

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In The Matter Of The Petition Of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	ORDER GRANTING THE OFFICE
CORPORATION, A Hawai'i)	OF PLANNING'S AMENDED
Corporation)	MOTION TO EXEMPT HRT, LTD.'S
)	PROPERTY FROM THE ORDER TO
To Amend The Agricultural Land)	SHOW CAUSE GRANTED ON
Use District Boundary Into The)	FEBRUARY 26, 2003, PURSUANT
Urban Land Use District For)	TO THE STIPULATION FILED ON
Approximately 503.886 Acres Of Land)	DECEMBER 30, 2003
At Waikele And Ho'ae'ae, 'Ewa, O'ahu,)	
City And County Of Honolulu,)	
Hawai'i, Tax Map Key No. 9-4-02: 1,)	
Portion of 52, 70, And 71)	
_____)	

ORDER GRANTING THE OFFICE OF PLANNING'S AMENDED MOTION
TO EXEMPT HRT, LTD.'S PROPERTY FROM THE ORDER TO SHOW CAUSE
GRANTED ON FEBRUARY 26, 2003, PURSUANT TO THE
STIPULATION FILED ON DECEMBER 30, 2003

LAND USE COMMISSION
STATE OF HAWAII
2004 FEB 23 A 10:30

Conclusions of Law, and Decision and Order ("Decision and Order") dated October 1, 1996, if HRT fulfills the terms and conditions contained in the Stipulation filed with this Commission on December 30, 2003.² OP further requested that this Commission approve the other terms and conditions set forth in the Stipulation, which affect HRT's ownership of land within the Petition Area.

Attached to the Motion was an Affidavit Of John W. K. Chang ("Affidavit"), Deputy Attorney General for the State of Hawai`i and the attorney for OP. The Affidavit stated, among other things, that i) on December 29, 2003, OP and HRT entered into a Stipulation, which provides that should Halekua Development Corporation ("Petitioner") fail to perform its obligation to convey 150 acres of agricultural land to the State of Hawai`i by January 31, 2004, then HRT shall proceed to acquire the 150-acre site from the Robinson Estate and other owners related to the Estate for conveyance to the State of Hawai`i no later than February 28, 2004; ii) in return for the 150-acre site, OP agreed to request from this Commission that the lands owned by HRT located within the Petition Area should not be reclassified for any use other than the present designation unless requested by HRT, that Petitioner's failure to fulfill any of the terms and conditions of the Decision and Order would have no adverse effect upon HRT's lands, and that should Petitioner not comply with any other conditions of the Decision and Order, HRT would be given notice and have a right to

² The Stipulation was also attached to the Motion as Exhibit "A."
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cure any default; iii) Condition Numbers 6, 9, 10, 18, and 24 would continue to apply but no longer encumber lands owned by HRT in the Petition Area; iv) Condition Numbers 21, 22, and 23 be modified; v) conveyance of the land to the State of Hawai`i would fulfill only that portion of Condition Number 19, and that the portion pertaining to Petitioner's obligation to provide offsite infrastructure to the 150 acres would continue to remain in full force and effect; and vi) this Commission approve the Stipulation along with all the terms therein.

The Commission considered the Motion at its meeting on January 15, 2004, in Honolulu, Hawai`i. John W. K. Chang, Esq., and Abe Mitsuda appeared on behalf of OP. Also present were Reuben S. F. Wong, Esq., on behalf of HRT; and Mike Watkins on behalf of the City and County of Honolulu Department of Planning and Permitting ("DPP"). Petitioner was served with a copy of the Motion but advised the Commission staff that it would not be present at this proceeding, and in fact was not present or represented.

At the meeting, this Commission heard public testimony from Richard K. Mirikitani, Esq., senior vice-president and corporate counsel at Castle and Cooke Hawaii ("CCH")³, and Walter Davison, Esq., attorney for CCH, who expressed concerns about the impact upon development of the Petition Area, the Kunia community, adjacent landowners such as CCH, and Petitioner's current bankruptcy proceedings if

³ Castle & Cooke Kunia is the managing general partner of Kunia Residential Partners, which is the developer of Royal Kunia Phase I that is located adjacent to the Petition Area.

the Motion were granted in its entirety.⁴ This Commission also heard testimony from OP's witness, Randy Teruya, Agricultural Asset Manager, Department of Agriculture ("DOA"), who reiterated the DOA's position that the 150-acre site has significant value because of its historically high crop yields, and ideal location, and also reiterated the DOA's desire to acquire the site to preserve agriculture in the State.

Following discussion, this Commission entered into evidence, without objection, HRT's metes and bounds property description and a map showing the 150-acre site proposed to be conveyed to the State as Exhibits 1 and 2, respectively.

Thereafter, HRT asked this Commission to i) acknowledge that if Petitioner fails to convey the 150-acre agricultural site to the State of Hawai'i by January 31, 2004, HRT will acquire the site at its own expense and convey it to the State of Hawai'i no later than February 28, 2004, as required by part (a) Condition Number 19, and ii) as a condition to the conveyance, agree not to reclassify or downzone lands in the Petition area presently owned by HRT. HRT further asked this Commission to disregard the relief sought for all of the other conditions that were specified in the Stipulation and have them remain in full force and effect. HRT clarified that this request would address that portion of Condition Number 19 pertaining to the conveyance of the site to the State of Hawai'i, but that Petitioner's obligation to provide infrastructure to the site as required by said condition would remain in full force and

⁴ CCH is the holder of a mortgage as it relates to Petitioner's interest in the Petition Area.
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effect. OP stated that it agreed with HRT's proposal and amended its Motion ("Amended Motion") consistent with HRT's request in this matter.

Following further discussion, a motion was made and seconded to grant OP's Amended Motion to provide that i) in the event Petitioner fails to comply with Condition Number 19 regarding the conveyance of the 150-acre agricultural park site to the State of Hawai'i by January 31, 2004, HRT shall proceed to acquire the site for conveyance to the State of Hawai'i no later than February 28, 2004, ii) the HRT lands within the Petition Area shall not be reclassified to the Agricultural District; iii) upon the completion of the conveyance of the 150-acre agricultural park site to the State, only that portion of Condition Number 19 pertaining to the conveyance of the agricultural park site to the State of Hawai'i shall be deemed satisfied and released; and iv) all other conditions to the Decision and Order shall remain in full force and effect. Following discussion by the Commissioners, the motion was restated to clarify that i) in the event Petitioner fails to comply with Condition Number 19 regarding the conveyance of the 150-acre agricultural park site to the State of Hawai'i by January 31, 2004, HRT shall proceed to acquire the site and convey it to the State of Hawai'i no later than February 28, 2004, ii) the HRT lands within the Petition Area at the time of filing of the Motion shall not be reclassified to the Agricultural District for purposes of this Commission's Order to Show Cause proceedings in this docket unless requested by HRT, its successors or interests, or HRT violates other conditions of approval; iii) HRT shall report back to this Commission in six months regarding the status of Petitioner's

bankruptcy proceedings; and iv) all other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect. There being a vote tally of 9 ayes, 0 nays, and 0 absent, the motion carried.

ORDER

Having duly considered OP's Amended Motion, the Affidavit, the statements made by the public witnesses, the arguments of OP, HRT, and the DPP, and a motion having been made at a meeting conducted on January 15, 2004, in Honolulu, 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 ORDERS as follows:

OP's Amended Motion is GRANTED, that for purposes of this Commission's Order to Show Cause proceedings in this docket, i) in the event Petitioner fails to comply with Condition Number 19 with respect to the conveyance of the 150-acre agricultural park site to the State of Hawai'i by January 31, 2004, HRT shall proceed to acquire the site and convey it to the State of Hawai'i no later than February 28, 2004; ii) the HRT lands within the Petition Area at the time of filing of the Motion shall not be reclassified to the Agricultural District unless requested by HRT, its successors or interests, or HRT violates other conditions of approval; and iii) HRT shall report back to this Commission in six months regarding the status of Petitioner's bankruptcy proceedings. All other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 20th day of February, 2004. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Kaanapali, Maui, Hawai`i, this 20th day of February, 2004, per motion on February 20, 2004.

APPROVED AS TO FORM

Deane Jackson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By Lawrence N.C. Ing
LAWRENCE N.C. ING
Chairperson and Commissioner

By P. Roy Catalani
P. ROY CATALANI
Vice-Chairperson and Commissioner

By Bruce A. Coppa
BRUCE A. COPPA
Vice-Chairperson and Commissioner

By 
PRAVIN DESAI
Commissioner

By Excused
KYONG-SU IM
Commissioner

By Absent
ISAAC FIESTA, JR.
Commissioner

By 
STEVEN LEE MONTGOMERY
Commissioner

Filed and effective on
February 23, 2004

By Excused
RANDALL F. SAKUMOTO
Commissioner

Certified by:


ANTHONY CHING

By 
PETER YUKIMURA
Commissioner

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City and County of Honolulu,)	
Hawai'i, Tax Map Key No. 9-4-02: 1,)	
portion of 52, 70, and 71)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to the Stipulation Filed on December 30, 2003 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. MARY LOU KOBAYASHI
 Office of Planning
 P. O. Box 2359
 Honolulu, Hawaii 96804-2359

CERT. JONATHAN S. DURRETT, ESQ.
 Stubenberg & Durrett
 1001 Bishop Street, 808 Pauahi Tower
 Honolulu, Hawaii 96813

CERT. DAVID ARAKAWA, ESQ.
Corporation Counsel
City & County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

CERT. ERIC CRISPIN, DIRECTOR
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

CERT. RUEBEN WONG, ESQ.
Central Pacific Plaza, Suite 2288
220 South King Street
Honolulu, Hawaii 96813

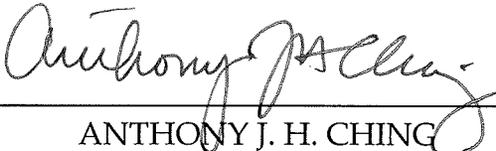
CERT. RICHARD MIRIKITANI, ESQ.
Castle & Cooke Hawaii, Inc.
P. O. Box 898900
Mililani, Hawaii 96789

CERT. STEVEN K.C. MAU, ESQ.
Rush, Moore, Craven, Sutton, Morry & Beh
737 Bishop Street, #2400
Honolulu, Hawaii 96813-3214

CERT. BRIAN KAU, ADMINISTRATOR – CHIEF ENGINEER
Agricultural Resource Management Division
Department of Agriculture
1428 S. King Street
Honolulu, Hawaii 96814-2512

CERT. JOHN CHANG, Esq.
Deputy Attorney General
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 23rd day of February, 2004.



ANTHONY J. H. CHING
Executive Officer