



LAND USE COMMISSION
STATE OF HAWAII

2019 JUL 23 A 11:00

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A05-758
)	
A CHARITABLE FOUNDATION	)	ORDER GRANTING IN PART AND
CORPORATION, a Nevada non-profit	)	DENYING IN PART PETITIONER'S
corporation	)	MOTION FOR ORDER RELEASING
	)	CONDITION NOS. 1, 4, 7, 8, 10 AND
To Amend The Agricultural Land Use	)	11 AS SET FORTH IN THE FINDINGS
District Boundary Into The	)	OF FACT, CONCLUSIONS OF LAW,
Conservation Land Use District For	)	AND DECISION AND ORDER DATED
Approximately 28.759 Acres Of Land	)	APRIL 21, 2006 AND IN THE
And The Conservation Land Use	)	DECLARATION OF CONDITIONS
District Boundary Into The Agricultural	)	RECORDED IN THE BUREAU OF
Land Use District For Approximately	)	CONVEYANCES OF THE STATE OF
5.219 Acres Of Land At Pūpūkea,	)	HAWAII AS DOCUMENT NO.
Ko`olauloa And Waialua, O`ahu,	)	2006-105635; AND CERTIFICATE OF
Hawai`i, Tax Map Keys: 5-9-23: Por. 1;	)	SERVICE
5-9-24: 1; And 6-1-02: Por. 22)	
_____)	

ORDER GRANTING IN PART AND DENYING IN PART 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 AND IN THE DECLARATION OF CONDITIONS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII AS DOCUMENT NO. 2006-

105635

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.

July 23, 2019 by

Executive Officer



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ORDER GRANTING IN PART AND DENYING IN PART 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 AND IN THE DECLARATION OF CONDITIONS RECORDED IN THE BUREAU OF CONVEYANCES OF THE STATE OF HAWAII AS DOCUMENT NO. 2006-105635

On April 9, 2019, A Charitable Foundation Corporation, a Nevada non-profit corporation, filed a 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 And In The Declaration Of Conditions Recorded In The Bureau Of Conveyances Of The State Of Hawai'i As Document No. 2006-105635; Affidavit Of Authorized Officer (David S. Druz); Exhibits 1 to 5; Memorandum In Support of Motion; Notice Of Motion; and Certificate Of Service (collectively "Motion for Order Releasing Conditions"), pursuant to Hawai'i Administrative Rules ("HAR") §§15-15-70 and 15-15-94. In its Motion for Order Releasing Conditions, Petitioner requests that the State Land Use Commission ("Commission") release and remove Condition Nos. 1, 4, 7, 8, 10, and 11 in the Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") dated April 21, 2006, in Docket No. A05-758 and the corresponding numbered conditions that are set forth in the Declaration of Conditions recorded in the Bureau of Conveyances on June 7, 2006, as Document No. 2006-105635 inasmuch as Petitioner has fully complied with or otherwise reasonably satisfied said conditions.

On May 28, 2019, Petitioner filed a Memorandum Re Amended Affidavit Of Authorized Officer (David S. Druz).

On June 10, 2019, the State Office of Planning ("OP") filed a 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.

Docket No. A05-758 A Charitable Foundation Corporation, a Nevada non-profit corporation Order Granting In Part And Denying In Part 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 And In The Declaration Of Conditions Recorded In The Bureau Of Conveyances Of The State Of Hawai'i As Document No. 2006-105635

By email dated June 12, 2019, Noelle Cole, planner at the City and County of Honolulu Department of Planning and Permitting (“DPP”), stated that DPP had no comment on Petitioner’s Motion for Order Releasing Conditions.

On June 20, 2019, Petitioner filed a Response To Office Of Planning’s Response To Petitioner’s Motion For Order Releasing Conditions.

On July 11, 2019, the Commission met in Honolulu, Hawai`i, to consider Petitioner’s Motion. Dickson Lee, Esq., David S. Druz, and Tracy Fukuda appeared on behalf of Petitioner. Eugene Takahashi and Dina Wong appeared on behalf of the DPP. Dawn Takeuchi-Apuna, Esq., and Rodney Funakoshi were present on behalf of OP.¹

At the meeting, Petitioner provided a background of the docket and arguments in support of its Motion for Order Releasing Conditions.

OP stated that it believed Condition Nos. 1, 4, 10, and 11 have been satisfied, and therefore could be deleted. With respect to Condition Nos. 7 and 8, OP provided testimony in opposition to their deletion.

¹ Upon commencement of the meeting, Commissioner Okuda disclosed his prior working relationship with Petitioner’s counsel, Mr. Lee, and Mr. Lee’s law firm as well as his own law firm’s representation of a client in an ongoing proceeding with the DPP. Commissioner Okuda noted that these matters would not affect his ability to render a fair and impartial decision on Petitioner’s Motion for Order Releasing Conditions. The parties had no objections to Commissioner Okuda’s participation in the proceeding.

Commissioner Cabral also disclosed that she and Mr. Lee had mutual clients, but that it would not affect her ability to similarly remain fair and impartial on the matter. The parties likewise had no objections to Commissioner Cabral’s participation in the proceeding.

The DPP stated that it had no objections to the Motion for Order Releasing Conditions.

Following discussion, Commissioner Aczon moved to delete Condition Nos. 1, 4, 10, 11, and to retain Condition Nos. 7 and 8. Commissioner Mahi seconded the motion. Following discussion, counsel for Petitioner requested that Mr. Druz be permitted to provide testimony in support of the Motion for Order Releasing Conditions. OP and the DPP had no objections to Mr. Druz's untimely oral testimony. Following Mr. Druz's testimony, Chairperson Scheuer requested that the Executive Officer of the Commission describe the annual report process. Following further discussion, Commissioner Aczon moved to withdraw the motion. Commissioner Mahi seconded the motion. Thereafter, Commissioner Aczon moved to delete Condition Nos. 1, 4, 10, and 11. The motion was seconded by Commissioner Mahi. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion passed. Thereafter, Commissioner Okuda moved to delete Condition No. 7. The motion was seconded by Commissioner Cabral. There being a vote tally of 2 ayes, 4 nays, and 3 excused, the motion failed to pass. Commissioner Okuda then moved to delete Condition No. 8. The motion was seconded by Commissioner Cabral. There being a vote tally of 2 ayes, 4 nays, and 3 excused, the motion failed to pass.

ORDER

This Commission, having duly considered Petitioner's Motion for Order Releasing Conditions, the comments of OP and the DPP, and a motion having been made at its meeting on July 11, 2019, 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 Condition Nos 1, 4, 10, and 11 to the Decision and Order dated April 21, 2006, be deleted.

IT IS FURTHER ORDERED that Condition Nos. 7 and 8 to the Decision and Order dated April 21, 2006, be retained and shall remain in full force and effect.

All other conditions to the Decision and Order dated April 21, 2006, shall continue in full force and effect.

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 23rd day of July 2019, per motion on July 11, 2019.

LAND USE COMMISSION
STATE OF HAWAII

APPROVED AS TO FORM

Randall S. Nishiyama
Deputy Attorney General


By 

JONATHAN SCHEUER
Chairperson and Commissioner

Filed and effective on:

07/23/2019

Certified by:



DANIEL ORODENKER
Executive Officer



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2010 JUL 23 A 11:01

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HAND Director
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Dated July 23, 2019

Honolulu, Hawai'i.



DANIEL E. ORODENKER
Executive Officer