

DOCKET NO. A89-636
GROVE FARM PROPERTIES
Successor Petitioner
Regency Puakea Properties LLC

Motion for an Order Releasing Condition 2 in the Findings of Fact, Conclusions of Law, and Decision and Orders dated June 30, 1989, and December 20, 1995

***STAFF
REPORT***

ACTION MEETING
May 14, 2026



Daniel E. Orodener, Executive Officer
Submitted: May 8, 2026

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1. EXPLANATION OF PROCEEDING

The proceeding before the Land Use Commission (“Commission”) is to consider the Motion to Release Condition No. 2 in the Findings of Fact, Conclusion of Law, and Decision and Orders dated June 30, 1989, and December 20, 1995, submitted by Regency Puakea Properties LLC (“Successor Petitioner” or “Petitioner” or “Movant”)¹, on May 20, 2025², and supplemented by filings on March 12, 2026.

Hawai‘i Administrative Rules (“HAR”) §15-15-70(a) provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

Pursuant to HAR §15-15-94, a petitioner who desires to have a modification or deletion of a condition that was imposed by the Commission, or a modification of the Commission’s order shall file a motion in accordance with HAR §15-15-70, including proper service and affidavits or declarations if the motion requires the consideration of facts not appearing in the record.

If good cause is shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order (HAR §15-15-94(b)). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission.

Pursuant to Hawai‘i Revised Statute (“HRS”) §91-10(5), the party initiating the proceeding shall have the burden of proof³, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence⁴.

2. BACKGROUND INFORMATION

The proceeding before the Land Use Commission (“LUC”) is to hear a motion by Regency Puakea Properties, LLC (“Regency” or “Petitioner”) to release Condition 2,

¹ A successor petitioner to a portion of Parcel 8, which is a portion of the original Petition Area.

² Commission deemed the initial filing incomplete for processing on June 6, 2025

³ A party’s obligation to prove its claims or defenses. It has two parts: the duty to produce evidence, and the duty to persuade the judge or jury that the evidence meets the required standard of proof. (*Blacks Law Dictionary (abridged 4th Edition, 1984 and 12th Edition, 2024)*)

⁴ The word “preponderance” means something more than weight of evidence; it denotes superiority of weight, or outweighing. That which best accords with reason and probability. The standard of proof in most civil cases. It means the fact at issue is more likely true than not true—essentially, that the evidence weighs slightly in favor of one side. (*Blacks Law Dictionary (abridged 4th Edition, 1984 and 12th Edition, 2024)*)

only for Lot 1545-A⁵, in the subject docket. Regency is a successor petitioner to Grove Farm Properties, Inc.; specifically, as the owner of a portion of the original Petition Area; a 5.603-acre parcel identified as TMK Nos. 3-3-003:045. The original Petition involved the reclassification of approximately 603 acres of land, in two increments, from the State Land Use Agricultural District to the State Land Use Urban District at Lihue, Kauai, State of Hawaii, TMK Nos. 3-3-003:001 (portion); 3-3-002: 019 (portion), and 3-4-005:007 (inclusive of roadways).

The district boundary amendment was incrementally granted on June 9, 1989, subject to 14 conditions; which included Condition 2 relating to an affordable housing requirement (see [1989 Decision and Order](#)).

The 1989 D&O was amended in 1995 to grant redistricting to the second increment of approximately 103.570 acres (“Increment II”)⁶. This was granted on December 20, 1995, subject to 20 conditions; which included Condition 2 relating to affordable housing requirements (see [1995 D&O](#)).

On January 5, 1996, the Commission filed a memorandum ([1996 Memorandum](#)) to all parties to substitute and amend the 1995 D&O pages 10 and 11 which affected Condition 2. Specifically, Condition 2(a) was amended to delete the phrase:

“thirty percent (30%) of the units which families with an income range of 80 to 120 percent of Kauai County’s median income can afford and”

With the corrected Condition 2(a) to now read:

“Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawai’i residents by offering for sale at least thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County’s median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate government agency.”

Petitioner submitted annual reports between 1990 and 2004, no annual reports were submitted between 2004 and 2013. Petitioner provided reports in 2013, 2016, 2017, 2018, combined 2019-2020, combined 2021-2022, 2023, 2024, and 2025.

Petitioner’s [1999 Annual Report](#) (pg. 9, Condition 11) indicates that Grove Farm Properties had entered into an option agreement with Regency Associates of Hawaii (since renamed to Regency Pacific, Inc.) for the sale of parcel 8, zoned for multifamily use, for the purpose of developing an assisted living project.

⁵ Lot 1545-A refers to Regency’s portion of the Petition Area and currently identified as TMK No. 3-3-003:045; it is also referred to within their filings as “a portion of Parcel 8.”

⁶ Increment II was comprised of Parcels 8, 17, and 19-21, the makai half of Parcel 16, the mauka one-half of Parcel 7, and the Kaumuali’i Alignment Area.

Petitioner's [2001 Annual Report](#) (pg. 10, Condition 11) indicated that Grove Farm had subdivided out a 5.603-acre parcel and conveyed it to Regency. Regency was seeking appropriate construction-related permits for the assisted living project.

Petitioner's [2003 Annual Report](#) (pg. 11, Condition 11) indicates that Regency had begun construction of the assisted living project named Regency at Puakea.

Petitioner's [2004 Annual Report](#) (pg. 11, Condition 11) indicates that Regency had completed construction of Regency Puakea and was negotiating for conveyance of a remaining 15.714 acres for full build out of their project.

Petitioner's [2013 Annual Report](#) (pg. 3, Condition 2a and 2b) indicates the affordable housing condition had been satisfied as acknowledged by the County on November 30, 2007. This is the first time that Petitioner stated that Condition 2 had been satisfied and acknowledged by a government agency. However, no official documentation was provided.

On May 20, 2025, Successor Petitioner (to a Portion of Parcel 8) Regency Puakea Properties, LLC filed a Motion for an Order Releasing Condition 2 as set forth in the LUC's Findings of Fact, Conclusions of Law, and Decision and Order dated June 30, 1989, and December 20, 1995, Memorandum in Support of Motion, Declaration of J. George Hetherington, Exhibits 1 to 8, and Certificate of Service ("[Motion](#)").

On June 3, 2025, the LUC sent a letter to Petitioner indicating several areas where the Motion failed to follow Hawai'i Administrative Rules ("HAR") and was deemed incomplete for processing ("[LUC Deemed Incomplete Letter](#)").

On August 13, 2025, Petitioner provided supplemental evidence, by email, a copy of a letter from the Kaua'i County Housing Authority (dated November 30, 2007).

On August 22, 2025, the LUC responded to inform Petitioner that they need to amend their Motion to include the supplemental evidence and demonstrate proper service to all landowners within the original Petition Area ("[LUC Response to Email](#)").

On March 12, 2026, Petitioner ("Regency") filed an Amended Motion, Memorandum in Support of Amended Motion, Verification, Declaration of Adam Roversi, Exhibit 9, and Certificate of Service ("[Amended Motion](#)").

On March 23, 2026, the State Office of Planning and Sustainable Development ("OPSD") filed its Response to Successor Petitioner's Motion for an Order Releasing Conditions ("[OPSD Response](#)").

On April 1, 2026, Petitioner provided the required filing fee for their Motion.

On April 29, 2026, the LUC mailed out its meeting agenda for May 14, 2026 to the

Parties, Statewide and Kaua‘i County mailing and email lists.

3. EVIDENCE AND ANALYSIS FOR RELEASE OF CONDITIONS⁷

Standing

Evidence Provided

Proof of Petitioner’s standing as a successor in interest for portion of original Petition Area is provided in the following filings: ([Petitioner’s Motion](#), pgs. 2; Memorandum pgs. 7-8, 10-11; Exhibit 4 Limited Warranty Deed and Reservation of Rights, pgs. 94-103, and Exhibit 5 Warranty Deed, pgs. 104-106; [Petitioner’s Amended Motion](#), Supplemental Memorandum, pgs. 9-10)

Staff Analysis

The LUC should recognize Regency Puakea as a Successor Petitioner to that specific portion of the original Petition Area, Lot 1545-A and currently identified as TMK No. 3-3-003:045, with standing to seek the relief requested in its Motion.

Request to Release Condition 2

Condition 2⁸

“2. The affordable housing requirement shall be satisfied as follows:

- a. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income Hawai‘i residents by offering for sale at least thirty percent (30%) of the units which families with an income range of 120 to 140 percent of Kauai County’s median income can afford. This condition may be fulfilled through projects, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State, or other appropriate governmental agency.*

This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation, through the construction of rental units to be made available at rents which families in the specified income ranges can afford.

⁷ The links to Petitioner’s Motion, Memorandum in Support of Motion, Amended Motion, and Memondum in Support of Amended Motion and the page numbers referenced are to the pdf page numbers. Navigation in these documents should be to the referenced pdf page number.

⁸ Condition 2 per 1989 D&O, amended by the 1995 D&O, and as corrected by the [1996 substitution of amended language](#)

- b. *The affordable housing requirements may also be satisfied in a manner that meets with the approval of the County of Kauai and the State Housing Finance and Development Corporation. Said requirements shall take into consideration affordable on-site (with the subject petition area) or off-site housing units or cash payments that satisfy the then current housing needs, or other necessary or desirable community facilities.”*

Evidence Provided

Petitioner represents that the affordable housing condition (Condition 2a and 2b) for the Petition Area, has been complied with and fully satisfied as of November 30, 2007 ([Petitioner’s Motion](#), Memorandum in Support, pgs. 11-12; Exhibit 6, 2024 Grove Farm Annual Report, pgs. 108-109; [Petitioner’s Amended Motion, pg. 2; Supplemental Memorandum, pg. 7, Declaration of Adam Roversi, pg. 14-15, and Exhibit 9, pg. 17](#))

Staff Analysis

Petitioner has provided adequate proof that the condition has been satisfied based on Kaua‘i County Housing Agency acknowledgement letter and the declaration by the current head of the County housing agency.

Good Cause

If good cause is shown, the Commission may modify or delete any of the conditions imposed or modify the Commission’s order (HAR §15-15-94(b)). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of the Commission.

Condition 12 of both the 1989 D&O and 1995 D&O provided the LUC with the ability to fully or partially release the conditions upon a motion and provision of adequate assurance of satisfaction of the condition. ([1989 D&O](#), pg. 38; [1995 D&O](#), pg. 15)

Evidence Provided

Petitioner has represented that good cause has been shown by documentation of: successor ownership, filing and service of a motion to release conditions, and satisfaction of condition by the County Housing agency in 2007 and reacknowledgement of satisfaction of the condition by the current County Housing director ([Petitioner’s Motion](#), Memorandum pgs. 11-12; [Petitioner’s Amended Motion](#), Supplemental Memorandum, pg. 10; Declaration of Adam Roversi, pgs. 14-15; Exhibit 9, pg. 17)

Staff Analysis

Petitioner Regency Puakea has provided sufficient proof that they are a successor Petitioner to a

portion of the original Petition Area, specifically Lot 1545-A portion of Increment II and currently identified as TMK No. 3-3-003:045.

Petitioner has filed a motion to request the release of a condition and provided the required notice of service to all recognized owners within the original Petition Area that may be affected by the request.

Petitioner has filed sufficient evidence to assure that Condition 2 has been fully satisfied and can therefore be released.

Request to Sign HUD Certification

Petitioner has requested that the Commission’s Executive Officer sign a HUD Certification ([Petitioner’s Motion](#), pg. 2-3, Memorandum, pgs. 12-13, Exhibit 7, pg. 116; [Petitioner’s Amended Motion](#), pg. 10)

Petitioner has represented that the Federal government’s Housing and Urban Development (“HUD”) attorney had drafted a certification document that required Petitioner to file a motion to release the affordable housing condition on Lot 1545-A and secure a signature from the Commission on the certification document in order to close on a loan. ([Petitioner’s Motion](#), Memorandum, pg. 12)

Staff Analysis

The Commission’s Decision and Order on the Motion to Release serves as legal documentation for whatever action the Commission takes. The “declaration” being referenced by Petitioner and in the HUD certification (Exhibit 7) are not within the Commission’s purview. These declarations are made by the Petitioner in filings to the State Bureau of Conveyances as documentation regarding liens and encumbrances on property. Three of the four items in this HUD certification are not under the authority of the Commission. The last item asks that the Commission “...affirm that affordable housing requirements set forth in Section 2 of the Declaration do not apply to the Borrower or the Project.” This is the only item that it would appear the Commission does have the authority to address should they decide to grant the release of Condition 2.

4. OPSD POSITION

On March 23, 2026, OPSD filed a response to Successor Petitioner’s Motion.

OPSD recommended support of the Petitioner’s motion as they have provided sufficient evidence for standing, the relief sought, and evidence that Condition 2 of the 1989 D&O and 1995 D&O had been satisfied. [Response to Successor Petitioner’s Motion](#)

5. COUNTY OF KAUA‘I

No filings as of Staff Report release date.

6. STAFF RECOMMENDATION

Staff recommend the Commission grant Successor Petitioner’s Motion to Release Condition 2, for Lot 1545-A portion of Increment II and currently identified as TMK No. 3-3-003:045; and, for the entire original Petition Area.

Should the Commission agree and find the evidence provided by the Petitioner sufficient and that it amounts to good cause to grant the Motion to Release Condition 2, then it is suggested that a Motion by the Commission should include the following:

Successor Petitioner, Regency Puakea Properties, LLC **has** shown good cause for the motion;

Successor Petitioner, **has** provided adequate or a preponderance of evidence that the affordable housing requirements have been satisfied and for the release of Condition 2;

That the Commission authorizes the Executive Officer to affirm to the U.S. Department of Housing and Urban Development that the affordable housing requirement no longer applies to Regency Puakea Properties; and,

The Commission authorizes the Chair to sign the Decision and Order.