



LAND USE COMMISSION
STATE OF HAWAII

2020 DEC 22 P 1:25

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A11-791
)	
HG KAUA'I JOINT VENTURE, LLC)	ORDER GRANTING LIKO-O-KALANI
)	MARTIN'S PETITION TO INTERVENE IN
)	HG KAUA'I JOINT VENTURE, LLC'S
)	PETITION FOR LAND USE DISTRICT
To Amend The Agricultural Land Use)	BOUNDARY AMENDMENT; AND
District Boundary Into The Urban Land)	CERTIFICATE OF SERVICE
Use District For Approximately 97 Acres)	
Of Land At Kapa'a, Island of Kaua'i, State)	
Of Hawai'i, Tax Map Key No. (4) 4-3-03:)	
Portion 001)	

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.

December 22, 2020

DATE

by


EXECUTIVE OFFICER



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STATE OF HAWAII

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ORDER GRANTING LIKO-O-KALANI MARTIN'S PETITION TO INTERVENE IN HG
KAUA'I JOINT VENTURE, LLC'S PETITION FOR LAND USE DISTRICT BOUNDARY
AMENDMENT

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ORDER GRANTING LIKO-O-KALANI MARTIN'S PETITION TO INTERVENE IN HG KAUA'I JOINT VENTURE, LLC'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

FINDINGS OF FACT

1. On March 21, 2011, 3 Stooges, LLC ("Petitioner"), filed a Petition For Land Use District Boundary Amendment ("Petition") to reclassify approximately 97 acres of land at Kapa'a, Island of Kaua'i, State of Hawai'i, identified as Tax Map Key No. (4) 4-3-03: por. 001, from the State Land Use Agricultural District to the State Land Use Urban District for the Kapa'a Highlands Phase II ("Project").

2. On April 14, 2011, Liko-O-Kalani Martin filed a timely Notice of Intent to Intervene pursuant to HAR §15-15-52(b), within thirty days of the date of the notification of petition filing.
3. On October 29, 2014, HG Kaua'i Joint Venture, LLC filed a motion with the Commission requesting among other things: the substitution of the original Petitioner with themselves as successor in interest.
4. On November 11, 2020, Petitioner, caused to be published a notice of hearing in newspapers with a statewide circulation pursuant to HRS §91-9.5. Any petitions to intervene, pursuant to HAR §15-15-52(e), will need to be received within fifteen days after this publication.¹
5. On November 20, 2020, the Commission mailed the Agenda and Meeting Notice for the December 3, 2020 meeting to all parties, and the Statewide and Kaua'i email and mailing lists. In addition, the notice was filed and posted at the Lt. Governor's office and the Commission's website.
6. On November 27, 2020, Liko-O-Kalani Martin filed a timely Petition to Intervene pursuant to HAR §15-15-52(e), within fifteen days after the notice of hearing was published. In his petition to intervene, Mr. Martin stated he was an independent Hawaiian elder concerned about the proposed Project's environmental impacts and impacts on traditional and customary practice. Mr. Martin identified several issues or concerns: potential constitutional issues regarding Hawaiian National usage; direct or indirect impacts to agricultural uses; cumulative impacts of planned and approved

¹ Fifteen calendar days would be November 26, 2020. However, since that was a State holiday, the next calendar day or November 27, 2020 was the filing deadline.

projects on infrastructure (wastewater and sewage, roads); ability of the County to provide water; risk to nearshore resources from injection wells; risk to drinking water resources; risk to wetlands from stormwater runoff; risks to children attending adjacent school due to increased traffic; visual impacts; maintenance of sufficient prime agricultural lands; and efficiency of vehicular transportation outside the Petition Area.

7. Between November 20 and December 3, 2020, the Commission received public comments from the following groups or individuals: John Zwiebel; Jon Olsen; Margery Freeman; Lorraine Newman; John and Lucy Witeck; Valerie Weiss; Bianca Isaki; Iris McGowan; and Dana Bekeart.
8. On December 1, 2020, Petitioner filed a Memorandum in Opposition to Petition to Intervene by Liko-O-Kalani Martin.
9. On December 3, 2020, the Commission considered timely filed Petitions to Intervene in Docket No. A11-791 at its meeting using Zoom video-conferencing technology. Liko Martin appeared on his own behalf as potential intervener. William W.L. Yuen, Esq. and Janna Wehelani Ahu, Esq. appeared on behalf of Petitioner. Dawn Takeuchi-Apuna, Esq., and Rodney Funakoshi appeared on behalf of the State Office of Planning (“OP”). Chris Donahue, Esq., and Jody Higuchi Sayegusa appeared on behalf of the County of Kaua‘i Planning Department (“County”). No representatives from Sierra Club of Kaua‘i nor the Wailua-Kapa‘a Neighborhood Association made an appearance.
10. There were two public witnesses who provided testimony. Rayne Regush supported Mr. Martin’s intervention request. Bridget Hammerquist also supported Mr. Martin’s intervention and felt he could bring attention to her concerns about water delivery and a

failure by Petitioner in its EIS to disclose additional planned development that will cause cumulative impacts.

11. Chair Scheuer disclosed that he knew Ms. Hammerquist from previous work he had done. There were no objections by the parties to his continued participation.
12. At the meeting, Mr. Martin stated his reasons for filing his petition for intervention and argued why he should be allowed to participate in the proceedings as an Intervener. During questioning by commissioners, Mr. Martin more fully described his participation with Petitioner's EIS process, concerns about traffic, water, cultural issues and other topics of concern, information sources he would rely on, and his willingness to collaborate with Ms. Regush and Ms. Hammerquist. Finally, Mr. Martin explained how "Hawaiian National usage" could be defined and what cultural practices might be involved. Mr. Martin believes that his intervention in the proceeding will result in the development of a complete record before the Commission and will serve the public's interest by ensuring that the concerns of Kaua'i residents and Native Hawaiians are adequately represented. Finally, Mr. Martin indicated he would be requesting a time extension for the start of the hearings.
13. Chair Scheuer disclosed that he knew Mr. Martin's mother from earlier work he had performed. There were no objections by the parties to his continued participation.
14. Following Mr. Martin's presentation on his Petition to Intervene, Petitioner's representative Mr. Yuen, stated that they opposed Mr. Martin's intervention due to concerns regarding the breadth of issues he has raised, that the State and County were appropriate advocates for the issues he has raised, and that certain issues such as the legality of title and sovereignty are outside the Commission's jurisdiction. Mr. Yuen did

not feel Mr. Martin would disrupt the proceedings, and argued that if admitted, the Commission should limit Mr. Martin's intervention to matters within its jurisdiction.

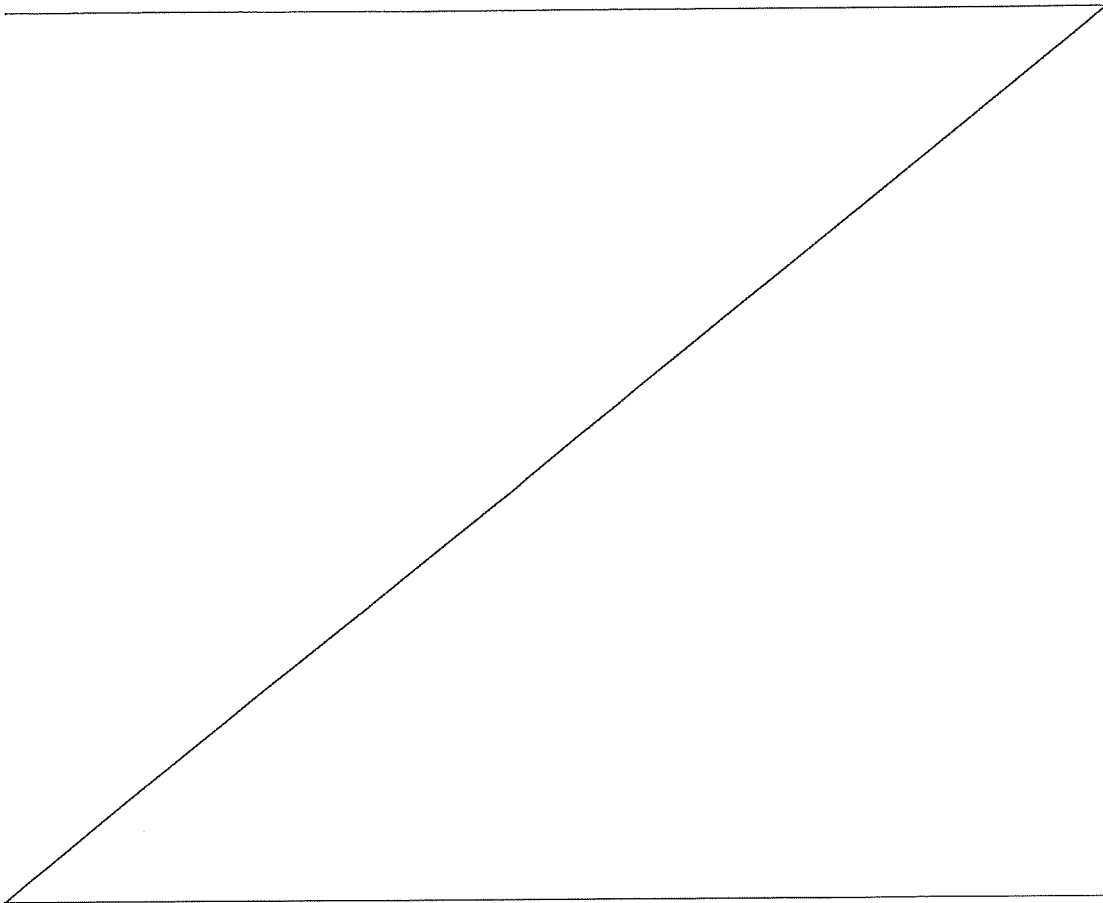
15. The County stated no objections to the Petition to Intervene.
16. OP had no objections to the Petition to Intervene, described the areas of contention that OP thought the Intervenor would include in its case, and asked how much time the Intervener felt they would need to prepare its case, if admitted. Mr. Martin felt he might need until February or March 2021 to prepare his case, retain legal counsel, coordinate with the Sierra Club and Wailua-Kapa'a Neighborhood Association, and review some of Petitioner's documents he had yet to receive.
17. The Commission went into Executive Session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities with regards to the Petition to Intervene.
18. Following discussion, a motion was made and seconded to (i) grant the Petition to Intervene for Liko-O-Kalani Martin; and (ii) that Mr. Martin should file a motion for a continuance or time extension by December 28, 2020. There being a tally of 6 ayes, 1 no, and 1 excused, the motion carried.²

² Currently there is one at-large position vacant on the Commission.

ORDER

This Commission, having duly considered Liko-O-Kalani Martin's timely Petition To Intervene, the arguments of the parties presented in the proceeding, and a motion having been made at a meeting on December 3, 2020, 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 Liko-O-Kalani Martin's timely Petition To Intervene be GRANTED; and that Mr. Martin file a motion for continuance or time extension for the start of hearings on this docket on or before December 28, 2020.



ADOPTION OF ORDER

The ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

DONE at Honolulu, Hawai'i, this 22nd day of December, 2020, per motion on December 3, 2020.

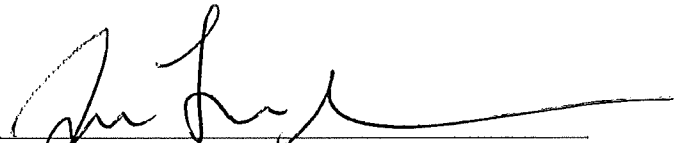
APPROVED AS TO FORM

/s/ Melissa Goldman

Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

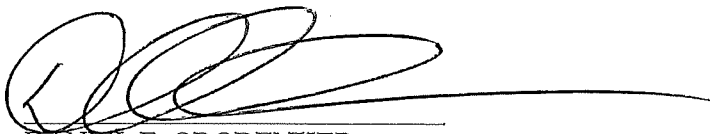
By



JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

12/22/2020



DANIEL E. ORODENKER

Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING LIKO-O-KALANI MARTIN'S PETITION TO INTERVENE IN HG KAUA'I JOINT VENTURE, LLC'S PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT 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:

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Attorney for Intervener – Liko-O-Kalani Martin

Honolulu, Hawai'i, 12/22/20 .



DANIEL E. ORODENKER
Executive Officer