



LAND USE COMMISSION
STATE OF HAWAII

2019 JAN 11 A 11: 22

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of

KAPOLEI PROPERTY DEVELOPMENT,
LLC

To Amend The Agricultural Land Use
District Boundary Into The Urban Land
Use District For Approximately 344.519
Acres Of Land At `Ewa, O`ahu, Hawai`i,
Tax Map Keys: 9-1-14: Por. 33, 34, And 35
And 9-1-15: Por. 20

DOCKET NO. A06-763

ORDER GRANTING PETITIONER'S
MOTION FOR EXTENSION OF TIME
TO COMPLETE PROJECT AND TO
CHANGE PETITIONER'S NAME AND
AMEND CAPTION; AND
CERTIFICATE OF SERVICE

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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, Hawai`i

1/11/19 by

Executive Officer



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On August 8, 2018, Kapolei Properties LLC ("KPL"), formerly known as Kapolei Property Development, LLC, filed a Motion for Extension of Time to Complete Project and to Change Petitioner's Name and Amend Caption; Memorandum in Support of Motion; Affidavit of Stephen H. Kelly; Exhibits A - M; and Certificate of Service (collectively "Motion for Extension"), pursuant to Hawai`i Administrative Rules ("HAR") §§15-15-70, 15-15-79, and 15-15-94. In its Motion for Extension, KPL requested that the State Land Use Commission ("LUC") (1) issue an order modifying the LUC's

Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") filed November 20, 2007, to amend Condition No. 17 to allow additional time to complete the backbone infrastructure for the Project; and (2) formally recognize KPL as the Petitioner in Docket No. A06-763 and grant leave to amend the caption of said docket.

On August 9, 2018, KPL filed an Errata Statement Regarding Signature Omitted from Petitioner Motion for Extension of Time to Complete Project and to Change Petitioner's Name and Amend Caption, Filed August 8, 2018; Exhibit A; and Certificate of Service.

On August 15, 2018, Dawn T. Apuna, Esq., counsel to the State Office of Planning ("OP"), filed a request to allow OP a 45-day extension in which to file its response to KPL's Motion for Extension.

On October 23, 2018, OP filed a Statement of Position of the Office of Planning on Petitioner's Motion for Extension of Time to Complete Project and to Change Petitioner's Name and Amend Caption.; Exhibit 1; and Certificate of Service.

On November 5, 2018, KPL filed Petitioner's List of Exhibits; Exhibits "N" – "V"; Petitioner's List of Witnesses; and Certificate of Service.

On November 28, 2018, OP filed a Revised Statement of Position of the Office of Planning on Petitioner's Motion for Extension of Time to Complete Project and

to Change Petitioner's Name and Amend Caption; Exhibits 1 and A; and Certificate of Service (collectively "Revised Statement of Position").

On November 30, 2018, the City and County of Honolulu Department of Planning and Permitting ("DPP") filed a Position Statement on KPL's Motion for Extension.

On December 4, 2018, KPL filed Petitioner's First Amended List of Exhibits and Certificate of Service.

On December 4, 2018, KPL filed Petitioner's Memorandum in Response to Revised Statement of Position of the Office of Planning on Petitioner's Motion for Extension of Time to Complete Project and to Change Petitioner's Name and Amend Caption, Filed on November 28, 2018; Exhibits W – Y; and Certificate of Service.

On December 11, 2018, OP filed a List of Witnesses; List of Exhibits; Exhibits B, C, and D; and Certificate of Service.

On December 13, 2018, the LUC considered KPL's Motion for Extension at its meeting at the Airport Conference Center, Room #IIT#2, in Honolulu, Hawai'i. Jennifer A. Lim, Esq., and Steve Kelly appeared on behalf of KPL. Dawn T. Apuna, Esq.; Rodney Funakoshi; and Lorene Maki appeared on behalf of OP. Dina Wong and Noelle Cole appeared on behalf of the DPP.

At the meeting, Mike Hamasu and Steve Kelly testified on behalf of KPL. Mr. Hamasu provided testimony summarizing the objectives, methodology, findings, and projections contained in his report entitled *Industrial Land Market Assessment for the Kapolei Harborside Project Area*. Mr. Kelly provided testimony on the site location and the overall Kapolei region as well as the infrastructure investment undertaken onsite and offsite by KPL. To address the concerns raised by OP and the State Department of Transportation ("DOT"), Airports Division, regarding the potential impact of avian wildlife on flight safety operations, Ms. Lim provided proposed additional language to Condition No. 8 for the LUC's consideration.

As part of its presentation, OP filed Exhibit E that provided amended language to Condition No. 8 from its Revised Statement of Position. There were no objections by the other parties in the proceeding to the admission of OP's Exhibit E into the record. Rodney Funakoshi and Jeffrey Chang testified on behalf of OP and the DOT, Airports Division, respectively. Mr. Funakoshi provided testimony on OP's position on the Motion for Extension, while Mr. Chang provided testimony about the concerns of the DOT, Airports Division, with respect to the impact of avian wildlife on flight operations at Kalaeloa and Daniel K. Inouye International Airports.

The DPP stated that it had no objections to the KPL's Motion for Extension.

Following the parties' closing arguments, a motion was made and seconded to grant KPL's Motion for Extension, subject to the following: (1) Condition No. 8 shall be amended as follows (additional material underscored; deleted material stricken):

8. **Notification of Potential Airports Nuisances.** Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in accordance with State law, of the potential adverse impacts of aircraft and airport activity from the adjacent airfields at Kalaeloa and ~~Honolulu~~ Daniel K. Inouye International Airport Airports, such as but not limited to noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, to buyers and lessees and to other future owners, lessees or occupants, to release claims against the State of nuisance relating to aircraft and airport operations.

Petitioner shall coordinate with the Department of Transportation, Airports Division, on practical property management measures within the Petition Area to discourage avian wildlife from interfering with flight safety operations at Kalaeloa and the Daniel K. Inouye International Airports as a result of the development at the Project. Petitioner shall incorporate such property management measures into the Project's Conditions, Covenants, and Restrictions that shall run with the land.;

(2) Condition No. 17 shall be amended (a) to reflect the change in name of Hanua Street to the Harbor Access Road and (b) to extend the deadline to complete buildout of the Project, including the backbone infrastructure, to December 31, 2035; and (3) KPL shall

be acknowledged as the Petitioner in Docket No. A06-763 and the caption in the docket shall be amended accordingly.

Thereafter, an amendment to the motion was proposed to delete the amended language to Condition No. 8 as stated in the original motion. Following further discussion by the commissioners, the proposed amendment failed and a vote was taken on the original motion. There being a vote tally of 6 ayes, 1 nay, and 1 excused, this motion carried.¹

ORDER

The LUC, having duly considered KPL's Motion for Extension, the oral and written arguments of the parties in the proceeding, and a motion having been made and seconded at a meeting on December 13, 2018, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS that KPL's Motion for Extension be GRANTED.

Accordingly, Condition No. 8 of the Decision and Order filed November 20, 2007, shall be amended as follows:

8. **Notification of Potential Airports Nuisances.** Petitioner shall notify and disclose to all prospective buyers and/or lessees of the Project, in

¹ There are currently eight sitting members on the LUC. The Kaua'i seat is vacant.

accordance with State law, of the potential adverse impacts of aircraft and airport activity from the adjacent airfields at Kalaeloa and Daniel K.

Inouye International Airports, such as but not limited to noise, right of flight, emissions, vibrations and other incidences of aircraft operations.

Petitioner shall implement procedures and provide covenants in any grant or transfer of interest in the Petition Area, or portion thereof, to buyers and lessees and to other future owners, lessees or occupants, to release claims against the State of nuisance relating to aircraft and airport operations.

Petitioner shall coordinate with the Department of Transportation, Airports Division, on practical property management measures within the Petition Area to discourage avian wildlife from interfering with flight safety operations at Kalaeloa and Daniel K. Inouye International Airports as a result of the development at the Project. Petitioner shall incorporate such property management measures into the Project's Conditions, Covenants, and Restrictions that shall run with the land.

IT IS ALSO ORDERED THAT Condition No. 17 of the Decision and Order filed November 20, 2007, shall be amended as follows:

17. **Completion of Project.** Petitioner shall complete the buildout of the Project, including completion of the backbone infrastructure consisting of the Harbor Access Road, drainage improvements, and sewer improvements, by December 31, 2035.

All other conditions to the Decision and Order filed November 20, 2007, shall continue in full force and effect.

IT IS FURTHER ORDERED that KPL shall be acknowledged as the Petitioner in Docket No. A06-763 and the caption in the docket shall be amended accordingly.

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 11, day of January, 2019, per motion on December 13, 2018.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII

Randall S. Ashiyama
Deputy Attorney General

By 
JONATHAN SCHEUER
Chairperson and Commissioner

Filed and effective on:

01/11/19

Certified by:


DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the ORDER GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME TO COMPLETE PROJECT AND TO CHANGE PETITIONER'S NAME AND AMEND CAPTION 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:

Regular CITY& COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING
650 South King Street
Honolulu, Hawaii 96813
Attention: Acting Director Kathy Sokugawa

Regular STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814
Attention: Chairperson Scott E. Enright

Regular STATE OF HAWAII
OFFICE OF PLANNING
P.O. Box 2359
Honolulu, Hawaii 96804-2359
Attention: Director Leo R. Asuncion, Jr.

Certified JENNIFER LIM, Esq.
Carlsmith Ball
1001 Bishop Street, Suite 2100
Honolulu, Hawaii 96813

Regular Donna Leong Esq.
Department of Corporation Counsel
City & County of Honolulu
530 South King Street
Honolulu, Hawaii 96813

Regular Deputy Attorney General- Dawn Takeuchi-Apuna
Hale Auhau
425 Queen Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawai'i,
January 11, 2019

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke extending to the right.

DANIEL ORODENKER
Executive Officer