

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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)
970.80 Acres at Keahuolu through)
Keauhou, North Kona, Island of)
Hawaii, State of Hawaii, Tax Map)
Key No.: 7-4-08: por. 1; 7-5-03: 6,)
7, 23; 7-5-10: 1, 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 MOTION TO
DECLARE AMENDED PETITION
DEFECTIVE

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LAND USE COMMISSION
STATE OF HAWAII

ORDER GRANTING MOTION TO DECLARE AMENDED PETITION DEFECTIVE

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ORDER GRANTING MOTION TO DECLARE AMENDED PETITION DEFECTIVE

On February 21, 1995, the Office of State Planning ("OSP") filed its Motion To Declare Petition Defective ("Motion") pursuant to sections 15-15-70, 15-15-41, 15-15-35(c), and 15-15-50(d)(6), Hawaii Administrative Rules ("HAR"), and section 205-4, Hawaii Revised Statutes ("HRS").

The Motion requested that the petition filed in the matter of LUC Docket No. A94-705/County of Hawaii Planning Department be deemed defective on the OSP's belief that the petition does not conform to the statutory process and that the various motions to intervene in the proceedings by landowners and non-landowners show that Petitioner County of Hawaii Planning Department's ("Petitioner") authority is limited and insufficient to satisfy Land Use Commission ("Commission") rules.

On March 2, 1995, Petitioner filed its Memorandum In Opposition To Office Of State Planning's Motion To Declare Petition Defective Filed February 21, 1995 ("Memorandum"). Said Memorandum provided arguments in opposition to arguments provided in the OSP Motion.

On March 7, 1995, the OSP filed its Reply To County Of Hawaii's Memorandum In Opposition To Office Of State Planning's Motion To Declare Petition Defective Filed February 21, 1995. The OSP argued that the petition is devoid of substance and lacks either a plan or a stated purpose beyond urbanization of the petition area. The OSP suggested that the petition be spilt into manageable parcels and that the appropriate studies be conducted to support the reclassification request.

On March 23, 1995, the Motion came before this Commission for action at its meeting in Kailua-Kona, Hawaii. A Stipulation To Continue Motions On 1) Office Of State Planning's Motion To Declare Petition Defective; 2) To Consider Request For Intervention Filed By Liliuokalani Trust, Nansay Hawaii, Inc., Hawaiian Development Corporation, Lanihau Partners, Palani Ranch Co., Inc., Kona Scenic Land, Inc., Kamehameha Investment Corp., Tokyo Green Hawaii, Inc.; 3) To Waive Requirement For Landowner's Written Authorization To File Petition For TMK: 7-3-10: 31; and 4) To consider Petitioner's Motion To Amend Petition To Reclassify Approximately 3,785 Acres Of Land Currently In The Agricultural District Into The Urban District From Kau Through Keauhou, North Kona, Hawaii ("Stipulation"). The Stipulation was entered into by the Petitioner and the OSP.

Due to the filing of the Stipulation, further action on the Motion was continued.

On April 10, 1995, the OSP re-filed the Stipulation with the addition of 1) the Affidavit of Virginia Goldstein; 2) a letter dated March 23, 1995 from Gregory G.Y. Pai, Ph.D. to Virginia Goldstein; 3) a letter dated March 22, 1995 from Virginia Goldstein to Ross Cordy; and 4) a letter dated March 23, 1995 from Virginia Goldstein to Liliuokalani Trust Estate.

On May 25, 1995, the continued action on the Motion came before this Commission at its meeting in Kailua-Kona, Hawaii.

The OSP filed its Supplemental Memorandum In Support Of The Office Of State Planning's Motion To Declare Petition Defective And Response To County Of Hawaii's Amended Motion For Permission To Amend Petition By Further Reducing The Total Acreage Of The Petition Area ("Supplemental Memorandum"). Said Supplemental Memorandum provided information on area in which the petition for reclassification is defective. Specifically, the areas in which the OSP believes that the petition is defective are: archaeological inventory surveys, botanical surveys, and terrestrial animals and avifauna surveys.

Continued action on the Motion was deferred by the Commission.

On August 7, 1995, Petitioner filed its Memorandum In Opposition To Office Of State Planning's Reply To County's Memorandum In Opposition To Office Of State Planning's Motion To Declare Petition Defective Filed February 21, 1995 ("Subsequent Memorandum").

Said Subsequent Memorandum argued that the OSP's Motion is premature, the petition is not defective pursuant to the Commission's rules, and the issue of defectiveness of the petition is moot since it has been amended to reduce the amount of acreage in the petition.

On August 10, 1995, the continued action on the Motion came before this Commission at its meeting in Kailua-Kona, Hawaii. Pursuant to HAR section 15-15-70, the OSP orally moved to declare the amended petition defective due to the non-provision of information on a number of parcels concerning archaeological inventory surveys, botanical surveys, and terrestrial animals and avifauna surveys.

This Commission, having heard the arguments, both oral and written, presented by the OSP and Petitioner, and having reviewed the entire record herein, and with good cause showing therefrom;

IT IS HEREBY ORDERED that the Motion To Declare Amended Petition Defective, filed by the Office of State Planning, is granted in part, and the amended petition filed in the matter of LUC Docket No. A94-705/County of Hawaii Planning Department to reclassify approximately 970.80 acres from the Agricultural District to the Urban District is hereby deemed defective due to the non-submittal of the following:

- 1) Information on cave invertebrates and the Hawaiian bat for all parcels of the amended petition;
- 2) Information on historical, botanical, and fauna resources for TMK: 7-5-10: 1;

- 3) Information on botanical and fauna resources for TMK: 7-4-08: por. 1;
- 4) Information on the Plutella Moth for TMK: 7-5-03: 6 and 7;
- 5) Information on historical resources for TMK; 7-5-03: 23;
- 6) Information on historical resources and the Plutella Moth for TMK: 7-5-10: 5;
- 7) Information on historic resources for TMK: 7-6-13: 9;
- 8) Information on botanical and fauna resources for TMK: 7-7-04: 56, and historical information on a 20.86 acre portion of TMK: 7-7-04: 56;
- 9) Information on historic resources for TMK: 7-7-07: por. 27;
- 10) Information on historic resources on TMK: 7-7-08: 99; and
- 11) Information on the Plutella Moth for TMK: 7-8-10: por. 29 and por. 30.

Pursuant to HAR section 15-15-41, the date of filing shall be as of the date the above defects are cured.

Dated: Honolulu, Hawaii, September 18, 1995.

LAND USE COMMISSION
STATE OF HAWAII

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

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DOCKET NO. A94-705

CERTIFICATE OF SERVICE

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I hereby certify that a copy of the Order Granting Motion to Declare Amended Petition Defective was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

GREGORY G.Y. PAI, PH.D., Director
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DATED: Honolulu, Hawaii, this 18th day of September 1995.



ESTHER UEDA
Executive Officer