

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A05-758
)	
A CHARITABLE FOUNDATION)	AFFIDAVIT OF AUTHORIZED
CORPORATION)	OFFICER (DAVID S. DRUZ);
)	EXHIBITS 1 TO 5
To Amend The Agricultural Land Use District)	
Boundary Into The Conservation Land Use)	
District for Approximately 28.759 Acres Of Land)	
And The Conservation Land Use District Into The)	
Agricultural Land Use District For)	
Approximately 5.129 Acres Of Land At Pupukea,)	
Ko'olauloa And Waialua, O'ahu, Hawai'i, Tax)	
Map Keys.: 5-9-23: Por. 1; 5-9-24:1; And 6-1-02:)	
Por. 22)	

AFFIDAVIT OF AUTHORIZED OFFICER
 (DAVID S. DRUZ)

STATE OF HAWAII)
)
 CITY AND COUNTY OF HONOLULU)

DAVID S. DRUZ, upon oath duly sworn, does hereby depose and state as follows:

1. I am a member of the board of directors of A Charitable Foundation Corporation ("Petitioner"), a Nevada nonprofit corporation duly registered as a foreign nonprofit corporation in the State of Hawai'i, and in that capacity, I am familiar with matters relating to the land which is the subject of Docket No. A05-758 and duly authorized and knowledgeable to make this affidavit and testify on behalf of the Petitioner.

2. Petitioner filed a petition filed with the Land Use Commission of the State of Hawai'i ("Commission") in Docket No. A05-758 to amend the land use district boundary to reclassify 28.759 acres of land in the Agricultural District to the Conservation District and 5.129

acres of land in the Conservation District to the Agriculture District ("Property") at Pupukea, Ko'olauloa And Waialua, O'ahu, Hawai'i.

3. On April 24, 2006, the Commission entered its Findings of Fact and Conclusions of Law, and Decision and Order dated April 21, 2006 in Docket No. A05-758. A Declaration of Conditions, which incorporates the conditions set forth in the Findings of Act and Conclusions of Law, and Decision and Order was recorded in the Bureau of Conveyances of the State of Hawai'i on June 7, 2006 as Doc. No. 2006-105635.

4. To the best of my knowledge, information and belief, the status of Petitioner's compliance with the conditions imposed by the Commission and set forth in the Decision and Order is as follows and, as applicable, supported by the exhibits referenced thereto and attached hereto and incorporated by reference:

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Commission's Condition	Status and Compliance
<p>1. <i>Conveyance of Lands for a State Park Reserve. Petitioner shall, upon receiving all necessary entitlements and governmental approvals, proceed with the consolidation, re-subdivision, and conveyance of approximately 79.031 acres of land, which shall include Petition Area A and adjacent Conservation District land, to the DLNR for a State Park Reserve, to be kept in perpetuity for the public good in maintenance and preservation of the view planes, open space, recreational values, and the cultural, historical, and natural qualities of Pupukea Ridge.</i></p>	<p>Request Release</p> <p>Petitioner has fully complied with Condition 1 and is requesting the Commission to release it. Petitioner caused Petition Area A and Petition Area B to be consolidated and resubdivided and conveyed Petition Area A to the State of Hawai'i by Limited Warranty Deed recorded in the Bureau of Conveyances on January 24, 2019 as Document No. A-69631003.</p> <p>See: <u>Exhibit 1</u></p> <p>See also: Item 3 below and Exhibit 4</p>
<p>2. <i>Farm Dwelling. Farm dwelling(s) on Petition Area B, if any, shall be consistent with the DOH's sewage disposal rules and regulations. Any single-family dwelling on the lot shall be a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.</i></p>	<p>Any farm dwellings, if any, on Petition Area B must perform by law comply with DOH's sewage disposal rules and regulations.</p> <p>Any future use of Petition Area B is and will be subject to the foregoing requirements and perform applicable laws and ordinances including HRS Sec. 205-4.5 and RoH/LUO Sec. 21-3.</p> <p>The following are encumbrances which run with and encumber title to Petition Area B.</p> <p>(a) Declaration of Restrictive Covenants (Agricultural Uses) dated July 17, 2017 and recorded in the Bureau of Conveyances of the State of Hawai'i as Document No. A-64300656 (See: <u>Exhibit 2</u>)</p> <p>(b) Declaration of Conditions dated June 1, 2006 and recorded in the Bureau of Conveyances of the State of Hawai'i as Document No 2006-105635 (See: <u>Exhibit 3</u>)</p>
<p>3. <i>Agricultural Uses. Any future use of the retained 15.144 acres of land, which include Petition Area B, shall be</i></p>	<p>The retained 15.144 acres were subdivided into the following lots as evidenced by the Affidavit recorded in the Bureau of</p>

<p><i>consistent with City and County zoning, and Petitioner or any future owner shall not subdivide the retained 15.144 acres into more than two zoning or subdivided lots</i></p>	<p>Conveyances of the State of Hawai'i on August 21, 2017 as Doc. No. 64420258 (including Subdivision Map - Approved May 5, 2017. See: <u>Exhibit 4</u>:</p> <p>Lot B - TMK No. (1) 5-9-033-002 9.237 acres</p> <p>Lot C - TMK No. (1) 5-9-033-003 5.691 acres</p> <p>Lot D - TMK No. (1) 5-9-033-004 0.216 acre (roadway)</p>
<p>4. <i>Maintenance of Trail System. With the approval of DLNR, Petitioner shall be responsible for maintaining the existing trail system as currently configured in Petition Area A and the adjacent Conservation District land at its own cost following the conveyance of Petition Area A and the adjacent Conservation District land to the DLNR until such time as the DLNR decides to accept responsibility for the maintenance, or ten years from the date of this Decision and Order, whichever occurs first</i></p>	<p>Request Release</p> <p>Petitioner's responsibility to maintain the existing trail system over Petition Area A expired as of April 24, 2016, which is ten years from the date of the LUC's Decision and Order. (Petitioner has exceeded this condition where Petitioner has been gratuitously paying for the maintenance of the existing trail system in accordance with past practices.)</p>
<p>5. <i>Previously Unidentified Burial/Archaeological/Historic Sites. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of development of the Petition Areas, then all development activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.</i></p>	<p>This condition is self-executing where it is required by law. If any burial, archaeological, or historic sites are discovered during the course of development of the area, all development activity must stop until the issuance of an archaeological clearance from the State Historic Preservation Division.</p>

<p>6. <i>Compliance with Representations to the Commission. Petitioner shall comply with the representations made to the Commission. Failure to so comply may result in reversion of the Petition Areas to their former classification, or change to a more appropriate classification</i></p>	<p>Petitioner has complied with representations made to the Commission.</p> <p>In addition to the recordation of Declaration of Conditions (Exhibit 2) and Declaration of Restrictive Covenants (Agricultural Uses) (Exhibit 3), Petitioner will record a Declaration of Conditions, Covenants and Restrictions which provides that the composite area of Petition Area B shall not be comprised of more than two (2) subdivided or zoning lots and no more than four (4) farm dwellings may be situated thereon. (See: <u>Exhibit 5</u>)</p> <p>By the recording of the forego, the representations made to the Commission will run with Petition Area B.</p>
<p>7. <i>Notice of Change to Ownership Interest. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Areas, prior to any development of the Petition Areas.</i></p>	<p>Request Release</p> <p>Petitioner conveyed Petition Area A in compliance with Condition 1 above.</p> <p>This condition is acknowledged with respect to Petition Area B and will be complied with should this situation arise. Any sale, lease, assignment, place in trust, or otherwise voluntary alteration of the ownership interests of Petition Area B will be subject to the Declaration of Conditions (Exhibit 2), Declaration of Restrictive Covenants (Agricultural Uses) (Exhibit 3) and upon recordation, (Petitioner's) Declaration of Conditions, Covenants and Restrictions (Exhibit 5). Petitioner informs the Commission of Petitioner's intent to sell Petition Area B.</p>
<p>8. <i>Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP, and the DPP in connection with the status of the Petition Areas and the Petitioner's progress in complying with the</i></p>	<p>Request Release</p> <p>Petitioner has been filing Annual Reports each year since 2007 to 2019. Based on the representations set forth herein, this condition should be released.</p>

<p><i>conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.</i></p>	
<p>9. <i>Release of Conditions Imposed by the Commission. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Areas upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.</i></p>	<p>Based on the representations set forth herein, Petitioner is requesting the Commission to release the following conditions:</p> <p>Condition 1 Conveyance of Petition A to the State Condition 4 Maintenance of Trail System Condition 7 Notice of Change to Ownership Interest Condition 8 Annual Reports Condition 10 Recording of Conditions Condition 11 Recording of Conditions</p>
<p>10. <i>Recording of Conditions. Within seven days of the issuance of the Commissioner's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Areas are subject to conditions imposed herein by the Commission in the reclassification of the Petition Areas, and (b) shall file a copy of such recorded statement with the Commission.</i></p>	<p>Request Release</p> <p>The Commission's Declaration of Conditions was recorded on June 7, 2006 as Document No. 2006- 105635 in the Bureau of Conveyances (Exhibit 2). A copy of the recorded Commission's Declaration of Conditions was filed with the Commission.</p>
<p>11. <i>Recording of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.</i></p>	<p>Request Release</p> <p>The Commission's Declaration of Conditions was recorded on June 7, 2006 as Document No. 2006- 105635 in the Bureau of Conveyances (Exhibit 2). A copy of the recorded Commission's Declaration of Conditions was filed with the Commission.</p>

5. Based on the foregoing, Petitioner has fully complied with and respectfully requests the Commission to release the following conditions:

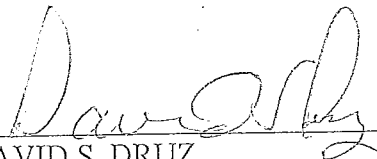
Condition 1	Conveyance of Petition A to the State
Condition 4	Maintenance of Trail System
Condition 7	Notice of Change to Ownership Interest
Condition 8	Annual Reports
Condition 10	Recording of Conditions
Condition 11	Recording of Conditions

6. I declare under penalty of law that the foregoing is true and correct and that Exhibit Nos. 1, 2, 3 and 4, which are attached hereto and incorporated by references, are true copies of documents recorded in the Bureau of Conveyances of the State of Hawai'i.

Further affiant sayeth naught.

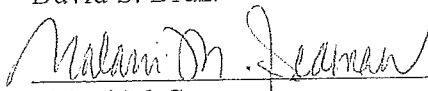
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DATED: Honolulu, Hawai'i, April 8, 2019

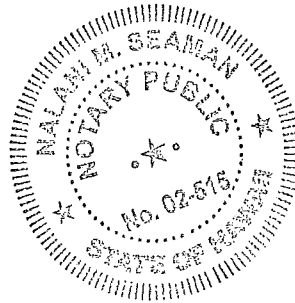


DAVID S. DRUZ

This 8-page Affidavit of Authorized Officer
(David S. Druz) dated April 8, 2019, was
subscribed and sworn to before me
this 8th day of April, 2019
in the First Circuit of the State of Hawai'i, by
David S. Druz.



Nalani M. Seaman
Notary Public, State of Hawai'i
My Commission expires: October 20, 2022



Affidavit of David S. Druz
In the Matter of the Petition of A Charitable Foundation Corporation
Motion for Order to Release and Delete Conditions Set Forth in the
Findings of Fact, Conclusions of Law, and Decision and Order
Docket No. A05-758