



LAND USE COMMISSION

Komikina Ho'ohana 'Āina

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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REGENCY PUAKEA PROPERTIES, LLC

SUBJECT: Motion for Order Releasing Condition No. 2 of Commission's Decisions
and Orders dated June 30, 1989 and December 20, 1995

Dear Mr. Hetherington:

On May 20, 2025, the Land Use Commission ("LUC" or "Commission") received your Motion for Order to Release Condition No. 2 of the Commission's 1989 ("1989 Order") and 1995 ("1995 Order") Decisions and Orders, Memorandum in Support of Motion, Verification and Declaration of J. George Hetherington, Exhibits 1 to 8, and Certificate of Service ("Motion"). Land Use Commission Staff has reviewed the Motion and provides the following comments:

The Motion specifically requests the Commission to: (1) recognize Regency at Puakea, LLC ("Regency") as a successor petitioner; (2) issue an order modifying the 1989 Order and 1995 Order to expressly release Lot 1545-A from the affordable housing conditions for the Petition Area; and, (3) authorize the Commission's Executive Officer to sign a Certification as prepared and requested by the U.S. Department of Housing and Urban Development ("HUD") for Lot 1545-A.

Hawai'i Administrative Rules ("HAR") section 15-15-94 provides the authority and process for petitioners to modify or delete conditions imposed by the Commission. This begins through the filing of a motion and service on all parties to the boundary amendment proceeding. The petitioner (or movant) must show good cause in order for the Commission to modify or delete conditions.

Regency, on page 10 of the Motion, indicates that a review of the title report was done only for Lot 1545-A¹, and service was made to all persons with a recorded interest. Lot

¹ Lot 1545-A is a 5.603 acre portion of the original Petition Area, conveyed to Regency by Grove Farm. See Petitioner's Exhibit 4.

1545-A is only a portion of the entire Petition Area. The original Petition Area was approximately 103.57 acres. The Petition Area has since been subdivided and portions sold off to new owners, among them Regency, who may be considered successor petitioners. Conditions imposed on the Petition Area run with the land and all successor petitioners are individually and collectively responsible for the satisfaction of all conditions. Therefore, all landowners within the Petition Area need to be determined and served by Regency for this Motion.

Regency has the burden of proof to show good cause by placing authoritative evidence on the record for the Commission to base their decision. The Motion, on page 11, provides a statement from Grove Farm's 2025 Annual Report (Petitioner's Exhibit 7) that Condition 2 has been satisfied. Grove Farm's statement references a November 30, 2007, acknowledgement of satisfaction of the affordable housing requirement by the County, and housing credits earned from development. However, no official document from the County of Kaua'i has been made part of the record.

Regency provides, in the conclusion section of its Motion (Petitioner's Motion, page 12), that "...evidence and testimony to be provided at the hearing on this Motion..." All evidence that Regency would like the Commission to consider needs to be provided prior to the evidentiary hearing so that all interested parties, including the State Office of Planning and Sustainable Development ("OPSD") and the County of Kaua'i ("County") can review and provide comments.

The Motion needs to be amended to demonstrate proper service to all landowners (successor petitioners) in the Petition Area (not just for Lot 1545-A) and to provide authoritative evidence of satisfaction of Condition 2. The Commission will schedule a hearing on your Motion once it has the required additional documentation identified.

Should you have any questions, please contact our office, at (808) 587-3822 or via email at dbedt.luc.web@hawaii.gov.

Sincerely,

Daniel E. Orodener
Executive Officer
Land Use Commission
State of Hawai'i