

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition) DOCKET NO. A00-732
)
of) ORDER GRANTING PETITIONER'S
) MOTION TO (1) AMEND CONDITION
TSA CORPORATION) NO. 2.A AND (2) DELETE
) CONDITION NOS. 6, 7 AND 8.A OF
To Amend the Land Use District Boundary) THE LAND USE COMMISSION'S
of Certain Lands situated at Kaloko, North) FEBRUARY 14, 2002 FINDINGS OF
Kona, Island of Hawaii, State of Hawaii,) FACT, CONCLUSIONS OF LAW, AND
consisting of approximately 102.016 acres,) DECISION AND ORDER FOR A
Tax Map Key: 7-3-051: portion of 060, from) STATE LAND USE DISTRICT
the Conservation District to the Urban) BOUNDARY AMENDMENT
District)
_____)

ORDER GRANTING PETITIONER'S MOTION TO (1) AMEND CONDITION NO.
2.A AND (2) DELETE CONDITION NOS. 6, 7 AND 8.A OF THE LAND USE
COMMISSION'S FEBRUARY 14, 2002 FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER FOR A STATE LAND USE DISTRICT
BOUNDARY AMENDMENT

The Land Use Commission ("Commission") considered Petitioner's Motion to (1) Amend Condition No. 2.A and (2) Delete Condition Nos. 6, 7, and 8A of the Land Use Commission's February 14, 2002 Findings of Fact, Conclusions of Law and Decision and Order for a State Land Use District Boundary Amendment ("Motion"), filed on September 20, 2007, at its meeting on October 4, 2007, in Kailua-Kona, Hawaii. Nathan T. Natori, Esq. appeared on behalf of Petitioner. Brooks Bancroft, Esq., and Norman Hayashi appeared on behalf of the County of Hawaii Planning Department

("County"). Bryan C. Yee, Esq., and Lorene Maki appeared on behalf of the State Office of Planning ("OP"). Geraldine Bell and Sallie Beavers appeared on behalf of Intervenor Koloko Honokohau National Historical Park, National Park Service.

On October 4, 2007, the Intervenor submitted a response to the Motion with respect to Condition No. 2A.

The Petitioner, pursuant to Condition 15 of the February 14, 2002 Findings of Fact, Conclusions of Law, and Decision and Order, requested the deletion or release of Conditions 7 and 8A, on the basis that those Conditions had been satisfied, as evidenced (i) by the approval of the Petitioner's affordable housing needs assessment report and implementation plan by the Commission on January 20, 2006, and (ii) the State Historic Preservation Division approval, on December 29, 2003, of a report stating that the Petitioner had fulfilled the requirements for data recovery reports. The Petitioner also requested that Condition 6 be deleted or released due to the fact that it is duplicative of other fair-share agreements throughout the Commission's February 14, 2002 Order, such as in conditions 1B, 1G, 4, 5B and 5D, and the fact that a similar condition in another docket before the Land Use Commission had been deleted or released for the same reasons.

The Petitioner requested the amendments of Condition 2.A on the basis that the State Department of Health has declined to approve the project's CC&Rs.

The County had no objection to the Motion based on review of the Motion and a similar position taken in a similar docket. The Office of Planning stated that it supported the amendment of condition 2A based on conversations with the Department of Health, took no position on the deletion of Conditions 6 and 8A, and deferred to the County with respect to deletion of Condition 7. The Intervenor had no opposition to the proposed amendments, but asserted that Condition 2 of the Commission's February 14, 2002 Order remains an important environmental protection order.

After considering the Motion, the supporting Affidavit, Exhibit "A", the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, a motion was made and seconded to grant the Motion. There being a vote tally of 6 ayes , 1 absent, the motion carried.

ORDER

A motion having been made at a hearing on October 4, 2007, in Kailua-Kona, 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, this Commission GRANTS the Motion, and ORDERS that Condition Number 2.A of the Commission's February 14, 2002 Decision and order in this docket be amended to read as follows:

"2a. To the extent possible, all storm and surface water runoff shall be captured on the premises. To the extent possible, all runoff entering the ground shall be

first treated to remove all industrial waste so that no industrial pollutants will reach the Kaloko-Honokohau National Park or enter the water table. Petitioner shall be subject to and prepare covenants, conditions, and restrictions for the Petition Area to contain spills and prevent materials associated with light industrial uses attributable to the operations of property, including petroleum products, chemicals, or other pollutants from leaching or draining into the ground or subsurface storm drain collection areas. Said covenants shall be prepared by Petitioner upon consultation with the National Park Service, and the County of Hawaii. The Petitioner and/or tenant shall obtain all required permits and construct required improvements for storm water discharge on and from the property. These conditions shall include the following: "

The Commission further ORDERS that Condition Nos. 6, 7 and 8.A are DELETED.


All other conditions to the Decision and Order issued on February 14, 2002, are affirmed and continue in effect.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 31st day of January, 2008. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

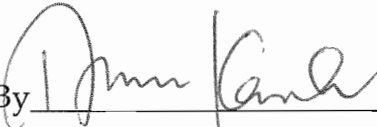
Done at Honolulu, Hawai'i, this 31st day of January, 2008, per motion on October 4, 2007.

APPROVED AS TO FORM


Deputy Attorney General

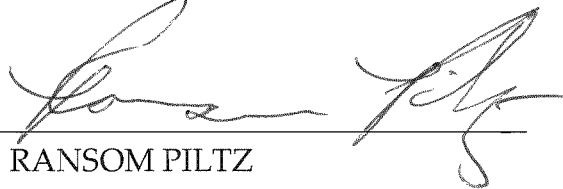
LAND USE COMMISSION
STATE OF HAWAII

By (absent)
LISA M. JUDGE
Chairperson and Commissioner

By 
DUANE KANUHA
Presiding Officer and Commissioner


By 
THOMAS CONTRADES
Commissioner

By 
VLADIMIR PAUL DEVENS
Commissioner

By 
RANSOM PILTZ
Commissioner

By 
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:
JAN 31 2008

By 
REUBEN S.F. WONG
Commissioner

Certified by:


Interim Executive Officer

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A00-732
)
TSA CORPORATION) CERTIFICATE OF SERVICE
)
To Amend the Conservation Land Use)
District Boundary into the Urban Land Use)
District for Approximately 102.016 Acres at)
Kaloko, North Kona, Hawai'i, TMK 7-3-51:)
portion 60)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Petitioner's Motion To (1) Amend Condition No. 2.A and (2) Delete Condition Nos. 6, 7 And 8.A of The Land Use Commission's February 14, 2002 Findings of Fact, Conclusions of Law, and Decision and Order for a State 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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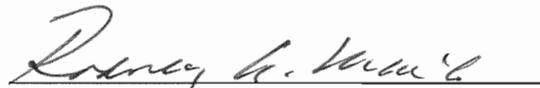
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Dated: Honolulu, Hawaii, JAN 31 2008.



RODNEY A. MAILE
Interim Executive Officer