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LAND USE COMMISSION
STATE OF HAWAII

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STATE OF HAWAI'I

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. A05-758
)	
A CHARITABLE FOUNDATION)	OFFICE OF PLANNING'S RESPONSE
CORPORATION)	TO PETITIONER'S MOTION FOR
)	ORDER RELEASING CONDITION NOS.
To Amend the Agricultural Land Use)	1, 4, 7, 8, 10 AND 11 AS SET FORTH IN
District Boundary Into the Conservation)	THE FINDINGS OF FACT,
Land Use District for Approximately 28.759)	CONCLUSIONS OF LAW, AND
Acres of Land And The Conservation Land)	DECISION AND ORDER DATED APRIL
Use District Into The Agricultural Land Use)	21, 2006; CERTIFICATE OF SERVICE
District For Approximately 5.129 Acres of)	
Land At Pupukea, Ko'olauloa and Waialua,)	
O'ahu, Hawaii, Tax Map Keys. : 5-9-23:)	
Por. 1; 5-9-24: 1; And 6-1-02: Por. 22)	
)	

**OFFICE OF PLANNING'S RESPONSE TO PETITIONER'S
MOTION FOR ORDER RELEASING CONDITION NOS. 1, 4, 7, 8, 10
AND 11 AS SET FORTH IN THE FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER DATED APRIL 21, 2006**

The Office of Planning, State of Hawaii ("OP"), provides the following response to
Petitioner A Charitable Foundation Corporation's ("Petitioner's") Motion for Order Releasing
Condition Nos. 1, 4, 7, 8, 10 and 11 as Set Forth in the Findings of Fact, Conclusions of Law,

and Decision and Order Dated April 21, 2006 ("D&O") and in the Declaration of Conditions Recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-105635 ("Motion").

I. Background

Petitioner sought to reclassify approximately 28.759 acres, identified as Tax Map Keys ("TMK") 5-9-24: 1 and 5-9-23: por. 1 ("Petition Area A"), from the State Land Use Agricultural District to the State Land Use Conservation District for donation to the Department of Land and Natural Resources, State of Hawaii ("DNLR"), as a State Park Reserve, and to reclassify approximately 5.219 acres of land, identified as TMK: 6-1-02: por. 22 ("Petition Area B"), from the State Land Use Conservation District to the State Land Use Agricultural District for agricultural use. Petition Area A was to be consolidated with approximately 50.272 acres of adjacent land, and brought under the jurisdiction and management responsibility of DLNR.

Petitioner would retain Petition Area B along with approximately 9.925 acres of adjacent land, identified as TMK: 5-9-23: por. 1, which was already in the State Land Use Agricultural District. Petitioner did not at the time of the D&O specify plans for the development of the approximately 15.144 acres of land it would retain, other than to seek to consolidate and re-subdivide the 15.144 acres of land into two Agricultural District parcels that would be limited to agricultural uses with the potential development of farm dwellings.

Petitioner's Motion requests the deletion of and release from Condition Nos. 1, 4, 7, 8, 10, and 11. Pursuant to Hawaii Administrative Rules § 15-15-94(b), "[f]or good cause shown, the [C]ommission may act to modify or delete any of the conditions imposed or modify the [C]ommission's order."

II. Argument

OP's position for each of the six (6) conditions requested by Petitioner for deletion is as follows:

A. Condition No. 1.

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.*

Petitioner has conveyed 79.031 acres of land, which includes Petition Area A, to DLNR for a State Park Reserve, as evidenced by that certain Limited Warranty Deed, dated January 11, 2019, by and between Petitioner and the State of Hawaii, by its Board of Land and Natural Resources (Petitioner's Exhibit 1).

The Limited Warranty Deed states in part that the "Property is and shall be forever owned for the public good in the management, maintenance and preservation of the Property's scenic, view planes, open space, recreational values, and cultural, historical and natural resources and values of the Pupukea Ridge and restricted from any development or use that would impair or interfere with such resources and values."

Additionally, the Limited Warranty Deed includes but is not limited to the following restrictions: Structures, such as communication or other utility towers or poles, zip lines and wind turbines, are prohibited. Recreational use is and shall be restricted to traversing the Property by foot or on animals, such as horses, mules or donkeys. DLNR may construct improvements, such as maintenance structures and comfort stations, provided that such improvements do not detract from such resources and values and blend with the natural

environment, do not exceed a height of 15 feet, are set back so that such improvements are not visible from Waimea Valley and Waimea Beach Park below. Dogs and public hunting are not and shall not be permitted on the Property provided that Grantee may conduct ungulate control and eradication of invasive animals.

The grant of the property to DLNR by Petitioner is also subject to "claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes."

Upon consultation with DLNR's Land and State Parks Divisions, DLNR has no objections or comments on the deletion of Condition No. 1.

OP does not object to the deletion of Condition No. 1.

B. Condition No. 4.

Maintenance of Trail System. *With the approval of the 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.*

By way of the Limited Warranty Deed, DLNR has accepted both ownership and responsibility for the maintenance of the existing trail system as currently configured in Petition Area A and the adjacent Conservation District. Additionally, Petitioner's responsibility to maintain the trail system expired as of April 24, 2016, or ten years from the date of the LUC's Decision and Order. The DLNR Division of State Parks has no objections to and no comments on the deletion of this Condition. OP therefore does not object to the deletion of Condition No. 4.

C. Condition No. 7.

Notice of Change to Ownership Interests. *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.*

Should DLNR, or any subsequent successor-in-interest decide to sell, lease, assign, place in trust, or alter the ownership interests in the Petition Area, the Commission may want to be made aware of such change. Therefore, OP recommends retaining Condition No. 7.

D. Condition No. 8.

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 Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer to the Commission.*

Based upon the Petitioner's intent to retain some of the Conditions of the D&O, annual reports should still be required to track the Petitioner or any successors-in-interest's compliance. Therefore, OP recommends retaining Condition No. 8.

E. Condition No. 10.

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.*

Petitioner recorded the Commission's Declaration of Conditions on June 7, 2006 as Document No. 2006-105635 in the Bureau of Conveyances (Petitioner's Exhibit 2), and filed a copy of the recorded Commission's Declaration of Conditions with the Commission. Petitioner having fulfilled this Condition, OP does not object to the deletion of Condition No. 10.

F. Condition No. 11.

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.*

Petitioner recorded the Commission's Declaration of Conditions on June 7, 2006 as Document No. 2006-105635 in the Bureau of Conveyances (Petitioner's Exhibit 2), and filed a copy of the recorded Commission's Declaration of Conditions with the Commission. Petitioner having fulfilled this Condition, OP does not object to the deletion of Condition No. 11.

III. Conclusion.

For all the aforementioned reasons, OP recommends that Petitioner's request to delete and be released from Conditions 1, 4, 10, and 11 be granted, that Petitioner's request to delete Conditions 7 and 8 be denied and retained, and that Conditions 2, 3, 5, 6, and 9 be retained.

DATED: Honolulu, Hawai'i, June 10, 2019.

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_____)	

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawai'i, June 10, 2019.



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