



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2012 DEC 10 P 3:33

In the Matter of the Petition of)
)
Y-O LIMITED PARTNERSHIP)
)
)
To Amend the Agricultural Land Use)
District Boundary to the Urban Land Use)
District for Approximately 408.719 Acres of)
Land at Kaloko and Kohanaiki, North Kona,)
Hawai'i, TMK Nos.: (3) 7-3-009:019, 020, 032,)
and 057 to 062.)
_____)

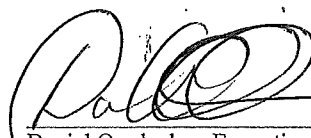
DOCKET NO. A81-525

ORDER GRANTING PETITIONER'S
MOTION FOR EXTENSION OF TIME
TO APPLY FOR REDISTRICTING
OF PHASE II

ORDER GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME
TO APPLY FOR REDISTRICTING OF PHASE II

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

_____ 12/10/12 _____ by



Daniel Orodener, Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

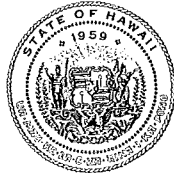
LAND USE COMMISSION
STATE OF HAWAII
2012 DEC 10 P 3:33

In the Matter of the Petition of)
)
Y-O LIMITED PARTNERSHIP)
)
)
To Amend the Agricultural Land Use)
District Boundary to the Urban Land Use)
District for Approximately 408.719 Acres of)
Land at Kaloko and Kohanaiki, North Kona,)
Hawai'i, TMK Nos.: (3) 7-3-009:019, 020, 032,)
and 057 to 062.)
_____)

DOCKET NO. A81-525

ORDER GRANTING PETITIONER'S
MOTION FOR EXTENSION OF TIME
TO APPLY FOR REDISTRICTING
OF PHASE II

ORDER GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME
TO APPLY FOR REDISTRICTING OF PHASE II



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2012 DEC 10 P 3:33
LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A81-525
)	
Y-O LIMITED PARTNERSHIP)	
)	ORDER GRANTING PETITIONER'S
)	MOTION FOR EXTENSION OF TIME
)	TO APPLY FOR REDISTRICTING
)	OF PHASE II
To Amend the Agricultural Land Use)	
District Boundary to the Urban Land Use)	
District for Approximately 408.719 Acres of)	
Land at Kaloko and Kohanaiki, North Kona,)	
Hawai'i, TMK Nos.: (3) 7-3-009:019, 020, 032,)	
and 057 to 062.)	
_____)	

ORDER GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME
TO APPLY FOR REDISTRICTING OF PHASE II

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

On September 25, 2012, Successor Petitioner KALOKO HEIGHTS ASSOCIATES, LLC., a Delaware limited liability company ("Petitioner"), successor to original Petitioner Y-O Limited Partnership, filed a Motion for Extension of Time to Apply for Redistricting of Phase II ("Motion") including Exhibits A-D; pursuant to sections 15-15-70, 15-15-78 and 15-15-94, Hawai'i Administrative Rules ("HAR"). Attached to the Motion were a Memorandum in Support of Motion and Affidavit of Jennifer A. Benck, Esq., representative of Petitioner ("Memorandum").

The Motion requests a fifth extension of time for an additional ten (10) year period, from January 20, 2013 through and including January 20, 2023 to allow Petitioner to substantially complete on-site and off-site improvements to Increment I and apply for the redistricting of Phase II.¹

FINDINGS OF FACT

BACKGROUND

1. Petitioner was required to complete Increment I improvements by January 20, 2013, pursuant to the Order Granting Motion for Fourth Extension of Time to Apply for Redistricting of Phase II issued by the Land Use Commission (“LUC” or “Commission”) on December 5, 2002.

2. The Commission granted the reclassification of Increment I (“Increment I”) and incremental redistricting for Increment II (“Phase II”) comprising approximately 213.473 acres and 195.246 acres respectively, from the State Land Use Agricultural District to the State Urban District situated at Kaloko-Kohanaiki, County and State of Hawai`i, then identified as Tax Map Key No. (3) 7-3-009:019 (“Petition Area”) pursuant to its Findings of Fact, Conclusions of Law, and Decision and Order issued on January 20, 1983 (“Decision and Order”). Increment I is now identified as Tax Map Key Nos. (3) 7-3-009: 020, 032, 057 through 062, and Phase II is now identified as Tax Map Key No. (3) 7-3-009: 019. Increment I (north of Hina Lani Street) and Phase II (south of Hina Lani Street) together comprise the Kaloko Heights project (“Project”), at Kaloko and Kohanaiki, North Kona, Hawai`i.

3. Under the previous Petitioner, Y-O Limited Partnership, the following had been completed in efforts toward development of Increment I: (1) construction and dedication to the

¹ The Petitioner uses the terms Increment II and Phase II interchangeably within its Motion. This Order will use the term Phase II to be consistent with language used in previous extension orders.

County of Hina Lani Street; (2) installation and dedication to the County of water transmission lines in Hina Lani Street and installation of street lights; and (3); subdivision and dedication of an approximately 1.38 acre portion of Phase II property for a water storage tank site to the Water Board of the County of Hawai`i. Petitioner also made the following expenditures on development of Increment I's infrastructure, totalling over \$18,000,000, since acquisition of the Property: (1) final subdivision approval to create 7 bulk lots within Increment I in February 2006; (2) grubbing permits for approximately 200 acres within Phase I in 2006; (3) final Plan approval for a 219-unit multi-family residential project within Area D-1 in 2007; (4) construction of a 10MVA Substation, including transformer and switchgear, and installation of underground 12KV feeder cables and vacuum switch; (5) construction of approximately 1,000 linear feet of a Loop Road; and (6) construction and dedication of an offsite 1.0 Million gallon water tank.

4. The following Project development activities have also occurred: (1) payment of \$8,866,920 to the County of Hawai`i Department of Water Supply for 1,494 water commitments; (2) State Historic Preservation Division ("SHPD") approval of an Archaeological Inventory Survey for Increment I in October 2005; (3) SHPD approval of a Final Preservation Plan for 7 burial sites within Increment I in November 2006; (4) recordation of a Declaration of Archaeological Easement against portions of Tax Map Key Nos. (3) 7-3-009: 057, 058, 059 and 062 to protect burial sites; (5) continued discussion and a draft agreement with the County of Hawai`i Office of Housing and Community Development to address Petitioner's development of 92 affordable housing units; (6) revisions to Petitioner's initial concept plan to address concerns of community and kūpuna groups related to the maintenance and preservation of the Road to the Sea, also known as the Trail to Sea Coast and the Kohanaiki Trail, which crosses portions of Increment I in a mauka to makai alignment; and (7) payment of \$3,260 to the State to obtain 4

perpetual, non-exclusive access and utility trail-crossing easements over the Road to the Sea, also known as the Trail to Sea Coast and the Kohanaiki Trail, and final Grant of Easement was approved by the Board of Land and Natural Resources on June 8, 2007.

PROCEDURAL MATTERS

5. On October 2, 2012, the Office of Planning (“OP”) filed a request for a time extension for all parties to file responses until October 9, 2012.

6. On October 3, 2012, the Commission mailed and sent electronic communications to all parties granting a time extension for filing of responses until October 9, 2012.

7. On October 8, 2012, OP filed its Statement of No Objection to Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II. OP’s response was conditioned on Petitioner’s acknowledgement that it would analyze the potential impacts and mitigation of Phase II developments that may result in the imposition of revised or additional conditions upon Petitioner’s application for redistricting of Phase II.

8. On October 9 and October 12, 2012, the County of Hawai`i, Department of Planning (“County”) submitted through an electronic communication and hard copy respectively, its Statement of No Opposition to Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II.

9. The Motion came on for hearing before the Commission on October 19, 2012, in Kailua-Kona, Hawai`i. Steven Lim, Esq. and Jennifer Benck, Esq. of Carlsmith Ball, LLP, and Peter Phillips of Kaloko Heights Associates, LLC appeared on behalf of Petitioner. William Brillhante, Esq., and Bobbie Jean Leithead-Todd, appeared on behalf of the County. Bryan Yee, Esq. and Rodney Funakoshi, appeared on behalf of OP.

10. At the hearing on October 19, 2012, the Petitioner requested the Commission's acceptance of Petitioner's Exhibits E through G. The County and OP had no objections to the exhibits. The Commission accepted Petitioner's Exhibits E through G into the record at that time.

11. The Petitioner provided the Commission with updated information on past and current progress in development activities. In 2009 litigation between the then-members of Kaloko Heights Associates, LLC ("KHA") substantially delayed KHA's development activities at the Project. In August 2012, a final settlement was reached, and KHA is ready to reinstate and complete development work on the Project. Petitioner thereafter requested an extension of time to comply with completing construction of necessary improvements prior to applying for redistricting of Phase II.

12. The County stated that it had no opposition to the Petitioner's Motion since it was timely, the applicant and its predecessors had contributed to infrastructure improvements for the community, and had not significantly deviated from the original development plan.

13. OP stated no objection to the Petitioner's Motion, reiterated that the Petitioner needed to analyze potential impacts and mitigation of Phase II development, and acknowledge that the Commission may impose revised or additional conditions upon Petitioner's application for redistricting of Phase II. The Petitioner's representative, Mr. Phillips, stated that Petitioner planned to analyze potential impacts and mitigations for incremental approval for Phase II, and would be open to any conditions or revisions that the Commission might deem necessary.

14. Thereafter, a motion was made and seconded to grant Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion carried.

DECISION AND ORDER

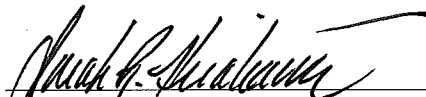
Having duly considered Petitioner's Motion, the supporting Memorandum, the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, and a motion having been made at a hearing on October 19, 2012, in Kailua-Kona, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause shown for the motion, this Commission ORDERS that Petitioner's Motion for a ten-year time extension to substantially complete Increment I and apply for redistricting of Increment II from January 20, 2013 through and including January 20, 2023 is hereby GRANTED, subject to the condition that Petitioner, consistent with its representations before the Commission, shall analyze the potential impacts and mitigation of Phase II developments that may result in the imposition by the Commission of revised or additional conditions upon Petitioner's application for redistricting of Phase II.

DATED: Honolulu, Hawai'i December 7¹⁰, 2012.

LAND USE COMMISSION
STATE OF HAWAII


By KYLE CHOCK
Chairperson and Commissioner

APPROVED AS TO FORM:


Deputy Attorney General

Filed and effective on
December 7, 2012

Certified by: ¹⁰ W


Executive Officer

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)	
)	CERTIFICATE OF SERVICE
)	
To Amend the Agricultural Land Use)	
District Boundary to the Urban Land Use)	
District for Approximately 408.719 Acres of)	
Land at Kaloko and Kohanaiki, North Kona,)	
Hawai`i, TMK Nos.: (3) 7-3-009:019, 020, 032,)	
and 057 to 062.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Motion for Extension of Time to Apply for Redistricting of Phase II was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

CERT. STEVEN S.C. LIM, Esq.
 JENNIFER A. BENCK, Esq.
 Carlsmith Ball LLP
 121 Waiuanuenue Avenue
 Hilo, Hawai`i 96720
 Attorney for Petitioner

DEL. JESSE SOUKI, Director
 State Office of Planning
 State Office Tower, 6th Floor
 235 South Beretania Street
 Honolulu, Hawai`i 96813

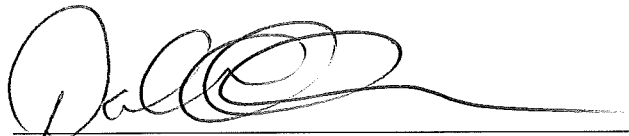
DEL. BRYAN YEE, Esq.
 Deputy Attorney General
 Hale Auhau, Third Floor
 425 Queen Street
 Honolulu, Hawai`i 96813

CERT. LINCOLN ASHIDA, Esq.
WILLIAM V. BRILHANTE, Esq.
Corporation Counsel
County of Hawai`i
101 Aupuni Street, Suite 325
Hilo, Hawai`i 96720-4262

CERT. BOBBY JEAN LEITHEAD-TODD, Director
Planning Department
County of Hawai`i
101 Pauahi Street, Suite 3
Hilo, Hawai`i 96720

DEL RUSSEL Y. TSUJI
Department of Land and Natural Resources
Land Division
1151 Punchbowl Street, Room 220
Honolulu, Hawai`i 96813

DATED: Honolulu, Hawai`i, 12/10/12



DANIEL ORODENKER
Executive Officer