




BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A10-785
)	
HAWAII HOUSING FINANCE AND)	ORDER GRANTING PETITIONERS'
DEVELOPMENT CORPORATION and)	MOTION TO WITHDRAW ITS
FOREST CITY HAWAII KONA, LLC)	PETITION WITHOUT PREJUDICE
)	
To Amend The Agricultural Land Use District)	
Boundary Into The Urban Land Use District)	
for certain lands situate at Keahuolū, North)	
Kona, Hawai'i; consisting of approximately)	
271.837 acres, Tax Map Key Nos. (3) 7-4-)	
021:020 (por.); (3) 7-4-021:024; (3) 7-4-)	
021:025; (3) 7-4-021:026; and (3) 7-4-021:027)	

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.

April 26, 2010 by


Executive Officer



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ORDER GRANTING PETITIONERS' MOTION TO WITHDRAW ITS PETITION WITHOUT
PREJUDICE

On April 6, 2010, Hawai'i Housing Finance and Development Corporation (HHFDC) and Forest City Hawai'i Kona, LLC, (collectively "Petitioners"), filed Petitioners' Motion To Withdraw Its Petition Without Prejudice ("Motion"), pursuant to section 15-15-70, Hawai'i Administrative Rules ("HAR").

In their Motion, Petitioners pointed out that they had received feedback from the State Office of Planning that the prior archaeological inventory survey ("AIS") conducted within the Petition Area and approved by the State Historic Preservation Division ("SHPD") in 1993

may not address new concerns raised by SHPD. To address these concerns, Co-Petitioner Forest City has commissioned a supplemental AIS. The current 45-day decision timeframe required under the section 201H-38, HRS, process for land use district boundary amendments does not allow enough time for Petitioner to submit the supplemental AIS to the Commission, as well as for interested parties to provide comments and argument prior to the Commission's final action on the Petition.

Therefore, the Petitioner requests the Commission grant the withdrawal of the Petition without prejudice, such that section 15-15-76, HAR, would not bar Petitioner from re-filing within one year of the withdrawal. Petitioner argues:

1. Section 15-15-34(b), HAR, allows the Commission, for good cause shown, to waive or suspend any rule that is not jurisdictional;
2. The one-year ban on re-filing after a withdrawal contained in Section 15-15-76, HAR, is not jurisdictional;
3. Good cause exists in this case to waive section 15-15-76, HAR, because Petitioner is taking steps to address OP's concerns prior to the opening of the hearings in the docket; and because no prejudice would result from waiving the one-year re-filing ban: no statements of position regarding the Petition have been filed, no testimony has been presented, and the hearing on the Petition has not opened.

On April 6, 2010, the State Office of Planning ("OP") filed a Memorandum In Support of Petitioner's Motion to Withdraw Its Petition Without Prejudice.

On April 8, 2010, the Commission considered the Motion at its meeting in Honolulu, Hawai'i. Craig Y. Iha, Esq. and Jennifer A. Benck, Esq., appeared on behalf of

Petitioners. Bryan C. Yee, Esq., Abbey Mayer, and Mary Alice Evans appeared on behalf of OP. The County of Hawai'i Department of Planning was apprised of this meeting but was not present or represented.

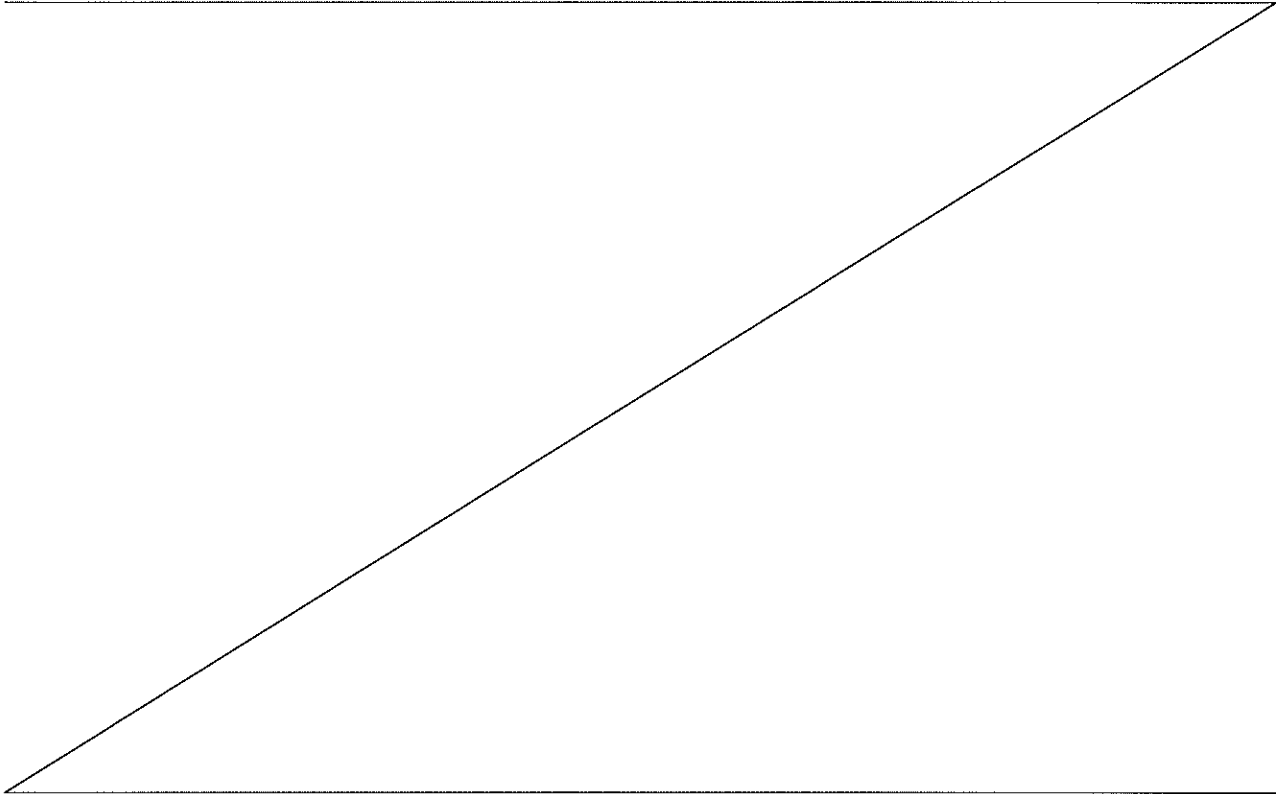
At the meeting, Mr. Iha provided Petitioners' argument on the Motion, and Mr. Yee provided OP's position.

Following discussion, a motion was made and seconded to grant Petitioners' Motion to withdraw the petition without prejudice because Section 15-15-76, HAR is not jurisdictional and good cause appears in this case for the Commission to waive the rule because Petitioner is taking steps to address OP's concerns and no prejudice would result from waiving the requirements of Section 15-15-76, HAR, in this instance. There being a vote tally of 8 ayes and 1 absent, the motion carried.

ORDER

This Commission, having duly considered Petitioners' Motion, and there being no objections from the parties in this proceeding, and a motion having been made at its meeting on April 8, 2010, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS that Petitioners' Motion to withdraw its Petition without prejudice be and hereby is GRANTED.



Done at Honolulu, Hawai'i, this 26 day of April, per motion on April 8,
2010.

LAND USE COMMISSION

APPROVED AS TO FORM
Diane Guiken
Deputy Attorney General

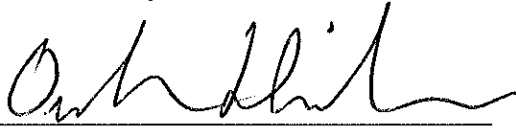
STATE OF HAWAII

By *Ransom Piltz*
RANSOM PILTZ
Chairperson and Commissioner

Filed and effective on:

April 26, 2010

Certified by:

A handwritten signature in black ink, appearing to read "Orlando Davidson", written over a horizontal line.

ORLANDO DAVIDSON

Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the ORDER GRANTING PETITIONERS' MOTION TO WITHDRAW ITS PETITION WITHOUT PREJUDICE 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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Dated: Honolulu, Hawai'i, April 26, 2010



ORLANDO DAVIDSON
Executive Officer