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LAND USE COMMISSION
STATE OF HAWAI'I

ADOPTION OF ORDER
A92-683 HALEKUA DEVELOPMENT (O'ahu))
ADMINISTRATIVE RULES)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a meeting at the following Video Conference Centers simultaneously: O'ahu-Kalanimoku Building, 1151 Punchbowl Street, Room B10 Honolulu, Hawai'i; Maui-Wailuku Judiciary Building, 2145 Main Street, First Floor, Wailuku, Hawai'i, commencing at 9:30 a.m. on October 4, 2013, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
Certified Shorthand Reporter

1 A P P E A R A N C E S

2 COMMISSIONERS:
3 SHELDON BIGA
4 KYLE CHOCK
5 DENNIS ESAKI
6 RONALD HELLER, CHAIRMAN
7 LANCE M. INOUYE
8 CHAD McDONALD
9 CAROL TORIGOE

7 EXECUTIVE OFFICER: DAN ORODENKER

8 CHIEF CLERK: RILEY HAKODA
9 STAFF PLANNERS: SCOTT DERRICKSON, BERT SARUWATARI
10 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

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11 Docket No. A92-683 Halekua Development (O'ahu)

12 For the Petitioner: CURTIS TABATA, ESQ.

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14 For the County: DAWN TAKEUCHI-APUNA, ESQ.
15 Deputy Corporation Counsel

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1 CHAIRMAN HELLER: Okay. Let's call the
2 meeting to order. I know the minutes have been
3 circulated. Are there any comments or corrections?
4 If not, is there is a motion to approve?

5 COMMISSIONER BIGA: So moved.

6 CHAIRMAN HELLER: Is there a second?

7 COMMISSIONER ESAKI: Second.

8 CHAIRMAN HELLER: All in favor say aye.

9 COMMISSIONERS: "Aye".

10 COMMISSIONER BIGA: "Aye".

11 CHAIRMAN HELLER: Any opposed? The minutes
12 are approved. The next order of business is the
13 tentative meeting schedule. I'll ask the Executive
14 Officer to brief us on that.

15 MR. ORODENKER: Thank you, Mr. Chair. On
16 October 17 we'll be on Maui for oral argument and
17 decision-making for Maui R&T and CMBY.

18 On November 7th and 8th we'll be here on
19 O'ahu at the Airport Conference Center Room No. 3 for
20 Kuilima Development Company Corporation's Defend O'ahu
21 Coalition renewed Motion for Issuance of an Order to
22 Show Cause.

23 On November 21st and 22nd we'll have that
24 open for any continued hearings if necessary for
25 Kuilima. December 11 and 12 is currently open. That

1 brings us to the end of the business.

2 CHAIRMAN HELLER: Thank you. The next item
3 on the agenda is Adoption of Order for A92-683 Halekua
4 Development. This is an action meeting to approve the
5 Form of the Order for Petitioner's Motion for Order
6 Amending Amended Findings of Fact, Conclusions of Law
7 and Decision and Order dated October 1, 1996. It's
8 being conducted via video conference linking
9 conference centers on O'ahu and Maui.

10 I'll ask our neighbor island Commissioner
11 to acknowledge that he's present to verify that the
12 audio is working and that he's ready to begin the
13 hearing. Commissioner Biga?

14 COMMISSIONER BIGA: Yes.

15 CHAIRMAN HELLER: Okay. Thank you.
16 Present on O'ahu we have Commissioners Esaki, Chock,
17 Inouye, McDonald, Torigoe, Heller, and the LUC staff,
18 representatives of the city and county and the
19 Petitioner.

20 Let me update the record. On August 22,
21 2013 the Commission met in Honolulu and voted to grant
22 Petitioner's Motion for Order Amending Amended
23 Findings of Fact, Conclusions of Law and Decision and
24 Order dated October 1, 1996.

25 On September 25, 2013 the Commission mailed

1 the agenda for the October 4, 2013 meeting to the
2 parties and to the statewide Maui and O'ahu mailing
3 lists. Is there anyone present today who wishes to
4 provide public testimony on this matter? Did we have
5 anyone signed up?

6 MR. ORODENKER: Mr. Chair, we have had no
7 one signed up to testify.

8 CHAIRMAN HELLER: Does anyone in the room
9 wish to speak on this matter? Let's have the parties
10 identify themselves please.

11 MR. TABATA: Good morning, Chair, Members
12 of the Commission, Curtis Tabata appearing on behalf
13 of the Petitioner, Kam Partners IV, Royal Kunia
14 Properties, LLC. Also present is Richard Riegels of
15 Stanford Carr Development.

16 CHAIRMAN HELLER: Thank you. Do we have a
17 representative from the City?

18 MS. TAKEUCHI-APUNA: Good morning. Deputy
19 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
20 the Department of Land Use and Permitting. Here with
21 me today is Mike Watkins.

22 CHAIRMAN HELLER: No one from OP at this
23 time? Commissioners, you have the form of the Order,
24 the proposed Order, granting the Petition in this
25 Docket No. A92-683. The Chair will entertain a Motion

1 to Approve the form of the Order. Commissioners, what
2 is your pleasure? (pause) Is there a motion to
3 approve the form?

4 COMMISSIONER McDONALD: So moved, Chair.

5 CHAIRMAN HELLER: Is there a second?

6 COMMISSIONER CHOCK: Second.

7 CHAIRMAN HELLER: Thank you. Any
8 discussion, questions or comments? If not will you
9 call for the vote.

10 MR. ORODENKER: Thank you, Mr. Chairman.
11 The motion is to Approve the Form of the Order
12 Granting Motion Amending Findings of Fact, Conclusions
13 of Law and Decision and Order filed on October 1st,
14 1996 in case A92-683 Halekua Development.
15 Commissioner McDonald?

16 COMMISSIONER McDONALD: Yes.

17 MR. ORODENKER: Commissioner Chock?

18 COMMISSIONER CHOCK: Yes.

19 MR. ORODENKER: Commissioner Matsumura is
20 excused. Commissioner Biga?

21 COMMISSIONER BIGA: Yes.

22 MR. ORODENKER: Commissioner Torigoe?

23 COMMISSIONER TORIGOE: Yes.

24 MR. ORODENKER: Commissioner Esaki?

25 COMMISSIONER ESAKI: Yes.

1 MR. ORODENKER: Commissioner Inouye?

2 COMMISSIONER INOUE: Yes.

3 MR. ORODENKER: Chair Heller?

4 CHAIRMAN HELLER: Yes.

5 MR. ORODENKER: Mr. Chair, the motion
6 carries unanimously.

7 CHAIRMAN HELLER: Thank you. Is there
8 anything further on this agenda item?

9 MR. TABATA: Petitioner has nothing more.
10 Thank you.

11 CHAIRMAN HELLER: Thank you. If not, then
12 our next item is the Administrative Rules: To
13 consider approval of the final form of the proposed
14 amendments to the LUC Administrative Rules so that
15 they can be submitted to the Governor. Again, these
16 have been circulated to the Commissioners.

17 Is there anyone -- I realize we've already
18 had public meetings on this, but is there anyone who
19 wishes to provide further public comment on the rules
20 at this time? I'll note for the record there's no
21 response.

22 Commissioners, is there any discussion
23 about the proposed rule amendments? (pause)
24 Commissioners, what is your pleasure? Do we have a
25 motion for approval of the final form?

1 MR. ORODENKER: Mr. Chair, what staff is
2 requesting is that the Commission adopt the amended
3 Rules of Practice and Procedure in the current form
4 and authorize staff to transmit the rules to the
5 Governor for final approval.

6 Staff is also requesting authorization to
7 make minor non-substantive changes to the rules to
8 correct typographical errors to conform the language
9 and format to legal requirements, and make other minor
10 changes as deemed necessary.

11 We still have -- once we submit them to the
12 Governor there still is a process where they may ask
13 us to make non-substantive changes to correct format
14 and to conform language and so forth, and so on. So
15 that's actually the motion that we're requesting.

16 CHAIRMAN HELLER: All right.
17 Commissioners, is there a motion?

18 COMMISSIONER BIGA: So moved.

19 CHAIRMAN HELLER: First let's get a second
20 then we can have discussion. Is there a second?

21 COMMISSIONER ESAKI: Second.

22 CHAIRMAN HELLER: All right. Discussion?

23 COMMISSIONER INOUYE: Anyone here present
24 that (inaudible).

25 THE REPORTER: Excuse me. I cannot hear.

1 COMMISSIONER INOUYE: I'm sorry. Anyone
2 here, especially representing the state or the city,
3 have any problems with the proposed rules as drafted,
4 I wish to hear.

5 MS. TAKEUCHI-APUNA: Speaking on behalf of
6 city I don't think we've gotten the latest draft. The
7 draft where we have provided our comments, those were
8 our comments. I'm not sure if those were integrated.

9 COMMISSIONER INOUYE: There was an attempt
10 to do so. I think that was posted a couple days ago.
11 Go ahead.

12 MR. ORODENKER: Commissioner Inouye, we
13 received comments -- well, let me kind of go through
14 the process a little bit. Public hearings were held
15 on all the islands for the month of September. On
16 September 5th a hearing was held on Maui. On
17 September 10th a hearing was held on O'ahu, on
18 September 11th on Moloka'i, on September 18th on the
19 Big Island, September 23rd on Lana'i and
20 September 25th on Kaua'i.

21 Throughout the hearings no substantive
22 comments were received. There were a number of
23 general comments, but no substantive ones. We did
24 receive written comments from the City and County of
25 Honolulu on September 24th. I can briefly address

1 those comments if you'd like. We posted the comments
2 on the website so I won't reiterate the comments. The
3 Commissioners have those comments or have seen those
4 comments.

5 With regard to item No. 1 in the County
6 comments a change was made to section 15-15-96 to add
7 the word "first". The County comment was that the
8 timeline with regard to submittals to special use
9 permits was not clear. So we made it clear that the
10 special use permits had to go to the County first
11 before they came to the Land Use Commission.

12 Their second comment was with regard to the
13 15-acre distinction in Section 15-15-120(b), the IAL
14 section. On further review it was discovered that
15 reference to the 15-acre distinction was an error in
16 drafting. There is no 15-acre distinction in the IAL
17 section Chapter 205. So we appreciate them pointing
18 out that there was a 15-acre distinction in there
19 because we had to remove it.

20 There were a number of comments with regard
21 to definitions and further clarifying the meaning of
22 certain sections. One of those was they were asking
23 for clarification as to what a transportation market
24 should be. We believe that those type of things
25 should be analyzed on a case-by-case basis based on

1 the evidence submitted.

2 There was a request -- there was a comment
3 that the language in section 15-15-122(A2) which talks
4 about, I believe, that's the section that talks about
5 moving lands.

6 A petition by a farmer or landowner for
7 designation of Important Agricultural Lands with a
8 rural conservation reclassification as well. There
9 was a comment that one of the sections, A2, that the
10 reclassification only talks about Urban Districts.
11 They were commenting that the language should include
12 rural.

13 However, a review of chapter 205 reveals
14 that it does not refer to rural in that subsection.
15 It only refers to urban. So that change was not made.

16 We've made some changes to language that
17 are consistent with what the County's recommendations
18 were that were non-substantive. Most all these
19 changes were deemed non-substantive in fact. That was
20 really the gist of the County comments. The rest of
21 the changes were with regard to typographical errors
22 and language clarifications that were non-substantive.

23 There was a request to further define
24 "landowner". We believe that the concern is a valid
25 one. However, defining "landowner" in the current

1 context may result in a definition that would soon
2 find itself to be useless because there were so many
3 different ways to have ownership of property.

4 Limiting it through a definition was irresponsible in
5 this case. So we did not make those changes. Those
6 were the only comments that we received. As I
7 mentioned some were incorporated, some were not.

8 CHAIRMAN HELLER: So to confirm, all
9 comments received to date, including those from the
10 City were considered by staff and are reflected in the
11 latest draft.

12 MR. ORODENKER: That's correct, Mr.
13 Chairman.

14 CHAIRMAN HELLER: And OP had the
15 opportunity to submit comments as well.

16 MR. ORODENKER: OP -- the State -- the way
17 we undertook the review of these rules by state
18 agencies was to provide them to the state agencies
19 prior to us creating the draft that was sent to the
20 Governor and was placed on the website for public
21 review.

22 OP sent us comments that were voluminous.
23 We took a lot of those into account. I can't say we
24 were a hundred percent in agreement with them, but I
25 would say 90 percent of their comments were

1 incorporated into that original draft. We also got
2 comments from OHA, which were incorporated into the
3 document. DHHL did not comment. The Department of
4 Agriculture and Department of Land and Natural
5 Resources both commented. And those comments were
6 incorporated in the last draft.

7 CHAIRMAN HELLER: Thank you. Any other
8 comments or questions?

9 COMMISSIONER INOUYE: I just want to thank
10 those who took the time to provide comments because
11 that's how the rules will get better. I appreciate
12 that they have been looked at. It's just a comment.

13 CHAIRMAN HELLER: So we have a Motion to
14 Approve which has been seconded. If there's no
15 further discussion I guess we call for the vote.

16 MR. ORODENKER: Mr. Chair, I'd like to
17 clarify that the motion is to approve the draft rules
18 of practice and procedures, that they be accepted as a
19 substantive final draft, and that staff be authorized
20 to transmit the rules to the Governor for final
21 approval and adoption.

22 Staff is further authorized to make
23 non-substantive changes to the draft rules and correct
24 typographical errors, conform language and format to
25 make other minor non-substantive changes as it deems

1 necessary.

2 CHAIRMAN HELLER: Commissioner Biga, I
3 think it was your motion. Do you accept that as a
4 statement of your motion?

5 COMMISSIONER BIGA: Yes, Chair.

6 CHAIRMAN HELLER: Who was the second?

7 MR. ORODENKER: Dennis.

8 COMMISSIONER ESAKI: Yes.

9 CHAIRMAN HELLER: Please call the roll.

10 MR ORODENKER: Commissioner Biga?

11 COMMISSIONER BIGA: Yes.

12 MR. ORODENKER: Commissioner Esaki?

13 COMMISSIONER ESAKI: Yes.

14 MR. ORODENKER: Commissioner Matsumura is
15 excused. Commissioner Torigoe?

16 COMMISSIONER TORIGOE: Yes.

17 MR. ORODENKER: Commissioner McDonald?

18 COMMISSIONER McDONALD: Yes.

19 MR. ORODENKER: Commissioner Chock?

20 COMMISSIONER CHOCK: Yes.

21 MR. ORODENKER: Commissioner Inouye?

22 COMMISSIONER INOUYE: Yes.

23 MR. ORODENKER: Chair Heller?

24 CHAIRMAN HELLER: Yes.

25 MR. ORODENKER: Thank you, Mr. Chair.

1 The motion carries unanimously. I personally would
2 like to thank all the Commissioners and staff for
3 their help and support in this arduous task,
4 especially the various Commissioners who took the time
5 to read it closely and assist us in catching our
6 errors and mistakes. We appreciate it.

7 CHAIRMAN HELLER: Thank you. Anything
8 further on this agenda item? Any other business for
9 today's meeting? Is there a motion to adjourn?

10 COMMISSIONER INOUE: Move to adjourn.

11 COMMISSIONER BIGA: So moved.

12 CHAIRMAN HELLER: I'll treat that as a
13 second. Meeting is adjourned. Thank you.

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15 (The proceedings were adjourned at 9:50 a.m.)

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C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State of Hawai'i, do hereby certify;

That I was acting as court reporter in the foregoing LUC matters on the 4th day of October 2013;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

That the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matters.

DATED: This _____ day of _____ 2013

HOLLY M. HACKETT, HI CSR #130, RPR #5910
Certified Shorthand Reporter