



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

QUEEN LILI'UOKALANI TRUST

To Amend the Agricultural District Boundary into the Urban District for approximately 919.366 acres and to Amend the Conservation District Boundary into the Urban District for approximately 188.358 acres, at Keahuolū, Island, County and State of Hawai'i, Hawai'i Tax Map Key Nos. (3) 7-4-08: por. 2, por. 12

DOCKET NO. A89-646

ORDER GRANTING PETITIONER
QUEEN LILI'UOKALANI TRUST'S
MOTION FOR ORDER MODIFYING
THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER FILED
AUGUST 28, 1991; CERTIFICATE OF
SERVICE

LAND USE COMMISSION
STATE OF HAWAII

2016 APR 21 P 12:22

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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, HAWAII.

By

DANIEL E. ORODENKER

Executive Officer

04/21/2016

Date



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On August 14, 2015, Petitioner QUEEN LILI'UOKALANI TRUST, a private operating foundation ("Petitioner") filed with the Land Use Commission of the State of Hawai'i ("Commission") a *Motion for Order Modifying the Findings of Fact, Conclusions of Law and Decision and Order filed August 28, 1991; Affidavit of LeeAnn Crabbe; Exhibits "1" "4"* in Docket No. A89-646 ("Motion to Modify"). The Motion to Modify requested the Commission issue an order modifying the Commission's *Findings of Fact, Conclusions of Law and Decision and Order filed August 28, 1991* ("1991 Decision and Order"), to remove 212.333 acres of

Agricultural Land makai of Queen Ka‘ahumanu Highway (“Phase III”) from the docket and the Petition Area that is subject to the 1991 Decision and Order. Phase III is further identified as Tax Map Key (“TMK”) No. (3) 7-4-008:002 (por.) and is approximately shown on Exhibit “1” to the Motion to Modify.

The Commission, having duly considered the Motion to Modify, the arguments and representations by the parties, and the record in this docket finds and concludes the following:

FINDINGS OF FACT

1. Petitioner is a private operating foundation which provides benefits to orphans and destitute children of Hawaiian ancestry. On August 4, 1989, and by subsequent amendments on January 18, 31, and on February 5, 1991 (hereinafter collectively referred to as the “1991 Petition”), Petitioner petitioned the Commission to amend the land use district boundary to reclassify its land at Keahuolū, Island, County and State of Hawai‘i, identified by Tax Map Key Nos. 7-4-08: por. 2 and 7-4-08: por. 12, to the State Urban District to permit the development of said lands.

2. The 1991 Petition identified three phases of development. Phase I and Phase II consisted of 545.391 acres of Agricultural and Conservation land mauka of Queen Ka‘ahumanu Highway, previously identified as TMK No. 7-4-08: por. 12 in the 1991 Decision and Order, but now identified as TMK Nos. (3) 7-4-020:009, 010, 011, 012, 013, 014, 015, 022, and 028 (collectively “Phase I and II”). Phase III consisted of 212.333 acres of Agricultural land makai of Queen Ka‘ahumanu Highway, identified as TMK No. 7-4-08: por. 2 (“Phase III”).

3. Upon hearing and review of the testimony and evidence submitted in support of the 1991 Petition, the Commission entered its 1991 Decision and Order in which it reclassified Phase I and II to the Urban District. In the 1991 Decision and Order, the Commission also ordered that Phase III be “incrementally reclassified” pursuant to Hawaii Administrative Rules

(“HAR”) § 15-15-78 for redistricting from the Agricultural District to the Urban District pending a showing that Petitioner has made substantial completion of Phase I and II.

4. The 1991 Decision and Order specifically states:

IT IS HEREBY FURTHER ORDERED that the portion of the Property designated “Phase III” (212 acres) in Petitioner’s Phasing Plan (Exhibit 18), representing a portion of the Property, consisting of approximately 212.333 acres in the Agricultural District, situated at Keahuolu, Island, County and State of Hawai‘i, Hawai‘i Tax Map Key No.: 7-4-08: por. 2, as approximately shown on Exhibit “A” attached hereto and incorporated herein by reference shall be and the same is hereby incrementally reclassified pursuant to Commission Rule 15-15-78, and that redistricting from the Agricultural District to the Urban District will be granted upon receipt of an application by Petitioner for redistricting of this second increment (Phase III) upon a prima facie showing that Petitioner has made substantial completion of first increment (Phase I and II).

5. On August 14, 2015, Petitioner filed its Motion to Modify the 1991 Decision and Order seeking to remove Phase III from the docket and the incremental districting for the subject Petition Area.

6. On August 24, 2015, OP filed a request for an extension to filing responses on Petitioner’s Motion until September 14, 2015.

7. On August 25, 2015, the Commission sent a letter granting an extension to OP and all other parties.

8. On September 28, 2015, OP filed a request for another extension to filing responses to Petitioner’s Motion until October 22, 2015.

9. On September 30, 2015, the Commission sent a letter granting the extension request to OP and all other parties.

10. On October 16, 2015, Petitioner filed with the Commission its *Supplemental Memorandum in Support of its Motion for Order Modifying the Findings of Fact, Conclusions of*

Law, and Decision and Order filed August 28, 1991; Affidavit of LeeAnn Crabbe; Exhibit "5," which provided further background regarding the 1991 Petition and the Motion to Modify.

11. On October 22, 2015, OP filed a request for a further extension to filing responses to Petitioner's Motion until November 6, 2015.

12. On October 22, 2015, the Commission sent a letter granting the extension request to OP and all other parties.

13. On November 6, 2015, the State Office of Planning ("OP") filed its *Response to Petitioner's Motion for Order Modifying the Findings of Fact, Conclusions of Law, and Decision and Order filed August 28, 1991; Office of Planning Exhibit 1*, requesting additional information and reserving the right to offer further comments if additional information is submitted.

14. On November 6, 2015, the County of Hawai'i, Department of Planning ("County") sent an e-mail request for an extension on filing comments on Petitioner's Motion.

15. On November 20, 2015, the Commission sent a letter to Petitioner requesting additional information to support its motion and sent a letter granting the extension request for additional time to comment to the County and all other parties pending receipt of supplemental information from Petitioner.

16. On January 11, 2016, Petitioner filed its *Second Supplemental Memo in Support of its Motion for Order Modifying the Findings of Fact, Conclusions of Law, and Decision and Order filed Aug. 28, 1991; Affidavit of LeeAnn Crabbe; Exhibits "6" – "10,"* responding to the OP's Response and the Commission's letter.

17. On January 22, 2016, the Planning Department, County of Hawaii ("County") filed its *Response to Petitioner's First and Second Supplemental Memorandum in Support of its*

Motion for Order Modifying the Findings of Fact, Conclusions of Law, and Decision and Order filed August 28, 1991; County Exhibits "1" – "3," supporting the Motion to Modify.

18. On March 4, 2016, the OP filed its *Supplemental Response to Queen Liliuokalani Trust's Motion for Order Modifying The Findings of Fact, Conclusions of Law, and Decision and Order filed August 28, 1991; Exhibit 1*, supporting the Motion to Modify.

19. On March 10, 2016, the Commission mailed the meeting notice and agenda for its March 23-24, 2016, meeting in Kona, Hawai'i to all parties, and the Statewide and Hawai'i County mailing lists.

20. On March 11, 2016, Petitioner filed its *Third Supplemental Memo in Support of its Mtn. for Order Modifying the Findings of Fact, Conclusions of Law, and Decision and Order filed Aug. 28, 1991; Affidavit of LeeAnn Crabbe; Exhibits "11" "12,"* which made a technical correction to the acreage information provided in Petitioner's earlier filings.

21. On March 21, 2016, the Commission received correspondence from Greater Kona Community Council ("Intervener") representative, Mark Van Pernis, advising that he no longer represented the Intervener which was involved in the original district boundary amendment proceedings and would not be appearing. Additional background checking indicates that the Greater Kona Community Council disbanded in 1994.

22. On March 22, 2016, OP filed an update and revision to OP Exhibit 1 (State Department of Transportation letter) in Supplemental Response of March 4, 2016.

23. The Commission received no formal requests to intervene in the Motion to Modify proceedings.

24. On March 23 and 24, 2016, the Commission met in Kailua-Kona, Hawai'i and considered Petitioner's Motion to Modify. Benjamin A. Kudo, Esq., Clara Park, Esq., and

LeeAnn Crabbe appeared on behalf of Petitioner; Bryan Yee, Esq. and Rodney Funakoshi appeared on behalf of OP; and, Amy Self, Esq., Daryn Arai and Duane Kanuha appeared on behalf of the County.

25. At the meeting, the Commission provided an opportunity for public testimony. The Commission heard public testimony from Ken Melrose in support, and Kirsten Kahaloa representing the Kona Chamber of Commerce also in support.

26. At the meeting on March 23, 2016, the Petitioner introduced Petitioner's Exhibits 1 to 12 and filed two new Petitioner's Exhibits 13 and 14. OP introduced OP Exhibits 1, Supplemental Exhibit 1 Department of Transportation ("DOT") letter, and an updated supplement to the DOT letter. The County introduced County Exhibits 1 to 3. There were no objections by any of the parties. The Chair admitted all parties' exhibits into the record. On March 24, 2016, the Petitioner introduced Petitioner's Exhibit 15 Resume and Qualifications for Tim Cornwell (replacement testifier for Richard Gollis) and a copy of Findings of Fact, Conclusions of Law, and Decision and Order for A79-470 Trustees of the Lili'uokalani Trust (by request of Commissioner Scheuer for Commission review).

27. LeeAnn Crabbe, Vice President for Petitioner, and Tim Cornwell, of The Concord Group, testified on Petitioner's behalf and addressed questions by the Commissioners. Mr. Cornwell was qualified as an expert witness in market feasibility analysis. Ms. Crabbe testified that QLT would not develop the remainder of Phase III lands before getting Commission approval of a petition for district boundary amendment; would not develop "gentlemen farms" in Phase III; and would not sequentially redistrict additional portions of Phase III in less than 15 acre increments, with the exception of the parcel to be included in the Makalapua Project District ("MPD").

28. Petitioner has completed the backbone infrastructure improvements required under the 1991 Decision and Order, as well as some development of Phases I and II and the conditions applicable to Phases I and II. However, Petitioner has not been able to substantially complete Phases I and II as originally planned in the 1991 Petition.

29. The downward market trends and recessions that occurred between 1990 and 2015 were unanticipated and affected the development demand for the 1991 Petition's original planned uses.

30. In addition, Petitioner discovered that the severe slopes of the lands in the Phase I and II parcels were better suited for smaller footprint uses.

31. Under the 1991 Decision and Order, Phase III remains subject to incremental districting from the Agricultural District to the Urban District because the 1991 Decision and Order requires the completion of Phases I and II before Phase III can be reclassified.

32. Petitioner has revised its development strategy for its Keahuolū lands, including Phase III, to better respond to community and market needs and to correspond with the Kona Community Development Plan ("Kona CDP"). Petitioner provided a conceptual overview of the two projects that it plans to develop: the MPD development, and the Keahuolū Land Plan development.

33. Petitioner filed the Motion to Modify to release the Phase III lands from incremental districting so that the Phase III lands can be incorporated into Petitioner's revised development strategy.

34. After Phase III is released from incremental districting, Petitioner will first seek reclassification of a less than 15-acre portion of Phase III through the County of Hawai'i, to be included in the MPD development. Petitioner will later seek reclassification of the remainder of

Phase III through a new petition for district boundary amendment to be filed with the Commission.

35. The release of Phase III lands for inclusion in the MPD development is critical because these lands are necessary to attract the types of tenants needed to support a regional commercial center as envisioned in the Kona CDP, and to generate the revenue needed to support the larger-scale Keahuolū Land Plan. The MPD development represents an immediate opportunity with significant retail and hotel interest, and Petitioner is already in active discussions regarding the MPD development.

36. The County stated its support of the Motion to Modify and addressed questions by the Commissioners. The County agreed that stagnation has occurred on commercial development within Petitioner's Phase I and II, with growth in recent years concentrated on lands situated makai of the Queen Ka'ahumanu Highway and immediately adjacent to the south of Phase III. The County believes that Petitioner's MPD development concept, which calls for the inclusion of a portion of the Phase III lands, will be a step towards establishing a Regional Center Transit Oriented Development as called for in the Kona CDP.

37. The OP stated its support of the Motion to Modify and addressed questions by the Commissioners. The OP requested that Petitioner provide OP with one hard copy and one electronic copy of its application for district boundary amendment with the County of Hawai'i within 24 hours of filing. The OP also recommended that Petitioner and the County consult with the State Department of Transportation, Department of Education, Department of Defense, Department of Land and Natural Resources, and Department of Health before the reclassification of the less than 15-acre area.

38. Following discussion by the Commissioners, a motion was made and seconded to grant the Motion to Modify. There being a vote tally of 7 ayes, 0 nays, and 1 absent, the motion carried.

CONCLUSIONS OF LAW

1. Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a construction of law; any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

2. HAR § 15-15-94 states:

(a) If a petitioner, pursuant to this subsection, desires to have a . . . modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.

(b) For good cause shown, the commission may act to . . . modify the commission's order.

(c) Any . . . modifications to the commission's order shall follow the procedures set forth in subchapter 11.

3. Under HAR §15-15-94(b), Petitioner has presented the Commission with good cause to modify the 1991 Decision and Order to remove Phase III from the docket and the incremental districting for the subject Petition Area.

ORDER

Having duly considered Petitioner's Motion to Modify, the oral and written arguments presented by the parties, the records and files herein, and a motion having been made at a hearing conducted on March 23 and 24, 2016, at Kailua-Kona, Hawai'i, and the motion having received

the affirmative votes required by HAR § 15-15-13, and there being good cause for the motion, the Commission ORDERS as follows:


1. The Motion to Modify filed by Petitioner is hereby GRANTED.
2. Within 24 hours of filing an application for district boundary amendment of a portion of Phase III with the County of Hawai‘i, Petitioner shall provide OP with one hard copy and one electronic copy of its application.
3. Petitioner comply with State DOT recommendations:
 - a. Road A, a proposed road connecting the development to Queen Ka‘ahumanu Highway between Hale Maka‘i Street and Makala Boulevard, shall be configured as a right-turn in and right-turn out (RIRO) for both highway approaches;
 - b. The conversion of the Hale Maka‘i Street intersection with Queen Ka‘ahumanu Highway to right-turn in and right-turn out, and the relocation of the traffic signal from this intersection to the proposed Manawalea Boulevard intersection with Queen Ka‘ahumanu Highway is under discussion and will be analyzed further; and,
 - c. Prepare and submit a Traffic Impact Analysis Report (“TIAR”) to DOT for review and acceptance prior to submittal of the application for district boundary amendment with the County of Hawai‘i . The TIAR shall include a discussion and calculation of the new QLT development’s fair-share contribution for regional roadway improvements and may propose specific improvements that would satisfy the project’s fair-share contribution.
4. Petitioner and the County shall consult with the State Department of Transportation, Department of Education, Department of Defense, Department of Land and Natural Resources, and Department of Health before the reclassification of a portion of Phase III by the County.

I. ADOPTION OF ORDER

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

Done at Kahului, Maui, this 21st day of April, 2016, per motion on March 24, 2016.

APPROVED AS TO FORM



Deputy Attorney General


LAND USE COMMISSION
STATE OF HAWAII

By 

EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

04/21/2016

Certified by:


DANIEL E. ORODENKER
Executive Officer



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I hereby certify that a copy of the ORDER GRANTING PETITIONER QUEEN LILI'UOKALANI TRUST'S MOTION FOR ORDER MODIFYING THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FILED AUGUST 28, 1991 was served upon the following by either hand delivery or deposit the same in the U.S. Postal Service by regular or certified mail as noted:

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Dated: Honolulu, Hawai'i, 04/21/2016.



DANIEL E. ORODENKER
Executive Officer