



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. DR11-44
)
)
DEPARTMENT OF HOUSING AND) PETITIONER DEPARTMENT OF
HUMAN CONCERNS, COUNTY OF) HOUSING AND HUMAN
MAUI) CONCERNS, COUNTY OF MAUI'S
) PETITION FOR DECLARATORY
) ORDER AND CERTIFICATE OF
) SERVICE
For Declaratory Order)
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_____)

ORIGINAL

PETITIONER DEPARTMENT OF HOUSING AND HUMAN CONCERNS, COUNTY
OF MAUI'S PETITION FOR DECLARATORY ORDER AND CERTIFICATE OF
SERVICE

LAND USE COMMISSION
STATE OF HAWAII
2011 APR -6 P 3:52



BEFORE THE LAND USE COMMISSION
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In The Matter Of The Petition Of)	DOCKET NO. DR11-44
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DEPARTMENT OF HOUSING AND)	ORDER GRANTING PETITIONER
HUMAN CONCERNS, COUNTY OF)	DEPARTMENT OF HOUSING AND
MAUI)	HUMAN CONCERNS, COUNTY OF
)	MAUI'S PETITION FOR
)	DECLARATORY ORDER
)	
For Declaratory Order)	
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LAND USE COMMISSION
STATE OF HAWAII
2011 APR -6 P 3:50

ORDER GRANTING PETITIONER DEPARTMENT OF HOUSING AND HUMAN CONCERNS, COUNTY OF MAUI'S PETITION FOR DECLARATORY ORDER

On March 1, 2011, the Commission received a Petition for Declaratory Order ("Petition") filed by Curtis T. Tabata, Esq., on behalf of the Department of Housing and Human Concerns, County of Maui ("Petitioner"), pursuant to Hawai'i Administrative Rules ("HAR") Section §15-15-99; Memorandum of Authorities; Affidavit of Curtis T. Tabata; and Exhibits 1 and 2.

In its Petition, Petitioner stated that it seeks a waiver of the development time schedule requirement in HAR Section §15-15-50(c)(19) as applied to a noticed but as yet unfiled petition to be filed with the Land Use Commission pursuant to Hawai'i

Revised Statutes ("HRS"), Chapter 201H, due to an inability to forecast the availability of public funds prior to attaining land use entitlements. Petitioner intends to submit an incremental plan without a time schedule and that its incremental development plan will address concerns regarding concurrency between the development of residential units and needed infrastructure. Further, the Petitioner believes that the time schedule requirement is not jurisdictional, that the Commission has authority to waive or suspend any rule nonjurisdictional pursuant to HAR Section §15-15-34(b), and that good cause exists to waive the rule.

On March 9, 2011, the Commission received the State Office of Planning's ("OP") Statement of Support for Petitioner's Petition for Declaratory Order.

OP stated that it supported Petitioner's request for a declaratory order because of the inability to forecast the availability of public funds required to build the project prior to obtaining land use entitlements; the Petitioner's intent to submit incremental plans without time schedules; Petitioner's representation that required infrastructure will be completed prior to commencement of each phase to ensure concurrency; the Project will be 100 percent affordable housing on Lana`i where there is a need for affordable housing; and that the time schedule is not jurisdictional or otherwise required by statute.

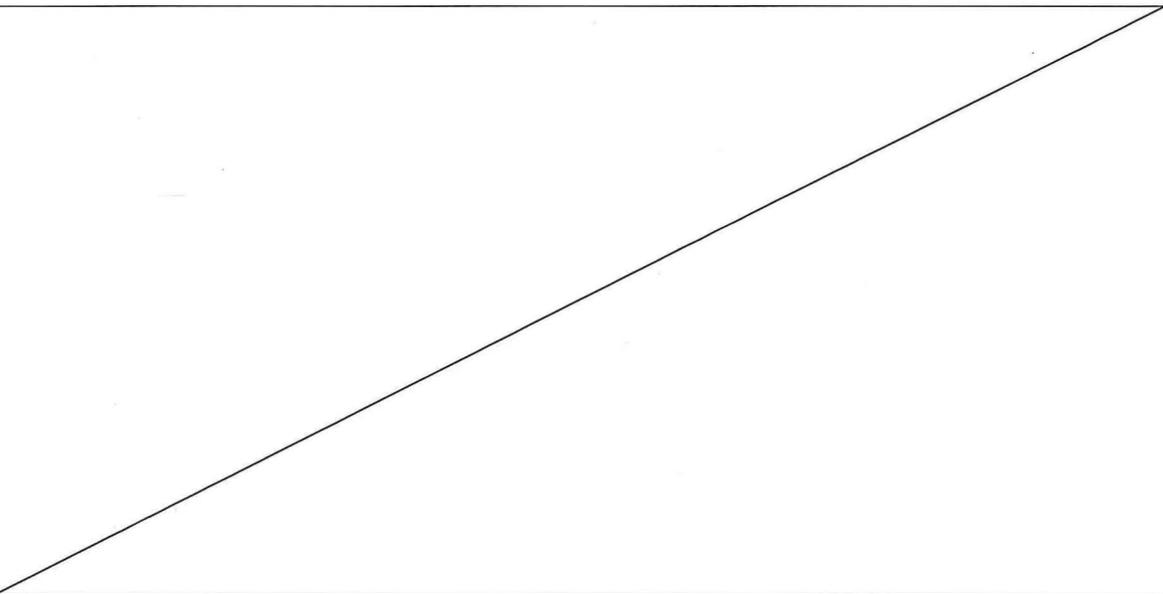
On March 14, 2011, the Commission received Petitioner's Errata to Department of Housing and Human Concerns, County of Maui's Petition for Declaratory Order. The Master Site Plan attached to Exhibit 2 of the Petition incorrectly stated the project's unit counts; the correct unit count is 208 single-family units and 217 multi-

family units. Page one of the Memorandum of Authorities in support of the Petition should also reflect the correct unit counts.

On March 23, 2011, the Commission met at the Leiopapa A Kamehameha Building, Honolulu, Hawai`i, to consider the Petition for Declaratory Order. Curtis Tabata, Esq., Benjamin Matsubara, Esq., Wyeth Matsubara, Esq., and Jo-Ann Ridao, Director, and Clyde Almeida, Assistant Housing Administrator of the Department of Housing and Human Concerns, were present on behalf of Petitioner. Bryan Yee, Esq., and Jesse Souki were present on behalf of OP.

At that meeting, the Chair asked whether any of the parties had any additional pleadings they wished to file or argument to present. Mr. Tabata responded that he did not. Mr. Yee responded that OP would rest on its statement of support.

Following discussion, a motion was made and seconded to grant the Petition for Declaratory Order. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.



ORDER

This Commission, having duly considered the Petition for Declaratory Order and the pleadings and arguments of the parties in this proceeding, and a motion having been made at a meeting on March 23, 2011, in Honolulu, Hawai`i, and the motion having received the affirmative votes required by HAR Section §15-15-13, and there being good cause for the motion,

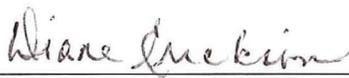
HEREBY ORDERS that the Petition for Declaratory Order be and hereby is GRANTED.

DATED: Honolulu, Hawai`i, 4/6/11 per motion in Honolulu, Hawai`i, on March 23, 2011.

By: 

APPROVED AS TO FORM:

VLADIMIR DEVENS
Chairperson and Commissioner


Deputy Attorney General

Filed and effective on:

4/6/11, 2011

Certified by:



ORLANDO DAVIDSON
Executive Officer



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STATE OF HAWAII

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the foregoing ORDER was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail, return receipt requested, as noted:

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- REG. WILLIAM SPENCE, Director
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250 South High Street
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Dated: Honolulu, Hawai'i, April 6, 2011


ORLANDO DAVIDSON
Executive Officer