

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY
OF THE STATE OF HAWAII

In re the Petition of)	File No.: PL MASP 13.1.3
)	
VICTORIA WARD, LIMITED)	DECLARATORY ORDER RE:
)	APPLICABILITY OF CONDITION NO. 4
For an order of Declaratory Relief)	OF NUNC PRO TUNC ORDER RE:
_____)	HEARING OFFICER'S PROPOSED
)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, AND DECISION AND ORDER
)	FOR A MASTER PLAN PERMIT, ISSUED
)	JANUARY 14, 2009

**DECLARATORY ORDER RE: APPLICABILITY OF CONDITION NO. 4
OF NUNC PRO TUNC ORDER RE: HEARING OFFICER'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
FOR A MASTER PLAN PERMIT, ISSUED JANUARY 14, 2009**

On August 29, 2012, VICTORIA WARD, LIMITED ("Petitioner" or "VWL") submitted a Petition for Declaratory Relief ("Petition"), pursuant to Hawaii Administrative Rules ("HAR") §15-219-83, as to the applicability of Condition No. 4 of the January 14, 2009 Nunc Pro Tunc Order re: Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit ("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").

On October 10, 2012, the Petition came on for hearing before the Hawaii Community Development Authority ("the Authority") at a regularly scheduled meeting.

Condition No. 4 of the Master Plan Permit required VWL to amend the 2005 Mauka Area Rules/Plan should VWL choose to implement any of the following items:

- (1) 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 Kamakee Street (“Halekauwila Street Extension Deletion”);
- (2) Deletion of the park/parking garage facility along the Halekauwila Extension contained in the Mauka Area Plan (“Park/Parking Garage Deletion”); and
- (3) A single “mixed-use” land use designation for the Ward Neighborhood Master Plan area, instead of the “mixed-use commercial” (MUZ-C) and “mixed-use residential” (MUZ-R) land use designations, which will allow more flexibility in designing and developing the mixed use community that was approved under the Master Plan. (“Single Mixed-Use Designation”).

Condition No. 4 (which was based upon Finding of Fact No. 63) stated specifically,

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 shown in the Proposed Open Space Plan on page 19 of Petitioner's Master Plan Application Addendum (dated September 12, 2008). This park space would be dedicated through a perpetual easement for public use gathering areas.

Subsequently, the 2005 Mauka Area Rules/Plan were repealed in their entirety.

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."

Based upon the foregoing, there is good cause to issue a declaratory order regarding the applicability of Condition No. 4 of the Master Plan Permit. For all of the reasons stated in the Petition, and as presented on the record before the Authority at its October 10, 2012 meeting, the Petition is hereby GRANTED. The Authority hereby DECLARES AND ORDERS THAT:

- (1) The amendments required for the Halekauwila Street Extension Deletion, Park/Parking Garage Deletion, and Single Mixed-Use Designation in Finding of Fact No. 63 and Condition No. 4 of the Master Plan Permit are inapplicable and are no longer required given the repeal of the 2005 Mauka Area Rules/Plan and the adoption of a new Mauka Area Plan in November 2011; and

- (2) All other terms and conditions of the Master Plan Permit remain in full force and effect, including the requirement in Condition No. 4 of the Master Plan Permit to “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 shown in the Proposed Open Space Plan on page 19 of Petitioner’s Master Plan Application Addendum (dated September 12, 2008)” which “park space would be dedicated through a perpetual easement for public use gathering areas” as mitigation should Petitioner implement the Park/Parking Garage Deletion.

Done at Honolulu, Hawaii, this 10th day of October, 2012.

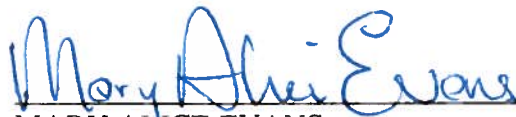
HAWAII COMMUNITY DEVELOPMENT
AUTHORITY (KAKA‘AKO MEMBERS)



BRIAN LEE, CHAIRPERSON

(Excused)

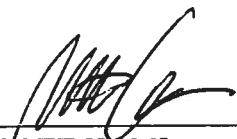
GRADY CHUN



MARY ALICE EVANS



RANDY GRUNE



SCOTT KAMI



MILES KAMIMURA

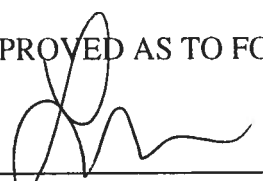


KAMAKI KANAHELE

(Excused)

DEAN SEKI

(Vacant)

APPROVED AS TO FORM


Deputy Attorney General