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HG KAUAI JOINT VENTURE, LLC



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

In the Matter of the Petition of:

HG KAUAI JOINT VENTURE, LLC

To Amend the Land Use District Boundary of Certain Lands Situated at Kapa'a, Island of Kauai, State of Hawai'i, consisting of approximately 96 Acres, from the Agricultural Land Use District to the Urban Land Use District, Kauai Tax Map Key 4-3-03: por 01.

DOCKET NO. A11-791

HG KAUAI JOINT VENTURE, LLC'S
OPPOSITION TO INTERVENOR'S
MOTION TO CONFIRM DEADLINES
FOR COMMISSION DECISION-
MAKING SHALL BE EXTENDED;
CERTIFICATE OF SERVICE

**HG KAUAI JOINT VENTURE, LLC'S OPPOSITION TO
INTERVENOR'S MOTION TO CONFIRM DEADLINES FOR
COMMISSION DECISION-MAKING SHALL BE EXTENDED**

HG KAUAI JOINT VENTURE, LLC, a Hawaii limited liability company ("HG Kauai"),
by and through its attorneys, Dentons US LLP, responds to Intervenor's Motion to Confirm
Deadlines for Commission Decision-Making Shall Be Extended ("Motion").

I. INTRODUCTION

At this stage in the contested case hearing, Intervenor's Motion should be denied because
it is premature and Intervenor has failed to show how the Governor's Emergency Proclamations

“prevent the applicant, the agency, or the department from fulfilling application or review requirements.”

II. ARGUMENT

HRS § 91–13.5 requires state and county agencies to adopt rules specifying a maximum time period to grant or deny, a district boundary amendment. This statute states in relevant part:

§ 91–13.5 Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions. (a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval; ...

...

(c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved; provided that a delay in granting or denying an application caused by the lack of quorum at a regular meeting of the issuing agency shall not result in approval under this subsection; provided further that any subsequent lack of quorum at a regular meeting of the issuing agency that delays the same matter shall not give cause for further extension, unless an extension is agreed to by all parties.

...

(e) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

Emphases added.

The legislative history indicates that the purposes for enacting HRS § 91–13.5 include streamlining administrative processes and improving Hawai`i’s business climate. *See* 1998 Haw. Sess. Laws Act 164, § 1 at 613; *see also* S. Stand. Comm. Rep. No. 2386, in 1998 Senate Journal, at 976–77 (“Your Committees find that **establishing time frames will compel agencies to prioritize permitting and approval activities**, streamline and eliminate any requirements for

unnecessary application information, and in the process identify critical application information.”) (emphasis added).

The deadline for the Commission to act is August 27, 2021, which is 365 days after the application was accepted.¹ Unless a time extension is granted, the Commission must approve, deny, or modify the Petition by the deadline. *See id.* If the Commission grants an extension, it is “not to exceed ninety days. . .” *Id.*

The Commission began holding its contested case hearing on the Petition on March 10, 2021, less than a month before the Intervenor filed this Motion.² The Commission has scheduled

¹ HAR § 15-15-74(b):

For district boundary amendment petitions filed on or after July 14, 1998, prior to a period of not more than three hundred sixty-five days after the petition has been deemed a proper filing by the commission or the executive officer, unless otherwise ordered by a court, or unless a time extension, not to exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with subchapter 11. If the commission fails to act on the petition pursuant to section 205-4(g), HRS, the petition shall be deemed approved, subject to the provisions of section 15-15-90(e);

see also HRS § 205-4(g):

Within a period of not more than three hundred sixty-five days after the proper filing of a petition, unless otherwise ordered by a court, or unless a time extension, which shall not exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section 205-17 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.

² HAR § 15-15-74(a):

For district boundary amendment petitions filed before December 31, 1995, within a period of not more than one hundred twenty days after the close of the hearing, unless otherwise ordered by the court, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with subchapter 11;

see also HRS 205-4(b):

Upon proper filing of a petition pursuant to subsection (a) the commission shall, within not less than sixty and not more than one hundred and eighty days, conduct a hearing on the appropriate island in accordance with the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

additional hearing days on April 15, April 29, May 13, May 27, June 9, 10, 24 and 25. Based on the purposes of HRS § 91–13.5—*i.e.*, time frames which will compel agencies to prioritize permitting and approval activities to streamline the process—it is simply premature for the Intervenor to request an extension at this junction, when the deadline is five months away.

In addition, the Intervenor is not asking for a ninety day extension, as allowed by HAR § 15-15-74(b), but is asking for an indeterminate continuance based on HRS § 91-13.5 for state emergencies. One of the requirements for a continuance based on HRS § 91-13.5(e) is a showing that the state emergency “prevent[s] the applicant, the agency, or the department from fulfilling application or review requirements.” While the Petitioner acknowledges the Commission and its staff have had to operate in a remote capacity due to the Governor’s Emergency Proclamations (*see* Motion at 4), the Intervenor has presented no evidence that these changes have delayed the Commission’s timeline for hearing the case, or that it would prevent fulfillment of review requirements in the ordinary course of time.

III. CONCLUSION

Based on the foregoing, Petitioner requests the Motion be denied as premature. However, if the Commission is inclined to grant the Motion, Petitioner asks that the extension not exceed ninety days under HAR § 15-15-74(b).

DATED: Honolulu, Hawai‘i, April 13, 2021.

/s/ Janna Wehilani Ahu
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JANNA WEHILANI AHU

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing document to be served on the following persons by E-mail, U.S. mail, postage prepaid to their respective addresses (as indicated below):

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DATED: Honolulu, Hawai'i, April 13, 2021.

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