fulfill its requirement in the form of application of Petitioner's PFD credits, cash-in-lieu payments or through the dedication of land for public facilities within various locations of the Master Plan Area. If future public facilities dedications

are required, KS intends to fulfill these requirements in the form of a cash-in-lieu payment. See Petitioner's Exhibit 6 (Addendum 1), at A-2.

F. Proposed Phasing Plan:

72. The Master Plan's phasing program is intended to be flexible to give Petitioner the ability to adapt to economic and market conditions. Some parcels within the Master Plan Area may be developed for transitional uses within timeframes shorter than the full implementation of the Master Plan. See Petitioner's Exhibit 4 (Application), at 8-1.

73. Petitioner intends that work on its initial phase ("Increment 1") will begin upon approval of the Master Plan Permit and the Development Agreement.

74. Petitioner intends that Increment 1 of the Master Plan will consist of development of Blocks A, B and E. At full-build out, Increment 1 will consist of 767,071 square feet of density on Block A, 196,110 square feet of density on Block B, and 614,699 square feet of density on Block E. See Petitioner's Exhibit 4 (Application), at 8-1.

75. In the Increment 1 phase, Petitioner will plan and construct initial street level improvements that connect Mother Waldron Park to the Makai Gateway Park. See Petitioner's Exhibit 4 (Application), at 8-2.

76. During Increment 1, KS will also work with HCDA and the C&C to identify street level improvements along Auahi and Cooke Streets to enhance the pedestrian experience and to better unify the neighborhood along these major crossroads (Section 8-2).

77. As expressed throughout the Master Plan, it intends to foster organic development as well as incorporate adaptive re-use where practical to provide early stage renewal opportunities within the community. While the Master Plan (including Increment 1), has maximum density ceilings, projects could use all or a portion of the maximum density, or could

involve adaptive re-use projects that usually do not materially increase density above the current building footprints. Alternatively, projects could involve a partial block development rather than the full-block building to the maximum permitted density.

G. Variances or Amendments to Mauka Area Plan and Rules:

78. Petitioner is not requesting any modifications, variances or amendments to the Mauka Area Plan and Rules in conjunction with its Master Plan Permit Application. However, Petitioner has identified the following as possible necessary modifications, variances or amendments to the Mauka Area Plan and Rules to achieve the vision of the Master Plan:

- KS may request an increase of the maximum podium (platform) heights above 45 feet as a part of the Planned Development Permit Application process, as allowed by § 15-22-120(7), HAR, to achieve the vision of activating streets while providing adequate parking within each block, see Petitioner's Exhibit 4 (Application), at 9-7, and Exhibit 20 (Letter dated June 30, 2009 from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 5;
- Shared parking best practices will reduce the need for parking spaces, thereby mitigating the cost of development and allowing for a wider range of housing options, see Petitioner's Exhibit 4 (Application), at 9-7; and
- Alteration or removal of the Park/Parking Lot ("P/PG") designation for a portion of Block A contained in the Mauka Area Plan, see Petitioner's Exhibit 4 (Application), at 9-7, Exhibit 10 (Addendum 2), at Item K, and Exhibit 20 (Letter dated June 30, 2009 from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 4.

Petitioner may request these variances or amendments subsequent to approval of the Master Plan and prior to its application for Planned Development Permits.

79. As specific projects are designed for possible development, information may arise that other modifications, variances or amendments may be necessary to implement the Master Plan that have not yet been identified by Petitioner or the HCDA. Petitioner may request such modifications, amendments and/or variances at the time of project specific applications.

II. Requirements for Master Plan Permit Approval:

80. HCDA's Mauka Area Rules require that the following be considered in reaching a determination for Master Plan approval:

- a. The nature of the proposed Master Planned Area and proposed developments therein in terms of size, use, density, general bulk and height of structures, setbacks, required open space and recreation areas, the location and amount of residential uses including reserved housing units, and on-site parking;
- b. The relationship between structures and use within structures, building orientation, deck level activities, and preservation of view corridors;
- c. Whether the pedestrian and vehicular circulation system is so designed as to provide an efficient, safe, and convenient transportation system;
- d. The appropriateness of the public benefits to be provided and the adequacy of provisions for the delivery of those public benefits;
- e. The appropriateness of any proposed exception to the applicable development rules which are needed to implement the Master Plan;

- f. The appropriateness for providing greater development flexibility for the purpose of attracting investment capital into the area and encouraging timely redevelopment and better overall planning for the area; and
- g. Any other matter which the Authority deems appropriate. See § 15-22-205(a), HAR.

81. HCDA's Mauka Area Rules require that the proposed Master Plan be consistent with the provisions of the Mauka Area Plan and Rules in effect on the date of Master Plan approval. See § 15-22-205(b), HAR.

82. The nature of the proposed Master Plan is generally consistent with the Mauka Area Plan and Rules, as set forth below.

**A. Size, Use, Density, Bulk and Height of Structures, Open Space and Recreation Areas, Residential Uses, and Parking:
Land Use and Mixed-Use Concept**

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

84. § 15-22-113, HAR, requires different mixes of land use and controls the proportion of commercial and residential uses that can be developed for larger projects. Based on the total land area encompassing the Master Plan, the Mauka Area Rules allow a maximum of 2,072,453 square feet of commercial (including retail and office) floor area, and up to 4,426,197 square feet of residential development but the maximum allowable floor area that can be

constructed in any situation as a function of the Master Plan Area is 4,426,197 square feet. The Master Plan proposes the following maximum floor areas:

- Residential – 4,426,197 square feet,
- Commercial (includes retail and office) – 2,072,453 square feet, and
- Industrial – 126,463 square feet.

See Petitioner's Exhibit 11 (corrected page 5-12).

Density and Floor Area Transfer

85. § 15-22-116, HAR, allows a maximum density of 3.5 FAR for projects with a minimum land area of 80,000 square feet. This section also provides a 0.3 FAR bonus for any planned development that provides industrial use, among other uses, but the Master Plan does not propose to utilize the bonus floor area. The Master Plan proposes to construct as much as 4,426,197 square feet of floor area on approximately 29 acres of land. This translates to a density of 3.5 FAR. See Petitioner's Exhibit 11 (corrected page 5-12). The proposed density is consistent with the Mauka Area Plan and Rules.

86. § 15-22-203(b)(1), HAR, allows the floor area of land uses, including reserved housing units, to be transferred from one development to one or more other developments within the Master Plan Area subject to specific criteria. The Master Plan proposes to transfer floor area from Land Blocks B and D to the other seven Land Blocks within the Master Plan Area.

§ 15-22-203(b)(1)(B) and (D), HAR, provides that no Land Block shall be allowed to have a permitted density of less than a 1.5 FAR or more than a 4.375 FAR. In the event that the bonus floor area option under § 15-22-116, HAR, is utilized for a given Land Block, then such Land Block shall be allowed to have no more than 4.675 FAR, but the Master Plan does not propose to utilize the bonus floor area. Petitioner proposes 1.60 FAR for Block B and 1.55 FAR for Block

D. The remaining seven Land Blocks are proposed to have a density of 4.0 to 4.25 FAR. See Petitioner's Exhibit 11 (corrected page 5-12). The proposed floor area for the various Land Blocks within the Master Plan Area is consistent with a minimum density of 1.5 FAR and a maximum density of 4.375 FAR and conforms to § 15-22-203(b)(1), HAR.

87. The maximum floor area allowed within the KCDD at full-build out is as follows:

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

At full build out, the Master Plan includes approximately 4.43 million square feet of floor area. Even at full-build out, the Master Plan will encompass only twelve percent (12%) of the total projected density for the KCDD.

Proposed Urban Form

88. Urban form refers to the combination of design elements that affect the appearance and function of the Master Plan Area. The Master Plan proposes a pedestrian-friendly, smart-growth community, where its residents can live, work, and play. See Petitioner's Exhibit 4 (Application), at 3-2 to 3-6 and Chapter 4. Major design objectives of the Master Plan including a neighborhood, pedestrian-friendly corridors along Auahi Street and Cooke Street with a central plaza, preservation of Mauka-Makai view corridors and enhancing the existing roadway network with canopy trees and pedestrian amenities. See Petitioner's Exhibit 4 (Application), at 5-2 to 5-5, 7-2. To mitigate the unsightliness of structured parking and promote interaction with pedestrian traffic at the ground level, the Master Plan anticipates embedding the

majority of the parking structures within a liner. Parking structure liner uses can range from commercial or residential uses to decorative screening. See id., at 5-8.

Heights

89. § 15-22-116(a), HAR, provides for a maximum height allowance of 400 feet. The Master Plan proposes towers that are in conformance with the Mauka Area Plan and Rules. See Petitioner's Exhibit 4 (Application), at 5-9.

Open and Recreational Space

90. Open space is a portion of a development lot, exclusive of required setbacks and parking areas, that is open and unobstructed by any structures above, is an area that is landscaped and maintained as a recreational or social facility, and cannot be used for driveways, loading areas, storage, or parking. § 15-22-64(c)(1), HAR, requires that the lower amount of either ten percent (10%) of a development lot or twenty-five percent (25%) of the lot area less required yard areas be set aside as open space. The Master Plan provides an estimated 126,463 square feet of open space, which is ten percent (10%) of the development lots, and is consistent with the Mauka Area Plan and Rules. See Petitioner's Exhibit 11 (corrected page 5-12). The forms of the open spaces depicted in the Master Plan are "For Illustrative Purposes Only" to demonstrate that KS has the requisite square footage to, and will comply with, open space requirements. See Petitioner's Exhibit 4 (Application), at 5-6. However, the actual layout of open space on development sites will be determined as a part of the Planned Development Permit review process.

91. Recreation space is a portion of a development lot, exclusive of required setbacks and parking area that is set aside and designed for the exclusive use of residents, employees, or visitors. The recreation space can be an outdoor or indoor space and can be provided on any

floor within the building. § 15-22-65, HAR, requires that fifty-five square feet of recreation space be provided for each dwelling unit being proposed. The Master Plan proposes to provide 151,250 square feet of recreation area for residential use, see Petitioner's Exhibit 11 (corrected page 5-12), which is consistent with the Mauka Area Plan and Rules.

Residential Use and Reserved Housing

92. The Master Plan proposes to construct as much as 4,426,197 square feet of residential use, which is in conformance with the Mauka Area Plan and Rules, and proposes as many as 2,750 residential units in the Master Plan Area.

93. One of the goals of Chapter 206E, HRS, is to "join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development" addressing, among other things, "a lack of suitable affordable housing." See § 206E-1, HRS. Along these lines, § 206E-33, HRS, outlines development guideline policies, which includes the "integration both vertically and horizontally of residents of varying incomes, ages and family groups; and an increased supply of housing for residents of low or moderate-income..." The Mauka Area Rules require that a developer "provide at least twenty per cent of the total number of dwelling units in the development for sale or rental to qualified persons..." See § 15-22-115(a), HAR. The HCDA shall not allow cash payment in lieu of the reserved housing, except to account for any fractional unit that result after calculating the percentage requirement against residential floor space or total number of units developed. See Act 018, SLII 2009 (effective April 23, 2009). The Mauka Area Rules establish that the development of at least the twenty percent (20%) requirement fulfills the reserved housing policy. See § 15-22-115(c), HAR.

94. § 15-22-115, HAR, requires planned development projects to set aside twenty percent (20%) of its total residential units for reserved housing to families whose annual income is no more than one hundred forty percent (140%) of the annual area median income. Under the Master Plan, Petitioner has proposed to satisfy the reserved housing requirement by providing approximately 550 new reserved housing units on- or off-site within the KCDD as permitted by HCDA. See Petitioner's Exhibit 4 (Application), at 9-5, and Exhibit 11 (corrected page 5-12).

On-Site Parking

95. § 15-22-67, HAR, imposes certain off-street parking requirements. The Master Plan proposes approximately 4,850 parking stalls, which satisfies the Mauka Area Plan and Rules requirements. See Petitioner's Exhibit 11 (corrected page 5-12).

96. Additionally, the Master Plan proposes a shared parking concept, which allows for various stalls to be shared among residents and commercial users.

97. The transportation strategy also will consider parking options such as unbundled parking within new residential development, 'park-once' strategy, restricted surface parking lots, use of short-term parking, and referred parking for hourly car rental/car sharing programs like zip cars and flex cars. See Petitioner's Exhibit 4 (Application), at 6-4 and 6-5, and Exhibit 6 (Addendum 1), at A-8 and 9.

98. At a master plan application level, specific details on off-street loading requirements for each project are not required. Determination for loading area requirements can only be made at the time a Planned Development Permit Application is submitted. Each development within the Master Plan will be required to meet the loading area requirements of the Mauka Area Rules for such development. See Petitioner's Exhibit 4 (Application), at 6-4.

B. Relationship Between Structures and Uses, Building Orientation and View Corridor Preservation are Consistent with Mauka Rules:

99. Petitioner proposes utilizing tower design strategies including orienting the tower buildings in a Mauka-Makai direction in order to provide a slim building profile, building spacing, and setbacks in order to maintain maximum Mauka-Makai view corridors through the Master Plan Area. The strategic placement of structures along South Street and Cooke Street, both designated by the HCDA as view corridor streets, create additional Mauka-Makai view corridors. See Petitioner's Exhibit 4 (Application), at 5-9 and 5-10, and Exhibit 6 (Addendum 1), at Item 4. A view corridor is an important community benefit and allows residents and visitors alike to experience mountain and ocean perspectives. The Petitioner's proposed tower designs are consistent with the Mauka Area Plan and Rules.

C. Efficient, Safe, and Convenient Pedestrian and Transportation System:

100. The Master Plan generally proposes the following improvements that are designed to provide an efficient, safe, and convenient transportation system. Some of the components or improvements will need to be further detailed and analyzed as a part of the Planned Development Permit review process.

101. Vehicular Circulation: The proposed vehicular circulation system of the Master Plan includes traffic management, significant on-site parking with multiple garage access, above-referenced parking strategies, transit integration, and a pedestrian-friendly environment. See Petitioner's Exhibit 4 (Application), at 6-4 and 6-5. A mixed use, live-work-play development, such as that proposed under the Master Plan, would support a pedestrian environment and reduces the need for residents to use their vehicles. Petitioner does not propose restructuring of

the road network but rather seeks to utilize the existing rights-of-way with possible closures of certain privately owned rights-of-way.

102. Pedestrian Circulation: The Master Plan proposes several enhancements to pedestrian circulation within the district in the form of street improvements to Auahi Street, Cooke Street, South Street, and Ala Moana Boulevard. Both Auahi Street and Cooke Street are being proposed as major landscaped, pedestrian-friendly streets. In addition to the street improvements, the Master Plan envisions the strategic placement of open spaces to create pocket parks, courtyards and public gardens to promote walkability and facilitate pedestrian circulation throughout the Master Plan Area and central plaza at the Auahi Street and Cooke Street intersection. Residential, commercial and decorative screening liners have been proposed along major streets that would hide the parking structures behind them. See Petitioner's Exhibit 4 (Application), at 5-8 and 6-5. The Master Plan's proposed pedestrian circulation system is consistent with the goals of the Mauka Area Plan and Rules.

103. Honolulu High-Capacity Transit Corridor and Station: The C&C High-Capacity Transit Corridor Project proposal could have a major impact on the proposed Master Plan. The C&C's current preferred transit route is within Halekauwila Street, from Punchbowl to Ward Avenue, with the Civic Center Station proposed to be located on a portion of Block A of the Master Plan Area. See Petitioner's Exhibit 6 (Addendum 1), at A-5. The location of the transit route and the transit station will influence access to residential areas and places of employment. Once the transit route is finalized, Petitioner will coordinate with the C&C regarding the precise alignment and exact location for the transit station within the Master Plan Area. As part of the Planned Development Permit Applications for this area, a more detailed transit route and station location shall be addressed and incorporated.

104. Bike Plan: § 15-22-71(b), HAR, provides in relevant part that “[p]ublic or private...bicycle circulation paths may be required where appropriate in conjunction with development projects.” The Master Plan proposes collaborating with the HCDA and the C&C to create and expand the bicycle route network in the Master Plan Area to connect to the C&C’s Bicycle Master Plan. It also proposes bicycle parking to be provided at major destination points and within each parking structure and plans for such bike facilities will be submitted in conjunction with individual Planned Development Permit Applications. See Petitioner’s Exhibit 4 (Application), at 6-5 and 7-4. Petitioner will also consider constructing at its own expense dedicated bike ways on its lands within the Master Plan Area.

D. Public Benefits:

105. The public benefits described in paragraph 59 above and described below are consistent with the Mauka Area Plan and Rules. These public benefits enhance the surrounding communities and provide a benefit to the residents of the area, as well as the general public.

E. Appropriateness of Proposed Exceptions to the Applicable Development Rules which are needed to Implement the Master Plan:

106. Appropriateness of Proposed Exceptions: The Master Plan Permit Application does not request modification to the Mauka Area Plan and Rules, but has identified potential modifications.

107. Modification to Maximum Podium Heights: An increase to the maximum podium heights of 45 feet as a part of the Planned Development Permit review process may permit better design of a mixed-use community with activated street-levels and a vibrant neighborhood by allowing commercial, residential, and industrial and community services to be built within the podium. The additional podium height offers the opportunity to move a parking

structure up and away from the street, shielding it from view and opening up area for alternative uses. See Petitioner's Exhibit 4 (Application), at page 9-6, and Exhibit 20 (Letter dated June 30, 2009 from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 5.

F. Appropriate Opportunity for Providing Greater Development Flexibility, Attracting Investment Capital, and Encouraging Timely and Better Overall Development:

108. The Master Plan application establishes a template for an orderly and methodical development of a large section of the KCDD. Redevelopment of Kakaako is a primary objective of HCDA. The Master Plan over a fifteen-year development period is expected to create approximately 9,291 on-site construction jobs and 10,202 off-site jobs. The total construction and off-site worker payroll for the development period is estimated to be approximately \$933 million dollars. At full build-out, it is estimated that the Master Plan development will generate 5,466 full-time professional and service jobs and generate approximately \$230 million dollars in annual payroll. Tax revenue to the State from the construction phase is estimated to be approximately \$141.5 million dollars in excise tax and \$73.7 million dollars in income tax. After the development is completed, it is projected that annual revenue to the State in income tax will be approximately \$18.1 million dollars. Additionally, the County government stands to collect approximately \$8.9 million dollars annually in the form of property taxes. See Petitioner's Exhibit 19 (Michael Dang Declaration).

G. Other - Cultural/Historic Preservation:

109. Based on consultation with recognized cultural descendants of the Master Plan Area, the State Historic Preservation Division ("SHPD"), Oahu Island Burial Council, Office of Hawaiian Affairs, Native Hawaiian Legal Corporation, Hui Malama I Na Kupuna o Hawaii Nci,

and other native Hawaiian organizations, no known customary or traditional native Hawaiian rights have been asserted in the Master Plan Area.

110. KS has demonstrated its commitment to ensuring the proper respect for and treatment of iwi kupuna and cultural resources by initiating a proactive program of cultural stewardship of the Master Plan Areas. Petitioner's Application at page 8-2 outlines the proactive efforts it has taken to identify potential cultural sites within its properties and its commitment to continuing to identify and develop protocols for the treatment of any cultural resources that may be encountered throughout the implementation of the Master Plan. These efforts include an ethno-historic study and targeted subsurface archaeological testing. See Petitioner's Exhibit 4 (Application), at page 8-2, and Exhibit 20 (Letter dated June 30, 2009 from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 5 and 6.

111. Petitioner has engaged Mason Architects who has prepared an Architectural Inventory Survey to identify and preserve historic architectural resources located in the Master Plan Area. See Petitioner's Exhibit 20 (Letter dated June 30, 2009 from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 6.

112. To date, KS has submitted to the SHPD archeological inventory survey plans for Tax Map Key areas (1) 2-1-030: 001; 2-1-054: 025, 027, 028, and 032; 2-1-055: 004, 009, and 017, which comprise of Blocks A, B, and E. SHPD has approved and accepted the final archeological inventory survey plan for Block E, and approved the draft archeological inventory survey plan for Blocks A and B. Exhibit 20 (Letter dated June 30, 2009 from KS to HCDA responding to HCDA's Staff Analysis & Recommendations), at 5 and 6.

113. To ensure the proper protection and preservation of cultural and historic resources, specifically the protection and preservation of native Hawaiian burials in the Master Plan Area, Petitioner shall prepare an archeological inventory survey plan in accordance with § 13-284-5(c), HAR, and approved by the SHPD of the State of Hawaii for any block before submitting an individual Planned Development Permit Application for said block.

114. Petitioner shall continue meeting with, consulting and providing regular updates to the SHPD of the State of Hawaii, Oahu Island Burial Council, Office of Hawaiian Affairs, cultural descendants and other native Hawaiian organizations in developing an archeological methodology and process to protect native Hawaiian burials and other cultural and historic resources in the Master Plan Area.

RULINGS ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. The Authority has jurisdiction to approve master plan applications and issue master plan permits pursuant to §§ 206E-7 and 206E-33, HRS.
2. Master plan permits are deemed approved if no decisions are made granting or denying them within 200 days. § 15-22-23(a)(1), HAR. The 200-day deadline commenced on

March 23, 2009 when the Master Plan application was deemed complete. The Master Plan will be deemed approved if no decisions are made granting or denying it by October 9, 2009.

3. "Master plan" is defined as a long-range development plan for an area within the Mauka Area which describes the overall character of development envisioned within said area and the manner in which development projects will be implemented. § 15-22-201, HAR.

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

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

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

7. The Oahu Island Burial Council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites located in the Master Plan Area is

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

8. In the event any human skeletal remains are inadvertently discovered; any activity in the immediate area that could damage the remains or the potential historic site shall cease. The discovery shall be reported as soon as possible to the Department of Land and Natural Resources, the appropriate medical examiner or coroner, and the Honolulu Police Department. § 6E-43.6, HRS. The Department of Land and Natural Resources has jurisdiction over any inadvertent discovery of human skeletal remains over fifty years old, and the protocol to be followed is set forth in § 13-300-40, HAR.

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

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

11. The Petitioner's PFD requirement may be satisfied in part or in whole by the application of Petitioner's PFD credits, the contribution of land, and/or payment of a sum equal

to the fair market value of the land area otherwise required pursuant to §§ 15-22-73(a), (d) and (e) and 15-22-205(f)(1)-(3), HAR.

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

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

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

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

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

DECISION AND ORDER

IT IS HEREBY ORDERED that the Master Plan, consisting of approximately 29 acres of land in the Kakaako Community Development District, Oahu, Hawaii, and identified as Tax Map Key Numbers 2-1-030: 001; Halekauwila Street, Lot A-1, between South and Keawe Streets; 2-1-054: 025; 2-1-054: 027; 2-1-054: 028; 2-1-054: 032; 2-1-054: 001; 2-1-053: 004; 2-1-053: 005; 2-1-053: 027; Koula Street, Lot B, between Pohukaina and Auahi Streets; 2-1-055: 004; 2-1-055:

009; 2-1-055: 017; 2-1-055: 003; 2-1-055: 006; 2-1-055: 021; 2-1-055:026; 2-1-055: 038; 2-1-055: 001; 2-1-055: 002; 2-1-055: 018; 2-1-055: 032; 2-1-055: 033; 2-1-055: 034; 2-1-055: 035; Lana Lane between Auahi Street and Ala Moana Boulevard; 2-1-056: 003; 2-1-056: 004; Ohe Lane between Auahi Street and Ala Moana Boulevard; 2-1-056: 002; 2-1-056: 007; and 2-1-056: 008 and all as shown approximately on Exhibit A, attached hereto and incorporated by reference herein is approved and shall be in effect for the period set forth in paragraph 1 below and subject to conditions set forth below in paragraphs 2 through 13; and

IT IS HEREBY FURTHER ORDERED that for the effective period of the Master Plan, HCDA's Mauka Area Plan and Rules applicable to development shall be those plan and rules in effect on September 2, 2009.

1. **Effective Period of Master Plan.** Master Plan approval shall be valid for a period of fifteen years from the date of issuance of this Order. The Master Plan Permit shall be issued to KS. Any PFD Credits and/or reserved housing credits that are valid at the end of the effective period of the Master Plan shall not expire or otherwise be adversely affected by the expiration of the effective period of the Master Plan. The development will proceed in accordance with all applicable laws, rules, regulations, and the terms and conditions of the Master Plan Permit. The development shall not be restricted or prohibited by rules promulgated by the HCDA after the date of approval of the Master Plan Permit and, pursuant to and to effect the purpose of § 15-22-200(a) and (c) and § 15-22-203(a), HAR, it is the stated intent of the parties that the Mauka Area Rules applicable to development within the Master Plan Area shall be those rules in effect at the time of the Master Plan approval, notwithstanding any subsequent amendment to said rules. Such subsequent amendment(s) shall be void as applied to development of property

within the Master Planned Area to the extent that it changes any rule which the Authority has agreed at the time of the Master Plan approval to maintain in force for a specified period of time.

2. **Development Agreement.** Petitioner shall forthwith execute a Master Plan Development Agreement. Supplemental Master Plan Development Agreement(s) should be developed as details become available to provide the Authority with assurances and/or specifications including but not limited to: (a) the general timing and phasing of any Mauka Area Plan Amendments proposed by the Petitioner; (b) the general timing and phasing of the delivery, manner and timing of reserved housing, the central plaza, dedication of public facilities, satisfaction of the P/PG requirements; (c) the implementation of the Master Plan multi-modal transportation and parking strategy; (d) the location of any C&C High-Capacity Transit Corridor Project transit station located within the Master Plan Area; and (e) the manner in which any joint developments in the Master-Plan Area will be administered. A memorandum of the Master Plan Development Agreement(s) shall be recorded at the Bureau of Conveyances within thirty (30) days of its execution in a form and with content to be reasonably prescribed by the HCDA Executive Director.

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

4. **Amendments.** Petitioner's proposed variances and amendments to the Mauka Area Rules (see FOF ¶ 64) shall be addressed pursuant to the Authority's rule making procedure pursuant to § 15-16-26, HAR, *et. seq.* and § 15-22-18. HAR. If Petitioner applies for a Mauka Area Plan amendment to delete or partially delete the P/PG designation on Block A, to mitigate any loss of park space, Petitioner shall (a) provide an area equal to the actual loss of park space

under the revised P/PG designation (but not more than 96,000 square feet if the entire P/PG designation is deleted) for a park or parks to be located in an area or areas acceptable to the HCDA within the Master Plan Area, which park or parks may include public gathering areas or plazas, or (b) negotiate such other alternative arrangement acceptable to HCDA.

5. **Historical, Cultural and Archeological Resources.** Prior to submission of the first Planned Development Permit Application for the development projects under the Master Plan, Petitioner shall prepare and submit to the Authority a historic building inventory and a cultural impact assessment for the Master Plan Area. For any block, as a part of the Planned Development Permit review process, Petitioner shall obtain and submit to the Authority an archaeological inventory survey plan for such block that has been accepted by the State of Hawaii, Department of Land and Natural Resources' SHPD (or its successor agency).

6. **Dedication of Public Facilities.** Petitioner shall satisfy its public facility dedication requirement, estimated to be 140,174 square feet of land, which estimate is based on the most likely mix of residential and commercial development proposed by the Petitioner. Petitioner shall satisfy such requirement by the application of PFD Credits, or in accordance with the Rules including but not limited § 15-22-205(f), HAR, which provides for cash-in-lieu payment, and/or through the dedication of land for public facilities within various locations of the Master Plan Area to be determined as a part of the development permit review process.

7. **Open Space.** Prior to the submission of the first Planned Development Permit Application for a development site pursuant to the Master Plan, Petitioner shall prepare an open space design guideline for HCDA's approval, as such design guidelines are described on page 7-1 of the Master Plan. Petitioner shall satisfy its open space requirement, which totals an estimated 126,463 square feet, pursuant to such design guidelines approved by HCDA. Open

space along Cooke Street ("Cooke Street Promenade Open Spaces") shall remain as proposed in the Open Space Plan on page 5-6 of the Master Plan. A central plaza envisioned as a large public plaza shall be located at the crossroads of the Cooke Street park-to-park promenade and the Auahi Street retail corridor (at the corner of Blocks C, D, G or H) and shall be at least 25,000 square feet in area, the design of which shall be submitted as part of the Planned Development Permit Application for the applicable block. In the event, the central plaza is not located on Block D and instead is located on Block C, G or H, the FAR densities in the Application at 5-12 shall be adjusted accordingly in compliance with § 15-22-203(b)(1), HAR, and shall be subject to the HCDA's approval.

8. **Reserved Housing.** Petitioner shall satisfy its reserved housing requirement for the Master Plan Area, which shall be equal to twenty percent (20%) of the total number of actual residential units built for the Master Plan Area, as permitted by the Mauka Area Rules. Petitioner shall provide ten percent (10%) (or one-tenth) of its reserved housing requirement at or below one hundred percent (100%) of the area median income.

9. **Relocation Assistance.** Petitioner shall provide relocation assistance to affected tenants pursuant to its proposed relocation program set forth in paragraph 59(s) of the Findings of Fact. Petitioner shall provide at least 120 days' prior written notice to any tenant within the Master Plan Area who will be displaced as part of a new planned development project and who is not in breach of the terms of the applicable lease.

10. **Sustainability.** Prior to the submission of each Planned Development Permit Application for a development site pursuant to the Master Plan, Petitioner shall provide sustainability guidelines for that block to the HCDA. The details of Petitioner's sustainability

space along Cooke Street ("Cooke Street Promenade Open Spaces") shall remain as proposed in the Open Space Plan on page 5-6 of the Master Plan. A central plaza envisioned as a large public plaza shall be located at the crossroads of the Cooke Street park-to-park promenade and the Auahi Street retail corridor (at the corner of Blocks C, D, G or H) and shall be at least 25,000 square feet in area, the design of which shall be submitted as part of the Planned Development Permit Application for the applicable block. In the event, the central plaza is not located on Block D and instead is located on Block C, G or H, the FAR densities in the Application at 5-12 shall be adjusted accordingly in compliance with § 15-22-203(b)(1), HAR, and shall be subject to the HCDA's approval.

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10. **Sustainability.** Prior to the submission of each Planned Development Permit Application for a development site pursuant to the Master Plan, Petitioner shall provide sustainability guidelines for that block to the HCDA. The details of Petitioner's sustainability

ADOPTION OF ORDER

The undersigned Members, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 2nd day of September, 2009. This ORDER and its ADOPTION shall take effect upon the date this ORDER is approved by the Authority.

Done at Honolulu, Hawaii, this 2nd day of September, 2009.

Hawaii Community Development
Authority (Kakaako members)

Jonathan W. Y. Lai, Chairperson

Paul Kimura

Amanda Chang

C. Scott Bradley

Grady Chun

Joseph Dwight, IV

Christopher Kobayashi

Kay Mukaigawa

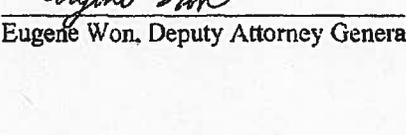
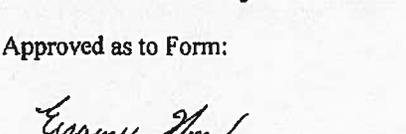
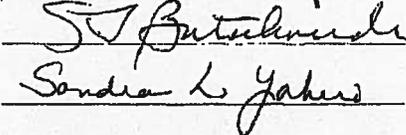
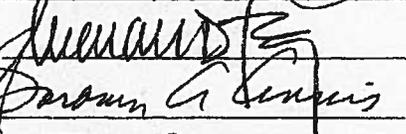
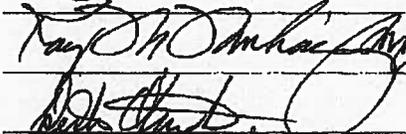
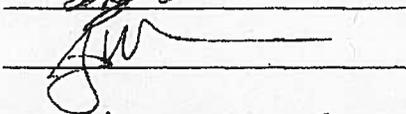
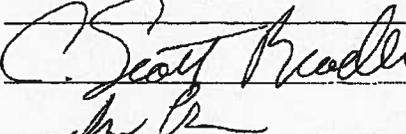
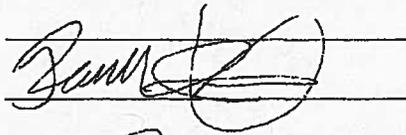
Dexter Okada

~~Bremont Morioka~~ MICHAEL D. FORMBY

Georgina Kawamura Barbara A. Annis

Theodore E. Lili STEVEN L. BREICHNSIDER

Russ K. Saito SANDRA L. YAHIRO



Approved as to Form:



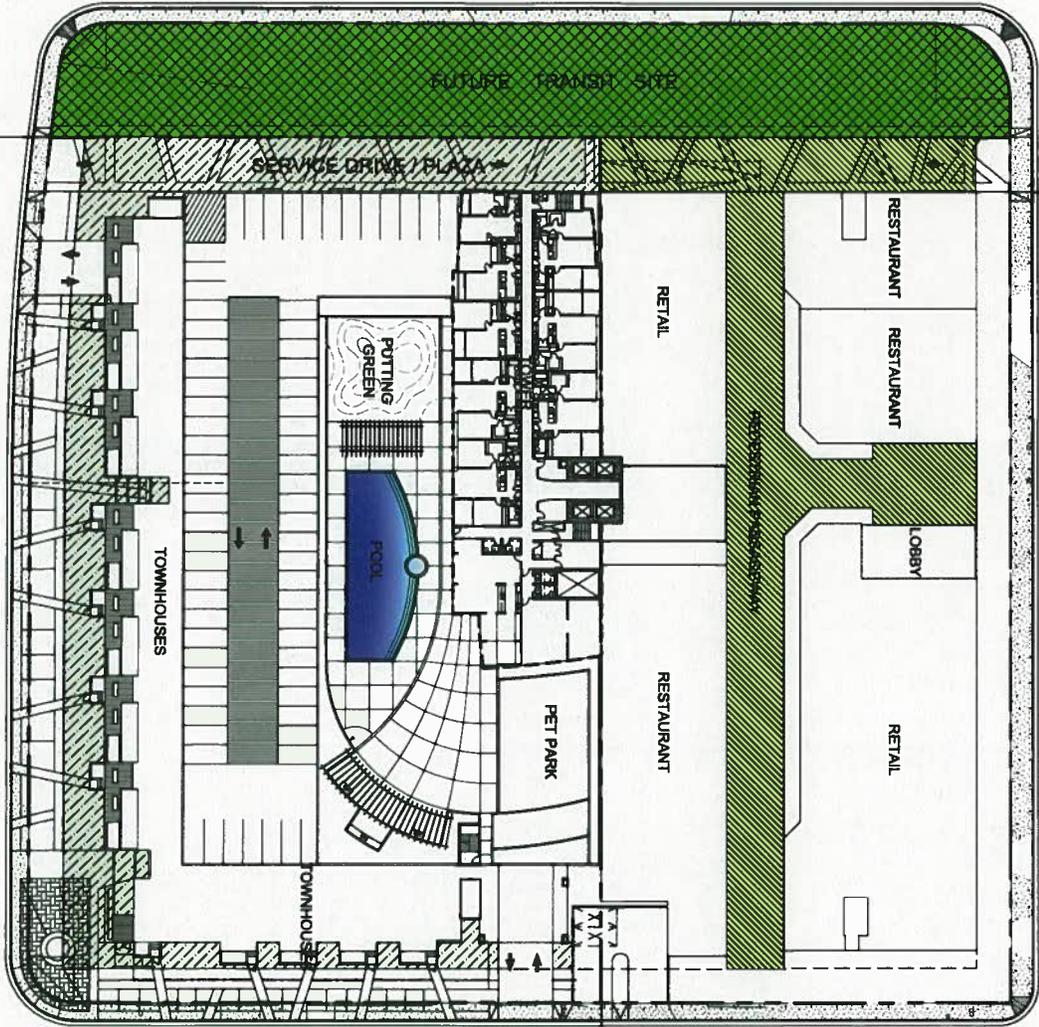
Eugene Won, Deputy Attorney General

EXHIBIT C

**(Map Depicting the Approximate Locations of Areas That Will be Used to Meet the
Park/Parking Garage Requirement)**

HALEKAUWILA STREET

A1-3 A1-2
KEAWE STREET



OPEN SPACE DIAGRAM
SCALE: 1" = 50'-0"



SCALE: 1" = 50'-0"



OPEN SPACE (A1-1)	12,961 SF
OPEN SPACE (A1-2)	15,130 SF
OPEN SPACE (A1-3)	20,585 SF
OPEN SPACE CALCULATION:	
LOT A1-1	12,961 SF
LOT A1-2	15,130 SF
LOT A1-3	20,585 SF
TOTAL BLOCK A1	49,676 SF

POHUKAINA STREET

A1-2
A1-1

Keauhou Place
HCD4 PROJECT ELIGIBILITY
PERMIT & DEVELOPMENT
CHECK SUBMISSION

OPEN SPACE DIAGRAM
DATE: DECEMBER 12, 2013
SHEET: EXHIBIT C

