

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

In the Matter of the Petition of)
COUNTY OF HAWAII)
PLANNING DEPARTMENT)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
955.78 Acres at Keahuolu through)
Keauhou, North Kona, Island of)
Hawai'i, State of Hawai'i, Tax Map)
Key No.: 7-4-08: por. 1; 7-5-03: 6,)
7, 23; 7-5-10: 5; 7-5-17: 1, 19;)
7-6-13: 9; 7-7-04: por. 2, 56;)
7-7-07: 41; 7-7-08: por. 27, 99,)
105; 7-8-10: por. 29, and por. 30.)

DOCKET NO. A94-705
ORDER GRANTING IN PART
AND DENYING IN PART
PETITIONS FOR
INTERVENTION

LAND USE COMMISSION
STATE OF HAWAII
MAY 9 8 15 AM '96

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On December 13, 1994, Liliuokalani Trust filed a Petition for Intervention pursuant to section 15-15-53, Hawai'i Administrative Rules ("HAR"). Said petition was subsequently amended on January 11, 1995, July 31, 1995, and February 6, 1996. Liliuokalani Trust is the fee simple owner of Tax Map Key No. 7-4-08: por. 1, which is a parcel within the amended petition area of approximately 955.78 acres under the subject docket.

On December 19, 1994, Nansay Hawaii, Inc. filed a Petition for Intervention pursuant to HAR section 15-15-52. Nansay Hawaii, Inc. is the fee simple owner of a parcel that was included in the initial petition area under the subject docket.

On December 27, 1994, Hawaiian Development Corporation filed a Petition for Intervention pursuant to HAR section 15-15-52. Hawaiian Development Corporation is the fee simple

owner of Tax Map Key No. 7-5-03: 6 and 7, which is a parcel within the amended petition area of approximately 955.78 acres under the subject docket.

On December 28, 1994, Tokyo Green Hawaii, Inc. filed a Petition to Intervene pursuant to HAR section 15-15-52. Tokyo Green Hawaii, Inc. is the fee simple owner of parcels that were included in the initial petition area under the subject docket.

On December 28, 1994, Lanihau Partners L.P. and Palani Ranch Company filed a Petition of Lanihau Partners L.P. and Palani Ranch Company to Intervene in District Boundary Amendment Proceeding pursuant to HAR sections 15-15-52 and 15-15-53. Lanihau Partners L.P. and Palani Ranch Company are the fee simple owners of parcels that were included in the initial petition area under the subject docket.

On December 28, 1994, John Tommy Rosas, Jr. ("Rosas") filed a Petition to Intervene as a citizen of the United States and resident of the State of Hawai'i, County of Hawai'i, ahupua'a of Ke'eke'e, and pursuant to HAR section 15-15-52. Rosas appears to argue that he has aesthetic and environmental interests in preserving various historic and cultural sites located within the proposed reclassification area and which he has personally documented.

On December 28, 1994, Life of the Land filed a Petition for Intervention pursuant to HAR section 15-15-52. Life of the Land represented that based upon its members' long-term commitment to environmental preservation in Hawai'i, its interest is distinct from the general public.

On December 28, 1994, E Mau Na Ala Hele filed a Petition for Intervention pursuant to HAR section 15-15-52. E Mau Na Ala Hele represented in its petition that its interests is different from that of the general public because it is a non-profit organization whose members are interested in the research, documentation, education, and preservation of historic Hawaiian foot and horse trails that exist within the area that the County of Hawaii Planning Department is seeking to reclassify to urban use in this proceeding. E Mau Na Ala Hele also has concerns regarding archaeological materials submitted by the County of Hawaii Planning Department, and other matters.

On December 29, 1994, Kamehameha Investment Corporation filed a Petition for Intervention pursuant to HAR section 15-15-52. Said petition was subsequently amended on January 23, 1996. Kamehameha Investment Corporation is the fee simple owner of Tax Map Key No. 7-8-10: por. 29 and por. 30, which are parcels within the amended petition area of approximately 955.78 acres under the subject docket.

On December 29, 1994, Kona Scenic Land, Inc. filed a Petition for Intervention pursuant to HAR section 15-15-53. Kona Scenic Land, Inc. is the fee simple owner of approximately 49.03 percent interest in a parcel that was included in the initial petition area under the subject docket.

On December 29, 1994, James M. Rath ("Rath") filed a Request for Intervenor Status pursuant to HAR section 15-15-52. Rath represented that his interest in this proceeding arises from his capacity as a duly-elected County Council Member for the

Eighth Council District, County of Hawai'i, which included a vast majority of the land that was included in the initial petition area under the subject docket. Without citation to any legal or other authority, Rath has maintained "that there exists a separate fiduciary responsibility, non-legislative in nature and function, to represent those residents in particular geographic district" from which he was elected.

On January 12, 1995, the County of Hawaii Planning Department filed a Motion for Permission to Amend Petition by Reducing the Total Acreage of the Petition Area. Said motion requested a reduction in the Petition Area acreage from approximately 3,785 to approximately 3,728 acres.

On February 2, 1995, at the Land Use Commission's ("Commission") meeting in Kailua-Kona, Lunakanawai Hauanio ("Hauanio") orally requested intervenor status and appears to argue that as a native Hawaiian, his interest in this proceeding will be to protect archaeological sites and "violation" of his "home" land.

On February 2, 1995, Lynn Lee, Office of Hawaiian Affairs orally requested intervenor status as an agency of the State of Hawai'i and pursuant to its statutory authority under Haw. Rev. Stat. section 10-3(4) to "[assess] the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and [conduct] advocacy efforts for native Hawaiians and Hawaiians."

On February 2, 1995, the various Petitions for Intervention filed by the aforementioned entities came before the

Commission at its meeting in Kailua-Kona, Hawai'i. Upon the provision of arguments made by the County of Hawaii Planning Department, the Office of State Planning, and the various aforementioned entities, the Commission took the issues raised and requests for intervention under advisement.

On February 21, 1995, the Office of State Planning filed a Motion To Declare Petition Defective pursuant to HAR sections 15-15-70, 15-15-41, 15-15-35(c), and 15-15-50(d)(6), Haw. Rev. Stat. section 205-4.

On May 15, 1995, the County of Hawaii Planning Department filed an Amended Motion for Permission to Amend Petition by Further Reducing the Total Acreage of the Petition Area.

Said motion requested reduction of the total acreage of the petition area for the subject docket from approximately 3,785 acres to approximately 970.80 acres. The reduction in acreage was due to the deletion of lands from the petition that were located north of Palani Road.

On May 25, 1995, the motion to reduce the total acreage of the petition area came before the Commission at its meeting in Kailua-Kona, Hawai'i. Upon hearing arguments from the County of Hawaii Planning Department and the Office of State Planning, the Commission granted the motion to reduce the total acreage of the petition area.

On June 15, 1995, the Order Granting Petitioner's Amended Motion for Permission to Amend Petition by Further

Reducing the Total Acreage of the Petition Area was issued by the Commission.

On June 5, 1995, Kona Scenic Land, Inc. withdrew its Petition for Intervention.

On June 7, 1995, Tokyo Green Hawaii, Inc. filed a Notice of Withdrawal of Petition to Intervene.

On June 13, 1995, Lanihau Partners L.P. and Palani Ranch Company withdrew its Petition to Intervene.

On June 15, 1995, Nansay Hawaii, Inc. withdrew its Petition for Intervention.

On June 19, 1995, Life of the Land withdrew its Petition for Intervention.

On July 20, 1995, the Office of Hawaiian Affairs withdrew its request for intervention status.

On August 10, 1995, the Office of State Planning's Motion to Declare Petition Defective came before the Commission at its meeting in Kailua-Kona, Hawai'i. Upon hearing arguments provided by the County of Hawaii Planning Department and the Office of State Planning, the Commission granted the Motion to Declare Petition Defective. The Order Granting Motion to Declare Amended Petition Defective was issued on September 18, 1995.

On November 24, 1995, the County of Hawaii Planning Department filed a Motion to File Additional Information to Cure Defects Presented in the State Land Use Commission's Order Granting Motion to Declare Amended Petition Defective ("Motion to Cure").

On December 14, 1995, the Motion to Cure came before the Commission at its meeting in Lihue, Kauai. Upon hearing arguments provided by the parties, the Commission granted the Motion to Cure. On January 5, 1996, the Commission issued its Order Granting Motion to File Additional Information to Cure Defects Presented in the State Land Use Commission's Order Granting Motion to Declare Amended Petition Defective.

On January 18, 1996 a hearing notice for the amended petition was published in the Hawaii Tribune-Herald and Honolulu Advertiser. Said hearing notice extended the timeframe for filing petitions for intervention to February 2, 1996.

On February 2, 1996, Amelia Kuulei Gora ("Gora") filed her Petition for Intervention. Gora represented that as descendants of Chiefess Akahi and through oral history, that her ancestors were born, raised, and buried in the petition area. Further, Gora argued that her interest included historic preservation, protection of family burial grounds and temple/heiau sites, and the collection and gathering of endemic flora and fauna for medicinal and other purposes.

On February 15, 1995, the Petitions for Intervention of Liliuokalani Trust, Hawaiian Development Corporation, John Tommy Rosas, Jr., E Mau Na Ala Hele, Kamehameha Investment Corporation, James M. Rath, Lunakanawai Hauanio, and Amelia Kuulei Gora came before the Commission at its meeting in Kailua-Kona, Hawai'i.

The County of Hawaii Planning Department did not object to the Petitions for Intervention of Liliuokalani Trust, Hawaiian

Development Corporation, Kamehameha Investment Corporation, E Mau Na Ala Hele, and Lunakanawai Hauanio.

The County of Hawaii Planning Department stated its objections to the Petitions for Intervention of John Tommy Rosas, Jr., James M. Rath, and Amelia Kuulei Gora.

The Office of State Planning did not object to any of the Petitions for Intervention.

The Commission, having heard the arguments provided by the parties and entities requesting intervention in the subject docket, both oral and written, and upon review of the entire record herein, and good cause showing therefrom, rendered an oral decision to grant Liliuokalani Trust, Hawaiian Development Corporation, Kamehameha Investment Corporation, E Mau Na Ala Hele, and Lunakanawai Hauanio intervention status, and deny the Petitions for Intervention filed by John Tommy Rosas, Jr., James M. Rath, and Amelia Kuulei Gora.

On March 27, 1996, at its meeting in Kailua-Kona, Hawai'i, the Commission clarified its oral decision made on February 15, 1996 regarding those admitted as Intervenors.

The Commission stated that granting of Intervention status to the various entities was conditioned upon said entities complying with applicable administrative rules in HAR Chapter 15-15, governing intervention.

The Commission noted that E Mau Na Ala Hele, Liliuokalani Trust, Kamehameha Investment Corporation, and Hawaiian Development Corporation have complied with the provisions governing intervention in HAR Chapter 15-15.

Therefore, IT IS HEREBY ORDERED that the Petitions for Intervention filed by Liliuokalani Trust, Hawaiian Development Corporation, and Kamehameha Investment Corporation ARE HEREBY GRANTED.

IT IS FURTHER ORDERED that the Petition for Intervention filed by E Mau Na Ala Hele IS HEREBY GRANTED and the scope of its intervention shall be limited to concerns regarding the impacts upon archaeological and environmental resources, and preservation of ancient and historic trails, roadways, and road remnants.

IT IS FURTHER ORDERED that the oral Request for Intervention by Lunakanawai Hauanio IS HEREBY DENIED as Hauanio did not comply with HAR section 15-15-52.

IT IS FURTHER ORDERED that the Petitions for Intervention filed by John Tommy Rosas, Jr., James M. Rath, and Amelia Kuulei Gora ARE HEREBY DENIED.

DOCKET NO. A94-705 - COUNTY OF HAWAII PLANNING DEPARTMENT

Done at Honolulu, Hawaii, this 9th day of May 1996,
per motion on February 15, 1996.

LAND USE COMMISSION
STATE OF HAWAII

By *Allen K. Hoe*
ALLEN K. HOE
Chairperson and Commissioner

By *Trudy K. Senda*
TRUDY K. SENDA
Vice Chairperson and Commissioner

By *Rupert K. Chun*
RUPERT K. CHUN
Commissioner

By *M. Casey Jarman*
M. CASEY JARMAN
Commissioner

By *Lloyd F. Kawakami*
LLOYD F. KAWAKAMI
Commissioner

By (absent)
MERLE A. K. KELAI
Commissioner

By (absent)
EUSEBIO LAPENIA, JR.
Commissioner

Filed and effective on
May 9, 1996

Certified by:

Elton Wada
Executive Officer

By (absent)
JOANN N. MATTSON
Commissioner

By (absent)
ELTON WADA
Commissioner

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

In the Matter of the Petition of)	DOCKET NO. A94-705
COUNTY OF HAWAII)	
PLANNING DEPARTMENT)	CERTIFICATE OF SERVICE
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting In Part And Denying In Part Petitions For Intervention was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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DATED: Honolulu, Hawaii, this 9th day of May 1996.



ESTHER UEDA
Executive Officer