

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A06-763
)	
KAPOLEI PROPERTY DEVELOPMENT,)	FINDINGS OF FACT,
LLC)	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 344.519 Acres Of Land At)	STATEMENT
`Ewa, O`ahu, Hawai`i, Tax Map Keys: 9-1-14:)	
Por. 33, 34, And 35 And 9-1-15: 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 Kapolei Property Development, LLC ("Petitioner"), on October 26, 2006, and upon consideration of the matters discussed therein, at its meeting on November 2, 2006, in Kailua-Kona, Hawai`i, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On March 17, 2006, Petitioner filed a Petition For Land Use District Boundary Amendment ("Petition").
2. The Petition requested the reclassification of approximately 331.674 acres of land, identified as Tax Map Keys: 9-1-14: por. 33 and 34 and 9-1-15: por. 20

("Petition Area"), 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), Hawai'i Revised Statutes ("HRS"), and section 11-200-6(b)(1)(A), Hawai'i Administrative Rules ("HAR").

4. On April 6, 2006, and by a written Order dated May 24, 2006, 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").¹

5. The Office of Environmental Quality Control ("OEQC") published notice of the EISPN in its April 23, 2006, issue of *The Environmental Notice*, which began a 30-day public comment period that ended on May 23, 2006.

6. Upon receipt of the comments, Petitioner prepared a Draft Environmental Impact Statement ("DEIS"), which was transmitted to the OEQC on July 27, 2006. The OEQC published notice of the availability of the DEIS in its August 8, 2006, issue of *The Environmental Notice*, which began a 45-day public comment period that ended on September 22, 2006.

¹ At the Commission's April 6, 2006, meeting, Petitioner stated that it would amend the Petition to include approximately 12.845 acres of land, identified as TMK: 9-1-14: 35, within the Petition Area. The addition of parcel 35 increases the total area of the Petition Area to approximately 344.519 acres.

7. On August 7, 2006, Petitioner filed an Amended Petition that reflected, among other things, the addition of TMK: 9-1-14: 35 to the Petition Area.

8. The following federal, state, and city and county agencies; public utility; community/non-profit organizations; and individuals provided responses on the DEIS: the U.S. Department of the Interior, U.S. Geological Survey; the U.S. Department of the Interior, Fish and Wildlife Service; the Commission; the State Office of Planning ("OP"); the State Department of Business, Economic Development and Tourism, Strategic Industries Division; the State Department of Accounting and General Services; the State Department of Education; the State Department of Transportation; the State Department of Health, Environmental Planning Office (included comments from the Wastewater Branch, Safe Drinking Water Branch, Clean Water Branch, Clean Air Branch, and the Hazard Evaluation & Emergency Response Office); the OEQC; the Office of Hawaiian Affairs; the University of Hawai'i Environmental Center; 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 Parks and Recreation; the C&C Department of Community Services; the C&C Board of Water Supply; the C&C Fire Department; Hawaiian Electric Company, Inc.; the Smithsonian Institution, National Museum of Natural History; the Hawai'i Audubon Society; the Conservation Council for Hawai'i; KAHEA: The Hawaiian Environmental Alliance; Alyssa Miller; Kimberly Tice; Shannon

Wianecki; Chris E. Buddenhagen; Teya Penniman; Shad Kane; Eileen Helmstetter; Daniel Tanaka; Choon James; Douglas Lamerson; Floyd W. McCoy; Stanley Bergstrom; George Hinol; Jan Welda Fleetham; Annette Kaohelaui`i; Keith Krueger; Nicholas P. Kalodimos; Joseph Watts; Phyllis Ha; and Suzanne L. Varady.

9. On October 26, 2006, Petitioner filed the FEIS with this Commission.

10. On November 2, 2006, the Commission met in Kailua-Kona, Hawai`i, to consider acceptance of Petitioner's FEIS. Benjamin A. Kudo, Esq.; Naomi Kuwaye, Esq.; Jeff Overton; and Steve Kelly appeared on behalf of Petitioner. Bryan C. Yee, Esq., and Abe Mitsuda appeared on behalf of OP. By letter dated November 2, 2006, the DPP notified the LUC staff that it would not be present at the meeting, and further that the DPP had no comments on the acceptance of the FEIS. At the meeting, Petitioner argued that the FEIS should be accepted because it complied with the requirements of chapter 343, HRS, and chapter 11-200, HAR. Petitioner also filed a revised Table 9.1 entitled *Consulted Parties* (pages 9-1 through 9-4) to the FEIS, as reflected in Exhibit "A" attached hereto and incorporated herein by reference. The revised table listed the names of additional individuals that provided comments on the DEIS and corrected certain typographical errors. Following the presentation, the OP stated that it had no objection to the acceptance of the FEIS.

11. The Commission finds that the FEIS, as supplemented by the revised Table 9.1, 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.

12. After due deliberation at the Commission's meeting on November 2, 2006, a motion was made and seconded to accept Petitioner's FEIS, as supplemented by the revised Table 9.1. There being a vote tally of 5 ayes and 4 absent, the motion carried.

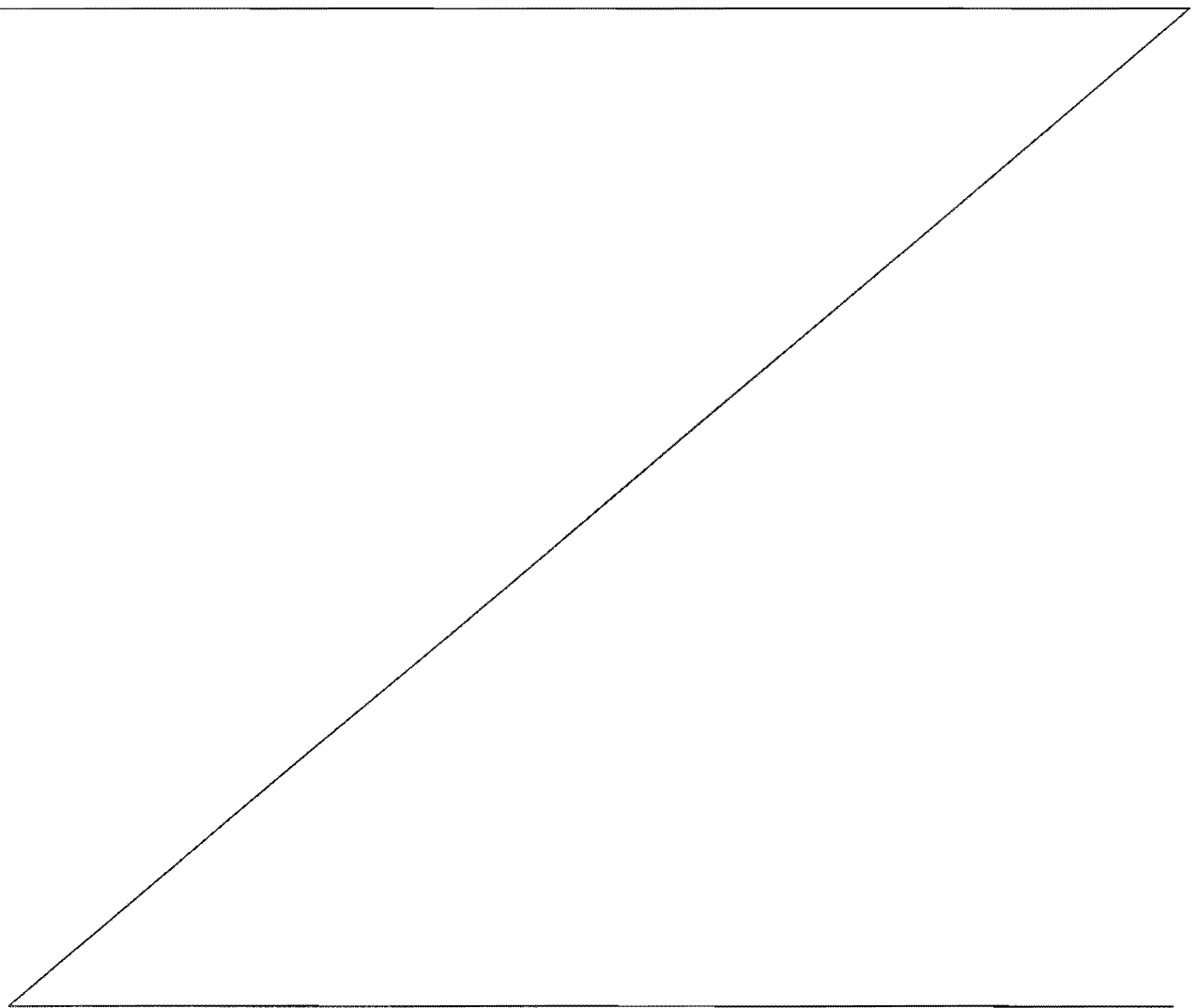
CONCLUSIONS OF LAW

Pursuant to chapter 343, HRS, and the EIS Rules under chapter 11-200, HAR, and a motion having been made at a meeting on November 2, 2006, in Kailua-Kona, 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, as supplemented by the revised Table 9.1, 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 Docket No. A06-763/Kapolei Property Development, LLC, as supplemented by the revised Table 9.1, be ACCEPTED pursuant to chapter 343, HAR, and chapter 11-200, HAR.

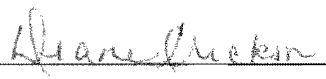


ADOPTION OF ORDER

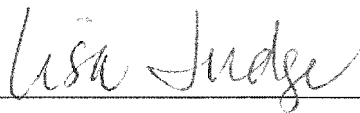
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 16th day of November, 2006. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

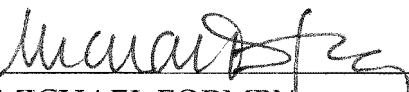
Done at Makena, Maui, Hawai'i, this 16th day of November, 2006, per motion on November 2, 2006.

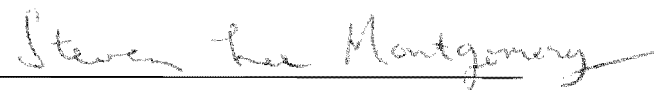
APPROVED AS TO FORM


Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII


By 
LISA JUDGE
Chairperson and Commissioner

By 
MICHAEL FORMBY
Vice-Chairperson and Commissioner

By 
STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner

By _____ (absent)
THOMAS CONTRADES
Commissioner

By _____ (absent)
KYONG-SU IM
Commissioner

By  _____
DUANE KANUHA
Commissioner

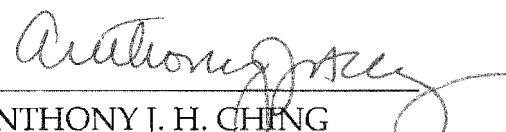
By  _____
RANSOM PILTZ
Commissioner

By _____ (absent)
NICHOLAS TEVES
Commissioner

Filed and effective on
NOV 21 2008

By _____ (absent)
REUBEN WONG
Commissioner

Certified by:


ANTHONY J. H. CHING

KAPOLEI HARBORSIDE CENTER
Final Environmental Impact Statement

RECEIVED

9.0 AGENCIES AND PARTIES CONSULTED

NOV 2 2006

Table 9-1 lists the agencies, organizations, and individuals who were contacted during the preparation of the Environmental Impact Statement Preparation Notice (EISPN), the Draft Environmental Impact Statement (DEIS) or the Final Environmental Impact Statement (FEIS) for the proposed Kapolei Harborside Center project. Copies of the written comment letters and responses are included in this report.

Table 9-1: Consulted Parties

Respondents and Distribution	Received April 2006 EISPN	Comments Received on EISPN	Received July 2006 DEIS	Comments Received on DEIS	Receiving November 2006 FEIS
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A. Federal Agencies

U.S. Army Corps of Engineers – Pacific Ocean Division	x		x		
U.S. Department of the Interior – Fish and Wildlife Service	x		x	x	
U.S. Department of the Interior – Geological Survey	x	x	x	x	
U.S. EPA, Region 9 – Pacific Islands Contact Office	x		x		
U.S. Department of Agriculture, Natural Resources Conservation Service	x		x		
Federal Highway Administration	x		x		

B. State Agencies

BUF – Department of Budget and Finance	x		x		
DACS – Department of Accounting and General Services			x	x	
DBEDT - Department of Business, Economic Development & Tourism	x		x		
DBEDT – Energy, Resources, & Technology Division	x		x		
DBEDT - Housing Finance & Development Corporation			x		
DBEDT – Land Use Commission	x		x	x	x
DBEDT - Office of Planning	x	x	x	x	x
DBEDT – Strategic Industries Division		x	x	x	
DHHL - Department of Hawaiian Home Lands	x		x		
DLIR – Department of Labor and Industrial Relations	x		x		
DLNR - Department of Land and Natural Resources	x		x		
DLNR – Commission on Water Resources			x		
DLNR – Division of Forestry & Wildlife					x
DLNR - Historic Preservation Division	x	x	x		
DHS – Department of Human Services, Housing and Community Development Corporation	x		x		

KAPOLEI HARBORSIDE CENTER

Final Environmental Impact Statement

Respondents and Distribution	Received April 2006 EISPN	Comments Received on EISPN	Received July 2006 DEIS	Comments Received on DEIS	Receiving November 2006 FEIS
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B. State Agencies (cont.)

DOD - Department of Defense	x		x		
DOA - Department of Agriculture					
DOE - Department of Education	x	x	x	x	
DOH - Department of Health	x		x		
DOH - Environmental Planning Office	x		x	x	
DOH - Wastewater Branch		x	x	x	
DOH - Environmental Management Division, Clean Water Branch	x	x	x	x	
DOT - Department of Transportation	x	x	x	x	
OEQC - Office of Environmental Quality Control	x	x	x	x	x
OHA - Office of Hawaiian Affairs	x		x	x	
OMPO - O'ahu Metropolitan Planning Organization	x	X	x		
Public Utilities Commission	x		x		
University of Hawai'i - Environmental Center	x		x	x	x
University of Hawai'i Water Resources Research Center	x		x		

C. City and County of Honolulu

Board of Water Supply	x	x	x	x	
Department of Community Services	x	x	x	x	
Department of Design and Construction	x	x	x	x	
Department of Environmental Services	x		x	x	
Department of Facility Maintenance	x		x		
Department of Parks and Recreation	x	x	x	x	
Department of Planning and Permitting	x	x	x	x	x
Department of Transportation Services	x	x	x		
Honolulu Fire Department	x	x	x	x	
Honolulu Police Department	x	x	x		
O'ahu Civil Defense Agency	x		x		
Office of the Mayor	x		x		

D. Elected Officials

Todd Apo, Honolulu City Councilmember, District 1	x		x		
Nester Garcia, Honolulu City Councilmember, District 9	x		x		
Michael Puamamo Kahikina, State Representative, District 44	x		x		
Brian Kanno, State Senator, District 19	x		x		
Mark Moses, State Representative, District 40	x		x		

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E. Media

Honolulu Advertiser			x		x
Honolulu Star Bulletin			x		x

F. Public Libraries

DBEDT Library			x		x
Hawai'i State Library			x		x
Honolulu Department of Customer Services Library					x
Legislative Reference Bureau			x		x
Kapolei Library	x		x		x
Hilo Regional Library			x		x
Kaneohe Regional Library			x		x
Kahului Regional Library			x		x
Kaimuki Regional Library			x		x
Lihue Regional Library			x		x
Pearl City Regional Library			x		x
UH Hamilton Library			X		x

G. Community Organizations, Non-Profit Special Interest Organizations & Individuals

Association of Hawaiian Civic Clubs	x		x		
Conservation Council for Hawai'i				x	
'Ewa Neighborhood Board No. 23	x		x		
Hawai'i Audubon Society	x		x	x	
Hawai'i Building and Construction Trade Council	x		x		
Hawai'i Farm Bureau Foundation	x		x		
Hawai'i Thousand Friends	x		x		
Hawaiian Electric Company			x	x	
KAHEA				x	
Kamehameha Schools	x		x		
Kapolei Rotary Club	x		x		
Land Use Research Foundation of Hawai'i	x		x		
League of Women Voters	x		x		
Leeward O'ahu Transportation Management Association	x		x		
Life of the Land	x		x		
Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34	x		x		
Makakilo Kapolei Lions Club	x		x		
Outdoor Circle	x		x		
Sierra Club, Hawai'i Chapter	x		x		

KAPOLEI HARBORSIDE CENTER

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G. Community Organizations, Non-Profit Special Interest Organizations & Individuals (cont.)

Smithsonian - National Museum of Natural History				x	
The Nature Conservancy	x		x		
Wai'anae Coast Neighborhood Board No. 24	x		x		
West O'ahu Economic Development Association	x		x		
Bergstrom, Stanley				x	
Buddenhagen, Chris				x	
Welda Fleetham, Jan				x	
Ha, Phyllis				x	
Helmstetter, Eileen				x	
Hinol, George Keoki				x	
James, Choon				x	
Kalodimos, Nicholas				x	
Kane, Shad				x	
Kaohelaulii, Annette				x	
Krueger, Keith				x	
Miller, Alyssa				x	
Lamerson, Doug				x	
McCoy, Floyd				x	
Penniman, Teya				x	
Tanaka, Daniel				x	
Tice, Kimberly				x	
Varady, Suzanne				x	
Watts, Joseph				x	
Wianecki, Shannon				x	

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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:

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 Honolulu, Hawaii 96804-2359


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Dated: Honolulu, Hawaii, NOV 21 2006.



ANTHONY J. H. CHING
Executive Officer