

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )	DOCKET NO. A99-728
)	
HOUSING AND COMMUNITY DEVELOPMENT )	ORDER GRANTING PETITIONER'S
CORPORATION OF HAWAII, STATE OF )	REQUEST TO MODIFY CONDITION
HAWAII )	3 AND FINDINGS OF FACT 21,
)	69, AND 178 OF THE FINDINGS
To Amend the Agricultural Land )	OF FACT, CONCLUSIONS OF
Use District Boundary into the )	LAW, AND DECISION AND ORDER
Urban Land Use District for )	ISSUED BY THE LAND USE
Approximately 1,300 Acres of Land )	COMMISSION ON SEPTEMBER 8,
at Honouliuli, 'Ewa, O'ahu, )	1999 REGARDING PETITIONER
Hawaii, TMK 9-1-16: 8, 108, and )	HOUSING AND COMMUNITY
109; 9-1-17: 71 and 86; and )	DEVELOPMENT CORPORATION OF
9-1-18: 3 and 5 )	HAWAII'S PETITION FOR LAND
)	USE DISTRICT BOUNDARY
)	AMENDMENT FILED MARCH 5,
)	1999

ORDER GRANTING PETITIONER'S REQUEST TO MODIFY CONDITION 3  
AND FINDINGS OF FACT 21, 69, AND 178 OF THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER ISSUED BY THE LAND USE  
COMMISSION ON SEPTEMBER 8, 1999, REGARDING PETITIONER HOUSING AND  
COMMUNITY DEVELOPMENT CORPORATION OF HAWAII'S PETITION FOR LAND  
USE DISTRICT BOUNDARY AMENDMENT FILED MARCH 5, 1999

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A99-728
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HOUSING AND COMMUNITY DEVELOPMENT	)	ORDER GRANTING PETITIONER'S
CORPORATION OF HAWAI'I, STATE OF	)	REQUEST TO MODIFY CONDITION
HAWAI'I	)	3 AND FINDINGS OF FACT 21,
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To Amend the Agricultural Land	)	OF FACT, CONCLUSIONS OF
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Urban Land Use District for	)	ISSUED BY THE LAND USE
Approximately 1,300 Acres of Land	)	COMMISSION ON SEPTEMBER 8,
at Honouliuli, 'Ewa, O'ahu,	)	1999 REGARDING PETITIONER
Hawai'i, TMK 9-1-16: 8, 108, and	)	HOUSING AND COMMUNITY
109; 9-1-17: 71 and 86; and	)	DEVELOPMENT CORPORATION OF
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	)	AMENDMENT FILED MARCH 5,
	)	1999

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ORDER GRANTING PETITIONER'S REQUEST TO MODIFY CONDITION 3  
AND FINDINGS OF FACT 21, 69, AND 178 OF THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER ISSUED BY THE LAND USE  
COMMISSION ON SEPTEMBER 8, 1999, REGARDING PETITIONER HOUSING AND  
COMMUNITY DEVELOPMENT CORPORATION OF HAWAII'S PETITION FOR LAND  
USE DISTRICT BOUNDARY AMENDMENT FILED MARCH 5, 1999

On February 1, 2000, pursuant to sections 15-15-70 and 15-15-94, Hawai'i Administrative Rules, the Housing and Community Development Corporation of Hawai'i, State of Hawai'i ("Petitioner"), filed a Request To Modify Condition 3 And Findings Of Fact 21, 69, And 178 Of The Findings Of Fact, Conclusions Of Law, And Decision And Order Issued By The Land Use Commission On September 8, 1999, Regarding Petitioner's Petition For Land Use District Boundary Amendment Filed March 5, 1999 ("Motion").

Petitioner requested that the Land Use Commission ("Commission") modify Condition Number 3 of this Commission's

Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") dated September 8, 1999, to be consistent with the requirements of Act 277, 1996 Session Laws of Hawai'i ("SLH"), and section 304-1.5, Hawai'i Revised Statutes ("HRS"), as follows:

- 3) Petitioner shall contribute to the development, funding, and/or construction of public schools as determined by, and to the satisfaction of, the State Department of Education (DOE). Any contribution by the Petitioner for the development, funding, and/or construction of University of Hawaii facilities shall be made in accordance with section 6 of Act 277, 1996 Session Laws of Hawaii and the University of Hawaii-West Oahu special fund set forth in section 304-1.5, Hawaii Revised Statutes. The Petitioner and the DOE shall enter into written agreements on this matter prior to Petitioner obtaining approval for City and County of Honolulu zoning. In the event the University of Hawaii is a party to any agreement between the Petitioner and the DOE or is a party to any separate agreement with the Petitioner, such agreement particular to the University of Hawaii shall be consistent with the requirements of Section 6 of Act 277, 1996 Session Laws of Hawaii and section 304-1.5, Hawaii Revised Statutes.

Petitioner also requested that Findings of Fact Numbers 21, 69, and 178 to the Decision and Order be amended to conform to Condition Number 3, as modified.

A Memorandum In Support Of Motion ("Memorandum In Support") stated, among other things, that Condition Number 3, in part, conflicted with section 6 of Act 277, 1996 SLH, and section 304-1.5, HRS<sup>1</sup>. Petitioner stated that section 6 of Act 277, 1996 SLH, required Petitioner to deposit the net income or revenues

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<sup>1</sup> The funding for the University of Hawai'i-West O'ahu ("UHWO") campus in Kapolei is the funding contemplated by section 6 of Act 277, 1996 SLH, and section 304-1.5, HRS.

derived from the sale of a 500-acre parcel designated as Lot 10077<sup>2</sup>, or from both the sale of the lot and any improvements thereon, into the UHWO special fund, which was created by section 304-1.5, HRS, to assist the University of Hawai'i ("UH") for the design, development, and construction of the UHWO and the infrastructure and other public or common facilities necessary for the development of the permanent campus of the UHWO in Kapolei. Petitioner stated that to the extent that Condition Number 3 permitted the UH to fund projects other than the UHWO and its facilities, it conflicted with and exceeded the legislative intent of section 6 of Act 277, 1996 SLH, and section 304-1.5, HRS.

Petitioner further stated that while section 201G-12(1), HRS, expressly authorized Petitioner to develop property for housing projects and, in cooperation with the Department of Education, educational and related infrastructure as a necessary and integral part of its housing projects, said section did not expressly authorize Petitioner to enter into a written agreement with the UH for this purpose.

The Memorandum In Support also stated that Findings of Fact Numbers 21, 69, and 178 should be clarified to support Condition No. 3, as modified, to read as follows:

- 21) Petitioner is committed to putting in the required infrastructure for the Project and contribute to development of the UHWOC or such other University of Hawaii expenditures in accordance with section 6 of Act

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<sup>2</sup> Lot 10077 is proposed for a large lot subdivision and is identified as TMK 9-1-16: por. 108.

277, 1996 Session Laws of Hawaii and section 304-1.5, Hawaii Revised Statutes.

69) The major social impacts associated with the Project are summarized as follows:

- Provision of needed housing for Oahu;
- Enhancement of Kapolei's customer base;
- Development of a new community focus at the sports complex;
- Increase in traffic congestion;
- Possible impacts on social life due to construction noise or dust;
- Competition for community resources and facilities, namely parks and schools;
- Continued transformation of Ewa into a bedroom community; and
- Financing for development of the University of Hawai'i facilities in accordance with section 6 of Act 277, 1996 Sessions Laws of Hawaii and section 304-1.5, Hawaii Revised Statutes.

178) The State of Hawaii will incur major costs as developer but also gain significant revenues from the Project. Development costs are estimated to be about \$95 million for infrastructure and \$27.5 million for the sports complex. Revenues include receipts from land sales, taxes on construction-related cash flows, operating revenues for the sports complex, and new income associated with visitor spending due to the sports complex.

Petitioner will be able to cover its development costs and supply the University of Hawaii with funds in accordance with section 6 of Act 277, 1996 Session Laws of Hawaii and section 304-1.5, Hawaii Revised Statutes. Overall, the Project will result in continuing cash flows for the State over and beyond State costs. By 2022, the net balance of revenues to the State over costs of the Project is estimated as \$193 million to \$245 million (1997 dollars).

On February 8, 2000, Petitioner filed an Errata to the Motion which corrected typographical errors in reference to Lot 10077 on pages 3 and 5 of the Motion.

On February 9, 2000, Jane H. Howell, Esq., Deputy Corporation Counsel, City and County of Honolulu, filed a letter

which stated that the City and County of Honolulu Department of Planning and Permitting had no objection to the Motion.

On February 9, 2000, Haseko (Ewa), Inc. ("Intervenor"), filed its Response To Petitioner Housing And Community Development Corporation Of Hawaii's Request To Modify Condition 3 And Findings Of Fact 21, 69, And 178 Of The Findings Of Fact, Conclusion Of Law, And Decision And Order, which stated that inasmuch as Intervenor's scope of intervention was limited to any effect the proposed East Kapolei project may have upon drainage and the adequacy of drainage facilities as it pertained to Intervenor's property and to the water quality of the marina and coastal waters, Intervenor had no comments on the Motion.

On February 16, 2000, the Office of Planning filed its Testimony Of The Office Of Planning In Support Of The Motion To Modify Condition No. 3 And Respective Findings.

The Motion came on for hearing before this Commission on February 17, 2000, in Honolulu, Hawai'i, with appearances by parties as noted in the minutes. At the hearing, the Commission recommended that the phrase, "as such laws may be amended" be inserted following each reference to section 6 of Act 277, 1996 SLH, and section 304-1.5, HRS, in Condition No. 3 and Findings of Fact Numbers 21, 69 and 178, as modified. The purpose for this qualifying phrase is to recognize that the law may change from time to time, and that Petitioner shall be subject to the constraints imposed by the law as those constraints may change. The parties present at the proceeding had no objections to the suggested amendment.

This Commission, having duly considered Petitioner's Motion, Memorandum In Support, the oral and written arguments presented by the parties in this proceeding, and good cause existing therefrom,

HEREBY ORDERS that Petitioner's Motion be GRANTED.

IT IS FURTHER ORDERED that Condition Number 3 be amended as follows:

- 3) Petitioner shall contribute to the development, funding, and/or construction of public schools as determined by, and to the satisfaction of, the State Department of Education (DOE). Any contribution by the Petitioner for the development, funding, and/or construction of University of Hawai'i facilities shall be made in accordance with section 6 of Act 277, 1996 Session Laws of Hawai'i, and the University of Hawai'i-West O'ahu special fund set forth in section 304-1.5, Hawai'i Revised Statutes, as such laws may be amended. The Petitioner and the DOE shall enter into written agreements on this matter prior to Petitioner obtaining approval for City and County of Honolulu zoning. In the event the University of Hawai'i is a party to any agreement between the Petitioner and the DOE or is a party to any separate agreement with the Petitioner, such agreement particular to the University of Hawai'i shall be consistent with the requirements of section 6 of Act 277, 1996 Session Laws of Hawai'i, and section 304-1.5, Hawai'i Revised Statutes, as such laws may be amended.

IT IS FURTHER ORDERED that Findings of Fact Numbers 21, 69, and 178 be amended as follows:

- 21) Petitioner is committed to putting in the required infrastructure for the Project and contribute to development of the UHWOC or such other University of Hawai'i expenditures in accordance with section 6 of Act 277, 1996 Session Laws of Hawai'i, and section 304-1.5, Hawai'i Revised Statutes, as such laws may be amended.
- 69) The major social impacts associated with the Project are summarized as follows:
  - Provision of needed housing for O'ahu;

- Enhancement of Kapolei's customer base;
- Development of a new community focus at the sports complex;
- Increase in traffic congestion;
- Possible impacts on social life due to construction noise or dust;
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- Financing for development of the University of Hawai'i facilities in accordance with section 6 of Act 277, 1996 Sessions Laws of Hawai'i and section 304-1.5, Hawai'i Revised Statutes, as such laws may be amended.

178) The State of Hawai'i will incur major costs as developer but also gain significant revenues from the Project. Development costs are estimated to be about \$95 million for infrastructure and \$27.5 million for the sports complex. Revenues include receipts from land sales, taxes on construction-related cash flows, operating revenues for the sports complex, and new income associated with visitor spending due to the sports complex.

Petitioner will be able to cover its development costs and supply the University of Hawai'i with funds in accordance with section 6 of Act 277, 1996 Session Laws of Hawai'i, and section 304-1.5, Hawai'i Revised Statutes, as such laws may be amended. Overall, the Project will result in continuing cash flows for the State over and beyond State costs. By 2022, the net balance of revenues to the State over costs of the Project is estimated as \$193 million to \$245 million (1997 dollars).

All other conditions and findings of fact to the Decision and Order filed on September 8, 1999, are hereby reaffirmed and shall continue in effect.

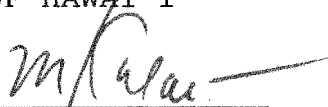


Docket No. A99-728 - HOUSING AND COMMUNITY DEVELOPMENT CORPORATION  
OF HAWAII, STATE OF HAWAII

Done at Honolulu, Hawai'i, this 8th day of March 2000,  
per motions on February 17, 2000 and March 3, 2000.

LAND USE COMMISSION  
STATE OF HAWAII

By

  
MERLE A. K. KELAI  
Chairperson and Commissioner

By

(absent)  
LAWRENCE N.C. ING  
Vice Chairperson and Commissioner

By

  
P. ROY CATALANI  
Commissioner


By

(absent)  
BRUCE A. COPPA  
Commissioner

By

(absent)  
PRAVIN DESAI  
Commissioner

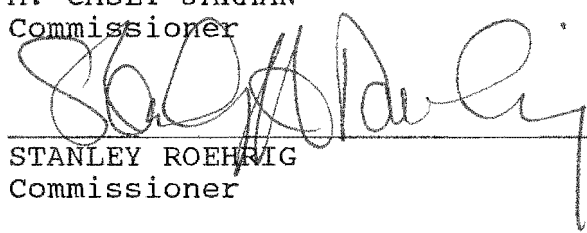
By

  
ISAAC FIESTA, JR.  
Commissioner

By

(absent)  
M. CASEY JARMAN  
Commissioner

By

  
STANLEY ROEHRIG  
Commissioner

Filed and effective on  
March 8, 2000

Certified by:

  
Executive Officer

By

  
PETER YUKIMURA

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of the )	DOCKET NO. A99-728
HOUSING AND COMMUNITY DEVELOPMENT )	
CORPORATION OF HAWAI'I, STATE OF )	CERTIFICATE OF SERVICE
HAWAI'I )	
To Amend the Agricultural Land Use )	
District Boundary into the Urban )	
Land Use District for Approximately )	
1,300 Acres of Land at Honouliuli, )	
`Ewa, O`ahu, Hawai'i, TMK Nos. )	
9-1-16: 8, 108, 109; 9-1-17: 71, 86; )	
and 9-1-18: 3, 5 )	
_____ )	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Request to Modify Condition 3 and Findings of Fact 21, 69, and 178 of the Findings of Fact, Conclusions of Law, and Decision and Order Issued by the Land Use Commission on September 8, 1999 Regarding Petitioner Housing and Community Development Corporation of Hawaii's Petition for Land Use District Boundary Amendment Filed March 5, 1999 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL.           DAVID W. BLANE, Director  
                Office of Planning  
                P. O. Box 2359  
                Honolulu, Hawaii 96804-2359

CERT.          RANDALL K. FUJIKI, Acting Director  
                Department of Planning and Permitting  
                City and County of Honolulu  
                650 South King Street  
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CERT.          JANE HOWELL, ESQ.  
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                City and County of Honolulu  
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400 Davies Pacific Center  
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DATED: Honolulu, Hawaii, this 8th day of March 2000.

  
\_\_\_\_\_  
ESTHER UEDA  
Executive Officer