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State of Hawai'i

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February 11, 2020

Office of Environmental Quality Control  
Attn: Tom Eisen  
State Department of Health  
235 South Beretania Street, Room 702  
Honolulu, Hawai'i 96813

Dear Mr. Eisen:

Subject: Docket No. A03-739, R. D. Olson Development  
Environmental Impact Statement (EIS) and EISPN  
Proposed Windward Hotel  
Kahului, Maui, State of Hawai'i  
Tax Map Key Nos. 3-8-01: Por. 2, 3-8-06: Por.4, and 3-8-79: Por. 13

On February 5, 2020, the Land Use Commission made a determination at its hearing that the subject project triggered the requirement for HRS Chapter 343 review and that the LUC would be the accepting authority. In addition, the LUC made a determination that the impacts from the proposed project are likely to be significant pursuant to HAR §11-200.1-13. Therefore, in its judgement and experience the LUC is authorizing the applicant to prepare an EIS, beginning with the preparation of an Environmental Impact Statement Preparation Notice ("EISPN") pursuant to HAR §11-200.1-14(d)(2).

The applicant has notified the LUC that they are not ready to submit an EISPN at this time. Once the applicant has submitted an EISPN for the LUC to review for adequacy pursuant to HAR §11-200.1-23; the LUC will forward on the EISPN for publication in the Environmental Notice.

Enclosed is a hard copy of the LUC action and will send a digital pdf of the same via electronic mail to your office.



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In The Matter Of The Petition Of ) DOCKET NO. A103-739  
)  
A&B PROPERTIES, INC. A Hawai'i, ) ORDER DETERMINING (1) THAT THE  
Corporation ) LAND USE COMMISSION AGREES TO  
) BE THE ACCEPTING AUTHORITY  
To Amend the Agricultural Land Use ) PURSUANT TO CHAPTER 343, HAWAI'I  
District Boundary Into the Urban Land Use ) REVISED STATUTES; AND (2)  
District Boundaries for Approximately 200 ) AUTHORITY TO PREPARE  
acres of land, consisting of Tax Map Key ) ENVIRONMENTAL IMPACT  
Nos. 3-8-01: Por. 2, 3-8-06: Por. 4, And 3-8- ) STATEMENT PREPARATION NOTICE  
79: Por. 13, Kahului, Maui, State of Hawai'i )  
)  
)

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ORDER DETERMINING (1) THAT THE LAND USE COMMISSION AGREES TO BE THE  
ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI'I REVISED  
STATUTES; AND (2) AUTHORITY TO PREPARE ENVIRONMENTAL IMPACT  
STATEMENT PREPARATION NOTICE

On January 16, 2020, R.D. OLSON DEVELOPMENT, ("Petitioner" "Windward Hotel"), by and through its attorneys, MASUBARA, KOTAKE & TABATA, filed a Motion to Amend the Findings of Facts, Conclusions of Law and Decision and Order filed on March 25, 2004 ("Motion to Amend"). Petitioner has also submitted a Motion requesting the Land Use Commission ("LUC") to be the accepting authority for Hawai'i Revised Statue ("HRS") Chapter 343 compliance and issuance of an Environmental Impact Statement Preparation Notice ("EISPN") ("Motion to Designate").

An Environmental Assessment (“EA”) was previously prepared and published by the Office of Environmental Quality Control (“OEQC”) on August 8, 2018, at that time the County Planning Commission was identified as the accepting authority. The County reviewed the document and provided comments for the final EA on August 8, 2019. After receiving and reviewing comments collected during the draft EA process; the Petitioner decided that there were enough substantive comments to warrant the preparation of an EIS.

On September 20, 2018, the LUC commented on the draft EA for the Windward Hotel by request of the Department of Planning, County of Maui.

On January 8, 2019, an EISPN was published by OEQC. A draft EIS was published on October 8, 2019. The County reviewed the draft EIS and provided comments on the Final EIS to be considered by the County Planning Commission at its November 12, 2019 meeting. The appropriate approving agency question was raised in the November 12, 2019 meeting since an amendment to the LUC’s Decision and Order (“D &O”) was going to be necessary. The County pointed to the fact that the EA and EIS process were already initiated, however, the County supported the LUC as the approving agency and recommended that it would be appropriate for LUC to authorize the preparation of an EIS.

On December 23, 2019, State Office of Planning (“OP”) sent a letter commenting on the DEIS to the County.



On January 16, 2020, Petitioner filed a Motion for Amending the Findings of Facts, Conclusions of Law and Decision and Order filed on March 25, 2004, and Exhibit "1".

On January 16, 2020, R.D. Olson Development filed a Motion to Designate the Land Use Commission as Approving Agency for Environmental Statement Under HRS Chapter 343 and for Authority to prepare Environmental Impact Statement Preparation Notice; and, Memorandum In Support of Petitioner's Motion.

On January 16, 2020, Petitioner file a first Amendment to the Motion for Order Amending the Findings of Fact, Conclusions of Law and Decision and Order filed March 25, 2004, Exhibit "2". Petitioner included Property Owner's Letter of Authorization for necessary Land Use Permitting and Approvals for Development of the Windward Hotel Located at the Southeast corner of Haleakala Highway and Kuleana Street, Kahului, Maui, Hawai'i; TMK: (2) 3-8-103-0149 (portion), 015, 016,017, and 018 from A&B Properties Hawai'i LLC ( Petitioner's Exhibit 2).

On January 27, 2020, the Commission mailed the Meeting Notice and Agenda for the February 5, 2020 meeting on Petitioner's Motion to Designate to be held by interactive Conference Technology ("Video Conference") in Maui to the Parties, the Statewide, O'ahu and Maui County mailing lists. The Meeting Notice and Agenda were also filed with the Lieutenant Governor's office and posted electronically to the Commission website.

On January 30, 2020, the Commission sent a letter notifying the Petitioner that its Motion to Amend was an incomplete filing and identified several procedural and content deficiencies that would need to be corrected. Staff informed the Petitioner that

the EIS process would need to be completed before the Commission could review and process the Motion to Amend.

On February 3, 2020, OP filed its Response in support to Petitioner's Motion to Designate.

On February 4, 2020, the Department of Planning, County of Maui ("County") filed its Position Statement in support on Motion to Designate.

On February 5, 2020, the Commission met using an interactive Conference Technology format at Maui, O'ahu and Hawai'i islands, to consider Petitioner's Motion to Designate that the Commission enter an order: (i) determine that it will be the accepting authority for an environmental statement under HRS Chapter 343; (ii) determine, through its judgement and experience, that an Environmental Impact Statement ("EIS") is likely to required; and, (iii) authorize Petitioner to Prepare an Environmental Impact Statement Preparation Notice ("EISPN"). Petitioner's representative Anthony Wrzosek and Petitioner's attorney Curtis Tabata appeared on behalf of Petitioner. Dawn Apuna, Esq., and Aaron Setogawa appeared on behalf of the State Office of Planning ("OP"). Michele C. McLean Maui Planning Director, and Tara Furukawa appeared on behalf of the County of Maui.

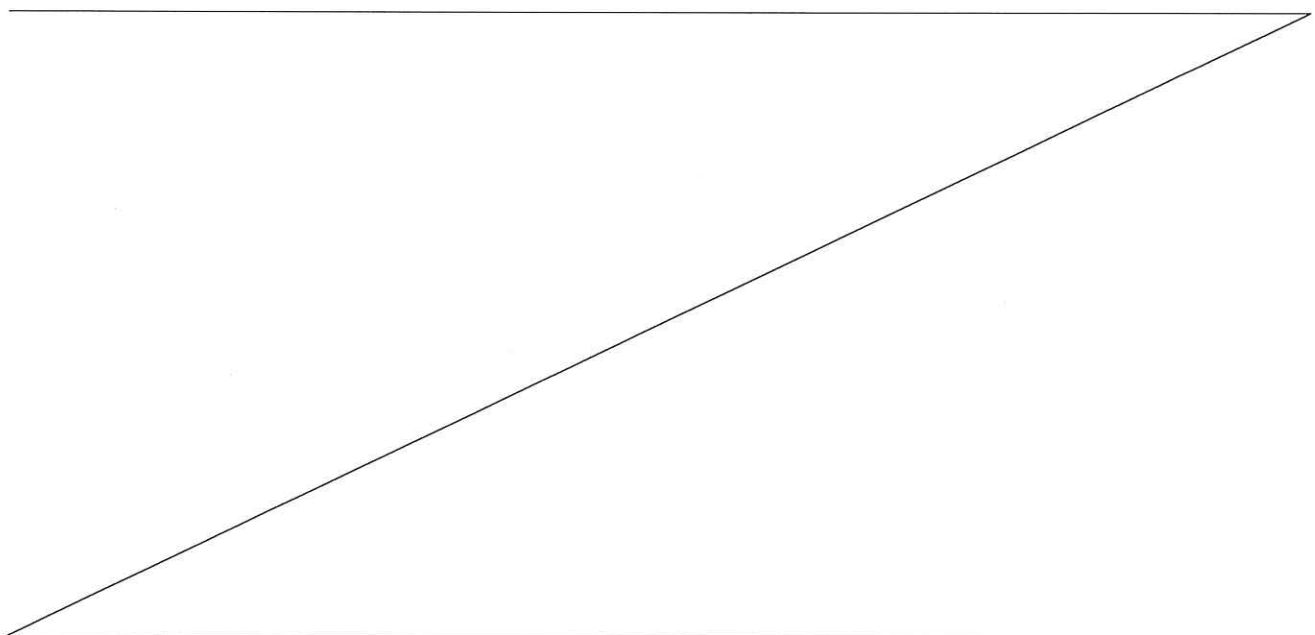
At the meeting, Dwight Vincente provided public testimony from Island of Hawai'i. Mr. Vicente declined to affirm the truthfulness of his testimony and testified about why the LUC proceedings were unlawful and the LUC lacked jurisdiction over the lands in question. Petitioner provided a summary of their Motion: that the proposed Motion to Amend triggers HRS Chapter 343 compliance; and that the Commission is the appropriate accepting authority for an EIS/EISPN. The County of Maui and OP had no objections to the Motion.

During discussion, the Commissioners discussed and agreed that LUC was the appropriate accepting authority for HRS Chapter 343 compliance; and the Commission clarified about LUC being Accepting Authority rather than Approving Agency.

Following discussion, a motion was made and seconded to:

1. identify the Land Use Commission as the “Accepting Authority” to review and accept the applicant’s proposed actions pursuant to HRS Chapter 343;
2. the Commission believes that Petitioner’s submittals show that there may be a significant effect or impact to the environment and direct the Petitioner to prepare an Environmental Impact Statement Preparation Notice (“EISPN”)

There being a vote tally of 8 ayes and 0 nays, the motion carried.



ORDER

This Commission, having duly considered Petitioner's pleadings and motion, the pleadings and comments of the County and OP in this proceeding, and a motion having been made at its meeting on February 5, 2020, at Maui, O'ahu and Hawai'i islands, 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 the Commission agrees to be the accepting authority pursuant to HRS Chapter 343; that the Project may have a significant effect upon the environment to warrant the preparation of an EIS, and that the Petition is directed to file an EISPN available for a 30-day public review and comment period pursuant to section 343-5(c) and 343-5(e), and section HAR §11-200.15(b).