

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition ) DOCKET NO. DR07-34  
 )  
 of )  
 ) DECLARATORY ORDER  
 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 )  
 )  
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DECLARATORY ORDER

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the matter of the Petition ) DOCKET NO. DR07-34  
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BIG ISLAND COUNTRY CLUB )  
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in Docket No. A05-762/Big Island )  
Country Club Homes, LLC )  
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DECLARATORY ORDER

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.

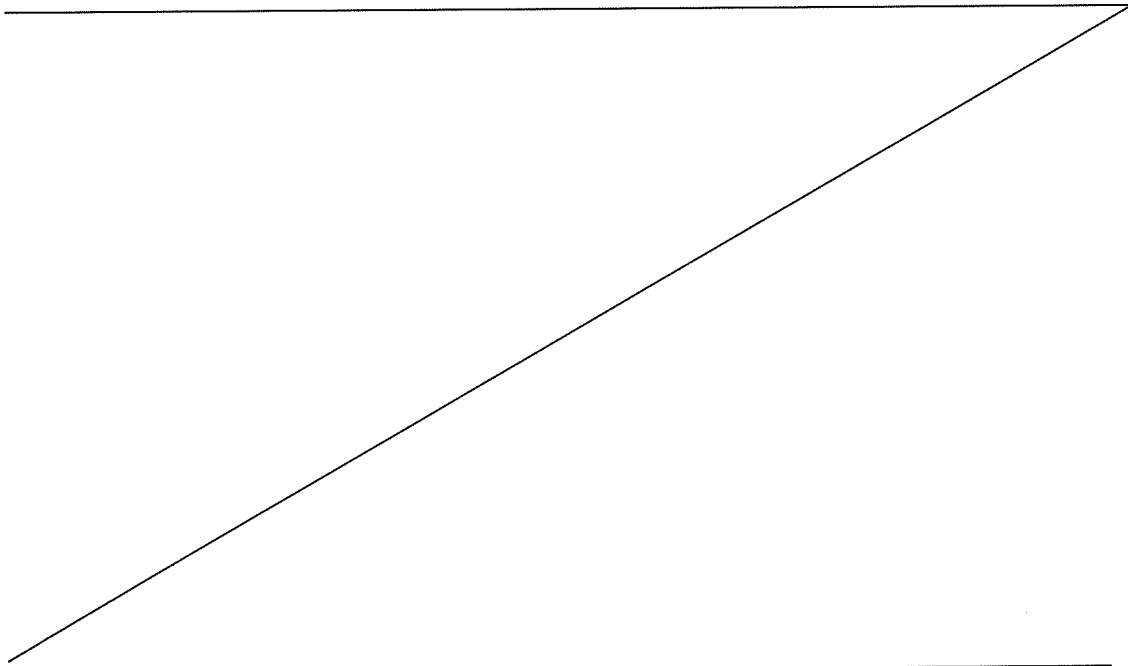
On April 26, 2007, the LUC met in Lihu`e, Kaua`i, Hawai`i, to consider the Petition pursuant to section 15-15-100, HAR. R. Ben Tsukazaki, Esq. appeared on behalf of the Petitioner. Bobbi Jean Leithead-Todd, Esq., provided argument on the Petition on behalf of the County of Hawai`i Planning Department (“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 Honolulu Hawaii, this 6th day of June, 2007, per motion on April 26, 2007.

APPROVED AS TO FORM


Diane Jackson  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII

By Lisa Judge  
LISA JUDGE  
Chairperson and Commissioner

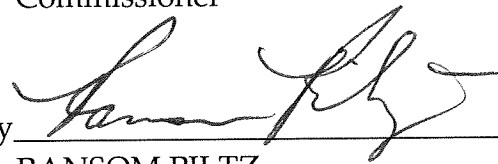
By (absent)  
MICHAEL FORMBY  
Vice-Chairperson and Commissioner

By (absent)  
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

By   
THOMAS CONTRADES  
Commissioner


By (absent)  
KYONG-SU IM  
Commissioner

By \_\_\_\_\_  
DUANE KANUHA  
Commissioner

By   
RANSOM PILTZ  
Commissioner

By   
NICHOLAS TEVES  
Commissioner

Filed and effective on  
JUN - 6 2007

By   
REUBEN WONG  
Commissioner

Certified by:

  
ANTHONY J. H. CHING

BEFORE THE LAND USE COMMISSION

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Country Club Homes, LLC	)	

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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  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

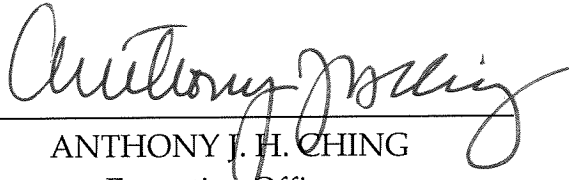
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Planning Dept. County of Hawaii  
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Hilo, Hawaii 96720

CERT: R. BEN TSUKAZAKI, Esq.  
85 W. Lanikaula Street  
Hilo, Hawaii 96720

Dated: Honolulu, Hawaii, JUN - 6 2007.

  
\_\_\_\_\_  
ANTHONY J. H. CHING  
Executive Officer