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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A81-525  
)  
Y-O LIMITED PARTNERSHIP ) OFFICE OF PLANNING AND  
) SUSTAINABLE DEVELOPMENT'S  
) RESPONSE TO PETITIONER'S MOTION  
) FOR EXTENSION OF TIME TO APPLY  
) FOR REDISTRICTING OF PHASE II;  
To Amend the Agricultural Land Use ) CERTIFICATE OF SERVICE  
District Boundary into the Urban Land Use )  
District for Approximately 408.719 Acres of )  
Land at Kaloko and Kohanaiki, North Kona, )  
Hawaii, TMK Nos.: (3) 7-3-09: 19, 20, and )  
57 to 62. )  
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**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S RESPONSE TO  
PETITIONER'S MOTION FOR EXTENSION OF TIME TO APPLY FOR  
REDISTRICTING OF PHASE II**

On November 22, 2022, RCFC Kaloko Heights, LLC, a Delaware limited liability company, Kaloko Heights B1A Holdings, LLC, a Delaware limited liability company, and Kaloko Heights Investors, LLC, a Delaware limited liability company, (collectively, the "Petitioner"), Successor Petitioner to Y-O Limited Partnership, filed its Motion for Extension of Time to Apply for Redistricting of Phase II ("Motion"). The Petitioner also filed three supplemental memoranda with exhibits on January 4, 2023 ("First Memo"), January 9, 2023 ("Second Memo"), and January 31, 2023 ("Third Memo," and together with the First Memo and Second Memo, the "Supplemental Memoranda"). The Office of Planning and Sustainable

Development (“OPSD”) supports partial approval of Petitioner’s Motion with revisions and recommendations.

I. PETITIONER’S REQUEST

Although the Petitioner filed a “Motion for Extension of Time to Apply for Redistricting of Phase II,” the actual request is more comprehensive. The request, as clarified on page 15 of the Motion, is for the Land Use Commission (“LUC”) to grant a ten-year extension of time to substantially complete Phase I and to apply for redistricting of Phase II. Petitioner requests an extension of the current deadline, January 20, 2023, to January 20, 2033.

II. BACKGROUND

1. Original Decision and Order: On January 19, 1983, the LUC approved reclassification of approximately 213.473 acres of land, now identified as TMKs (3) 7-3-09: 20, 32, 57 to 62, through Findings of Fact, Conclusions of Law and Decision and Order (“1983 Order”) for Phase I of the petition area. The LUC simultaneously approved incremental redistricting of approximately 195.246 acres, south of Hina Lani Street, now identified as TMK (3) 7-3-09: 19, or Phase II of the petition area. Before applying for redistricting, the 1983 Order required a prima facie showing within five years that Petitioner has made substantial completion of the onsite and offsite improvements within Phase I in accordance with the Petitioner’s development plan. The 1983 Order included conditions listed as A through F and stated that the required prima facie showing of substantial completion included, but was not limited to, partial satisfaction of Condition A for affordable housing, satisfaction of Conditions D and E to the extent possible, and full satisfaction of Conditions B and C for access to Queen Kaahumanu Highway.
2. First Extension of Time: On January 12, 1988, the LUC approved a five-year extension of time to January 20, 1993 for Petitioner to substantially complete Phase I and to apply for redistricting of Phase II.
3. Changes to the Affordable Housing Condition: On June 13, 1990, the LUC approved minor revisions to Condition A involving affordable housing.
4. Second Extension of Time: On November 17, 1992, the LUC approved a five-year extension of time to January 20, 1998 to substantially complete Phase I and to apply for redistricting of Phase II. The LUC also renumbered and revised the conditions. A complete listing of the current approved conditions is below in Section III.

5. Third Extension of Time: On December 22, 1997, the LUC approved a five-year extension of time to January 20, 2003 to substantially complete Phase I and apply for redistricting of Phase II.
6. Fourth Extension of Time: On December 5, 2002, the LUC approved a 10-year extension of time to January 20, 2013 to substantially complete Phase I and apply for redistricting of Phase II.
7. Fifth Extension of Time: On December 10, 2012, the LUC approved a 10-year extension of time to January 20, 2023 to substantially complete Phase I and apply for redistricting of Phase II.
8. Changes to the Affordable Housing Condition: On November 22, 2016, the LUC approved an amended condition for affordable housing.

### III. PETITION'S CURRENT ORDER AND CONDITIONS

Given that the 1983 Order has been amended and extended several times over the past 40 years, its current major components are listed below. The LUC's order dated December 10, 2012 ("2012 Order") captures the incremental redistricting requirement with the current deadline. The LUC's order dated November 22, 2016 ("2016 Order") captures the current affordable housing condition, which was renumbered from A to 1. The LUC's order dated November 17, 1992 ("1992 Order") includes the remaining conditions that were revised and renumbered as Conditions 2 through 7.

#### A. 2012 ORDER

"Having duly considered Petitioner's Motion...this Commission ORDERS that Petitioner's Motion for a 10-year time extension to substantially complete Increment I and apply for redistricting of Increment II from January 20, 2013 through and including January 20, 2023 is hereby GRANTED, subject to the condition that Petitioner, consistent with its representation before the Commission, shall analyze the potential impacts and mitigation of Phase II developments that may result in the imposition by the Commission of revised or additional conditions upon Petitioner's application for redistricting of Phase II."

#### B. 2016 ORDER

"1. Petitioner shall provide housing opportunities for low and moderate income residents by offering for sale or rental on a preferential basis, on its own or in cooperation with both the Hawaii Housing Finance and Development Corporation ("HHFDC") and the County of Hawaii, affordable housing units equivalent to ten per cent (10%) of the lots and residential units to be developed in the Petition Area, to

residents of the State of Hawaii of low and moderate family income as determined by HHFDC and the County of Hawaii Office of Housing and Community Development (“OHCD”) from time to time (the “Affordable Housing Requirement”). The affordable housing units shall be offered for sale or rent at prices not exceeding prices or rents (“Affordable Prices”) that enable such purchasers and renters to qualify for and obtain state-assisted financing (e.g., Hula Mae) or federally-insured or assisted financing (e.g., FHA Section 245 Program) intended to encourage home ownership by low- and moderate-income families. This affordable housing condition shall be implemented to the satisfaction of OHCD.”

C. 1992 ORDER

“2. Petitioner shall afford lot purchasers public access from the subject property to Queen Kaahumanu Highway and to Mamalohea Highway by participating in the construction of a roadway connecting the two highways and running through the subject property, the location and standard of design and construction of such roadway to be approved and accepted by the County of Hawaii. The Petitioner shall be responsible for constructing such portions of the roadway within the subject property. The Petitioner’s participation for the portions of the roadway outside the subject property may be by way of loans, loan guarantees, purchase of county obligations or otherwise.

3. Petitioner shall dedicate to appropriate State and County Agencies sufficient land for the provision of necessary public facilities.

4. Petitioner shall submit annual progress reports to the Commission, Office of State Planning (now known as OPSD) and Hawaii County Planning Department as to its progress in satisfying these conditions.

5. These conditions may be fully or partially released by the Commission as to all or any portion of the subject properties upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner.

6. Petitioner shall develop the Property in substantial compliance with the representations made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

7. Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.”

IV. OPSD’S REVIEW AND COMMENTS

In its Motion and Supplemental Memoranda, Petitioner made certain representations and provided the status of Phase I of the petition area. Below are OPSD’s review and comments.

A. Changes to the Master Plan

Petitioner's current plan contains many revisions from the original plan proposed under the 1983 Order, including a reduction in number of residential units. Between the original plan and the current plan, the total number of residential units proposed is 192 fewer residential units. The original plan proposed a total of 1,433 residential units. Petitioner's current plan provides for a total of 1,141 residential units plus 100 affordable units. The table on Page 12 of the First Memo indicates that Phase I will contain 521 units plus the affordable housing development of 100 units for a total of 621 units and Phase II will contain 620 units. Thus, the total number of residential units proposed for both Phases I and II is 1,241, including the affordable units.

Petitioner provides the following reasons for reducing the number of residential units:

- a. Petitioner conducted a topographic survey of the petition area, which revealed significant slopes that affected the detailed grading plans and limited the proposed number of units on the sloped areas.
- b. The reduced number of units will reduce the quantity of necessary construction materials, which are costly and difficult to procure.
- c. The Petitioner enlarged and better incorporated/preserved the archaeological areas and historic trail site into Phase I of the petition area.
- d. The County required that the mid-level roadway, or Holo Holo Street, needed to be re-aligned and significantly redesigned to accommodate the affordable housing site.

OPSD recognizes that the plans associated with the petition area have changed but does not believe that an amendment is necessary to reflect those changes for the following reasons:

- a. The major components of this project have not changed. It continues to involve the production of much needed housing, including affordable housing, and provides the necessary infrastructure to support the housing. It creates green spaces for active and passive recreation, and other amenities for future residents and neighbors. It includes a street network with more access to adjoining parcels than originally proposed.

- b. The changes resulting from concerns that arose from the topographic survey appear to be reasonable. While the production of housing is necessary, the current proposal has been reasonably revised to consider the site's topographic challenges. The reduction of units will also have a lesser impact on County services and roads.
- c. Certain changes were the result of accommodation of County requests, such as the realignment of Holo Holo Street.
- d. The current plan accommodates several new archaeological preserves and trails within Phase I of the development. These preserves also appear to significantly increase the amount of green space within the proposed development.

OPSD is concerned, however, that the reduced number of residential units will also reduce the number of affordable units. Petitioner appears to propose fewer units than the 10 percent minimum. Condition 1 for affordable housing requires that Petitioner provide affordable housing units equivalent to 10 percent (10%) of the lots and residential units to be developed in the Petition Area. If the proposed residential units in Phases I and II now total 1,241, the affordable units should minimally equal 124, not 100, as Petitioner proposes. Petitioner should address this issue at the hearing.

**B. Petitioner's Request for a 10-Year Time Extension**

The representation made to the LUC when it first granted the district boundary amendment for this project was that Phase I would be completed within five years. Since that time, five extensions have been granted and 40 years have passed, yet no housing construction has occurred. While there appear to be good reasons for this delay and significant progress has been made, OPSD recommends that the LUC consider limiting the current request for a 10-year time extension to a three-year time extension. A shorter extension would give the LUC an opportunity to weigh in earlier if the project is further delayed. This recommendation is based on Petitioner's representations regarding the relationship between home construction and the County's construction of the wastewater transmission line.

Petitioner represented that it has received all approvals from the County needed to construct subdivision improvements for the first 46 lots. Also, that the Hawaii Island

Community Development Corporation (“HICDC”) has all the approvals needed to construct the proposed 100 affordable rental units. However, Petitioner states that construction of the market-rate units in the petition area will not commence until the County completes construction of the wastewater transmission line, which is expected to be completed in mid-2024 according to page 15 of the First Memo. Petitioner represents that construction will commence within one year of the wastewater line’s completion. Based on these representations, it is reasonable to expect that home construction will be underway or completed within three years.

C. Petitioner’s Compliance with the Conditions

Petitioner represented the following relating to the conditions:

- a. Condition 1 required affordable housing on TMK parcel 32. This will be provided in Phase I, by agreement with HICDC.
- b. Condition 2 required the participation of the Petitioner in the construction of Hina Lani Street. Petitioner represents they have completed construction of this Street.
- c. Condition 3 required that Petitioner dedicate sufficient land to State and the County for the provision of necessary public facilities. Petitioner represents that they have met and are meeting this requirement.
- d. Condition 4 requires the submission of annual reports to the LUC. Petitioner represents that they have met and will meet this requirement.
- e. Condition 5 refers to the release of conditions. Petitioner represents that they have not requested the release of any conditions.
- f. Condition 6 refers to substantial compliance. Petitioner represents that they will develop the Petition Area in substantial compliance with representations made to the LUC.

Most of the conditions that were included in the requirement for substantial completion of Phase I have been satisfied. These included partially satisfying Condition A for affordable housing, satisfaction of Conditions D and E to the extent possible, and full satisfaction of Conditions B and C for access to Queen Kaahumanu Highway.

V. OPSD RECOMMENDATION

OPSD recommends approval with revisions of Successor Petitioner’s Motion for Extension of Time to Apply for Redistricting of Phase II for a period of three years from January 20, 2023, to January 20, 2026.

OPSD finds that Petitioner has, in part, met the conditions and their representations made to the LUC throughout the forty-year period between the initial approval of the reclassification and the Petitioner’s current request. Although certain components of the initial plan have changed, the project still involves the production of housing in an area where housing is needed and appropriate. An amendment of the original proposal is likely not needed because the current plan is reasonable, given the various studies that have been conducted, which include archaeological surveys, topographic, grading and planning studies, and because the County appears to be in support of the plan.

OPSD is concerned, however, with the length of time that has passed since the original proposal was approved by the LUC. OPSD finds that another ten-year extension is unnecessary given the representations made by the Petitioner that construction can begin once the wastewater line is in place, i.e., 2024. A shorter extension would give the LUC an opportunity to weigh in earlier, if the project is further delayed. If the issue of the minimum requirement for affordable housing is not addressed to the satisfaction of the LUC, then OPSD recommends that the Phase II application for redistricting contain a proposal for the production of affordable housing.

Finally, OPSD recommends that the Phase II application comply with the State and County’s policies, regulations, and rules pertaining to land development, including, for example, but not limited, conformity with current planning documents and subdivision design standards.

DATED: Honolulu, Hawaii, March 10, 2023.

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SCOTT J. GLENN  
DIRECTOR



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Land at Kaloko and Kohanaiki, North Kona,	)	
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery, depositing the same in the U.S. Postal Service by regular mail, or by electronic mail.

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DATED: Honolulu, Hawaii, March 10, 2023.

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SCOTT J. GLENN  
Director