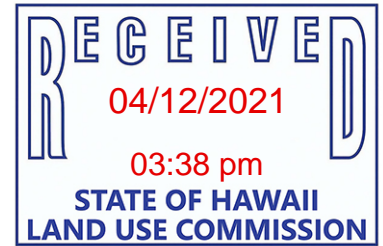


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BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A11-791
)	
HG KAUAI JOINT VENTURE, LLC)	OFFICE OF PLANNING’S RESPONSE
)	TO INTERVENOR’S MOTION TO
)	CONFIRM DEADLINES FOR
To Amend the Land Use District Boundary)	COMMISSION DECISION-MAKING
of Certain Lands Situated at Kapaa, Island)	SHALL BE EXTENDED; CERTIFICATE
of Kauai, State of Hawaii, Consisting of)	OF SERVICE
approximately 96 Acres, From the)	
Agricultural Land Use District to the Urban)	
Land Use District, Kauai Tax Map Key 4-3-)	
03: por. 01)	
_____)	

OFFICE OF PLANNING’S RESPONSE TO INTERVENOR’S MOTION TO CONFIRM
 DEADLINES FOR COMMISSION DECISION-MAKING SHALL BE EXTENDED

I. INTRODUCTION

The Office of Planning (“OP”) recommends that Intervenor’s Motion to Confirm Deadlines for Commission Decision-Making Shall Be Extended (“Intervenor’s Motion to Continue”) be heard later, at least after Petitioner has finished presenting its case-in-chief. On or after the Petitioner has finished presenting its case-in-chief, the LUC may wish to consider scheduling further briefing, including: (1) a deadline by which Intervenor may supplement its motion to more clearly explain why the difficulty in travel has prevented them from reviewing this matter in the ordinary course, to propose a new deadline with a basis for that time period, and to supplement its motion based upon the circumstances as it exists at that time; and (2) a deadline by which the parties may respond to Intervenor’s motion and supplemental briefing.

II. ARGUMENT

OP has expressed a concern that the pace and length of this hearing may later incentivize the LUC to encourage the other parties to shorten their cases or to not provide sufficient time to

prepare comments to a proposed decision and order because the 365 day deadline expires in September 2021. See HAR § 15-15-74 (setting a 365 day deadline to rule on district boundary amendments, with not more than one 90-day extension). So, OP is sympathetic to any request to extend that 365 day period. But Intervenor's Motion to Continue needs to meet the statutory requirements.

In this case, Intervenor's are not asking for a 90 day extension as allowed by HAR § 15-15-74(b), but are asking for an indeterminate continuance based on HRS § 91-13.5 for state emergencies. One of the requirements for a continuance based on section 91-13.5 is a showing that the emergency prevented the applicant, agency, or department from "fulfilling application or review requirements." Even assuming this applies to the inability of parties to conduct their review, Intervenor's do not give a clear factual explanation as to why the restricted travel has prevented them from reviewing the petition on a timely basis. OP suggests that this factual assertion could be further supported in a supplemental pleading.

Intervenor's also ask for an extension of the deadline, without giving a recommendation as to the length of the extension. As the extension is presumably based upon the delay caused by the emergency, this factual assertion could also be further supported in a supplemental pleading.

Although OP is concerned about the 365 day deadline, we do not yet know if we will be able to meet this deadline without undue imposition on the times of the parties. These concerns should be clearer later in the hearing. Depending on how long it takes, this matter may be considered for scheduling after Petitioner completes its case-in-chief. At that stage in the process, the LUC will have more information to know whether the Motion to Continue is needed.

III. CONCLUSION

Accordingly, OP recommends that the Motion to Continue be heard for scheduling after Petitioner completes its case-in-chief or some other later date, and that the LUC at that point schedule further briefing on this matter to allow Intervenor's to supplement their motion, and then to allow the other parties to file responses.

DATED: Honolulu, Hawaii, April 12, 2021.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
DIRECTOR

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Land Use District, Kauai Tax Map Key 4-3-)	
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_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawaii, April 12, 2021.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
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