

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Application of)	File No.: PL MASP 13.1.3
)	NUNC PRO TUNC ORDER RE:
GENERAL GROWTH PROPERTIES,)	HEARING OFFICER'S PROPOSED
INC. on behalf of its affiliate VICTORIA)	FINDINGS OF FACT, CONCLUSIONS
WARD, LIMITED)	OF LAW, AND DECISION AND
)	ORDER FOR A MASTER PLAN
For a Master Plan Permit)	PERMIT; EXHIBIT "A"
_____)	

NUNC PRO TUNC ORDER RE: HEARING OFFICER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A MASTER PLAN PERMIT

On January 14, 2009, the Hawaii Community Development Authority ("Authority") issued its Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit ("Decision & Order"), granting GENERAL GROWTH PROPERTIES, INC., on behalf of its affiliate, VICTORIA WARD, LIMITED's ("Petitioner" or "VWL") application for a master plan, pursuant to chapter 206E of the *Hawai'i Revised Statutes* ("HRS") and chapter 15-22 of the *Hawai'i Administrative Rules* ("HAR"), for approximately 59.96 acres of land in the Kaka'ako Community Development District, Oahu, Hawai'i, also known as the Ward Neighborhood Master Plan ("Master Plan").

There is a clerical omission on pages 1, 8-9, and 42 of the Decision & Order.

Although TMK No. 2-1-052: 022 was part of the Master Plan application, and was

EXHIBIT 29

8, 9, 10, 11, and 12. Having admitted said supplemental exhibits, the contested case hearing was closed on January 2, 2009.

30. On January 2, 2009, Petitioner filed Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

31. On January 6, 2009, the Hearing Officer filed Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit.

32. On January 7, 2009, the GGP Committee neither submitted a report, nor offered anything to supplement the evidentiary record in the contested case hearing as the Authority set the Master Plan for a contested case hearing subsequent to the GGP Committee's formation.

33. On January 14, 2009, the Authority 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 Petitioner, respectively, and to take action on the Master Plan application.

Master Plan Overview

34. The Authority's rules regarding master planning are designed to encourage investment in new development and commitment to master planning of large land holdings. See HAR § 15-22-200(a).

35. 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.

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

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

Description of the Master Plan Area

38. The Master Plan Area consists of approximately 59.96 acres of land located in the Kaka'ako Community Development District, Oahu, Hawai'i, and identified as Tax Map Key Numbers 2-1-0049: 063, 2-1-049: 080, 2-1-056: 001, 2-3-001: 001, 2-3-001: 004, 2-3-001: 005, 2-3-002: 002, 2-3-002: 059, 2-3-003: 065, 2-3-003: 093, 2-3-005: 004, 2-3-005: 005, 2-3-005: 006, 2-3-005: 012, 2-1-050: 001, 2-1-050: 061, 2-1-050: 062, 2-1-052: 011, 2-1-052: 012, 2-1-052: 016, 2-1-052: 017, 2-1-052: 020, 2-1-052: 022, 2-1-052: 024, 2-1-052: 027, 2-1-052: 028, 2-1-052: 031, 2-1-052: 032, 2-1-052: 033, 2-1-052: 034, 2-1-052: 035, 2-1-052: 036, 2-1-052: 038, 2-1-052: 039, 2-1-052: 040, 2-1-052: 042, 2-1-052: 043, 2-1-052: 045, 2-

to identify how some of the sustainability concepts will be implemented in the Master Plan area. The details of how sustainability and energy efficiency and conservation will be integrated are not necessary for the master plan application. These details of Petitioner's sustainability strategy shall be provided to the Authority at the time of each planned development or base zone permit application.

43. Businesses may be displaced by the development within the Master Plan Area.

44. One of the public benefits to be derived from a master plan is the provision of relocation assistance by the Petitioner. See HAR § 15-22-200(b).

45. The importance of adequate and attractive recreational areas and facilities suitably located to residents, patrons, and workers was recognized by the Mauka Area Plan. See Mauka Area Plan at Page 53.

46. Land Uses/Area: The Master Plan proposes a mixed-use development including residential, retail, office, commercial, and industrial uses, for a total floor area of 9,334,240 square feet, with a floor area ratio ("FAR") of 3.8. It is a long range plan that would span over more than 20 years, potentially including 10-15 different phases. The phasing and mix of uses developed under the Master Plan will depend on changing market and social conditions. See Exhibit 1 (Application), at 19-55; Exhibit 5 (Staff Findings), at 3-4. Specifically, the maximum floor area requested for each use is:

- Residential -- 7.6 million square feet

- Retail, Restaurants & Entertainment -- 5 million square feet
- Office/Commercial/Other -- 4 million square feet
- Industrial -- 736,914 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 Exhibit 6 (Petitioner's Response to Staff Findings), at 2. In no instance, however, is Petitioner intending to develop all commercial spaces without any residential components. See id. In fact, residential uses are an important component of the Master Plan. See id.

47. **Urban Design Objectives:** The Master Plan proposes a pedestrian-friendly, smart-growth community, where its residents can live, work, and play. See Petitioner's Exhibit 1 (Application), at 19-26.

48. **Streetscapes:** Major design objectives of the Master Plan include connected public spaces, a pedestrian supportive environment including the redesign of Auahi Street as a landscaped promenade, preservation of Mauka-Makai view corridors and an enhanced roadway network with canopy trees and pedestrian amenities. See Petitioner's Exhibit 5 (Staff Findings), at 3. To mitigate the unsightliness of structured parking, the Plan anticipates extensive use of "liners" which are buildings designed to have aesthetically pleasing facades and to provide interaction with pedestrian traffic at ground level. See id.

62. Modifications to Mauka Area Rules: Petitioner has identified the following necessary modifications to the Mauka Area Plan to achieve the vision of the Master Plan:

- Increase the maximum podium or street front element height from 45 feet to 65 feet for parcels fronting Ala Moana Boulevard and to 75 feet for all other parcels not directly fronting Ala Moana Boulevard, which will allow retail, restaurants and residential units to be built within the podium and parking structures to be moved up and away from the street, creating a more aesthetically pleasing and pedestrian friendly facade;
- Eliminate the 1:1 setback slope from 20 feet to 45 feet in the building height along Ala Moana Boulevard, Ward Avenue, Kamake'e Street and Queen Street, which will allow for development of a continuous building façade that better defines the edge of the street;
- Eliminate the 75-foot view corridor setback for towers along Ala Moana Boulevard that have a Mauka-Makai orientation, which will allow for the tower footprint to be rotated perpendicular to the ocean, in a Mauka-Makai direction, to enhance ocean and mountain views;
- Allow for the development of a mid-rise or mid-height element without a maximum floor plate restriction where the maximum

- building height is no more than 240 feet and the separation between the buildings is at least 60 feet, which allows for a more evenly distributed building mass and reduces the number of towers needed to achieve the density proposed for this area; and
- Preserve all modifications and variances previously granted for the Ward Village Shops project in Land Block 3, in order to complete and include it in the Master Plan framework.

See Petitioner's Exhibit 5 (Staff Findings), at 5; Petitioner's Exhibit 6 (Petitioner's Response to Staff Findings), at 121-24. Petitioner requests that these modifications be granted as part of the approval of the Master Plan.

63. Amendments to Mauka Area Plan: Petitioner has identified the following necessary amendments to the Mauka Area Plan to achieve the vision of the Master Plan:

- Deletion of the Halekauwila Extension shown in the Mauka Area Plan on the East side of Ward Avenue connecting to Queen Street to be replaced by a street parallel to Queen Street between Ward Avenue and Kamake'e Street, which will enhance pedestrian and vehicular connectivity in the area and break down a larger block into smaller, more walkable, blocks;

- 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 9.33 million square feet of floor area. Even at full build out, the Master Plan will encompass only 26% of the total projected density for the Kaka'ako Community Development District. See Petitioner's Exhibit 5 (Staff Findings), at 11-12.

71. Height: HAR § 15-22-116 provides for a maximum height allowance of 400 feet for projects with a minimum of 80,000 square feet of land. The Master Plan proposes to construct towers of a range of heights with a maximum of 400 feet. The Master Plan proposes towers that are in conformance with the Mauka Area Plan and Rules. See Petitioner's Exhibit 5 (Staff Findings), at 12-13.

72. Urban Form: Urban form refers to the physical layout and design of a development. A major focus of the Master Plan is to create gathering places in the neighborhood. It also attempts to improve the pedestrian experience and foster an urban village lifestyle. Much of the off-street parking will be located in parking structures, which are proposed to be screened from view by retail/office and residential liners, up to the 65-foot or 75-foot level, depending on the location. The retail use at the street level will promote pedestrian activity. The proposed design concepts will

significantly improve the quality of the urban environment. Many of the platform levels will also include a certain amount of landscaping to serve as resident and employee recreation areas. The urban form proposed by the Master Plan consists of creating public spaces, pedestrian promenades, parking podiums with liner facades, and towers ranging from 105 to 400 feet in height, creating a varied skyline.

73. Reserved Housing: One of the goals of HRS Chapter 206E 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 HRS § 206E-1. Along these lines, HRS § 206E-33 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 HAR § 15-22-115(a). The Mauka Area Rules also allow a cash payment in lieu of the reserved housing, with a maximum payment equivalent to the 20% reserved housing requirement. The Mauka Area rules establish that the development of at least the 20% requirement fulfills the reserved housing policy. See HAR § 15-22-115(c).

support a pedestrian environment and reduce the need for residents to use their vehicles. The proposed vehicular circulation system eliminates the Halekauwila Street extension, which was provided for in the Mauka Area Plan and Rules, and replaces it with a street parallel to Queen Street that would run between Ward Avenue and Kamake'e Street. An amendment to the Mauka Area Plan will need to be approved by the Authority.

83. The traffic issues in Kaka'ako, however, are not just a product of development within Kaka'ako. Because of its central location between the downtown business district and Waikiki visitor district, any development outside of Kaka'ako will impact traffic within Kaka'ako. It appears that a regional traffic study is necessary before a determination on the adequacy of the proposed transportation strategies can be made. It is thus appropriate for Petitioner to conduct a regional traffic study prior to the submission of a development permit application for the first individual project. In addition, at the individual development permit stage, it is appropriate for Petitioner to conduct traffic impact assessments for individual development projects. See Petitioner's Exhibit 5 (Staff Findings), at 14-15.

84. Pedestrian Circulation: The Master Plan proposes several enhancements to pedestrian circulation within the district in the form of street improvements to Auahi Street, Ward Avenue, Kamake'e Street, and Pohukaina Street. Auahi Street is being proposed as a major landscaped, pedestrian friendly street. In addition to the street

improvements, the Master Plan includes several public plazas and open spaces that are connected to Auahi Street. Retail and commercial liners have been proposed along major streets that would hide the parking structures behind them. The buildings and public plazas will be linked by a street system that is designed to accommodate pedestrians. The Master Plan's proposed pedestrian circulation system is consistent with the goals of the Mauka Area Plan and Rules. See Petitioner's Exhibit 5 (Staff Findings), at 15.

85. High Capacity Transit Corridor and Station: The City and County of Honolulu's ("C&C") High Capacity Transit proposal could have a major impact on the proposed Master Plan. The C&C's current preferred transit route is situated within the Mauka portion of the master plan area. The proposed location of the transit station will influence access to residential areas and places of employment. Petitioner and the C&C have been engaged in discussions regarding the precise alignment and exact location for the transit station within the Master Plan area, and will continue to do so. As part of individual project development permit applications for this area, a more detailed transit route and station location shall be addressed and incorporated. See Petitioner's Exhibit 5 (Staff Findings), at 15-16.

86. Bike Plan: HAR § 15-22-71(b) 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 bicycle networks along

the form of new public spaces, parks and streets and infrastructure improvements.

Approximately \$300 million in street, infrastructure, and utilities improvements will be invested. It is estimated that the overall development will generate approximately \$8 billion in revenue for the State economy.

102. Modification of 75 foot tower setback -- The modification of the 75-foot tower setback requirement for buildings along Ala Moana Boulevard will allow the orientation of buildings in a Mauka-Makai direction, thereby facilitating a slender building profile, enhancing ocean and mountain views and maximizing visual transparency throughout the area. The existing 75-foot tower setback for buildings along major roadways could encourage the construction of structures along Ala Moana Boulevard in an 'Ewa to Diamond Head direction, potentially blocking view planes. The 75-foot tower modification would allow the tower footprint to be rotated perpendicular to the ocean, so that the narrow part of the footprint would face the ocean. See Petitioner's Exhibit 4 (Addendum), at 38-39.

103. Modification to podium heights -- The Master Plan proposes increasing the maximum podium height from 45 feet to 65 feet for parcels fronting Ala Moana Boulevard, and from 45 feet to 75 feet for other parcels not directly fronting Ala Moana Boulevard. Increasing the podium height allows for retail, restaurants, office and residential units to be built within the podium. The additional podium height offers the opportunity to move a parking structure up and away from the street, occupying a

smaller floor plate and making room for alternative uses. These new uses can then surround the garages. See Petitioner's Exhibit 4 (Addendum), at 36-37.

104. Modification to podium setback -- The Master Plan proposes to eliminate the 1:1 setback slope defined as a 20-foot to 45-foot slope in building height along Ala Moana Boulevard, Ward Avenue, Kamake'e Street and Queen Street. This would allow a more continuous urban street front with greater usable building density brought closer to ground level and a façade that would better define the edge of the street. See Petitioner's Exhibit 4 (Addendum), at 37-38.

105. Modification with respect to Mid-Rise or "Mid-Height Element" -- The Master Plan proposes the introduction of the "Mid-Height Element" as a building type, without a maximum floor plate restriction, with a maximum height of 240 feet and with a minimum separation of 60 feet between buildings. This could effectively replace one 400-foot tower with two 240-foot mid-rise buildings, which would create more favorable view angles within the Master Plan Area and reduce the number of towers needed to achieve the proposed density in Master Plan Area. In addition, this would allow the building mass to be distributed more evenly among different parcels.

106. As described in detail on pages 36 through 41 of Petitioner's Master Plan Application Addendum (dated September 12, 2008), the foregoing modifications proposed in the Master Plan: (a) will result in a development that is consistent with the intent of the Mauka Area Plan and Rules; (b) will provide flexibility for different uses

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. HRS §6E-43.6. 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 HAR §13-300-40.

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. A regional traffic study shall be completed by the Petitioner before the Authority considers Petitioner's request for amendments to the Mauka Area Plan and Rules.

12. The Authority may require that the public facility dedication land component be comprised of lands for streets, utility and service corridors, utility lines,

schools, parks, parking garages, sidewalks, pedestrian ways, and other community and public facilities.

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

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

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

16. 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.

17. Upon consideration of HRS chapter 206E and the Mauka Area Rules under HAR chapter 15-22 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 HAR chapter 15-22 pursuant to HAR §15-22-205(b).

the timing and phasing of Mauka Area Plan amendments; (d) descriptions of the delivery, manner and timing of reserved housing, the dedication of public facilities, the public use easements, and the manner in which any joint developments in the Master Plan Area will be administered; and (e) timing for filing of the first complete Planned Development Permit Application for the first phase of the Master Plan. A memorandum of the Master Plan Development Agreement shall be recorded at the Bureau of Conveyances within thirty (30) days of execution of the Master Plan Development Agreement, and shall include the signatures of all parties owning a fee simple interest in the Master Plan Area.

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 or base zone development project and evaluated for technical adequacy and enhancement of design and urban character.

4. Amendments. Petitioner's proposal to amend the Mauka Area Rules shall be addressed pursuant to the Authority's rule making procedure pursuant to HAR §15-16-26, *et. seq.* and HAR §15-22-18. If Petitioner applies for a Mauka Area Plan amendment to delete the park / parking garage facility designation along the Halekauwila Extension, to mitigate any loss of park space, Petitioner shall provide an area equal to the actual amount of park space lost, but not more than 30,000 square feet, for park space to be located in the open space of the 'Ewa Plaza located in block 5,