BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI’I

In the matter of the Petition

of

BIG ISLAND COUNTRY CLUB
HOMES, LLC

for a declaratory ruling on the extent to which chapter 343, Hawai‘i Revised Statutes is applicable to the Petition for Land Use District Boundary Amendment in Docket No. A05-762/Big Island Country Club Homes, LLC

DOCKET NO. DR07-34

DECLARATORY ORDER

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On March 13, 2007, Big Island Country Club Homes, LLC ("Petitioner"), filed a Petition for Declaratory Order ("Petition"); Exhibit A; and Certificate of Service, pursuant to section 91-8, Hawai‘i Revised Statutes ("HRS") and section 15-15-98 et seq., Hawai‘i Administrative Rules ("HAR"). Petitioner sought a declaratory ruling from the Land Use Commission ("LUC") as to the applicability or inapplicability of the provisions of section 343-5, HRS, relating to a requirement for environmental review in light of the historical and factual circumstances of Petitioner’s master-planned development in South Kohala,
Island of Hawai‘i, which is known as the Big Island Country Club in LUC Docket No. A05-762/Big Island Country Club Homes, LLC.

On April 2, 2007, the State of Hawai‘i Office of Planning (“OP”) filed the Office of Planning’s Memorandum in Response to Petition for Declaratory Order dated March 13, 2007; Exhibit A; and Certificate of Service.

On April 26, 2007, the LUC met in Lihu‘e, Kaua‘i, Hawai‘i, to consider the Petition pursuant to section 15-15-100, HAR. R. Ben Tsukazaki, Esq. appeared on behalf of the Petitioner. Bobbi Jean Leithead-Todd, Esq., provided argument on the Petition on behalf of the County of Hawai‘i Planning Department (“County”). Bryan Yee, Esq., provided argument on the Petition on behalf of the OP.

At the meeting of April 26, 2007, a motion was made and seconded by the Commissioners to affirm that chapter 343, HRS, is applicable to LUC Docket No. A05-762/Big Island Country Club Homes, LLC and that an Environmental Assessment (“EA”) is required in LUC Docket No. A05-762/Big Island Country Club Homes. The LUC clarified that the ruling did not constitute the LUC ruling on any matters that are before or under the jurisdiction of the State of Hawai‘i, Department of Transportation. The LUC further clarified that the LUC would be the appropriate accepting authority for the EA in LUC Docket No. A05-762/Big Island Country Clubs, LLC.
Following discussion by the Commissioners, a vote was taken on the motion. There being a vote tally of 5 ayes, 1 nay, and 3 absent, the motion carried.

ORDER

Having duly considered the Petitioner, the written and/or oral arguments presented by Petitioner, the County and the OP, and a motion having been made at a meeting conducted on April 26, 2007, in Lihu‘e, Kaua‘i, 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 DECLARES and ORDERS that section 343-5, HRS is applicable to LUC Docket A05-762/Big Island Country Clubs, LLC and that an Environmental Assessment should be prepared for that docket.
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this __6th__ day of ______June______, 2007. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at ______________Hawaii, this __6th__ day of ______June______, 2007, per motion on April 26, 2007.

APPROVED AS TO FORM

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI'I

By ______________________
LISA JUDGE
Chairperson and Commissioner

By ______ (absent) ______________
MICHAEL FORMBY
Vice-Chairperson and Commissioner

By ______ (absent) ______________
STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner
By Thomas Conrades
THOMAS CONTRADES
Commissioner

By (absent)
KYONG-SU IM
Commissioner

By
DUANE KANUHA
Commissioner

By
RANSOM PILTZ
Commissioner

By
NICHOLAS TEVES
Commissioner

By Reuben Wong
REUBEN WONG
Commissioner

Filed and effective on
Jun 6 2007

Certified by:

ANTHONY J. H. CHING

Docket No. DR07-34 Big Island County Club Homes, LLC
Declaratory Order
BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI’I

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory 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 as noted:

DEL: LAURA THIELEN, Director
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CERT: R. BEN TSUKAZAKI, Esq.
85 W. Lanikaula Street
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, _________________.

JUN - 6 2007

ANTHONY J. H. CHING
Executive Officer