

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
KOHALA JOINT VENTURE)
)
To Amend the Agricultural Land)
Use District Boundary into the)
Urban Land Use District for)
Approximately 1,288 Acres of Land)
at Kahua and Waika, North Kohala,)
Island of Hawai`i, State of Hawai`i,)
Tax Map Key Numbers: 5-9-01: Portion)
of 10; 5-9-09: Portion of 54)
(Road Parcel); 5-9-10: 31 through 55)
(inclusive), 57, 58, 60, Portion of 56;)
and 5-9-11: 1)
_____)

DOCKET NO. A88-620

ORDER DENYING MOVANT'S
MOTION TO RESCIND THE PRIOR
LAND USE CLASSIFICATION
GRANTED IN LUC DOCKET NO.
A88-620/KOHALA JOINT VENTURE,
AND/OR TO REQUIRE PETITIONER
TO SHOW CAUSE FOR FAILURE TO
PERFORM CONDITIONS IMPOSED
IN SAID DOCKET

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Comm. in Honolulu, Hawaii.

DEC 5 2002 by Anthony J. Arling
Date Executive Officer

ORDER DENYING MOVANT'S MOTION TO RESCIND THE PRIOR LAND USE
CLASSIFICATION GRANTED IN LUC DOCKET NO. A88-620/KOHALA JOINT
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On November 29, 2000, John A. Broussard ("Movant") filed a Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620/Kohala Joint Venture, And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket ("Motion To Rescind"), pursuant to sections 15-15-70 and 15-15-93, Hawaii Administrative Rules ("HAR"). Movant sought the revocation of the Land Use Commission's ("Commission") decision in LUC Docket

No. A88-620/ Kohala Joint Venture to include the reversion of the Petition Area¹ to its former land use classification and/or to require Petitioner to show cause why such revocation and reversion should not take place.

The Motion To Rescind stated, among other things, that Petitioner Kohala Joint Venture (“KJV”) and Kohala Ranch, LLC (“Kohala Ranch”), successor-in-interest to KJV, failed to comply with Condition Numbers 1, 3, 4, 6, 9, 11, and 12 of this Commission’s Findings of Fact, Conclusions of Law, and Decision and Order dated November 10, 1988.

On December 5, 2000, Movant filed a Supplement To Movant’s Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620/Kohala Joint Venture, And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket.

On December 18, 2000, Movant filed a Second Supplement To Movant’s Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620/Kohala Joint Venture, And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket.

On December 21, 2000, Kohala Ranch filed a Motion For Extension Of Time To File Memorandum In Opposition.

¹ Consolidation of parcels since the boundary amendment proceedings has changed the tax map key numbers composing the Petition Area. The current parcels of the Petition Area are identified as Tax Map Key Numbers: 5-9-01: 10 and 5-9-10: 31, 43, portion of 54, 57, 58, and 60.

On December 27, 2000, Kohala Ranch filed a Rejoinder To Kohala Ranch, LLC's Motion For Extension Of Time To File Memorandum In Opposition.

On February 9, 2001, Kohala Ranch filed a Memorandum In Opposition To Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620/Kohala Joint Venture, And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket. Kohala Ranch, with the approval of Movant, also filed a written request to postpone any hearing that may be scheduled by the Commission in the near future regarding the Motion To Rescind to allow additional time for further community dialogue and presentation of a revised conceptual plan to interested community members.

On February 21, 2001, Movant filed a Memorandum In Reply To Kohala Ranch LLC's Memorandum In Opposition, Filed February 9, 2001.

On July 2, 2001, Movant filed a Supplementary Memorandum Updating Situation Re: Movant's Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620.

On July 25, 2002, Movant filed a Motion Requesting That A Date Be Set For The Hearing Of Movant's Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620/Kohala Joint Venture, And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket.

On September 10, 2002, Movant filed a Petition For Standing In Contested Case Hearing.

On September 13, 2002, the County of Hawai`i filed a Memorandum Regarding Movant's Motion To Rescind Prior Land Use Classification Granted In Docket No. A88-620.

On September 17, 2002, Movant filed a Response To County Of Hawaii's Memorandum Regarding Movant's Motion To Rescind Prior Land Use Classification Granted In Docket No. A88-620.

On September 18, 2002, Kohala Ranch filed a Third Memorandum In Opposition To Motion To Rescind The Prior Land Use Classification Granted In LUC Docket No. A88-620/Kohala Joint Venture And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket.

On September 18, 2002, the Office of Planning ("OP") filed a Memorandum In Response To Movant's Motion To Rescind The Prior Land Use Classification Granted In Land Use Commission Docket No. A88-620, And/Or To Require Petitioner To Show Cause For Failure To Perform Conditions Imposed In Said Docket.

On September 23, 2002, Movant filed a Response To Petitioner's Third Memorandum Regarding Movant's Motion To Rescind Prior Land Use Classification Granted In Docket No. A88-620.

The Commission considered the Motion To Rescind at its meeting on October 3, 2002, in Hilo, Hawai`i. John A. Broussard appeared on behalf of Movant. R. Ben Tsukazaki, Esq., appeared on behalf of Kohala Ranch; John W.K. Chang, Esq., appeared on behalf of OP; and Patricia O'Toole, Esq., appeared on behalf of the County of Hawai`i. At the meeting, the Commission heard public testimony from Steven Spengler, Ph.D; A.J. DiMauro; Brad Carvalho; and Kelly Pomeroy. The Commission received written testimony from Movant; Tom Oiye and Laura Guerrant; Norm Cohler; Mark Van Pernis, Esq., on behalf of Robert Ryan, Teresa Ryan, and Roaring Lion, LLC; Joseph G. Roosevelt and Wendy M. Greenfield; and Kelly Pomeroy on behalf of Concerned Kohala Ranch Property Owners (with copy of a review by Steven Spengler, Ph.D., of a report entitled "Evaluation of Well No. 4 of the Kohala Ranch Water System," February 1994, by Tom Nance). The Commission also received i) Kohala Ranch LLC, Project District Application (REZ 00-19), Timeline of Key Actions/Events; ii) Kohala Ranch LLC, Kohala Ranch Project IV, Compliance with Condition B of Ordinance No. 92-40, with various attachments; iii) a Petition to the Planning Department, County Council, and Mayor Inouye opposing the use of the Kohala Mountain Road for traffic generated by Kohala Ranch Project IV; iv) results of a Concerned Kohala Ranch Property Owners' questionnaire; and v) various written public testimonies submitted to the County of Hawai`i Planning Director by Kohala Ranch property owners and neighboring residents regarding Kohala Ranch's Project IV

proposal. Thereafter, Kohala Ranch, OP, and the County of Hawai`i stated their objections to the Motion To Rescind as reflected in the transcript of the proceedings. Following oral arguments by the Movant, Kohala Ranch, OP, and the County of Hawai`i, the Commission noted, among other things, that the Movant had not provided enough information so as to cause the majority of the Commission members to form a belief that there has been a failure by Kohala Ranch to comply with any of the seven conditions of this Commission's conditions as alleged in Movant's Motion To Rescind.

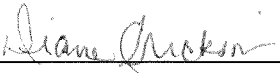
Thereafter, a motion was made and seconded to deny Movant's Motion To Rescind. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 6 ayes, 0 nays, and 3 absent, the motion carried.

ORDER

Having duly considered the Movant's Motion To Rescind, the written and oral arguments presented by the Movant, Kohala Ranch, OP, and the County of Hawai`i, and a motion having been made at a meeting conducted on October 3, 2002, in Hilo, Hawai`i, and the motion having received the affirmative votes required by sections 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that Movant's Motion To Rescind be DENIED.


Dated: Honolulu, Hawai'i, DEC 5 2002.

APPROVED AS TO FORM



Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII



By LAWRENCE N.C. ING
Chairperson and Commissioner

Filed and effective on
DEC 5 2002, 2002

Certified by:



Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A88-620
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KOHALA JOINT VENTURE) CERTIFICATE OR SERVICE
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To Amend the Agricultural Land)
Use District Boundary into the)
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(Road Parcel); 5-9-10: 31 through 55)
(inclusive), 57, 58, 60, Portion of 56;)
and 5-9-11: 1)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Denying Movant's Motion to Rescind the Prior Land Use Classification Granted in LUC Docket No. A88-620/Kohala Joint Venture, and/or To Require Petitioner to Show Cause for Failure to Perform Conditions Imposed in Said Docket was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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DATED: Honolulu, Hawaii, DEC 5 2002.



ANTHONY J. H. CHING
Executive Officer