

BEFORE THE LAND USE COMMISSION  
 OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. SP00-393
	)	DOCKET NO. BR93-699
KAMEHAMEHA SCHOOLS BERNICE	)	
PAUAHI BISHOP ESTATE	)	ORDER GRANTING
	)	CONSOLIDATION FOR HEARING
For a Special Permit to Establish and	)	(1) MOTION TO RELEASE
Operate an Elementary and Secondary	)	CONDITIONS 3, 4, 5, 7, 12, 13, 14, 17,
School Campus on Approximately 265.25	)	AND 18 FROM DECISION AND
Acres Within the State Land Use	)	ORDER ENTERED ON APRIL 7, 2000,
Agricultural District in Kea'au, Puna,	)	IN DOCKET NO. SP00-393 AND (2)
Hawaii; Tax Map Key No. 1-6-03:012 (por.)	)	MOTION TO RELEASE
_____	)	CONDITIONS 2, 4, 7, 8, 11, AND 15,
	)	IN THE ORDER PARTIALLY
In the Matter of the Petition of	)	APPROVING MOTION, ENTERED
	)	ON APRIL 7, 2000 IN DOCKET NO.
OFFICE OF STATE PLANNING, STATE	)	BR93-699
OF HAWAII	)	
	)	ORDER GRANTING (1) PARTIAL
To Amend the Agricultural Land Use	)	WITHDRAWAL OF MOTION (AS TO
District Boundary into the Urban Land Use	)	CONDITIONS 12 AND 13 OF SP00-
District for Approximately 660 Acres of	)	393 AND CONDITIONS 2 AND 11
Land at Kea'au, Puna, Hawaii, tax Map Key	)	FROM BR 93-699, (2) RELEASE OF
No.: 1-6-03; por. 3, por. 7, por. 8, por. 11,	)	CONDITIONS 3, 4, 5, 7a-7f, 14, 17,
por. 12, por. 13, por. 14, por. 15, por. 68, 76	)	AND 18 FROM DECISION AND
and 84	)	ORDER ENTERED ON APRIL 7, 2000,
	)	IN DOCKET NO. SP00-393 AND
	)	CONDITIONS 4 AND 15, IN THE
	)	ORDER PARTIALLY APPROVING
	)	MOTION, ENTERED ON APRIL 7,
	)	2000 IN DOCKET NO. BR93-699, AND
	)	(3) DEFERRING DECISION ON
	)	RELEASE OF CONDITION 7g OF
	)	SP00-393 AND CONDITIONS 7 AND
	)	8 OF BR93-699

ORDER GRANTING CONSOLIDATION FOR HEARING

AND

ORDER GRANTING (1) PARTIAL WITHDRAWAL OF MOTION (AS TO CONDITIONS 12 AND 13 OF SP00-393 AND CONDITIONS 2 AND 11 FROM BR 93-699, (2) RELEASE OF CONDITIONS 3, 4, 5, 7a-7f, 14, 17, AND 18 FROM DECISION AND ORDER ENTERED ON APRIL 7, 2000, IN DOCKET NO. SP00-393 AND CONDITIONS 4 AND 15, IN THE ORDER PARTIALLY APPROVING MOTION, ENTERED ON APRIL 7, 2000 IN DOCKET NO. BR93-699, AND (3) DEFERRING DECISION ON RELEASE OF CONDITION 7g OF SP00-393 AND CONDITIONS 7 AND 8 OF BR93-699

On September 24, 2004 Kamehameha Schools Bernice Pauahi Bishop Estate ("KS" or "Petitioner") filed its Motion to Release Conditions 3, 4, 5, 7, 12, 13, 14, 17, and 18 From Decision And Order Entered On April 7, 2000, In Docket No. SP00-393 And Conditions 2, 4, 7, 8, 11, And 15, In The Order Partially Approving Motion, Entered On April 7, 2000, In Docket No. BR93-699; Memorandum In Support Of Motion; Affidavit Of Yukio Takemoto; Exhibits "A" – "J"; Certificate Of Service.

On October 1, 2004, KS filed its Motion To Consolidate For Hearing (1) Motion to Release Conditions 3, 4, 5, 7, 12, 13, 14, 17, and 18 From Decision And Order Entered On April 7, 2000, In Docket No. SP00-393 And (2) Motion To Release Conditions 2, 4, 7, 8, 11, And 15, In The Order Partially Approving Motion, Entered On April 7, 2000, In Docket No. BR93-699; Memorandum In Support Of Motion; Exhibits "A" And "B"; Certificate Of Service.

On October 6, 2004, the Office of Planning ("OP") filed Testimony Of The Office Of Planning In Support Of The Motion By Kamehameha School Bernice

Pauahi Bishop Estate (Hawaii) To Consolidate For Hearing And In Partial Support Of Motion To Release Conditions 3, 4, 5, 7, 12, 13, 14, 17 And 18 From Decision And Order Entered On April 7, 2000 In Docket No. SP00-93 And Conditions 2, 4, 7, 8, 11 And 15 In The Order Partially Approving Motion, Entered On April 7, 2000 In Docket No. BR93-699. In its testimony, OP stated it had no objections to the release of Conditions 3, 4, 5, 14, 17 and 18 for Docket No. SP00-393 and Conditions 4 and 15 for Docket No. BR93-699. The OP's testimony recommended that Conditions 7, 12 and 13 for Docket No. SP00-393 be retained until a letter recommending the release of the conditions is obtained from the State Department of Transportation (Condition 7) and the State Department of Health (Conditions 12 and 13). OP also recommended that Conditions 2, 7 and 11 for Docket No. BR93-699 be retained until letters approving release are issued by the respective agencies.

The Motions came on for hearing before this Commission on October 7, 2004, in Hilo, Hawai'i, with appearances by KS and OP.

#### I. MOTION TO CONSOLIDATE

KS requested to consolidate the motions concerning the release of conditions 3, 4, 5, 7, 12, 13, 14, 17, and 18 of LUC Docket SP00-393 and conditions 2, 4, 7, 8, 11, and 15 of LUC Docket BR93-699.

OP expressed concern relating to the consolidation motion in that the conditions that apply to LUC Docket BR93-699 extend well beyond KS's property. OP sought clarification from KS to determine if the motion to release the conditions of BR93-699 apply solely to the KS site.

KS clarified that they seek only to remove the conditions of BR93-699 as it applies to the KS site. With that clarification, on motion duly made and carried by a vote tally of six ayes and no nays, the Commission GRANTED the Motion for Consolidation of Hearing.

## II. MOTIONS FOR RELEASE OF CONDITIONS

In KS's Memorandum In Support Of Motion to release conditions, supporting documentation is provided for the release of conditions, with the exception of condition 7g of SP00-393 and condition 8 of BR93-699, both relating to traffic mitigation. KS argued that both condition 7g of SP00-393 and condition 8 of BR93-699 are unrestricted and susceptible to strained interpretations. KS represented that the stated conditions have been met; as such, the Commission should release the conditions.

The County of Hawaii stated no objections to KS's motion to release the conditions.

OP objected to KS's motion to release the conditions. OP stated that the KS site was not fully built-out, noting that the last phase of the school development would include 12<sup>th</sup> grade students, who would be most likely to drive to school. OP argued that conditions related to traffic mitigation should not be released at this time due to the uncertainty of the traffic impacts for the KS site at full build-out. OP also expressed concern over the timeliness of KS's updated traffic analysis, which was presented the day of the hearing.

At the hearing conducted on October 7, 2004, a Motion to (1) allow the withdrawal of conditions 12 and 13 of LUC Docket No. SP00-393 and conditions 2 and 11 of BR 93-699 from the Petitioner's Motion; (2) to require the State Department of Transportation to file a written report with the Commission on the Petitioner's traffic analysis and position statement regarding regional traffic improvements to the Commission before November 7, 2004; (3) to release conditions 3, 4, 5, 7a-7f, 14, 17, 18 for LUC Docket No. SP00-393 and conditions 4 and 15 for LUC Docket No. BR93-699; and (4) to defer consideration of the release of conditions 7g of LUC Docket No. SP00-393 and conditions 7 and 8 of LUC Docket No. BR93-699 until December 9, 2004. Said Motion having received a vote tally of five ayes and no nays, the Motion was PASSED, having received the number of affirmative votes required by Section 15-15-13, HAR.

## ORDER

IT IS HEREBY ORDERED that the withdrawal of the request for release of conditions 12 and 13 of LUC Docket No. SP00-393 and conditions 2 and 11 of BR 93-699 from the Petitioner's Motion is GRANTED; the release of conditions 3, 4, 5, 7a-7f, 14, 17, 18 for LUC Docket No. SP00-393 and conditions 4 and 15 for LUC Docket No. BR93-699 is GRANTED; the State Department of Transportation shall file a written report of the Petitioner's traffic analysis and position statement regarding regional traffic improvements with the Commission before November 7, 2004; and consideration of the release of condition 7g of LUC Docket No. SP00-393 and conditions 7 and 8 of LUC Docket No. BR93-699 is hereby deferred until December 9, 2004.

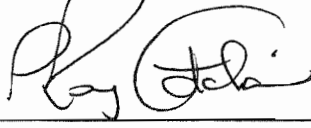
All other conditions pursuant to the Findings of Fact, Conclusions of Law and Decision and Order issued by the Commission on April 7, 2000, for both SP00-393 and BR93-699 shall remain in full force and effect.

MAY 17 2005

Dated: Honolulu, Hawai'i, \_\_\_\_\_.

LAND USE COMMISSION

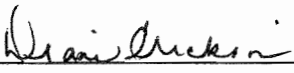
STATE OF HAWAII

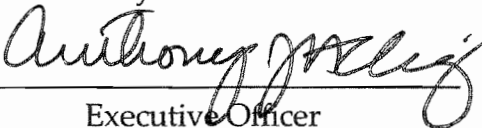
By 

P. Roy Catalani  
Chairperson and Commissioner

APPROVED AS TO FORM:

Filed and effective on  
MAY 17 2005, 2005

  
Deputy Attorney General

Certified by:  
  
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. SP00-393  
) DOCKET NO. BR93-699  
KAMEHAMEHA SCHOOLS BERNICE )  
PAUAHI BISHOP ESTATE ) CERTIFICATE OF SERVICE  
)  
For a Special Permit to Establish and )  
Operate an Elementary and Secondary )  
School Campus on Approximately 265.25 )  
Acres Within the State Land Use )  
Agricultural District in Kea'au, Puna, )  
Hawaii; Tax Map Key No. 1-6-03:012 (por.) )  
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No.: 1-6-03; por. 3, por. 7, por. 8, por. 11, )  
por. 12, por. 13, por. 14, por. 15, por. 68, 76 )  
and 84 )

CERTIFICATE OF SERVICE

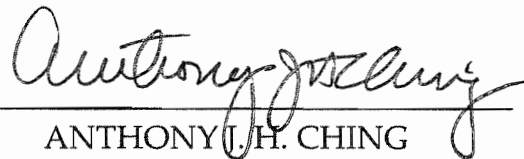
I hereby certify that a copy of the Order Granting Consolidation For Hearing (1) Motion To Release Conditions 3, 4, 5, 7, 12, 13, 14, 17, And 18 From Decision And Order Entered On April 7, 2000, In Docket No. Sp00-393 And (2) Motion To Release Conditions 2, 4, 7, 8, 11, And 15, In The Order Partially Approving Motion, Entered On



April 7, 2000 In Docket No. Br93-699; and the Order Granting (1) Partial Withdrawal Of Motion (As To Conditions 12 And 13 Of Sp00-393 And Conditions 2 And 11 From Br 93-699, (2) Release Of Conditions 3, 4, 5, 7a-7f, 14, 17, And 18 From Decision And Order Entered On April 7, 2000, In Docket No. Sp00-393 And Conditions 4 And 15, In The Order Partially Approving Motion, Entered On April 7, 2000 In Docket No. Br93-699, And (3) Deferring Decision On Release Of Condition 7g Of Sp00-393 And Conditions 7 And 8 Of Br93-699 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

DEL.	LAURA THIELEN Office of Planning P. O. Box 2359 Honolulu, Hawaii 96804-2359	JOHN CHANG, Esq. Deputy Attorney General 425 Queen Street Honolulu, HI 96813
	CHRISTOPHER YUEN, Director County of Hawaii Planning Dept. 101 Pauahi Street, Suite 3 Hilo, Hawaii 96720	LINCOLN ASHIDA, Esq. Corporation Counsel County of Hawaii 101 Aupuni Street, Suite 325 Hilo, Hawaii 96720
CERT:	LINNEL T. NISHIOKA, Esq. Oshima Chun Fong & Chung LLP 841 Bishop Street, Suite 400 Honolulu, Hawaii 96813	

Dated: Honolulu, Hawaii,                     MAY 17 2005                    .



ANTHONY H. CHING  
Executive Officer