

LAND USE COMMISSION
STATE OF HAWAII

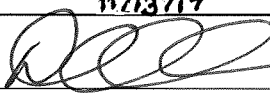
2017 NOV 13 P 3: 22

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A17-803
)	
KEALIA PROPERTIES, LLC	)	ORDER DETERMINING (1) THAT THE
	)	STATE LAND USE COMMISSION AGREES
To Amend The Agricultural Land Use	)	TO BE THE ACCEPTING AUTHORITY
District Boundary Into The Urban Land	)	PURSUANT TO HAWAII REVISED
Use District For Approximately 53.361	)	STATUTES CHAPTER 343; (2) THAT THE
Acres Of Land At Keālia, Kawaihau, Puna,	)	PROPOSED ACTION MAY HAVE A
Island Of Kaua'i, State Of Hawai'i, Tax	)	SIGNIFICANT EFFECT UPON THE
Map Key: (4) 4-7-004: Por. 001	)	ENVIRONMENT TO WARRANT THE
_____	)	PREPARATION OF AN
		ENVIRONMENTAL IMPACT
		STATEMENT; AND (3) THAT PETITIONER
		IS AUTHORIZED TO PREPARE AN
		ENVIRONMENTAL IMPACT STATEMENT
		PREPARATION NOTICE; AND
		CERTIFICATE OF SERVICE

ORDER DETERMINING (1) THAT THE STATE LAND USE COMMISSION
AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO HAWAII REVISED
STATUTES CHAPTER 343; (2) THAT THE PROPOSED ACTION MAY HAVE A
SIGNIFICANT EFFECT UPON THE ENVIRONMENT TO WARRANT THE PREPARATION
OF AN ENVIRONMENTAL IMPACT STATEMENT; AND (3) THAT PETITIONER IS
AUTHORIZED TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT
PREPARATION NOTICE
AND
CERTIFICATE OF SERVICE

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 Commission, Honolulu, Hawai'i

11/13/17 by

Executive Officer



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STATE OF HAWAII

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Use District For Approximately 53.361)	HAWAII REVISED STATUTES
Acres Of Land At Keālia, Kawaihau,)	CHAPTER 343; (2) THAT THE
Puna, Island Of Kaua'i, State Of)	PROPOSED ACTION MAY HAVE A
Hawai'i, Tax Map Key: (4) 4-7-004: Por.)	SIGNIFICANT EFFECT UPON THE
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		IMPACT STATEMENT PREPARATION
		NOTICE

ORDER DETERMINING (1) THAT THE STATE LAND USE COMMISSION
AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO HAWAII REVISED
STATUTES CHAPTER 343; (2) THAT THE PROPOSED ACTION MAY HAVE A
SIGNIFICANT EFFECT UPON THE ENVIRONMENT TO WARRANT THE
PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT; AND (3) THAT
PETITIONER IS AUTHORIZED TO PREPARE AN ENVIRONMENTAL IMPACT
STATEMENT PREPARATION NOTICE

On October 16, 2017, Kealia Properties, LLC ("Petitioner"), filed a Motion To Designate The Land Use Commission As Approving Agency For Environmental Statement Under HRS Chapter 343 And For Authority To Prepare Environmental Impact Statement Preparation Notice ("Motion"), pursuant to Hawai'i Administrative Rules ("HAR") §§11-200-12 and 15-15-70 and Hawai'i Revised Statutes ("HRS") §343-5. In its Motion, Petitioner requested that the State Land Use Commission ("Commission") enter an order to (1) determine that the Commission will be the accepting authority and the approving agency for the environmental statement under HRS chapter 343; (2) determine, through the judgement and experience of the Commission, that an Environmental Impact Statement ("EIS") is likely to be required for the proposed action; and (3) authorize Petitioner to prepare an EIS Preparation Notice ("EISPN").

Petitioner proposes to develop approximately 235 residential lots ranging in size from approximately 5,600 square feet to 7,300 square feet on approximately 53.361 acres of currently vacant land ("Project").

On October 16, 2017, Petitioner also filed a Petition For Land Use District Boundary Amendment ("Petition"), which included an EISPN.

Petitioner notes that the Project will require the use of state or county lands, including public roadways, and is therefore subject to the environmental review

process under HRS §343-5(a)(1).¹ Petitioner also contends that the filing of the Petition represents the earliest practicable time for an accepting agency to determine whether an EIS shall be required to assess the Project pursuant to HRS chapter 343. Petitioner further notes that if an agency determines that a proposed action is likely to have a significant impact, an applicant may bypass the initial environmental assessment step and proceed directly to the preparation of an EIS in accordance with HRS §343-5(e).

On October 31, 2017, the State Office of Planning (“OP”) filed a written response expressing no objections to Petitioner’s Motion.

On November 8, 2017, the Commission met in Līhu’e, Kaua’i, Hawai’i, to determine (1) whether this Commission should be the accepting authority pursuant to HRS chapter 343; (2) whether the Project may have a significant effect upon the environment to warrant the preparation of an EIS; and (3) whether to authorize Petitioner to prepare an EISPN pursuant to HRS §343-5(e). Benjamin M. Matsubara, Esq., and Curtis T. Tabata, Esq., appeared on behalf of Petitioner. Jodi Higuchi, Esq., and Dale Cua appeared on behalf of the County of Kaua’i Planning Department (“Planning Department”). Dawn Takeuchi-Apuna, Esq., and Rodney Funakoshi were present on behalf of OP.

¹ The use of state or county lands is also an action that triggers the environmental review process under HAR §11-200-6(b)(1)(A).

At the meeting, the Commission heard public testimony from Timothy Reis.

Following the receipt of public testimony, Petitioner summarized its position in support of its Motion that this Commission is the appropriate accepting authority for the EIS pursuant to HRS chapter 343, that the Project may have a significant effect upon the environment such that an EIS is likely to be required, and that Petitioner be allowed to proceed directly to the preparation of an EIS commencing with the preparation of an EISPN. Upon questioning from the Commission, Petitioner affirmed its commitment to include an archaeological inventory survey, if required, and a cultural impact assessment in the EIS.

Both OP and the Planning Department stated that they had no objections to Petitioner's Motion.

Following discussion, a motion was made and seconded to have this Commission (1) agree to be the accepting authority pursuant to HRS chapter 343; (2) find that the Project may have a significant effect upon the environment to warrant the preparation of an EIS; and (3) authorize Petitioner to prepare an EISPN pursuant to HRS §343-5(e). The motion was subsequently amended and seconded to authorize the Commission's Executive Officer to notify and submit a record of the Commission's decision to Petitioner and the State Office of Environmental Quality Control ("OEQC"), and to further authorize the Commission's Chairperson to sign the Order on this matter

on behalf of the Commission. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the amended motion carried.

ORDER

This Commission, having duly considered Petitioner's Motion, the comments of OP and the Planning Department, and an amended motion having been made at its meeting on November 8, 2017, in Līhu'e, Kaua'i, Hawai'i, and the amended motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the amended motion,

HEREBY ORDERS (1) that it agrees to be the accepting authority pursuant to HRS chapter 343; (2) that the Project may have a significant effect upon the environment to warrant the preparation of an EIS; and (3) that Petitioner is authorized to prepare an EISPN pursuant to HRS §343-5(e).

IT IS ALSO ORDERED that Petitioner shall make the EISPN available for a 30-day public review and comment period pursuant to HRS §343-5(e) and HAR §11-200-15(b).

IT IS FURTHER ORDERED that the Commission's Executive Officer shall notify and submit a record of the Commission's decision to Petitioner and the OEQC, and that the Commission's Chairperson shall sign the Order on this matter on behalf of the Commission.

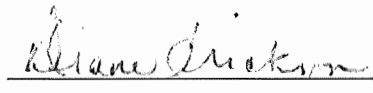
ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 13th day of November 2017, per motion on November 8, 2017.

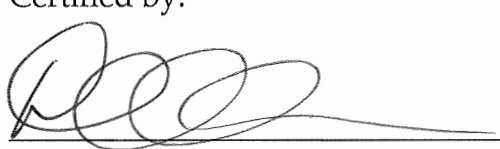
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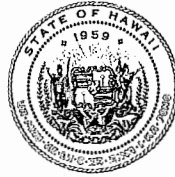
APPROVED AS TO FORM


Deputy Attorney General

By 
ARNOLD WONG
Chairperson and Commissioner

Filed and effective on:

11/13/17
Certified by:

DANIEL ORODENKER
Executive Officer



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District Boundary Into The Urban Land Use)
District For Approximately 53.361 Acres Of)
Land At Keālia, Kawaihau, Puna, Island Of)
Kaua'i, State Of Hawai'i, Tax Map Key: (4))
4-7-004: Por. 001)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER DETERMINING (1) THAT THE STATE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO HAWAII REVISED STATUTES CHAPTER 343; (2) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT EFFECT UPON THE ENVIRONMENT TO WARRANT THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT; AND (3) THAT PETITIONER IS AUTHORIZED TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE in the above referenced-docket was duly served 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.

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
LEO ASUNCION, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
DAWN TAKEUCHI-APUNA, ESQ Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
MICHAEL DAHILIG Director, Department of Planning, County of Kaua'i 4444 Rice Street Lihue, Hawai'i 96766		X	
KAUAI COUNTY PLANNING COMMISSION c/o Planning Department County of Kaua'i 4444 Rice Street Lihue, Hawai'i 96766			X
BENJAMIN M. MATSUBARA, Esq. CURTIS T. TABATA, Esq. Matsubara-Kotake & Tabata 888 Mililani Street, Suite 308 Honolulu, Hawaii 96813 Attorneys for Kealia Properties, LLC			X

Honolulu, Hawai'i, November 13, 2017


 DANIEL ORODENKER
 Executive Officer