

ORIGINAL



LAND USE COMMISSION
STATE OF HAWAII

2010 SEP 14 A 9:58

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use
District Boundaries into the Rural Land
Use District for Approximately 731.581
Acres in South Kohala District, Island of
Hawaii, Tax Map Key No. (3) 6-8-02:016
(portion)

DOCKET NO. A06-767

ORDER GRANTING WAIKOLOA
HIGHLANDS, INC.'S MOTION TO
CONTINUE HEARING ON ORDER TO
SHOW CAUSE; CERTIFICATE OF
SERVICE

**ORDER GRANTING WAIKOLOA HIGHLANDS, INC.'S MOTION TO
CONTINUE HEARING ON ORDER TO SHOW CAUSE**

AND

CERTIFICATE OF SERVICE

ORIGINAL



LAND USE COMMISSION
STATE OF HAWAII

2018 SEP 14 A 9:58

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use
District Boundaries into the Rural Land
Use District for Approximately 731.581
Acres in South Kohala District, Island of
Hawai'i, Tax Map Key No. (3) 6-8-02:016
(portion)

DOCKET NO. A06-767

ORDER GRANTING WAIKOLOA
HIGHLANDS, INC.'S MOTION TO
CONTINUE HEARING ON ORDER TO
SHOW CAUSE; CERTIFICATE OF
SERVICE

**ORDER GRANTING WAIKOLOA HIGHLANDS, INC.'S MOTION TO
CONTINUE HEARING ON ORDER TO SHOW CAUSE**

On July 24, 2018, Waikoloa Highlands, Inc. ("WHI"), successor-in-interest to Waikoloa Mauka, LLC, filed a Motion to Continue Hearing on Order to Show Cause¹ ("Motion"), a Memorandum in Support of Motion, Declaration of Derek B. Simon, Declaration of Natalia Batichtcheva, Exhibits A – M, and a Certificate of Service. The Motion asks for a continuance of not less than sixty days in order to allow WHI sufficient time to prepare and respond to the Order to Show Cause ("OSC") and to assure that the Commission has a fully-developed record.

On July 25, 2018, WHI filed a digital copy of its Motion with the Commission.

¹ On July 3, 2018, the State of Hawai'i Land Use Commission ("Commission") found a reason to believe that Petitioner had failed to perform according to the conditions imposed and to the representations made to the Commission in obtaining reclassification of the Subject Area. At that time the Commission set a hearing date for an Order to Show Cause on August 22-23, 2018.

On August 1, 2018, the State Office of Planning (“OP”) filed a Response to Petitioner’s Motion to Continue Hearing.

On August 14, 2018, the Commission mailed the notice and agenda for its meeting on August 22-23, 2018 in Kona, Hawai‘i to its Statewide and Hawai‘i island mailing lists.

On August 15, 2018, the County of Hawai‘i, Planning Department (“County”) filed a Statement of No Objection to Waikoloa Highlands, Inc.’s Motion to Continue Hearing on Order to Show Cause.

On August 16, 2018, WHI filed a copy of a letter dated August 15, 2018 to the Commission with attachments of the 2017 and 2018 Annual Reports.

On August 17, 2018, the Commission received a voicemail message from Parker Ranch indicating they would not be attending the upcoming meeting.

On August 20, 2018, the Commission received a telephone call from Hawai‘i Water Service advising that West Hawai‘i Water Company and West Hawai‘i Sewer Company would not be attending the upcoming meeting.

On August 21, 2018, the Commission received public comment via electronic mail from Cindy Kester and Julia Alos.

On August 21, 2018, the Commission received notification from the Natural Energy Laboratory Hawai‘i Authority (“NELHA”) that its meeting facilities and all airline flights in and out of Kona, Hawai‘i would be closed due to Hurricane Lane.

On August 22, 2018, the Commission notified all parties via electronic mail that the scheduled meeting had been cancelled and all non-essential State employees had been placed on administrative leave by the Governor due to Hurricane Lane.

On August 27, 2018, the Commission mailed notice and agenda for its rescheduled meeting on September 6, 2018 in Kona, Hawai'i to its Statewide and Hawai'i island mailing lists.

On September 4, 2018, the Commission received additional public testimony via electronic mail from Julia Alos.

The Commission considered WHI's Motion to Continue at its meeting on September 6, 2018, at Kona, Hawai'i. Steven Lim, Esq., Natalia Batichtcheva, and Joel La Pinta were present on behalf of WHI; Dawn Takeuchi-Apuna, Esq. appeared on behalf of OP; and, Ronald Kim, Esq., and Jeff Darrow appeared on behalf of the County.

At the meeting, Nancy Kester provided public testimony on behalf of Julia Alos. Following the receipt of public testimony, the parties provided oral argument on WHI's Motion.

Thereafter, a motion was made and seconded to grant WHI's motion to continue the hearing until October 24-25, 2018, when the Order to Show Cause will be heard.

During discussion on the motion, commissioners requested that WHI provide evidence that their representative, Natalia Batichtcheva has legal authority to make representations and binding agreements on behalf of WHI. Following discussion by the commissioners, a vote was taken on this motion. There being a tally of 5 ayes, 0 nays, and 3 excused, the motion carried.²

² There are currently only eight sitting commissioners; the Kaua'i seat remains vacant at this time.

ORDER

This Commission having duly considered WHI's Motion and the oral and written arguments of the parties in the proceeding, and a motion having been made at a meeting on September 6, 2018, in Kona, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, Hawai'i Administrative Rules ("HAR"), and there being good cause for the motion,

HEREBY ORDERS that WHI's Motion to Continue Hearing on Order to Show Cause be GRANTED, and a hearing on the Order to Show Cause shall be scheduled and publicly-noticed for October 24-25, 2018, and held in Kona, Hawai'i.

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 14th day of September, 2018, per motion on September 6, 2018.

APPROVED AS TO FORM

Randall S. Nishiyama
Deputy Attorney General

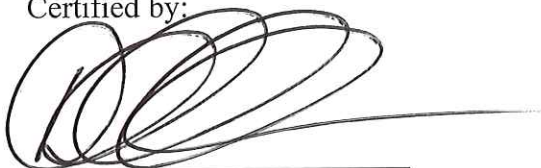
LAND USE COMMISSION
STATE OF HAWAII

By 
JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

09/14/2018

Certified by:


DANIEL E. ORODENKER
Executive Officer



LAND USE COMMISSION
STATE OF HAWAII

2018 SEP 14 A 9:58

BEFORE THE LAND USE COMMISSION
STATE OF HAWAI'I

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use
District Boundaries into the Rural Land
Use District for Approximately 731.581
Acres in South Kohala District, Island of
Hawai'i, Tax Map Key No. (3) 6-8-02:016
(portion)

DOCKET NO. A06-767

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the ORDER GRANTING WAIKOLOA
HIGHLANDS, INC.'S MOTION TO CONTINUE HEARING ON ORDER TO SHOW
CAUSE, was served upon the following by depositing the same in the U.S. Postal Service by
registered mail or certified mail as noted:

DEL. LEO ASUNCION, Director
State Office of Planning
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

DEL. DAWN TAKEUCHI-APUNA, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, Hawai'i 96813
Attorney for State Office of Planning

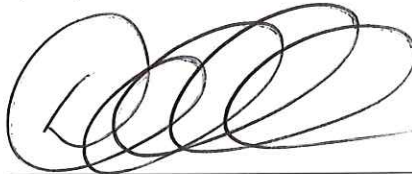
CERT. STEVEN S.C. LIM, Esq.
Carlsmith Ball LLP
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawai'i 96813
Attorney for Petitioner
Waikoloa Highlands, Inc.

CERT. MICHAEL LEE, Director
County of Hawai'i, Planning Department
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

CERT. JOSEPH K. KAMELAMELA, Esq.
RONALD KIM, Esq.
Department of the Corporation Counsel
Hilo Lagoon Center
101 Pauahi Street, Suite 325
Hilo, Hawai'i 96720
Attorney for County of Hawai'i
Department of Planning

CERT. Waikoloa Highlands, Inc.
Attn: Natalia Batichtcheva
1200 South Brand Blvd., #202
Glendale, California 91204-2641

Dated: Honolulu, Hawai'i, 09/14/2018



Daniel E. Orodener
Executive Officer