

BEFORE THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
OF THE STATE OF HAWAII

In re First Amended Petition of

KEAUHOU LANE, LP

For an Order of Declaratory Relief Re:  
Applicability of Condition No. 4 of the  
September 2, 2009 Findings of Fact,  
Conclusions of Law, Decision and Order for  
Kamehameha Schools Master Plan Permit  
(File No. PL MASP 13.2.8)

File No.: PL MASP 13.2.8

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

On December 16, 2013, Petitioner KEAUHOU LANE, LP (“Petitioner” or “KLLP”) submitted a First Amended Petition for Declaratory Relief (“Petition”), pursuant to Hawaii Administrative Rules (“HAR”) §15-219-83, as to the applicability of Condition No. 4 - Amendments of the September 2, 2009 Findings of Fact, Conclusions of Law, and Decision and Order Kamehameha Schools (“KS”) Master Plan Permit (File No. PL MASP 13.2.8) 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”).

Petitioner requested a declaratory order from the Hawaii Community Development Authority (“Authority”) confirming: (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fulfill the entirety of Condition No. 4, which requires an amendment to the 2005 Mauka Area Rules/Plan that have been repealed; (2) to the extent that Condition No. 4 required an amendment to the 2005 Mauka Area Rules/Plan, Condition No. 4 is deemed inapplicable and/or void; and (3)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 Kaiāulu ‘O Kaka‘ako Master Plan Permit (“Master Plan Permit”).

On January 8, 2014, the Petition came before the Authority at a duly noticed Board meeting;

The Authority, having heard and examined the Petition, public comments, and records and files herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

FINDINGS OF FACT

1. On November 26, 2008, KS submitted an application for a Master Plan Permit pursuant to Chapter 15-22, Hawaii Administrative Rules (“HAR”) to obtain a Master Plan Permit for approximately 29 acres of land in the Kakaako Community Development District.

2. By Findings of Fact, Conclusions of Law, and Decision and Order for a Master Plan Permit, dated September 2, 2009, the Authority approved KS’ application for a Master Plan Permit in PL MASP 13.2.8.

3. Findings of Fact No. 78 of the Master Plan Permit states in relevant part:

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:

- ...
- 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 & Recommendation), 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.

4. Condition No. 4 imposed by the Master Plan Permit states:

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

6. By letter dated November 18, 2013, KS authorized Petitioner to submit a petition for declaratory relief to the Authority regarding the applicability of Condition No. 4 of the Master Plan Permit in light of the November 2011 repeal of the 2005 Mauka Area Rules/Plan.

7. Any of the proposed Findings of Fact submitted by Petitioner not already ruled upon by the Authority herein or rejected by clearly contrary Findings of Fact herein, are hereby denied and rejected.

8. Any Conclusions of Law improperly designated as a Finding of Fact herein should be deemed or construed as a Conclusions of Law.

### CONCLUSIONS OF LAW

1. The Authority has jurisdiction to entertain the Petition and issue a declaratory order pursuant to Section 91-8, Hawaii Revised Statutes, and Subchapter 5 of Chapter 15-219, Hawaii Administrative Rules.
2. Petitioner is authorized to act on behalf of KS in seeking declaratory relief with respect to Condition No. 4.
3. Any finding of fact improperly designated as a Conclusions of Law herein should be deemed or construed as a Finding of Fact.

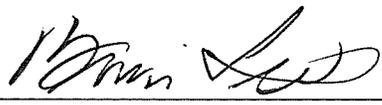
### DECISION AND ORDER

1. Based upon the foregoing, and the records and files herein, the Authority finds that there is good cause to issue a declaratory order regarding the applicability of Condition No. 4 of the Master Plan Permit.
2. The Authority declares and orders that Petitioner, as an authorized agent of KS, cannot seek an amendment of the 2005 Mauka Area Rules/Plan, as contemplated in FOF ¶ 78 of the Master Plan Permit, because the 2005 Mauka Area Rules/Plan were repealed.
3. The Authority further declares and orders that all other terms and conditions of the Master Plan Permit remain in full force and effect, including but not limited to, the requirement that “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.”

DATED: Honolulu, Hawaii, February 27, 2014.

HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY, State of Hawaii

By   
Brian Lee, Chairperson