



2016 NOV 22 P 12:48

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A81-525
	)	
Y-O LIMITED PARTNERSHIP	)	
	)	ORDER GRANTING IN PART
	)	AND DENYING IN PART
To Amend the Agricultural Land Use	)	PETITIONER'S MOTION FOR
District Boundary to the Urban Land Use	)	AN ORDER REGARDING
District for Approximately 408.719 Acres of	)	SATISFACTION OF AFFORDABLE
Land at Kaloko and Kohanaiki, North Kona,	)	HOUSING CONDITION
Hawai'i, TMK Nos.: (3) 7-3-009:019, 020, 032,	)	
and 057 to 062.	)	
_____	)	

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION FOR  
AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION

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

\_\_\_\_\_ 11/22/16 \_\_\_\_\_ by

Daniel E. Orodener, Executive Officer



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ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION FOR AN ORDER REGARDING SATISFACTION OF AFFORDABLE HOUSING CONDITION

On July 19, 2016, RCFC Kaloko Heights, LLC <sup>1</sup> ("Petitioner") filed a Motion for an Order Regarding Satisfaction of Affordable Housing Condition, Memorandum in Support of Motion, Exhibit A, and a Certificate of Service ("Motion"), pursuant to sections 15-15-70, 15-15-78, and 15-15-94, Hawai'i Administrative Rules ("HAR").

The Motion requested an order from the Land Use Commission ("Commission") that donation of a 10.775-acre parcel of land to the Hawai'i Island Community Development Corporation would satisfy the affordable housing requirements contained in Condition 1 of the

<sup>1</sup> RCFC Kaloko Heights, LLC is the successor petitioner to Kaloko Heights Associates, who was the successor petitioner to Y-O, Ltd.

Commission's Decision and Order dated January 20, 1983 for Phase I of the Petition Area, as amended by Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of Decision and Order dated January 20, 1983, and June 13, 1990, as entered by the Commission on November 17, 1992 (the "Affordable Housing Condition") for Phase I of the Petition Area; and to allow any affordable housing units developed in excess of the 10% required for Phase I to be applied to Petitioner's obligation to satisfy the affordable housing condition on Phase II of the Petition Area.

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On July 19, 2016, Petitioner filed the Motion.
2. On July 21, 2016, Petitioner submitted the required filing fee for its Motion and digital copies of all documents.
3. On July 26, 2016, the State Office of Planning ("OP") filed a request for 30-day extension to provide comments following receipt of Petitioner's supplemental materials.
4. On July 26, 2016, the County of Hawai'i Department of Planning ("County"), requested via e-mail to join the OP request for a 30-day extension to file a response to the Motion.
5. On July 26, 2016, Petitioner's counsel responded via e-mail stating Petitioner had no objection to OP and County's request for 30-day extension.
6. On July 26, 2016, the Commission acknowledged OP's request and granted a 30-day extension for all parties to file responses to Petitioner's Motion once Petitioner files supplemental materials.
7. On July 28, 2016, the Commission received County's written request to join OP's request for an extension.

8. On September 1, 2016, Petitioner filed a Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition, Exhibit B, and Certificate of Service.
9. On September 27, 2016, Petitioner filed a Second Supplemental Memorandum in Support of Motion for an Order Regarding Satisfaction of Affordable Housing Condition, and Certificate of Service.
10. On September 30, 2016, OP filed Office of Planning's Memorandum in Partial Opposition to Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition and two Supplemental Memorandums, and Certificate of Service.
11. On October 5, 2016, the County filed Respondent County of Hawai'i Planning Department's Memorandum in Opposition to Petitioner's Motion for an Order Regarding Satisfaction of Affordable Housing Condition and Petitioner's two Supplemental Memorandums, and Certificate of Service.
12. On October 5, 2016, the Commission mailed a notice of meeting and agenda for its October 13, 2016 meeting in Kailua-Kona to the Parties, and the Statewide and Hawai'i County mailing lists.
13. On October 13, 2016, the Motion came on for hearing before the Commission in Kailua-Kona, Hawai'i. William W.L. Yuen, Esq. of Alston Hunt Floyd & Ing, and Mark Meyer of RCFC Kaloko Heights, LLC appeared on behalf of Petitioner. William Brilhante, Esq., and Duane Kanuha, appeared on behalf of the County. Dawn Takeuchi-Apuna, Esq. and Rodney Funakoshi, appeared on behalf of OP.
14. At the hearing on October 13, 2016, the Commission heard public testimony from Mr. Keith Kato, Executive Director of the Hawai'i Island Community Development Corporation

("HICDC"). Mr. Kato described his organization and the current agreement between HICDC and Petitioner relating to an approximately 10-acre parcel in the Petition Area, and what future development plans are being considered to develop affordable housing on that parcel.

15. The Petitioner provided the Commission updated information on past and current progress in development activities for Phase I of the Petition Area. Petitioner thereafter discussed how negotiations between Petitioner, County and OP had resulted in revised language for the amendment to Condition 1 of the Commission's Decision and Order and amended the intention stated in the original Motion from seeking an order regarding Satisfaction of Affordable Housing Condition to seeking to amend Condition 1 to read as stated in an October 5, 2016 correspondence from Petitioner's counsel to the Commission staff, OP, and County that had not been filed with the Commission.

16. The County described the efforts it had contributed to crafting the language of the amendment to Condition 1 and that the language contained in the October 5, 2016 letter accurately portrayed the County's agreement regarding amendment of Condition 1.

17. OP summarized its position and described the matters OP considered in crafting the language contained in the amended Condition 1 in the October 5, 2016 letter. OP recommended approval of the amendment to Condition 1.

18. At the hearing on October 13, 2016, after Petitioner had presented its case and the other parties provided their positions; the Petitioner requested the Commission's acceptance of Petitioner's Exhibit 1<sup>2</sup>. The County and OP had no objections to the exhibit. The Commission accepted Petitioner's Exhibit 1 into the record.

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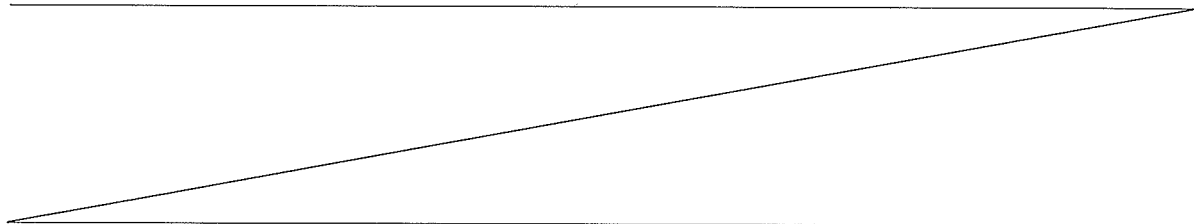
<sup>2</sup> Petitioner's Exhibit 1 was a letter correspondence dated October 5, 2016 to the Commission staff, OP, and County containing the language of a revised amendment to Condition 1 (the affordable housing requirement) that reflected negotiations between Petitioner, the County, and OP.

19. The specific language of Petitioner’s Exhibit 1 is as follows:

*“Petitioner shall provide housing opportunities for low and moderate income residents, by offering for sale or rental on a preferential basis, on its own or in cooperation with both the Hawaii Housing Finance and Development Corporation (“HHFDC”) and the County of Hawaii, affordable housing units equivalent to ten per cent (10%) of the lots and residential units to be developed in the Petition Area, to residents of the State of Hawaii of low and moderate family income as determined by HHFDC and the County of Hawaii Office of Housing and Community Development (“OHCD”) from time to time (the “Affordable Housing Requirement”). The affordable housing units shall be offered for sale or rent at prices or rents not exceeding prices or rents (“Affordable Prices”) that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low and moderate income families, or that provide affordable rental housing opportunities to such families. This affordable housing condition shall be implemented to the satisfaction of OHCD.”*

20. Thereafter, a motion was made and seconded to grant Petitioner’s Motion to amend Condition 1 (the affordable housing condition) by adopting the language contained in Petitioner’s Exhibit 1 filed and entered into the record in this Docket on October 13, 2016, and denying the rest of Petitioner’s Motion. There being a vote tally of 8 ayes, 0 nays, and 1 excused, the motion carried.

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DECISION AND ORDER

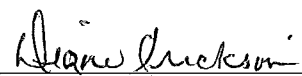
Having duly considered Petitioner's Motion, the supporting Memoranda, the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, and a motion having been made at a hearing on October 13, 2016, in Kailua-Kona, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission GRANTS Petitioner's modified Motion to amend Condition 1 of the Commission's Decision and Order dated January 20, 1983 for Phase I of the Petition Area and as later amended on November 17, 1992, to read as contained in Petitioner's Exhibit 1 filed on October 13, 2016 with the Commission. All other aspects of Petitioner's Motion are DENIED.

DATED: Honolulu, Hawai'i November 22, 2016.

LAND USE COMMISSION  
STATE OF HAWAII


  
By EDMUND ACZON  
Chairperson and Commissioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

Filed and effective on  
November 22, 2016

Certified by:

  
\_\_\_\_\_  
Executive Officer





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DATED: Honolulu, Hawai'i, 11/22/2016.

  
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DANIEL E. ORODENKER  
Executive Officer