



LAND USE COMMISSION
STATE OF HAWAII

2019 AUG -9 P 1:08

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A17-803
	)	
KEĀLIA PROPERTIES, LLC	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend The Agricultural Land Use	)	DECISION AND ORDER ACCEPTING
District Boundary Into The Urban Land	)	A FINAL ENVIRONMENTAL IMPACT
Use District For Approximately 53.361	)	STATEMENT; AND CERTIFICATE OF
Acres Of Land At Keālia, Kawaihau,	)	SERVICE
Puna, Island Of Kaua'i, State Of	)	
Hawai'i, Tax Map Key: (4) 4-7-004:	)	
Por. 001	)	
_____	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
ACCEPTING A FINAL ENVIRONMENTAL IMPACT STATEMENT

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

8/9/18 by 

Executive Officer



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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
ACCEPTING A FINAL ENVIRONMENTAL IMPACT STATEMENT

The State of Hawaiʻi Land Use Commission ("LUC"), having examined the proposed Final Environmental Impact Statement ("FEIS") filed by Keālia Properties, LLC ("Petitioner"), on July 11, 2019, and upon consideration of the matters discussed therein, at its meetings on July 25 and August 8, 2019, in Līhuʻe, Kauaʻi, Hawaiʻi, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

1. On October 16, 2017, Petitioner filed a Petition For Land Use District Boundary Amendment ("Petition") to reclassify approximately 53.361 acres of

land at Keālia, Kawaihau, Puna, Island of Kauaʻi, State of Hawaiʻi, identified as Tax Map Key: (4) 4-7-004: Por. 001 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District for the Keālia Mauka Homesites development ("Project").

2. An Environmental Impact Statement Preparation Notice ("EISPN") was included with the Petition, pursuant to Hawaiʻi Revised Statutes ("HRS") §343-5(a)(1) and Hawaiʻi Administrative Rules ("HAR") §§11-200-6(b)(1)(A).

3. On November 8, 2017, and by a written Order filed November 13, 2017, the LUC (i) agreed to be the accepting authority pursuant to HRS chapter 343; and (ii) determined that the proposed action may have a significant effect on the environment to warrant the preparation of an Environmental Impact Statement ("EIS").

4. The State of Hawaiʻi Office of Environmental Quality Control ("OEQC") published notice of the availability of the EISPN in its November 23, 2017, issue of *The Environmental Notice*, which began a 30-day public comment period that ended on December 26, 2017.

5. Upon receipt of the comments, Petitioner prepared a Draft EIS ("DEIS"). The OEQC published notice of the availability of the DEIS in its May 8, 2018, issue of *The Environmental Notice*, which began a 45-day public comment period that ended on June 22, 2018.

6. The following reviewers provided written comments on the DEIS:

Federal

U.S. Department of the Army, U.S. Army Corps of Engineers,
Regulatory Branch
Department of the Interior, Fish and Wildlife Service
Department of the Interior, U.S. Geological Survey, Pacific Islands
Water Science Center

State of Hawai'i

LUC

Department of Defense
Department of Accounting and General Services
Office of Planning ("OP")
Department of Education
Department of Land and Natural Resources,
Engineering Division, Division of Forestry and Wildlife, Land
Division
Department of Transportation ("DOT")

County of Kaua'i

Fire Department
Planning Department
Police Department
Department of Public Works
Department of Water

Organizations/Individuals

Wailua-Kapa'a Neighborhood Association
Sierra Club of Hawai'i, Kaua'i Group
Karen Gibbons
Barbara and David Beasley
Marj Dente
David Dinner
Marge Freeman
John Harder
Mark Henley
Sharla Kalauawa

Agnes Marti-Kini
Sylvia Partridge
Adam Roversi
Gabriela Taylor
Valerie Weiss

7. On July 11, 2019, Petitioner filed the proposed FEIS with the LUC.

8. On July 15, 2019, Petitioner filed a Motion for Issuance of Subpoena requesting that the LUC issue a Subpoena to Michael A. Dahilig to appear before the LUC on July 25, 2019, in Līhu'e, Kaua'i, Hawai'i, to testify in this docket pursuant to HRS §92-16(a)(1) and HAR §§15-15-69 and 15-15-70.

9. On July 15, 2019, the Executive Officer of the LUC issued a Subpoena to Michael A. Dahilig.

10. On July 18, 2019, OP filed its Response to Petitioner's Motion for Issuance of Subpoena.

11. On July 22, 2019, OP filed written comments recommending that the LUC accept the FEIS.

12. By e-mail correspondence dated July 23, 2019, Planner Lee Steinmetz notified the LUC that the Planning Department had no comments regarding the acceptability of the FEIS.

13. On July 24, 2019, the LUC received a letter from the DOT that found Petitioner's Traffic Impact Analysis Report ("TIAR") acceptable with the

qualification that Petitioner and its traffic consultant must work with the DOT to reach
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Findings Of Fact, Conclusions Of Law, And Decision And Order Accepting A Final Environmental
Impact Statement

an acceptable final recommendation of a traffic signal versus a roundabout for the intersection of Keālia Road and Kūhiō Highway, and that Petitioner shall be responsible for providing the final accepted recommended improvement at no cost to the State.

14. On July 25, 2019, the LUC met at the County of Kauaʻi Moikeha Building, Conference Room 2A/2B, in Līhuʻe, Kauaʻi, Hawaiʻi, to consider acceptance of Petitioner's proposed FEIS. Benjamin M. Matsubara, Esq., and Curtis T. Tabata, Esq., appeared on behalf of Petitioner. Nicholas Courson, Esq., and Kaʻaina Hull were present on behalf of the Planning Department and Dawn Takeuchi-Apuna, Esq., and Aaron Setogawa were present on behalf of OP. At the meeting, the LUC heard public testimony from Elaine Valois, Stuart Wellington, Marcus Laymon, Lester Gale, Bronson Carvalho, Kenderson Caspillo, Allen Suan, Jeffrey Rivera, Tony Reis, Bob Farias, Mark Baldonado, Agnes Marti-Kini, Barbara Giuliano, Karen Gibbons, Noa Mau-Espirito, Penny Prior, Julie Black Caspillo, Naia Nicole Blagg-Noblisse, Sean Asquith, Kamuela L. Pa, Kaponu Kapanui, Sharla Kalauawa, Justin Teves, Kenneth Johnson, David Dinner, Gabriela Taylor, Larry Graff, Lonnie Sykos, Rayne Regush, Bruce Laymon, Dan Freund, Lokelani Mahuiki, Bree Boerner, Alfred Alesna, Clayton Arinaga, Lianne Kobayashi, Albert Banach, Anne Walton, and Andy Bushnell on the acceptance of Petitioner's FEIS.¹ Following the receipt of public testimony, Petitioner offered Bruce

¹ Copies of written public testimonies filed via e-mail prior to or received at the July 25, 2019, meeting are on file at the LUC office in Honolulu, Hawaiʻi.

Laymon as Petitioner's witness to clarify the location of pig hunting and taro cultivation relative to the Petition Area. Petitioner then offered Michael A. Dahilig to address issues relating to the Kaua'i County General Plan and the Petition Area. Upon conclusion of Mr. Dahilig's testimony, the LUC recessed the meeting until August 8, 2019.

15. On August 5, 2019, the LUC received via e-mail a letter from the State Historic Preservation Division accepting the Archaeological Inventory Survey ("AIS") for the Project and concurring "...that the AIS supports a project effect determination of 'Effect, with agreed upon mitigation commitments.'"

16. On August 8, 2019, the LUC met at Kaua'i Community College, Rooms 106 C and 106 D, in Līhu'e, Kaua'i, Hawai'i, to resume consideration of Petitioner's FEIS. Benjamin M. Matsubara, Esq., and Curtis T. Tabata, Esq., appeared on behalf of Petitioner. Adam Roversi, Esq., and Ka'aina Hull were present on behalf of the Planning Department and Dawn Takeuchi-Apuna, Esq., and Aaron Setogawa were present on behalf of OP.² At the continued meeting, Petitioner offered Scott Ezer, Hallett Hammatt, Matt Nakamoto, William Eddy, Todd Beiler, and Thomas Holliday as witnesses. Mr. Ezer provided testimony on the history of the Petition Area, the HRS chapter 343 process, the potential impacts of the Project and mitigative measures, and

² Copies of written public testimonies filed via e-mail following the July 25, 2019, meeting or received at the August 8, 2019, continued meeting are on file at the LUC office in Honolulu, Hawai'i.

the FEIS's satisfaction of the EIS content requirements and the criteria governing acceptance of an FEIS. Mr. Hammatt described the scope and findings of the AIS and Cultural Impact Assessment prepared for the Project. Mr. Nakamoto discussed the TIAR, including the existing traffic situation in the area and the impact of the Project on the local roadways. Mr. Eddy addressed questions regarding the existence of an old government road in the area. As part of his presentation, Mr. Eddy referenced an ALTA map, which was not part of the record. Mr. Tabata subsequently introduced the map as Petitioner's Exhibit 6. Mr. Beiler described the noise impact study prepared for the Project, and Mr. Holliday addressed the affordable nature of the Project.

17. Mr. Hull stated that the Planning Department was in support of the acceptance of the FEIS.

18. Ms. Takeuchi-Apuna stated that Petitioner's responses to OP's comments on the DEIS were addressed to OP's satisfaction, and OP did not object to the acceptance of the FEIS.

19. The LUC finds that the proposed FEIS substantially conforms to the content requirements of HAR §11-200-18, to the extent that it includes (i) the DEIS revised to incorporate substantive comments received during the consultation and review processes; (ii) reproductions of all letters received containing substantive questions, comments, or recommendations; (iii) a list of persons, organizations, and

public agencies commenting on the DEIS; (iv) the responses of Petitioner to each substantive question, comment, or recommendation received in the review and consultation processes; and (v) text written in a format that allows the reader to easily distinguish changes made to the text of the DEIS.

20. After due deliberation at the LUC's meeting on August 8, 2019, a motion was made and seconded to accept Petitioner's proposed FEIS. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

CONCLUSIONS OF LAW

Pursuant to HRS chapter 343 and the EIS Rules under HAR chapter 11-200, and a motion having been made and seconded at a meeting on August 8, 2019, in Līhu'e, Kaua'i, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion, the LUC concludes that Petitioner's proposed FEIS substantially satisfies the criteria and procedures governing the acceptance of an FEIS under HAR §11-200-23.

DECISION AND ORDER

IT IS HEREBY ORDERED that the proposed FEIS filed by Petitioner in Docket No. A17-803/Keālia Properties, LLC, be ACCEPTED pursuant to HRS chapter 343 and HAR chapter 11-200.

ADOPTION OF ORDER

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

Done at Honolulu, Hawai'i, this 9th day of August 2019, per motion on August 8, 2019.

LAND USE COMMISSION
STATE OF HAWAII

APPROVED AS TO FORM

Randall S. Aishiyama
Deputy Attorney General

By Nancy Cabral
NANCY CABRAL
Vice-Chairperson and Commissioner

Filed and effective on:

08/09/2019

Certified by:



DANIEL ORODENKER
Executive Officer



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To Amend The Agricultural Land Use)
District Boundary Into The Urban Land Use)
District For Approximately 53.361 Acres Of)
Land At Keālia, Kawaihau, Puna, Island Of)
Kaua`i, State Of Hawai`i, Tax Map Key: (4))
4-7-004: Por. 001)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER ACCEPTING A FINAL ENVIRONMENTAL IMPACT STATEMENT AND CERTIFICATE OF SERVICE in the above referenced-docket was duly 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.

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
MARY ALICE EVANS, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		
DAWN TAKEUCHI-APUNA,ESQ Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
KAAINA HULL Director, Department of Planning, County of Kaua'i 4444 Rice Street Lihue, Hawai'i 96766		X	
KAUAI COUNTY ATTORNEY Office of the County Attorney 4444 Rice Street Suite 220 Lihue, Hawai'i 96766			X
BENJAMIN M. MATSUBARA, Esq. CURTIS T. TABATA, Esq. Matsubara-Kotake & Tabata 888 Mililani Street, Suite 308 Honolulu, Hawaii 96813 Attorneys for Kealia Properties, LLC			X

Honolulu, Hawai'i, August 9, 2019

DANIEL ORODENKER
Executive Officer