



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

2016 FEB 17 P 1:17  
LAND USE COMMISSION  
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. DR08-36
	)	
KO OLINA DEVELOPMENT, LLC	)	ORDER DENYING KO OLINA
	)	DEVELOPMENT, LLC'S MOTION FOR
For A Declaratory Order To Determine	)	RECONSIDERATION OF ORDER
Whether Petitioner's Location Of The	)	GRANTING MOTION TO DEFER
Public Boat Launch Ramp At Kalaeloa	)	ACTION OF PETITIONER'S STATUS
With The Installation Of The Proposed	)	REPORT FILED NOVEMBER 5, 2015;
Improvements Constitute Substantial	)	AND CERTIFICATE OF SERVICE
Compliance With Representations	)	
Made To The Land Use Commission	)	
_____	)	

ORDER DENYING KO OLINA DEVELOPMENT, LLC'S MOTION FOR  
RECONSIDERATION OF ORDER GRANTING MOTION TO DEFER ACTION OF  
PETITIONER'S STATUS REPORT FILED NOVEMBER 5, 2015

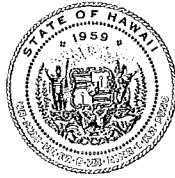
AND

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, Hawai'i.

February 17, 2016 by

Executive Officer



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ORDER DENYING KO OLINA DEVELOPMENT, LLC'S MOTION FOR  
RECONSIDERATION OF ORDER GRANTING MOTION TO DEFER ACTION OF  
PETITIONER'S STATUS REPORT FILED NOVEMBER 5, 2015

On November 12, 2015, Ko Olina Development, LLC ("Petitioner"), filed a Motion for Reconsideration of Order Granting Motion to Defer Action of Petitioner's Status Report Filed November 5, 2015 ("Motion for Reconsideration"). A Memorandum in Support of Motion ("Memorandum in Support") was attached to the Motion for Reconsideration. In its Memorandum in Support, Petitioner requested that the State of Hawai'i Land Use Commission ("Commission") issue an order vacating its Order Granting Motion to Defer Action of (sic) Petitioner's Status Report ("Order Granting

Motion to Defer Action”) filed on November 5, 2015, based on the grounds that (1) it fell outside of the 120-day period in which the Commission was required to take action following the close of the hearing on Petitioner’s Petition for Declaratory Order,<sup>1</sup> and therefore the Commission was without jurisdiction to enter further orders in this docket; and (2) it is an order that seeks to enforce the Commission’s Findings of Fact, Conclusions of Law, and Decision and Order (“Decision and Order”) filed on November 7, 2008, in this docket, and it is the DPP, not the Commission, which is the appropriate enforcement agency with respect to the Commission’s orders on O`ahu.

On November 19, 2015, the State of Hawai`i Office of Planning (“OP”) filed a Response to Petitioner’s Motion for Reconsideration of Order Granting Motion to Defer Action of Petitioner’s Status Report filed November 5, 2015.

On February 10, 2016, the Commission met in Honolulu, Hawai`i, to resume the status report meeting on the construction of the boat launch ramp inside the Ko Olina Marina previously held on October 16, 2015,<sup>2</sup> as well as to consider Petitioner’s Motion for Reconsideration.

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<sup>1</sup> The Commission closed the hearing on the Petition for Declaratory Order on August 8, 2008.

<sup>2</sup>At the October 16, 2015, meeting, the Commission deferred action on the status report for three months and requested (1) that the Commission’s Executive Officer receive questions from the Commissioners that could be addressed in writing by Petitioner and other relevant parties, including the City and County of Honolulu Department of Planning and Permitting (“DPP”), prior to the next scheduled meeting on the matter; (2) that the Commission’s staff and the Commission’s deputy attorney general provide a summary on the historical background on this matter to this Commission; and (3) that Petitioner and the DR08-36 Ko Olina Development, LLC

Order Denying Ko Olina Development, LLC’s Motion For Reconsideration Of Order Granting Motion To Defer Action Of Petitioner’s Status Report Filed November 5, 2015

Benjamin M. Matsubara, Esq.; Curtis T. Tabata, Esq.; and Ken Williams appeared on behalf of Petitioner. Also present were Bryan C. Yee, Esq., on behalf of OP and Don Kitaoka, Esq., and Kathy Sokugawa on behalf of the DPP. At the proceeding, the Commission heard public testimony on the matter from Creighton S. Q. Chang, Warren von Arnswaldt, and Rodney Ajifu.

Following the receipt of public testimony, Petitioner summarized the basis for its Motion for Reconsideration. OP thereafter noted its opposition to the Motion for Reconsideration, and the DPP stated that it took no position on the Motion for Reconsideration.

Following discussion, a motion was made and seconded to deny Petitioner's Motion for Reconsideration because the Commission's deferral of the status report by Ko Olina to obtain additional information is (1) consistent with the Commission's practice of requesting status reports on dockets to ensure compliance with the Commission's orders; and (2) neither an extension of the action the Commission took on the original declaratory order proceeding in this docket nor an enforcement action, and therefore it is well within the jurisdiction of the Commission. Thereafter, a vote was taken on this motion. There being a vote tally of 6 ayes and 2

excused, the motion carried.<sup>3</sup>

Petitioner, OP, and the DPP then proceeded to summarize their responses to the questions posed by the Commissioners on October 16, 2015, and as reflected in the Order Granting Motion to Defer Action.

Following discussion, a motion was made and seconded to acknowledge Petitioner's completion of the Ko Olina Boat Ramp in the Ko Olina Marina that is open to the public is in compliance with the Decision and Order filed on November 7, 2008, in this docket, and further to release Petitioner from the requirement of filing written quarterly status reports on the matter.<sup>4</sup> Thereafter, a vote was taken on this motion. There being a vote tally of 6 ayes and 2 excused, the motion carried.

#### ORDER

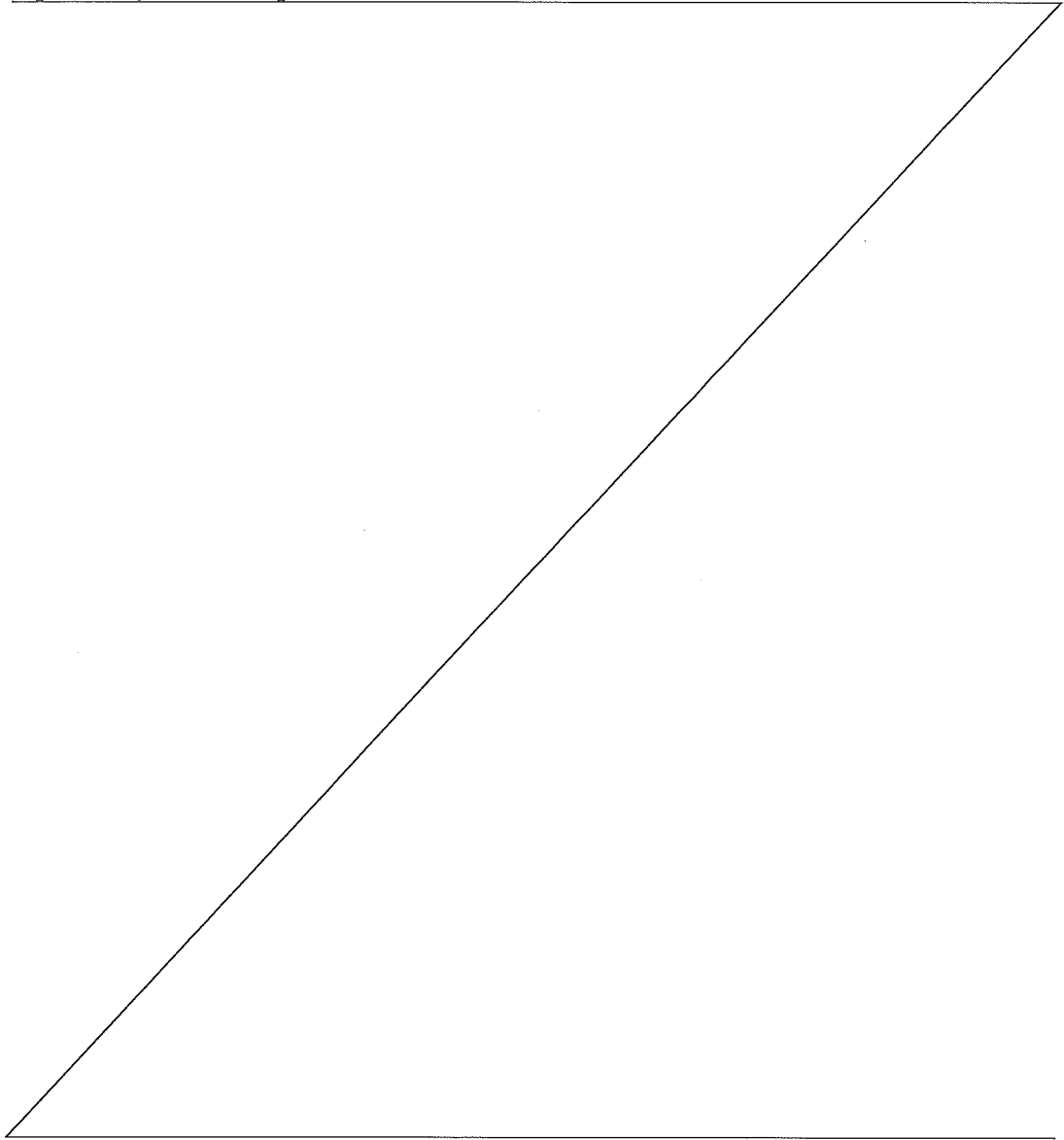
Having duly considered Petitioner's Motion for Reconsideration, the oral written arguments by OP and the DPP, and the public testimony, and a motion having been made at a meeting held on February 10, 2016, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by Hawai'i Administrative Rules §15-15-13, and there being good cause for the motion, this Commission ORDERS as follows:

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<sup>3</sup> There are currently eight sitting Commissioners on the Commission. The one remaining seat is vacant.

Petitioner's Motion for Reconsideration is DENIED. The Commission acknowledges Petitioner's completion of the Ko Olina Boat Ramp in the Ko Olina Marina that is open to the public is in compliance with the Decision and Order filed on November 7, 2008, in this docket. Accordingly, Petitioner is released from the requirement of filing written quarterly status reports on the matter.

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<sup>3</sup> On August 28, 2009, Petitioner provided a status report presentation to the Commission on the Ko Olina Boat Ramp. At the conclusion of the meeting, the Commission requested Petitioner to file written quarterly status reports on its efforts to relocate the boat ramp inside the Ko Olina Marina.

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 17th, day of February, 2016, per motion on February 10, 2016.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

*Diane Jackson*  
Deputy Attorney General

By *Edmund C. Aczon*  
EDMUND ACZON  
Chairperson and Commissioner

Filed and effective on:

2/17/2016

Certified by:

*[Signature]*  
DANIEL ORODENKER  
Executive Officer



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Made To The Land Use Commission )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER DENYING KO OLINA DEVELOPMENT, LLC'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO DEFER ACTION OF PETITIONER'S STATUS REPORT FILED NOVEMBER 5, 2015 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.            Leo Asuncion, Director  
                  Office of Planning  
                  P. O. Box 2359  
                  Honolulu, Hawaii 96804-2359

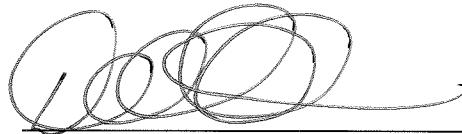


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888 Mililani Street, Eight Floor  
Honolulu, HI 96813

Dated: Honolulu, Hawaii, February 17, 2016.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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DANIEL ORODENKER  
Executive Officer