

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A04-753
	)	
AINA NUI CORPORATION, a Hawai'i	)	FINDINGS OF FACT,
corporation	)	CONCLUSIONS OF LAW, AND
	)	DECISION AND ORDER
To Amend The Agricultural Land Use District	)	ACCEPTING A FINAL
Boundary Into The Urban Land Use District	)	ENVIRONMENTAL IMPACT
For Approximately 174.209 Acres Of Land At	)	STATEMENT
`Ewa, O`ahu, Hawai'i, Tax Map Keys: 9-1-14:	)	
Por. 33 And 9-1-15: Por. 4 And Por. 20	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
ACCEPTING A FINAL ENVIRONMENTAL IMPACT STATEMENT

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
ACCEPTING A FINAL ENVIRONMENTAL IMPACT STATEMENT

The Land Use Commission ("Commission"), having examined the Final Environmental Impact Statement ("FEIS") filed by Aina Nui Corporation, a Hawai'i corporation ("Petitioner"), on June 7, 2005, and upon consideration of the matters discussed therein, at its meeting on June 16, 2005, in Honolulu, Hawai'i, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 29, 2004, Petitioner filed a Petition For Land Use District Boundary Amendment ("Petition").
2. Petitioner seeks to reclassify approximately 174.209 acres of land, identified as Tax Map Keys: 9-1-14: por. 33 and 9-1-15: por. 4 and por. 20, from the State Land Use Agricultural District to the State Land Use Urban District.

3. The Petition included an Environmental Impact Statement Preparation Notice ("EISPN"), pursuant to sections 343-5(a)(1), 343-5(a)(4), and 343-5(a)(6), Hawai'i Revised Statutes ("HRS"), and sections 11-200-6(b)(1)(A), 11-200-6(b)(1)(D), and 11-200-6(b)(2)(A), Hawai'i Administrative Rules ("HAR").

4. On October 7, 2004, and by a written Order dated December 14, 2004, the Commission (i) agreed to be the accepting authority pursuant to chapter 343, HRS; and (ii) determined that the proposed action may have a significant effect on the environment to warrant the preparation of an Environmental Impact Statement ("EIS").

5. The Office of Environmental Quality Control ("OEQC") published notice of the EISPN in its October 23, 2004, issue of *The Environmental Notice*, which began a 30-day public comment period that ended on November 22, 2004.

6. Upon receipt of the comments, Petitioner prepared a Draft Environmental Impact Statement ("DEIS"), which was transmitted to the OEQC on March 11, 2005. The OEQC published notice of the availability of the DEIS in its March 23, 2005, issue of *The Environmental Notice*, which began a 45-day public comment period that ended on May 6, 2005.

7. The following federal, state, and city and county agencies; community organizations; public utility; and individual provided responses on the DEIS: the U.S. Department of the Interior, U.S. Geological Survey, Pacific Islands Water Science Center; the Department of the Army, Regulatory Branch; the Commission; the State Office of Planning ("OP"); the State Department of Human Services, Housing and

Community Development Corporation of Hawai'i; the State Department of Land and Natural Resources ("DLNR"), Land Division; the DLNR, Engineering Division; the DLNR, Office of Conservation and Coastal Lands; the DLNR, Commission on Water Resource Management; the DLNR, Division of Forestry and Wildlife; the State Department of Health; the OEQC; the University of Hawai'i Environmental Center; the State Department of Transportation; the State Department of Education; the State Department of Agriculture; the State Department of Business, Economic Development and Tourism, Strategic Industries Division; the State Department of Budget and Finance, Public Utilities Commission; the City and County of Honolulu ("C&C") Department of Planning and Permitting ("DPP"); the C&C Department of Design and Construction; the C&C Department of Environmental Services; the C&C Department of Facility Maintenance; the C&C Department of Parks and Recreation; the C&C Department of Transportation Services; the C&C Civil Defense Agency; the C&C Board of Water Supply; the C&C Fire Department; the C&C Police Department; the Ko Olina Community Association; the Ko Olina Fairways AOA; the Hawaiian Railway Society; Hawaiian Telcom, Inc.; and State Senator Colleen Hanabusa.

8. On June 7, 2005, Petitioner filed the FEIS with this Commission.<sup>1</sup>

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<sup>1</sup> The FEIS originally did not contain a separate and distinct section that summarized the unresolved issues as required by section 11-200-17(n), HAR. Petitioner subsequently addressed this oversight, as well as certain typographical errors, and incorporated the additional material to the FEIS that was considered by this Commission.

9. The Commission finds that the FEIS generally conforms to the content requirements of section 11-200-18, HAR, to the extent that it includes (i) the DEIS revised to incorporate substantive comments received during the consultation and review process; (ii) reproductions of all letters received containing substantive comments; (iii) a list of persons, organizations, and public agencies commenting on the DEIS; (iv) the responses of Petitioner to each substantive question, comment, or recommendation received in the review and consultation processes; and (v) text written in a format that allows the reader to easily distinguish changes made to the text of the DEIS.

10. On June 16, 2005, the Commission met in Honolulu, Hawai'i, to consider acceptance of Petitioner's FEIS. Benjamin A. Kudo, Esq., appeared on behalf of Petitioner. John W. K. Chang, Esq., and Abe Mitsuda appeared on behalf of OP. Don Kitaoka, Esq., and Ray Sakai appeared on behalf of the DPP. At the meeting, Tom Fee of Helber Hastert and Fee, Planners, preparer of the FEIS, provided an orientation of the project site and an overview of the FEIS relative to the EIS content requirements of chapter 343, HRS. Donna Goth, Petitioner's President, then provided an overview of the transportation and employment issues in the region. Following the presentation, the DPP stated that it took no position on the acceptance of the FEIS. The OP recommended that Petitioner's FEIS be accepted. Thereafter, a motion was made and seconded to accept Petitioner's FEIS. There being a vote tally of 8 ayes, 0 nays, and 1 absent, the motion carried.

### CONCLUSIONS OF LAW

Pursuant to chapter 343, HRS, and the EIS Rules under chapter 11-200, HAR, and a motion having been made at a meeting on June 16, 2005, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission concludes that Petitioner's FEIS generally satisfies the criteria and procedures governing the acceptance of an FEIS under section 11-200-23, HAR.

### DECISION AND ORDER

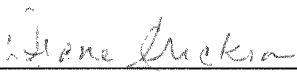
IT IS HEREBY ORDERED that the FEIS filed by Petitioner under LUC Docket No. A04-753/Aina Nui Corporation be ACCEPTED pursuant to chapter 343, HAR, and chapter 11-200, HAR.

ADOPTION OF ORDER

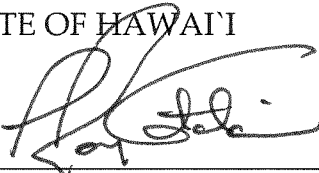
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 4th day of August, 2005. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

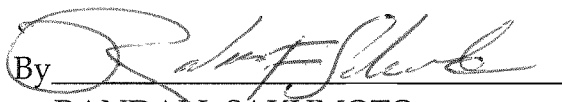
Done at Honolulu, Hawai'i, this 4th day of August, 2005, per motion on June 16,, 2005.

APPROVED AS TO FORM

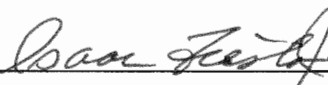
  
Deputy Attorney General


LAND USE COMMISSION  
STATE OF HAWAII

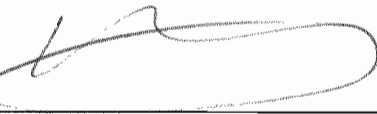
By   
P. ROY CATALANI  
Chairperson and Commissioner

By   
RANDALL SAKUMOTO  
Vice-Chairperson and Commissioner

By   
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

By   
ISAAC FIESTA, JR.  
Commissioner

By   
MICHAEL D. FORMBY  
Commissioner

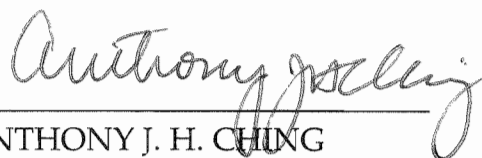
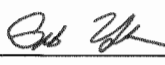
By   
KYONG-SU IM  
Commissioner

By   
LISA M. JUDGE  
Commissioner

Filed and effective on  
AUG 4 2005

By (absent)  
RANSOM PILTZ  
Commissioner

Certified by:

 By   
ANTHONY J. H. CHING PETER YUKIMURA  
Commissioner

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_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order Accepting a Final Environmental Impact Statement 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 H. THIELEN, Director  
              Office of Planning  
              P. O. Box 2359  
              Honolulu, Hawaii 96804-2359

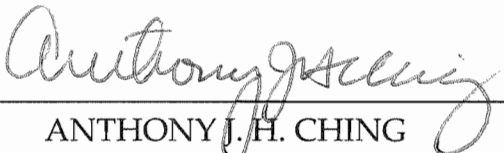
JOHN CHANG, Esq.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

HENRY ENG, Director  
Department of Planning and Permitting  
650 South King Street  
Honolulu, Hawaii 96813

CARRIE OKINAGA, Esq.  
Corporation Counsel  
City and County of Honolulu  
530 South King Street  
Honolulu, HI 96813

CERT. BENJAMIN A. KUDO, Esq.  
WESLEY M. FUJIMOTO  
NAOMI U. KUWAYE  
745 Fort Street, 17<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, AUG 4 2005.

  
\_\_\_\_\_  
ANTHONY J. H. CHING  
Executive Officer