



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

In The Matter Of The Petition Of)	DOCKET NO. A11-791
)	
HG KAUA'I JOINT VENTURE, LLC)	ORDER GRANTING PETITIONER'S
)	MOTION FOR WITHDRAWAL OF
)	AMENDED PETITION FOR LAND USE
)	DISTRICT BOUNDARY AMENDMENT;
To Amend The Agricultural Land Use)	AND CERTIFICATE OF SERVICE
District Boundary Into The Urban Land 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: 001)	
(portion))	
_____)	


ORDER GRANTING PETITIONER'S MOTION FOR WITHDRAWAL OF AMENDED
PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

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, HAWAI'I.

Date June 18, 2021

BY 
Executive Officer



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ORDER GRANTING PETITIONER'S MOTION FOR WITHDRAWAL OF AMENDED PETITION
FOR LAND USE DISTRICT BOUNDARY AMENDMENT

On May 27, 2021, HG Kaua'i Joint Venture, LLC ("Petitioner"), filed a Motion for Withdrawal of Amended Petition for Land Use District Boundary Amendment ("Motion") pursuant to Hawai'i Administrative Rules ("HAR") §§15-15-70 and 15-15-50.6(b). A Declaration of Counsel ("Declaration") by William W.L. Yuen, Esq., was also attached to the Motion.

FINDINGS OF FACT

1. On August 27, 2020, Petitioner filed its Amended Petition.

2. On March 10, 2021 the Commission began hearings on Petitioner’s Amended Petition. The Commission conducted additional hearings on March 11, March 24-25, April 15, and May 12-13, 2021.
3. On May 13, 2021, Petitioner completed and rested its case-in-chief. At that time a motion was made to deny the Amended Petition because Petitioner had not met its burden to show upon a clear preponderance of the evidence that the proposed boundary amendment was “...reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17.”¹ The motion was seconded and discussed by the Commission. Prior to voting, Petitioner requested an opportunity for all parties to respond to the motion in writing, which was orally granted by the Commission. At that time, the parties were informed that a decision-making hearing on the motion would be scheduled for June 10, 2021; and that any filings or briefs on the motion needed to be filed prior to this date.
4. On May 27, 2021, Petitioner filed its Motion and Declaration requesting the Amended Petition be withdrawn and a hearing on its Motion be held on June 10, 2021 instead of the Commission’s Motion to Deny the Amended Petition. In the Declaration, Mr. Yuen stated, that Petitioner wished to withdraw its Amended Petition to address concerns raised in the Commission’s motion, that include, but are not limited to, the need to supplement the Final Environmental Impact Statement (“FEIS”) and meet the standards from *Ka Pa‘akai O Ka‘Āina v. Land Use Commission*.² Mr. Yuen concluded that addressing these concerns will require significant

¹ Pursuant to requirements in Hawai‘i Revised Statutes (“HRS”) §205-4(h), and HAR §15-15-77(a).

² *Ka Pa‘akai O Ka‘Āina v. Land Use Comm’n, State of Hawaii* 31, 7 P.3d 1068 (2000)

attention and time. Petitioner acknowledged that in granting its Motion, Petitioner may not refile the petition within one year after the Commission's Order.³

5. On May 27, 2021, Intervener communicated by email that it would not be filing its own Motion or Brief responsive to the Commission's oral motion due to Petitioner's Motion for Withdrawal.
6. On May 28, 2021, the County of Kaua'i filed a Statement of No Objection to Petitioner's Motion for Withdrawal.
7. On June 2, 2021, the Commission mailed the Meeting Notice and Agenda for the June 9-10, 2021 meeting to the Parties, and the Statewide and Kaua'i County mailing and email lists.
8. On June 3, 2021, the State Office of Planning filed its Statement of No Objection to Petitioner's Motion for Withdrawal.
9. On June 4, 2021, Intervener filed its Statement of No Position on Petitioner's Motion for Withdrawal.
10. On June 10, 2021, the Commission held a meeting via interactive conferencing technology in Honolulu, Hawai'i on Petitioner's Motion. William W.L. Yuen, Esq. and Janna Ahu, Esq., appeared on behalf of Petitioner. Chris Donahoe, Esq., and Jodi Higuchi-Sayegusa appeared on behalf of the County of Kaua'i; Alison Kato, Esq., Rodney Funakoshi, and Aaron Setogawa appeared on behalf of the State Office of Planning; and, Lance Collins, Esq., Bianca Isaki, Esq., and Liko O Kalani Martin appeared on behalf of Intervener. At the meeting the Petitioner presented its Motion. The parties in this proceeding had no objections to the Motion. Following discussion, a motion was made and seconded to grant Petitioner's Motion. There being a vote tally of 8 ayes and no nays, the motion carried.⁴

³ Pursuant to §§15-15-50.6(b) and 15-15-76(b).

⁴ The Commission has nine positions. Currently there is one at-large position vacant on the Commission.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Authority to Make Motions

1. HAR §15-15-70(a) states the following:

“Any party may make motions before, during, or after the close of a hearing.”

Authority to Dismiss Petition

2. HAR §15-15-41(b) states the following:

“Notwithstanding the provisions of sections 15-15-50(e), 15-15-50(f), and 15-15-50.5, the commission may, on its own motion, or on the motion by any of the parties addressing alleged deficiencies of the petition, dismiss defective or nonconforming petitions with or without prejudice. If the petition is determined by the commission to be defective or nonconforming, the date of proper filing shall be the date the commission determines that the defects are cured. If the defects are jurisdictional, including, without limitation, failure to satisfy the requirements of section 15-15-50(c)(5), the commission shall dismiss the petition without prejudice.”

3. HAR §11-200.1-30(b) states the following:

“ (b) The accepting authority or approving agency in coordination with the original accepting authority shall be responsible for determining whether a supplemental EIS is required. This determination will be submitted to the office for publication in the periodic bulletin. Proposing agencies or applicants shall prepare for public review supplemental EISs whenever the proposed action for which an EIS was accepted has been modified to the extent that new or different environmental impacts are anticipated. A supplemental EIS shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned will not be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with.”

*[emphasis added]

4. HAR §15-15-50.6(b) states the following:

“If a petition for district boundary amendment has been set for hearing, the petition may be withdrawn only upon the commission’s granting of a motion for withdrawal filed by the petitioner. In the event the commission grants a motion to withdraw, the petitioner may not refile the petition within one year after the granting of the motion for withdrawal.”

Burden of Proof

5. HRS §91-10(5) states the following:

“Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.”

6. HRS §205-4(h) states the following:

“No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.”

7. HAR §15-15-59(a) states the following:

“The hearing shall be conducted in accordance with this subchapter. Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of persuasion.”

Authority to Sign Orders

8. HAR §15-15-70(m) states the following:

“Orders granting, denying or otherwise disposing of motions, including motions to amend decisions and orders relating to district boundary amendments and to special permits, shall be signed by the chairperson or any vice chairperson, or the presiding officer, or the hearing officer, as the case may be.”

ORDER

The State Land Use Commission (“Commission”), having duly considered Petitioner’s Motion, Petitioner’s Declaration, and there being no objections from the parties in this proceeding, and a motion being made at its meeting on June 10, 2021, using interactive digital conferencing technology 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,

ADOPTION OF ORDER

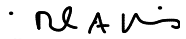
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 18TH, day of June, 2021, per motion on June 10, 2021.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By _____
JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

6/18/2021

Certified by:



DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A11-791
A11-791 HG KAUA'I JOINT VENTURE LLC) CERTIFICATE OF SERVICE
To amend the Land Use District Boundaries of)
Certain Lands Situated at Kapa`a, Island of)
Kaua`I, State of Hawai`i, consisting of)
approximately 96 Acres, from the State)
Agricultural Land Use District to the State)
Urban District, Kaua`i, (TMK): (4) 4-3-03:)
portion 01)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER GRANTING PETITIONER'S MOTION FOR WITHDRAWAL OF AMENDED 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 Intervenor Liko Martin

Dated: Honolulu, Hawai'i, June 18, 2021



DANIEL ORODENKER
Executive Officer