



LAND USE COMMISSION
STATE OF HAWAII

2020 OCT 28 P 1:03

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A03-745
HANOHANO LLC, A Hawai'i Limited)	
Liability Company)	ORDER GRANTING IN PART AND
)	DENYING IN PART HANOHANO
To Amend The State Land Use)	LLC'S MOTION TO RELEASE AND
Agricultural District To The State Land)	MODIFY CONDITIONS; AND
Use Urban District For Approximately)	CERTIFICATE OF SERVICE
28.695 Acres Of Land At Keahua, Kula,)	
Island And County Of Maui, State Of)	
Hawai'i, Bearing Tax Map Key Numbers)	
2-3-11: 1 And 2-3-11: 2 (Second Taxation)	
Division))	
-----)	

ORDER GRANTING IN PART AND DENYING IN PART HANOHANO LLC'S
MOTION TO RELEASE AND MODIFY CONDITIONS

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.

DATE

October 28, 2020

by _____

EXECUTIVE OFFICER



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ORDER GRANTING IN PART AND DENYING IN PART HANOHANO LLC'S
MOTION TO RELEASE AND MODIFY CONDITIONS

On August 10, 2020, Hanohano LLC, a Hawai'i Limited Liability Company ("Petitioner"), filed a Motion to Release and Modify Conditions, Memorandum in Support of Motion, Verification, and Certificate of Service (collectively "Motion to Release and Modify"), pursuant to Hawai'i Administrative Rules ("HAR") §§ 15-15-70 and 15-15-94.

In its Motion to Release and Modify, Petitioner requested that the State of Hawai'i Land Use Commission ("LUC") release Condition Nos. 1, 3, 5 through 23, and

25 and modify Condition Nos. 4 and 26 of the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment (“Decision and Order”) filed May 17, 2005.¹

On August 19, 2020, Petitioner filed a First List of Exhibits, Affidavit of Jennifer A. Lim, Exhibits “1” – “27,” and Certificate of Service.

On August 31, 2020, the County of Maui Department of Planning (“DP”) filed a Position Statement on Petitioner’s Motion to Release and Modify (“Position Statement”).

On September 22, 2020, the DP filed an Amendment to its Position Statement.

On September 25, 2020, the State of Hawai`i Office of Planning (“OP”) filed a Response to Petitioner’s Motion to Release and Modify.

On September 30, 2020, Petitioner filed a Second List of Exhibits, Affidavit of Derek B. Simon, Exhibits “28” – “31,” and Certificate of Service.

The LUC considered Petitioner’s Motion to Release and Modify at its meeting on October 7, 2020, using the Zoom Webinar Virtual Meeting platform.

Jennifer A. Lim, Esq., and Derek B. Simon, Esq., appeared on behalf of Petitioner. Dawn Apuna, Esq., appeared on behalf of OP. Michael Hopper, Esq.; Michele McLean; and Tara Furukawa appeared on behalf of the DP.

¹ Petitioner did not seek release of Condition Nos. 2 and 24.
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Conditions

At the meeting, Petitioner provided a background of the docket and described the relief requested in its Motion to Release and Modify. Petitioner offered Leilani Pulmano, Project Manager, Pacific Rim Land, Inc., as a witness.

Both OP and the DP summarized their respective positions on Petitioner's Motion to Release and Modify.

Following discussion, a motion was made and seconded to grant in part and deny in part Petitioner's Motion to Release and Modify by 1) releasing Condition Nos. 1, 3, 4f, 4h, 6a through 6d, 7, 9 through 13, 16, 17, 21, 22, 23, and 25 to the Decision and Order filed May 17, 2005; 2) modifying Condition Nos. 4a, 4b, 4c, 4d, 4e, 4g, 4i, and 26 to the Decision and Order filed May 17, 2005; and 3) retaining Condition Nos. 2, 5, 6e, 8, 14, 15, 18, 19, 20, and 24 to the Decision and Order filed May 17, 2005. An amendment to the motion was subsequently made and seconded to authorize the LUC Chair to order the release of Condition No. 6e once evidence is submitted to the LUC that the dedication of the right-of-way and setback has been completed to the satisfaction of the State of Hawai'i Department of Transportation ("DOT"). A secondary amendment of the original amendment to the motion was made and seconded to retain Condition No. 23.

Thereafter, a vote was taken on this secondary amendment of the original amendment to the motion. There being a vote tally of 8 ayes and 0 nays, the motion passed.²

ORDER

The LUC, having duly considered the oral and written arguments of Petitioner, OP, and the DP, and a motion having been made and seconded at its meeting on October 7, 2020, using the Zoom Webinar Virtual Meeting platform, 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, 3, 4f, 4h, 6a through 6d, 7, 9 through 13, 16, 17, 21, 22, and 25 to the Decision and Order filed May 17, 2005, be RELEASED.

IT IS ALSO ORDERED THAT Condition Nos. 4a, 4b, 4c, 4d, 4e, 4g, 4i, and 26 to the Decision and Order filed May 17, 2005, be MODIFIED as follows:

- 4a. Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such

² There are eight sitting commissioners presently on the LUC. The ninth seat is currently vacant.
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Conditions

reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to.

- 4b. Petitioner shall include in the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones.
- 4c. Petitioner shall cause the formation of a three (3) person committee, composed of two representatives of the Homeowners' Association and one representative of the Hawaiian Civic Club, Aha Moku Council, or similar Hawaiian entity (the "Curator Selection Committee"), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners' Association; and (b) direct and coordinate the perpetual maintenance by the Homeowners' Association of the native plantings in the 60 foot wide buffer zone. The Curator Selection Committee shall seek input from Office of Hawaiian Affairs on its proposed selection of a Curator prior to retaining such Curator.
- 4d. (Deleted by modification.)
- 4e. The Curator shall monitor the preservation and maintenance of the Heiau to maintain consistency with the requirements under the Preservation Plan. The Curator, or the Curator Selection Committee based upon information provided by the Curator, shall, upon request, provide a report to the Commission describing on the maintenance and preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.
- 4g. The Homeowners' Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&R's will include a condition to the effect that the Homeowners' Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator,

such that the Curator may perform the duties prescribed in this Decision and Order.

- 4i. (Deleted by modification.)
26. Petitioner shall record in the Bureau of Conveyances of the State of Hawai'i an amended and restated Certificate of Conditions recognizing the Commission's release of conditions and modification of conditions, as ordered pursuant to this Decision and Order, and restating the conditions reaffirmed by the Commission, if any, pursuant to this Decision and Order. The amended and restated Certificate of Conditions shall fully supersede and release the Certificate of Conditions that was recorded as Document No. 2005-105309.

IT IS FURTHER ORDERED that Condition Nos. 2, 5, 6e, 8, 14, 15, 18, 19, 20, 23, and 24 to the Decision and Order filed May 17, 2005, be RETAINED.

IT IS ALSO FURTHER ORDERED that the LUC Chair shall order the release of Condition No. 6e once evidence is submitted to the LUC that the dedication of the right-of-way and setback has been completed to the satisfaction of the DOT.

IT IS ALSO FURTHER ORDERED that the LUC Chair shall sign the Order in this matter on behalf of the LUC.

ADOPTION OF ORDER

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

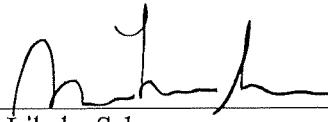
Done at Honolulu, Hawai'i, this 28th, day of October 2020, per motion on October 7, 2020.

LAND USE COMMISSION
STATE OF HAWAII

APPROVED AS TO FORM



Deputy Attorney General

By 

Jonathan Likeke Scheuer
Chairperson and Commissioner

Filed and effective on:

October 28, 2020 _____

Certified by:



DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of ORDER GRANTING IN PART AND DENYING IN PART HANOHANO LLC'S MOTION TO RELEASE AND MODIFY CONDITIONS was 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:

DEL. MARY ALICE EVANS, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

DEL. DAWN TAKEUCHI-APUNA, Esq.
Deputy Attorney General
Hale Auhau, Third Floor
425 Queen Street
Honolulu, Hawaii 96813

REGULAR MICHELE MCLEAN, Director
MAIL: County of Maui
Department of Planning
200 South High Street, Room 315
Wailuku, Hawaii 96793

CERTIFIED Mr. Michael Hopper Esq.,
MAIL: County of Maui
Department of Corporation Counsel
200 South High Street, Third Floor
Wailuku, Hawaii 96793

CERTIFIED CARLSMITH BALL
MAIL: JENNIFER LIM/DEREK SIMON
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, HI 96813

Honolulu, Hawaii, 10/28/2020.



RILEY K. HAKODA
Chief Clerk