



LAND USE COMMISSION
STATE OF HAWAII

2018 NOV 21 P 2:51

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 DENYING IN PART AND
GRANTING IN PART THE COUNTY
OF HAWAII'S MOTION TO QUASH
SUBPOENA AND SUBPOENA DUCES
TECUM; CERTIFICATE OF SERVICE

ORDER DENYING IN PART AND GRANTING IN PART THE COUNTY OF HAWAII'S
MOTION TO QUASH SUBPOENA AND SUBPOENA DUCES TECUM

AND

CERTIFICATE OF SERVICE

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

11/21/18 by

Chief Clerk



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STATE OF HAWAII

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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)

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ORDER DENYING IN PART AND GRANTING IN PART THE COUNTY OF HAWAII'S MOTION TO QUASH SUBPOENA AND SUBPOENA DUCES TECUM; CERTIFICATE OF SERVICE

ORDER DENYING IN PART AND GRANTING IN PART THE COUNTY OF HAWAII'S MOTION TO QUASH SUBPOENA AND SUBPOENA DUCES TECUM

The Commission has received Waikoloa Highlands, Inc.'s ("WHI") Motion for Issuance of a Subpoena and Subpoenas Duces Tecum, Memorandum in Support of Motion, Exhibits 38 to 41, and Declaration of Derek B. Simon on November 7, 2018 ("WHI Motion"). Then the Commission received WHI's Errata Statement Regarding Exhibit Numbering and Exhibit Copies for Waikoloa Highlands, Inc.'s Motion for Issuance of a Subpoena and Subpoenas Duces Tecum, and Exhibit A filed on November 8, 2018.

The Chair of the Commission issued the following subpoenas on November 9, 2018 and the office of Carlsmith Ball LLP picked them up: a Subpoena for Representative of County of Hawai'i Office of Housing and Community Development; a Subpoena Duces Tecum County of Hawai'i, Office of Housing and Community Development ("OHCD") and Exhibit A; and, a Subpoena Duces Tecum County of Hawai'i, Mayor's Office and Exhibit A. Verification of service of the subpoenas was received on November 15, 2018.

The Commission received County of Hawai'i Planning Department's Memorandum in Opposition to Waikoloa Highlands, Inc.'s Motion for Issuance of a Subpoena and Subpoenas Duces Tecum and/or Motion to Quash Subpoena and Subpoena Duces Tecum ("County's Motion to Quash"), Declaration of Ronald N.W. Kim, and Exhibit A on November 13, 2018.

The Commission received the Office of Planning's Response to Waikoloa Highlands, Inc.'s Motion for Issuance of a Subpoena and Subpoenas Duces Tecum on November 14, 2018.

The Chair has reviewed the pleadings submitted by the parties and notes that WHI's Motion does not request a hearing if the subpoenas are issued and the County's Motion to Quash does not request a hearing; and, that this order does not seek to amend a decision and order relating to a district boundary amendment and may be signed by the Chair pursuant to Hawai'i Administrative Rules ("HAR") §15-15-70(j) and (m).

The Chair finds the following:

1. The Commission issued the subpoena and subpoenas duces tecum as requested by WHI's Motion; including verification of the subpoenas' service. WHI's Motion has been effectively disposed of.
2. A representative of the County OHCD may have information material and relevant to the Order to Show Cause proceeding.
3. The Commission has already admitted into evidence Petitioner's exhibits related to the affordable housing requirement of Condition No. 9 of the Commission's Decision and Order dated June 10, 2008.
4. Petitioner's subpoena duces tecum generally requests production of copies of files relating to seven identified documents or issues; this request fails to comply with HAR §15-15-69(b), which requires the movant to specify particular documents or records.
5. Petitioner's subpoena duces tecum is duplicative, overbroad and repetitious of information already in the record or that might be supplied under the testimony of a representative of the County OHCD, pursuant to HAR §15-15-63(b).

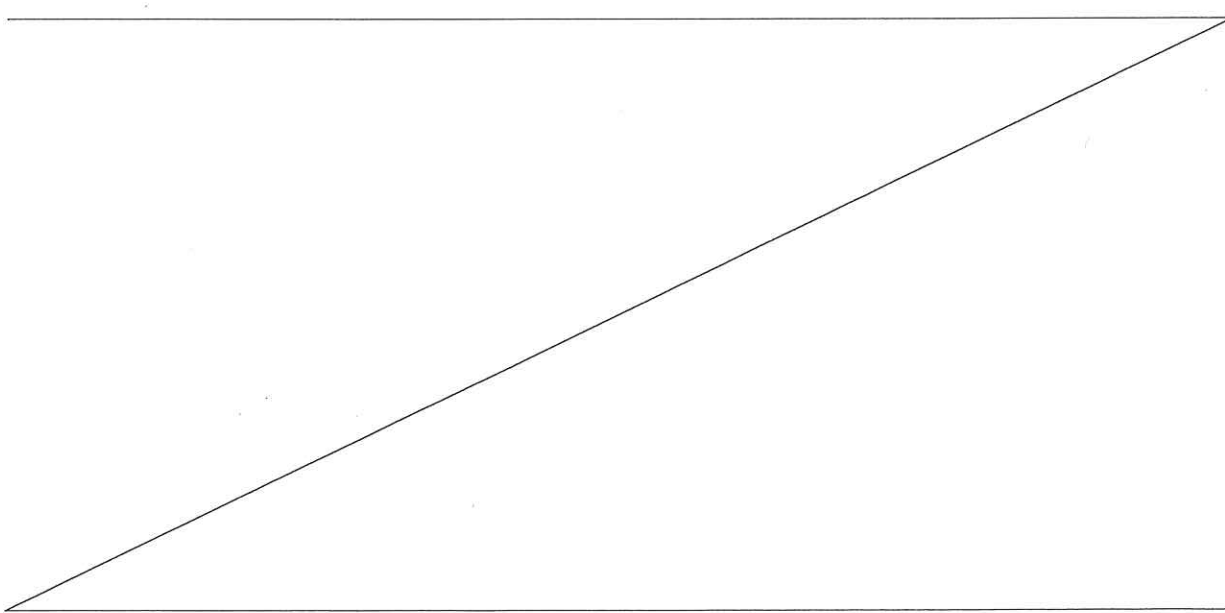
ORDER

The Chair having duly considered the County's Motion to Quash, the written arguments of the parties in the proceeding, and pursuant to Hawai'i Administrative Rules ("HAR") §15-15-70(j) and (m),

HEREBY ORDERS that the County's Motion to Quash be DENIED IN PART AND GRANTED IN PART, and,

FURTHER ORDERS that the subpoena to compel the County to provide a representative of the County's Office of Housing and Community Development at a hearing on the Order to Show Cause scheduled and publicly-noticed for November 28, 2018, in Kona, Hawai'i, is GRANTED; and,

FURTHER ORDERS that the subpoenas duces tecum with regards to the production of documents is hereby DENIED and quashed such that the County is not required to provide any of the documents called for in the Petitioner's Subpoenas Duces Tecum.



ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 21 day of ~~November~~ 2018.

APPROVED AS TO FORM

Randall S. Aishiyama
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By 
JONATHAN UIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

11/21/18

Certified by:


DANIEL E. ORODENKER
Executive Officer

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CERTIFICATE OF SERVICE

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I hereby certify that a certified copy of the ORDER TO SHOW CAUSE, was served upon the following by depositing the same in the U. S. Postal Service by registered or certified mail as noted:

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Email Natalia <natalia@vitoilinc.com>

Dated: Honolulu, Hawai'i, 11/21/18.


DANIEL E. ORODENKER
Executive Officer