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LAND USE COMMISSION
 STATE OF HAWAII

2019 JUN 20 P 1:22

Attorney for Petitioner
 A CHARITABLE FOUNDATION CORPORATION

BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII

In the Matter of the Petition of)	Docket No. A05-758
)	
A CHARITABLE FOUNDATION CORPORATION)	PETITIONER'S RESPONSE TO
)	OFFICE OF PLANNING'S
)	RESPONSE TO PETITIONER'S
To Amend The Agricultural Land Use District)	MOTION FOR ORDER RELEASING
Boundary Into The Conservation Land Use)	CONDITIONS; CERTIFICATE OF
District for Approximately 28.759 Acres Of Land)	SERVICE.
And The Conservation Land Use District Into The)	
Agricultural Land Use District For)	
Approximately 5.129 Acres Of Land At Pupukea,)	
Ko'olauloa And Wailua, O'ahu, Hawai'i, Tax Map)	
Keys.: 5-9-23: Por. 1; 5-9-24:1; And 6-1-02: Por.)	
22)	
)	

PETITIONER'S RESPONSE TO
 OFFICE OF PLANNING'S RESPONSE TO
 PETITIONER'S MOTION FOR ORDER RELEASING CONDITIONS

Petitioner A Charitable Foundation Corporation ("Petitioner"), a Nevada nonprofit registered as a foreign nonprofit corporation in the State of Hawaii and exempt from federal income taxes as an organization described in Sec. 503(c)(3) of the Internal Revenue Code, as amended, by its attorney Dickson C.H. Lee of Takushi Wong Lee & Yee - A Law Corporation, is responding to the Office of Planning's Response to Petitioner's Motion for Order Releasing Conditions filed on June 10, 2019.

Background

In 2003, Petitioner purchased 94.075 acres of land on the Pupukea ridge in furtherance of a vision and the charitable and public purpose of donating to the State of Hawaii a large part of that land for a state park reserve. When Petitioner purchased the land, 88.856 acres were classified "Agriculture" and 5.219 acres were classified "Conservation."

Pursuant to its Findings of Fact, Conclusions of Law and Decision and Order entered April 21, 2006, the Land Use Commission ("Commission") approved the Petition. The Petition area involved only 33.978 of the 94.075 acres of land. The 33.979 acres of land are referred to as "Petitioner Area A" and "Petition Area B." Petitioner Area A, having an area of 28.759 acres, was reclassified from "Agriculture" to "Conservation." Petition Area B, having an area of 5.219 acres, was reclassified "Conservation" to "Agriculture."

Thereafter, Petitioner proceeded with carrying out what could be described as a very time consuming, costly "journey." The process of planning the project, acquiring the 94.075 acres of land and obtaining land entitlements, including the filing of the Petition in the above captioned matter and subdividing the land, in order to be able to convey a 79.031-acre lot to the State for a state park reserve, took Petitioner over 18 years. After the Commission approved the Petition in 2006, it took almost 11 years to consolidate and resubdivide the 94.075 acres into the following lots:

<u>Lot</u>	<u>Land Use District Boundary</u>	<u>Area</u>
Lot A	Conservation	79.031
Lot B	Agriculture	9.237
Lot C	Agriculture	5.591
Lot D	Agriculture	0.216 (roadway)

By Limited Warranty Deed recorded in the Bureau of Conveyances of the State of Hawaii on January 24, 2019 as Document No. A-69631003, Petitioner conveyed Lot A to the State of Hawaii. The Office of Planning's memorandum acknowledges that the Limited Warranty Deed is protective of the use of Lot A for a state park reserve:

"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."

Petitioner crafted the foregoing provisions in the Limited Deed with great care and due concern to the North Shore community's interest to preserve and conserve the natural and scenic beauty of Pupukea ridge.

Discussion

Petitioner is requesting the Commission to release the following conditions, which Petitioner submits have been satisfied:

- | | |
|-----------------|--|
| Condition No. 1 | Conveyance of Lot A to the State |
| Condition No. 4 | Maintenance of the Trail System |
| Condition No. 7 | Notice of Intent to Sell Lot B and Lot C, together with an undivided interest in Lot D |

Condition No. 10

Recordation of Notice of Imposition of Conditions

Condition No. 11

Recordation of Declaration and Order

Based on the foregoing, Petitioner is requesting the Commission to release Condition No. 8 (pertaining to the filing of further annual reports after 2019) where as a matter of practicality, there is no further need to incur additional costs and time to file annual reports where the primary purpose of the Petition - being the conveyance of Lot A for a state park reserve - has been accomplished as required by Condition No. 1.

The Office of Planning's recommendation that Condition No. 8 (filling of annual reports) should not be released is solely with respect to Condition 7, which only requires Petitioner to 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." (emphasis supplied) The recommendation is based on the premise that "...the Commission *may* want to be made aware of such change."

Petitioner has complied with Condition No. 7, which does not require a notice of "change" in ownership. In the Affidavit of Authorized Officer (David S. Druz) attached to the Motion for Order Releasing Conditions, Petitioner informed the Commission of Petitioner's "intent" to sell Lot B and Lot C, together with an undivided interest in Lot D.

Further, where Lot A, which includes all of Petition Area A, was conveyed to the State of Hawaii, Condition No. 7 applies only to the portion of Lot B, Lot C and Lot D, having a total area of 15.044 acres, which constitutes Petition Area B, whose area is 5.219 acres.

If the Office of Planning's underlying concern is that a subsequent owner(s) of Lot B and Lot C, together with an undivided interest in Lot D, may use Lot B and Lot C for other than agriculture, Petitioner will not know of such use where Petitioner will not have title to those lots

and likely, would not know of such future other use. Further, such a concern has been and will continue to be addressed by the recordation in the Bureau of Conveyances of the State of Hawaii of the following documents which are attached to Petitioner's Motion and encumber title to those lots:

<u>Exh. No.</u>	<u>Document</u>	<u>Recordation Number</u>
2	Declaration of Restrictive Covenants	Doc. No. A-64300656
3	Declaration of Conditions	Doc. No. 2006-105635

In addition to the foregoing and prior to the offering of Lot B and Lot C, together with an undivided interest in Lot D, for sale, Petitioner will be recording the Declaration of Covenants, Conditions and Restrictions ("DCCRs"), which is attached to Petitioner's Motion as Exhibit "5" and places limitations on further subdivision of Lot B and Lot C and the number of farm dwellings that can be situated thereon. The DCCRs, at Section 6, provides, in relevant part, that the Commission (as well as the Department of Planning and Permitting of the City and County of Honolulu) has right to take legal action against owner(s) of Lot B and Lot C, respectively, for violations of the limitations on use set forth therein as follows:

6. Legal Effect. This Declaration shall constitute covenants running with the land, as provided by law, and shall be binding on and for the benefit of Declarant, its successors and assigns, and all subsequent owners of the Lots, their respective heirs, successors, legal representatives and assigns. Any deed, mortgage, agreement of sale or lease or other document referring to legal title shall state that title is subject to this Declaration.

Legal action may be taken by the Declarant, its successors and assigns, or the owners of record of Lot B and Lot C, , their respective heirs, successors, legal representatives and assigns, **or the Land Use Commission of the State of Hawaii** or Department of Planning and Permitted of the City and County of Honolulu, as their interests appear, to restrict or prevent by injunction, mandatory or restraining, any violation or threatened violation of any of the covenants, conditions and restrictions in this Declaration without prejudice to the right to pursue any other legal or equitable remedies thereafter for the same breach or failure, or for any

subsequent breach or failure, or to pursue suitable process to recover damages for any such breach or failure. (emphasis supplied)

Conclusion

There is no prejudice to the Commission or the Office of Planning if Condition No. 7 (Notice of Change to Ownership Interest) and Condition No. 8 (Annual Reports) are released.

DATED: Honolulu, Hawaii, June 20, 2019



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_____)	

CERTIFICATE OF SERVICE

I hereby certify that due service of a copy of the within document was made by depositing the same with the U.S. mail, postage prepaid, on June 20, 2019 addressed to:


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

Dawn Takeuchi Apuna
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Honolulu, Hawai'i 96813

Director, Department of Planning and
Permitting
650 South King Street
Honolulu, Hawai'i 96813

Department of the Corporation Counsel
City and County of Honolulu
530 South King Street
Honolulu, Hawai'i 96813

DATED: Honolulu, Hawai'i, June 20, 2019.



DICKSON C.H. LEE
Attorney for Petitioner A CHARITABLE
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