

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A92-686
	)	
AMFAC PROPERTY INVESTMENT	)	ORDER GRANTING MOTION TO
CORP., a Hawaii corporation, and	)	SUBSTITUTE PARTIES AND MODIFY
	)	CERTAIN CONDITIONS AND OTHER
HOUSING FINANCE &	)	MATTERS IN THE FINDINGS OF FACT,
DEVELOPMENT CORPORATION,	)	CONCLUSIONS OF LAW, AND DECISION
STATE OF HAWAII	)	AND ORDER DATED MAY 5, 1993
	)	
To Amend The Agricultural Land Use	)	
District Boundary into the Urban Land Use	)	
District for Approximately 298.992 Acres	)	
at Hanakao, Lahaina, Island and County	)	
of Maui, State of Hawaii, Formerly	)	
Bearing Tax Map Key Nos.: 4-4-02:02	)	
(por.) and 4-4-06:01 (por.) and Now	)	
Bearing Tax Map Key Nos. 4-4-15:	)	
parcels 1 through 29, 4-4-15:32, and	)	
portion of 4-4-15:33 (Second Taxation	)	
Division)	)	
	)	

ORDER GRANTING MOTION TO SUBSTITUTE PARTIES AND MODIFY CERTAIN  
CONDITIONS AND OTHER MATTERS IN THE FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER DATED MAY 5, 1993

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, HAWAII.

May 19 2009 BY   
 Date Executive Officer



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ORDER GRANTING MOTION TO SUBSTITUTE PARTIES AND MODIFY CERTAIN  
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LAW, AND DECISION AND ORDER DATED MAY 5, 1993

On June 12, 2008, pursuant to section 15-15-52 Hawai'i Administrative Rules ("HAR"),  
KAANAPALI LAND MANAGEMENT CORPORATION., a Hawaii corporation ("KLMC"),  
filed a MOTION TO SUBSTITUTE PARTIES AND MODIFY CERTAIN CONDITIONS AND  
OTHER MATTERS IN THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER DATED MAY 5, 1993, together with Affidavit and Verification of  
Howard Hanzawa; and Exhibits A to M ("Motion").

The Land Use Commission ("Commission"), having heard and examined the testimony the pleadings and evidence, and argument of counsel presented during the hearings on the Motion, hereby finds as follows:

**PROCEDURAL MATTERS**

1. On June 12, 2008, KLMC filed the Motion with the Commission.
2. On July 14, 2008, the Hawaii Housing Finance and Development Corporation ("HHFDC") filed a joinder in the Motion.
3. On July 25, 2008, the Planning Department of the County of Maui ("County") filed its response to the Motion.
4. On August 5, 2008, the State Office of Planning ("OP") filed its statement of partial support of the Motion.
5. On August 19, 2008, HHFDC filed with the Commission a letter supporting the Motion.
6. On August 22, 2008, the Mayor of the County of Maui filed a letter supporting the Motion.
7. On August 22, 2008, the Commission held a duly noticed action meeting at Makena, Maui, Hawaii, to consider the Motion.
8. At the August 22, 2008, meeting, the following individuals provided public testimony: Stan Fujimoto; Henry Ariyoshi; Jo-Ann Ridao; Hans Michel; George Ai Kala; May Fujiwara; Joseph Pluta; Robert Buchanan; Patricia Nishiyama; William Kennison; Ed Lindsey; Zeke Kaua; Kim Keo Kapahulehua; and Bill Kamai.
9. Action was deferred to allow the parties to work toward a resolution of the issues raised by the County in its July 25, 2008 memorandum. All parties agreed to the deferral.

10. On September 4, 2008, the Commission received the County's Notice of Withdrawal of its July 24, 2008 Memorandum in Response to the Motion.

11. On September 15, 2008, the Commission received correspondence from County of Maui's Office of the Mayor dated August 22, 2008 regarding the County of Maui's withdrawal of its July 24, 2008 memorandum.

12. On November 14, 2008, the Commission received the following:

- Office of Planning's Response to Motion to; and
- KLMC's Proposed Amended Findings of Fact, Conclusions of Law, and Decision and Order ("Proposed D&O").

13. On December 2, 2008, the Commission received Memorandum of County of Maui, Department of Planning, in Response to Petitioner's Motion to Substitute Parties and Modify Certain Conditions and Other Matters in the Findings of Fact, Conclusions of Law, and Decision and Order, Dated May 5, 1993 and Petitioners' Proposed Amended Findings of Fact, Conclusions of law, and Decision and Order, and Exhibit "A".

14. On December 29, 2008, the Commission received a copy of Petitioner's Response to Office of Planning's November 14, 2008 Response to Motion. The original was received on January 7, 2009.

15. On January 2, 2009, the Commission received Petitioner's Notice of Appearance of Co-Counsel for Kaanapali Land Management Corp.; Exhibit A (Letter of Authorization).

16. On January 8, 2009, at Waiakoa, Hawaii, the Commission held a duly noticed action meeting to consider the Motion. Scott Radovich, Esq., appeared on behalf of KLMC, and Bryan Yee, Esq., appeared on behalf of OP. The County had previously informed the Commission staff that it would not be present at the hearing.

17. On January 8, 2009, Howard Hanzawa, VP representing KLMC and Stan Fujimoto, representing HHFDC, testified in support of the Motion. The Commission received public testimony from Patricia Nishiyama, who also read testimony from Anthony Vierra and Stanley Abihai Jr.; and Clyde Hayashi-speaking on behalf of Hawaii LASIC (Laborers Union 368 and Signatory Contractors).

### **OWNERSHIP OF PETITION AREA**

18. KLMC, previously known as Kaanapali Development Corp., is a Hawaii corporation. Pursuant to a deed dated September 15, 2003, KLMC now owns all of the Petition Area, along with other lands. KLMC acquired the Petition Area from Pioneer Mill Company, LLC, the successor by merger to Pioneer Mill Company, Limited. KLMC and Pioneer Mill Company, LLC are affiliates of AMFAC Property Investment Corp. ("APIC"). The deed evidencing KLMC's ownership of the Petition Area and the Articles of Amendment evidencing the change in name to KLMC was filed with the Motion.

19. HHFDC is a public body and body corporate of the State of Hawaii. Pursuant to Act 180, Session Laws of Hawaii 2006, HHFDC is the successor agency to certain powers and authorities once held by HFDC and later assumed by the Housing and Community Development Corporation of Hawaii, including those relating to affordable housing projects approved under Act 15, Session Laws of Hawaii 1988 ("Act 15").

### **MODIFICATION OF CONDITIONS**

20. After entry of the original Decision and Order in 1993 (the "1993 D&O"), the Tax Map Key Numbers for the Petition Area were changed.

21. That portion of the Petition Area formerly bearing Tax Map Key Nos. 4-4-2 por. 2 and 4-4-6 por.1 now bears Tax Map Key Nos. 4-4-15: parcels 1-23; 4-4-15:32, and 4-4-15: por.33, comprises approximately 240.77 acres, and is called "Pu`ukoli`i Mauka."

22. That portion of the Petition Area formerly bearing Tax Map Key No. 4-4-2 por.2 and 4-4-6 por.1, now bears Tax Map Key Nos. 4-4-15: 24 through 31 and a portion of Tax Map Key No. 4-4-15: 33, and is called "Pu`ukoli`i Triangle."

23. After entry of the 1993 D&O, the original petitioner determined that the original project was not economically feasible.

24. Condition 5 of the 1993 D&O limited development of the original project to only Pu`ukoli`i Triangle, since construction on Pu`ukoli`i Mauka could commence only after completion of the Lahaina Bypass Road. Until the Lahaina Bypass Road is constructed, this condition cannot be satisfied.

25. Since entry of the 1993 D&O, the petitioner and its successors funded the design of the following improvements on Honoapiilani Highway, all of which are completed:

- (a) Widening approximately 1,000 feet of Honoapiilani Highway from two to four lanes from and north of its intersection with Kaanapali Parkway;
- (b) Installing a left turn storage lane and a separate right turn lane on the southbound approach of Honoapiilani Highway at its intersection with Kaanapali Parkway;
- (c) Installing improved signalization at the intersection of Honoapiilani Highway and Kaanapali Parkway.

26. After entry of the 1993 D&O, the State Department of Transportation ("DOT") and AMFAC/JMB Hawaii, Inc., an affiliate of KLMC, entered into the Lahaina Bypass Highway Development Agreement, dated June 16, 1993 ("Bypass Agreement"). By Bypass Agreement Assignment dated March 10, 2008, KLC Land Company, LLC, successor by merger to AMFAC/JMB, assigned, with DOT's consent, all of its rights, interests and obligations under the

Bypass Agreement to KLMC. By instrument dated March 10, 2008, KLMC and DOT amended portions of the Bypass Agreement.

27. The Bypass Agreement, as amended, contemplates the construction of the Bypass Highway by DOT. KLMC and its affiliates have timely complied with all terms and conditions of the Bypass Agreement and have expended approximately \$3 million to satisfy the terms of the Bypass Agreement, including:

- (a) The research, preparation and regulatory approval to an environmental impact statement for the entire Bypass Highway;
- (b) The civil and geotechnical engineering work to initiate construction of the first phase of the Bypass Highway;
- (c) The surveying and engineering work to determine the required right of way for almost the entire length of the Bypass Highway; and
- (d) The surveying and engineering work to subdivide KLMC's and its affiliates' lands mauka of the Kaanapali resort for the creation of the Bypass Highway corridor.

28. The original project included an affordable housing component pursuant to Act 15, Session Laws of Hawaii 1988. Act 15 sunsetted in 1993. Act 198, Session Laws of Hawaii 2005, granted the power and authority to "amend, delete, restate and otherwise modify the terms, conditions, plans, specifications, and all other matters relating, directly or indirectly" to any Act 15 housing project previously approved by HFDC or its successors. As to the Petition Area, Act 198 specifically required an agreement among the developer, HCDCH (now HHFDC), and the appropriate Maui County agency charged with the responsibility of administering affordable housing projects.

29. On or about April 7, 2008, KLMC, HHFDC and Maui County entered into an agreement which, among other things, modified and the affordable housing requirements for the Pu`ukoli`i Mauka portion of the Petition Area.

30. The revised affordable housing requirements include the following:

- (a) Two hundred ninety two single family units, of which no fewer than one hundred fourteen shall be affordable;
- (b) six hundred forty-eight multi-family units, of which no fewer than three hundred sixty-six shall be affordable;
- (c) Of the three hundred sixty-six affordable multi-family units, no fewer than one hundred shall be for elderly rental housing;
- (d) Commercial, community and neighborhood park, public school, church, community center and day care facilities and improvements; and
- (e) Related roadway, drainage, utility and other improvements.

As a result, the total number of units on Pu`ukoli`i Mauka is reduced from 1,300 to 940, with 51% being affordable.

31. The affordable housing requirements applicable to the Pu`ukoli`i Triangle portion of the Petition Area remain unchanged.

32. By letter dated December 26, 2007, addressed to the Commission, DOT supported removal of the Bypass Conditions for Pu`ukoli`i Mauka.

33. KLMC constructed Kaka`alaneo Drive, which runs roughly parallel and north of the roadway previously proposed by petitioner in this docket and Puukolii Road, and extends from Honoapiilani Highway to the Petition Area. Until completion of the Bypass Highway, Kaka`alaneo Drive will be the sole access to the Petition Area.

34. Condition No. 22 of the 1993 D&O required dedication to the State Department of Education ("DOE") of an 8-acre site for an elementary school.

35. KLMC represented to the Commission that it has had discussions with DOE and DOE may no longer require an elementary school site, but may instead need land for a middle school.

After discussion and deliberation by the Commissioners, a motion was made and seconded to grant KLMC's Motion to approve KLMC and HHFDC as substitute "Co-Petitioners". There being a vote tally of 8 ayes and 1 absent, the motion carried.

Following discussion and deliberation by the Commissioners, a motion was made and seconded to amend the 1993 D&O in the following manner.

1. Delete conditions 2, 4, 5, 12, 14, and 23 of the 1993 D&O only as they apply to Pu`ukoli`i Mauka; said conditions shall continue to apply to Pu`ukoli`i Triangle portion of the Petition Area.
2. Amend conditions 1, 22, and 25 as requested by KLMC as follows:
  - a. Condition 1 is amended to read as follows:

“1. As to the Pu`ukoli`i Triangle portion of the Petition Area, Petitioner shall comply with Act 15, 1988 Session Laws of Hawaii, all rules and regulations promulgated thereunder, and all amendments and successor legislation thereto. As to the Pu`ukoli`i Mauka portion of the Petition Area, Petitioner shall comply with the terms, covenants and conditions of that certain Pu`ukoli`i Mauka Affordable Housing Agreement (the ‘Affordable Housing Agreement’), dated April 7, 2008, among KLMC, HHFDC, and the County of Maui.”
  - b. Condition 22 is amended to read as follows:

“22. Petitioner shall donate to the State of Hawaii a not less than eight (8) acre site for a school in satisfaction of Department of Education requirements (the ‘School Site’). The School Site shall be adjacent to a not less than four (4) acre public park (the ‘Park Site’), subject to the following conditions:

a) The common border between the School Site and the Park Site shall be as close to a straight line as possible as agreed to by the Department of Education and the Director of the Department of Parks and Recreation of the County of Maui (the ‘Parks Director’).

b) The School Site shall be conveyed to the State of Hawaii free and clear of all materially adverse liens and encumbrances.

c) Petitioner shall seek reapproval of the concept plan for the School Site from the HHFDC, with the Department of Education, having the added opportunity to meet with Petitioner regarding any changes in the School Site.

d) The School Site should be relatively square.”

c. Condition 25 is amended to read as follows:

“25. Petitioner shall comply with the park dedication requirements under §18.16.320, Maui County code.”

3. Amend Condition 8 only as it applies to the Pu`ukoli`i Mauka portion of the Petition Area to read as follows:

“8a. Petitioner shall improve the intersection of Honoapiilani Highway and Kaka`alaneo Drive including traffic signalization when warranted to be established by a traffic study provided by Petitioner and approved by the Department of Transportation (“DOT”).”

“8b. Petitioner shall prepare a Preliminary Engineering (plan and profile) for the section of the Lahaina Bypass Road which intersects with Kaka‘alaneo Drive. The preliminary engineering shall be subject to review and acceptance by the DOT to ensure that conflicts between the proposed Pu‘ukoli‘i Mauka development and the proposed four-lane Lahaina Bypass Road are minimized.”

4. Amend Condition 9 to read as follows:

“9. Petitioner shall fund, design, and construct all roadway improvements necessitated by the proposed project. Kaka‘alaneo Drive shall be the Proposed Roadway and the main access road from Honoapiilani Highway to the Petition Area.”

5. Amend Condition 10 only as it applies to the Pu‘ukoli‘i Mauka portion of the Petition Area to read as follows:

“10. Petitioner shall comply with the Lahaina Bypass Highway Development Agreement dated June 16, 1993, as amended on March 10, 2008.”

There being a vote tally of 8 ayes and 1 absent, the motion carried.

#### ORDER

IT IS HEREBY ORDERED that the Motion filed by KLMC and HHFDC, be and hereby is GRANTED as follows:

1. KLMC and HHFDC are substituted as parties for AMFAC PROPERTY INVESTMENT CORP., and HOUSING FINANCE & DEVELOPMENT CORPORATION, STATE OF HAWAII, respectively.

2. Conditions 2, 4, 5, 12, 14, and 23 of the 1993 D&O are deleted only as they apply to the Pu`ukoli`i Mauka portion of the Petition Area; said conditions shall continue to apply to the Pu`ukoli`i Triangle portion of the Petition Area.

3. Condition 1 is amended to read as follows:

“1. As to the Pu`ukoli`i Triangle portion of the Petition Area, Petitioner shall comply with Act 15, 1988 Session Laws of Hawaii, all rules and regulations promulgated thereunder, and all amendments and successor legislation thereto. As to the Pu`ukoli`i Mauka portion of the Petition Area, Petitioner shall comply with the terms, covenants and conditions of that certain Pu`ukoli`i Mauka Affordable Housing Agreement (the ‘Affordable Housing Agreement’), dated April 7, 2008, among KLMC, HHFDC, and the County of Maui.”

4. Condition 8 only as it applies to the Pu`ukoli`i Mauka portion of the Petition Area, is amended to read as follows:

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6. Condition 10, only as it applies to the Pu‘ukoli‘i Mauka portion of the Petition Area, is amended to read as follows:

“10. Petitioner shall comply with the Lahaina Bypass Highway Development Agreement dated June 16, 1993, as amended on March 10, 2008.”

7. Condition 22 is amended to read as follows:

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- b) The School Site shall be conveyed to the State of Hawaii free and clear of all materially adverse liens and encumbrances.
- c) Petitioner shall seek reapproval of the concept plan for the School Site from the HHFDC, with the Department of Education, having the added opportunity to meet with Petitioner regarding any changes in the School Site.

d) The School Site should be relatively square.”

8. Condition 25 is amended to read as follows:

“25. Petitioner shall comply with the park dedication requirements under §18.16.320, Maui County code.”

Conditions 8 and 10 in their unamended form shall continue to apply to the Pu`ukoli`i Triangle portion of the Petition Area.

As so amended the findings of fact, conclusions of law, and decision and order of the 1993 D&O are in full force and effect.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and the proceedings, hereby adopt and approve the foregoing ORDER this 5th day of March, 2009. This ORDER may be executed in counterparts. The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

APPROVED AS TO FORM

Deane Jackson  
Deputy Attorney General

Filed and effective on:  
March 5, 2009

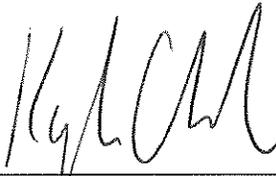
Orlando Smith  
Executive Officer

LAND USE COMMISSION  
STATE OF HAWAII

By Duane Kanuha  
DUANE KANUHA  
Chairperson and Commissioner

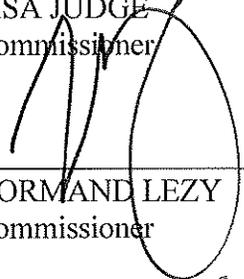
By ABSENT  
VLADIMIR PAUL DEVENS  
Vice Chairperson and Commissioner

By Ransom Piltz  
RANSOM PILTZ  
Vice Chairperson and Commissioner

By   
KYLE CHOCK  
Commissioner

By   
THOMAS CONTRADES  
Commissioner

By   
LISA JUDGE  
Commissioner

By   
NORMAND LEZY  
Commissioner

By   
NICHOLAS TEVES  
Commissioner

By   
REUBEN WONG  
Commissioner



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_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING MOTION TO  
SUBSTITUTE PARTIES AND MODIFY CERTAIN CONDITIONS AND OTHER MATTERS  
IN THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
DATED MAY 5, 1993 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.: ABBEY MAYER, Director  
State Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

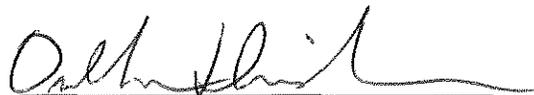
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CO-ATTORNEYS FOR PETITIONER

Dated: Honolulu, Hawaii, March 9, 2009.



ORLANDO DAVIDSON  
Executive Officer