

7210-03
February 4, 2011



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Mr. Orlando "Dan" Davidson, Executive Officer
State Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Subject: **2011 Annual Report**
Land Use Commission Docket A05-758
Pupukea Ridge Preservation Project
TMK Nos: 5-9-23: Por. 001; 5-9-24: 001, and 6-1-02: Por. 022

LAND USE COMMISSION
STATE OF HAWAII
2011 FEB -7 A 9:51

Dear Mr. Davidson:

In accordance with Condition No. 8 of the "Findings of Fact, Conclusions of Law, and Decision and Order" for the subject project granted by the State Land Use Commission (LUC) on April 24, 2006, transmitted herewith is a report on the progress and status of the project and compliance with the conditions of the Stand Land Use Boundary Amendment. The status of the conditions imposed from the April 21, 2006 approval is as follows:

1. *Conveyance of Lands for a State Park Reserve. Petitioner shall, upon receiving all necessary entitlements and governmental approvals, proceed with the consolidation, re-subdivision, and conveyance of approximately 79.031 acres of land, which shall include Petition Area A and adjacent Conservation District land, to the DLNR for a State Park Reserve, to be kept in perpetuity for the public good in maintenance and preservation of the view planes, open space, recreational values, and the cultural, historical, and natural qualities of Pupukea Ridge.*

The Petitioner, A Charitable Foundation (ACF), is continuing to obtain the necessary approvals needed to begin the process of consolidation and re-subdivision of the subject lands to be conveyed.

In the 2010 Annual Report we stated the Petitioner was in the process of obtaining a subzone designation for the 28.759 acre area reclassified into the Conservation District by the LUC before proceeding with subdivision and conveyance of the 79.031 acres to the State. The Application for Conservation Subzone Designation was submitted in May 2009. On November 19, 2009 the Board of Land and Natural Resources (BLNR) unanimously approved the Petitioner's Request for Public Hearing and Small Business Impact Determination for a Petition to Amend Title 13-5, Hawaii Administrative Rules (HAR) to Designate a Portion of the State Land Use Conservation District into the Resource Subzone.

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In addition to the BLNR's approval, the request for a public hearing also needed to be approved by the Governor. Pursuant to Administrative Directive No. 09-01 prior to formal publication of notice of public hearing on the proposed rule the Attorney General's approval "as to form" is required prior to submitting the rule to the Governor for public hearing. The Petitioner's Request for Approval as to the Form for Proposed Amendments to Chapter 13-5, Hawaii Administrative Rules is currently at the Attorney General's Office for review and approval. The Governor approved the request for a public hearing in October 2010.

A public hearing was conducted on December 14, 2010 at Sunset Beach Elementary School (see Attachment A). No one from the public attended the public hearing.

The BLNR approved the Resource Subzone designation on January 27, 2011. Minutes of the BLNR meeting are not available at this time.

A Conservation District Use Application for the consolidation and subdivision of property will be submitted to the Office of Conservation and Coastal Lands (OCCL) by April 2011.

Upon receiving approval from OCCL, a Subdivision Application will be submitted to the City & County of Honolulu Department of Planning and Permitting.

2. ***Farm Dwelling.*** *Farm dwelling(s) on Petition Area B, if any, shall be consistent with the DOH's sewage disposal rules and regulations. Any single-family dwelling on the lot shall be a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.*

The Petitioner will comply with this condition in the event that any farm dwellings are proposed for development.

3. ***Agricultural Uses.*** *Any future use of the retained 15.144 acres of land, which include Petition Area B, shall be consistent with City and County zoning, and Petitioner or any future owner shall not subdivide the retained 15.144 acres into more than two zoning or subdivided lots.*



Upon approval from the DLNR to consolidate and subdivide the conservation lands, the Petitioner intends to subdivide the agricultural land portion into two separate lots with road lot access to comply with this condition.

4. ***Maintenance of Trail System.*** *With the approval of DLNR, Petitioner shall be responsible for maintaining the existing trail system as currently configured in Petition Area A and the adjacent Conservation District land at its own cost following the conveyance of Petition Area A and the adjacent Conservation District land to the DLNR until such time as the DLNR decides to accept responsibility for the maintenance, or ten years from the date of this Decision and Order, whichever occurs first.*

ACF is maintaining the existing trail system with assistance from Happy Trails, a horseback riding operation. ACF will continue to maintain the trails for ten years from the date of the Decision and Order or until such a time as the DLNR decides to accept responsibility for the maintenance.

5. ***Previously Unidentified Burial/Archaeological/Historic Sites.*** *Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of development of the Petition Areas, then all development activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.*

This condition is acknowledged and will be complied with should such situations occur. If any burial, archaeological, or historic sites are discovered during the course of development of the area, all development activity will stop until the issuance of an archaeological clearance from the State Historic Preservation Division.

6. ***Compliance with Representations to the Commission.*** *Petitioner shall comply with the representations made to the Commission. Failure to so comply may result in reversion of the Petition Areas to their former classification, or change to a more appropriate classification.*

ACF will comply with the representations made to the Commission.

7. ***Notice of Change to Ownership Interest.*** *Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise*



voluntarily alter the ownership interests in the Petition Areas, prior to any development of the Petition Areas.

The condition is acknowledged and will be complied with should this situation arise.

8. ***Annual Reports.*** *Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP, and the DPP in connection with the status of the Petition Areas and the Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.*

This report constitutes the annual report submittal for the year 2011. A copy of this annual report will be sent to the Office of Planning and the City and County of Honolulu Department of Planning & Permitting.

9. ***Release of Conditions Imposed by the Commission.*** *The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Areas upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.*

Acknowledged.

10. ***Recording of Conditions.*** *Within seven days of the issuance of the Commissioner's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Areas are subject to conditions imposed herein by the Commission in the reclassification of the Petition Areas, and (b) shall file a copy of such recorded statement with the Commission.*

A statement that the Petition areas are subject to conditions imposed by the Commission, along with the Commission's Decision and Order, were recorded with the Bureau of Conveyances on June 6, 2006, and a copy of the recorded statement was filed with the Commission.

11. ***Recording of Conditions.*** *Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.*

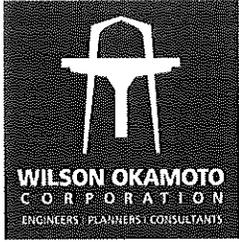
The Commission's Decision and Order was recorded with the Bureau of Conveyances on June 7, 2006.

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Please feel free to call me if you should have any questions regarding the status of any of the items above.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Fukuda". The signature is fluid and cursive.

Tracy Fukuda
Project Manager

Attachment

cc: Mr. Dave Druz, A Charitable Foundation
Mr. Abbey Seth-Mayer, Office of State Planning
Mr. David Tanoue, Department of Planning and Permitting
Mr. Curtis Tabata, Matsubara Lee & Kotake Attorneys at Law

ATTACHMENT A

Notice of Public Hearing on Proposed Amendment to
Chapter 13-5, Hawaii Administrative Rules to Designate
Conservation District Land Located at Pupukea, Oahu

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

**NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO CHAPTER
13-5, HAWAII ADMINISTRATIVE RULES TO DESIGNATE CONSERVATION
DISTRICT LAND LOCATED AT PUPUKEA, OAHU**

The Department of Land and Natural Resources (DLNR) will hold a public hearing for a Chapter 13-5, Hawaii Administrative Rule (HAR) amendment. DLNR is in receipt of a petition to designate undesignated Conservation District land known as TMK: (1) 5-9-024:001 and a portion of TMK: (1) 5-9-023: 001 located at Pupukea, Oahu into the Resource subzone.

The 6 p.m. public hearing shall be held on December 14, 2010, at Sunset Beach Elementary School located at 59-360 Kamehameha Highway, Haleiwa, Oahu.

All interested persons are urged to attend the public hearing to present relevant information and individual opinion for the DLNR to consider. At the public hearing or **postmark by January 14, 2011**, any person may file with the Board written comments or recommendations in support of or in opposition to the proposed subzone designation. Written testimony should be mailed to the Office of Conservation and Coastal Lands, P.O. Box 621, Honolulu, HI 96809. The Board of Land and Natural Resources shall take final action on this rule making at a future regularly scheduled Board meeting.

Materials are available for review between the hours of 7:45 am-4:00 pm in Honolulu at the DLNR Office of Conservation and Coastal Lands at the Kalanimoku Building, 1151 Punchbowl Street, Room 131. A copy of the application for conservation subzone designation shall be forwarded to the Waiialua Public Library. The subject proposal can be mailed to all persons for a fee of \$7.00 who have made a written request.

Disabled individuals planning to attend the hearing are asked to contact the Office of Conservation and Coastal Lands **at least four days in advance of the public hearing** to indicate if they have special needs which require accommodations. For more information regarding this matter, contact Tiger Mills at 587-0382.

BOARD OF LAND AND NATURAL RESOURCES

 Dated: 11/9/10

for LAURA H. THIELEN, Chairperson

PUBLICATION DATES: 11/14, 11/22, 11/29, 2010
Honolulu Star Advertiser