



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

In the Matter of the Petition of  
The State of Hawai'i, Department of  
Accounting and General Services,

) DOCKET NO. SP23-415

For An After-The Fact State Special Use  
Permit To Bring The Existing Petition Area  
That Is Approximately 23.7 Acres With A  
Portion of TMK Parcel 9-6-005:011, Known  
As The Waiawa Correctional Facility  
("WCF") Into Compliance With State Land  
Use Law, Chapter 205, Hawai'i Revised  
Statute ("HRS")

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)  
) **ORDER GRANTING STIPULATION**  
) **REGARDING REMAND OF THE**  
) **PETITION FOR SPECIAL USE PERMIT**  
) **TO THE CITY AND COUNTY OF**  
) **HONOLULU'S PLANNING**  
) **COMMISSION TO SUPPLEMENT THE**  
) **RECORD; AND CERTIFICATE OF**  
) **SERVICE**

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**ORDER GRANTING STIPULATION REGARDING REMAND OF THE PETITION  
FOR SPECIAL USE PERMIT TO THE CITY AND COUNTY OF HONOLULU'S  
PLANNING COMMISSION TO SUPPLEMENT THE RECORD;**

**AND**

**CERTIFICATE OF SERVICE**

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.

May 3, 2023

  
BY \_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



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**ORDER GRANTING STIPULATION REGARDING REMAND OF THE PETITION FOR SPECIAL USE PERMIT TO THE CITY AND COUNTY OF HONOLULU’S PLANNING COMMISSION TO SUPPLEMENT THE RECORD;**

On March 29, 2023, the Honolulu Planning Commission delivered the complete record for SP23-415 an application for an after-the-fact State Special Use Permit (“SUP”) to bring the existing Waiawa Correctional Facility (“WCF”) into compliance with respect to State Land Use Law, Chapter 205, Hawai‘i Revised Statutes (HRS). According to the application, the existing Petition Area is approximately 23.7 acres with a portion of TMK Parcel 9-6-005:011. The LUC deemed the record complete on March 31, 2023.

On April 25, 2023, the LUC received a stipulation from the Petitioner, County and OPSD requesting a voluntary remand of the application to repair inadequacies of the Petition.

The Commission having heard and examined the testimony and evidence presented by Petitioners, the State Office of Planning and Sustainable Development (“OPSD”), the City and County of Honolulu and the filings and public testimony submitted via electronic mail during its in-person hearing on April 26, 2023 at the Airport Conference Center (in the Hawaiian Airlines Terminal Building), 400 Rodger Blvd., 7<sup>th</sup> Floor, IIT Suite 700, Room #1, Honolulu, HI 96819, along with the pleadings filed herein, hereby make the following Findings of Fact, Conclusions of Law, and Decision and Order granting the stipulated Motion to Remand its Petition.

## **FINDINGS OF FACT**

### **PROCEDURAL MATTERS**

1. On September 2, 2022, the Petitioner filed the Application with the City and County of Honolulu Department of Planning and Permitting (“DPP”) (SUP No. 2022/SUP-3), pursuant to Chapter, 205-6, Hawai‘i Revised Statutes (HRS), and Chapter 15-15-95 et seq., Hawai‘i Administrative Rules (HAR).

2. On March 29, 2023, the Honolulu Planning Commission delivered their complete record for SP23-415 to the LUC. The LUC deemed the record complete on March 31, 2023.

3. On April 17, 2023, the Commission distributed the April 26, 2023, Meeting Agenda Notice to the Parties, the Statewide and O‘ahu mail and email list. The Commission also sent notice to the Lt. Governor’s office and posted the notice on the State e-calendar and the LUC website.

4. On April 25, 2023, the LUC received a stipulation from the Petitioner, County and OPSD indicating agreement that the record was incomplete and that the Petition should therefore be remanded to the City and County of Honolulu’s Planning Commission to supplement the record.

5. On April 26, 2023, the Commission met in-person at the Airport Conference Center (In the Hawaiian Airlines Terminal Building), 400 Rodger Blvd., 7<sup>th</sup> Floor, IIT Suite 700, Room #1, Honolulu, HI 96819 to consider the Petition pursuant to HAR§15-15-95. Linda Chow, Esq., Lance Maja, DAGS planner and Ivan Lee, SSFM representative (DAGS consultant firm), appeared on behalf of Petitioner. Alison Kato, Esq. appeared on behalf of OPSD. The City and County of Honolulu Planning and Permitting Department and the Planning Commission advised the Commission via email that they would not be appearing after having agreed to the stipulation. There were no public witnesses or public testimony.

**DESCRIPTION OF THE PROPERTY**

6. The Petition Area which is the subject matter of this Application is described as an approximately 23.7-acre portion of Parcel 1 of Executive Order No. 3414 located in the Ewa District of Oahu, Hawai‘i, identified by TMK No. (1) 9-6-005: 011 (Master Lot).

7. The Petition Area contains approximately 23.7 acres and the Master Lot contains approximately 157.875 acres. The Master Lot is owned by the State of Hawai‘i, Department of Public Safety (PSD). The WCF encompasses approximately 180.5 acres of land and is for use as a minimum-security correctional facility. In total, it is comprised of two TMK parcels identified as TMK (1) 9-6-005: 011 and 012. Parcels 011 and 012 are 157.875 acres and 22.611 acres respectively. The correctional facility’s operations are carried out on the southern portion of Parcel 011. Parcel 012 is currently undeveloped, used for agricultural purposes, and was not included as part of this Petition.

**PETITIONER’S STIPULATION REGARDING REMAND OF THE PETITION FOR SPECIAL USE PERMIT TO THE CITY AND COUNTY OF HONOLULU’S PLANNING COMMISSION TO SUPPLEMENT THE RECORD**

8. The Parties recognized the record in this matter was incomplete after it had been filed with the LUC. A stipulation was then entered into by the parties to that effect agreeing to remand this matter back to the County. The record was deemed deficient regarding Chapter 343 compliance and environmental assessments, the breadth and scope of the permit, and whether a special permit was the appropriate action to address a facility which appeared to be permanent moving into the future.

9. The Parties noted that under HRS§ 205-6 and HAR§ 15-15-95, the LUC's review was based solely on the record from below and DAGS would not have an opportunity to present a full and complete record in support of the Application to the LUC during its hearing on the matter.

### **CONCLUSIONS OF LAW AND RULINGS ON THE PROPOSED FINDINGS OF FACT**

Any of the proposed Findings of Fact submitted by any party not already ruled upon by the Planning Commission by adoption, or rejected by clearly contrary Findings of Fact, are hereby denied and rejected.

Any Conclusions of Law herein improperly designated as a Findings of Fact should be deemed or construed as a Conclusion of Law; and Findings of Fact herein improperly designated as a Conclusion of Law should be deemed or construed as a Finding of Fact.

### **CONCLUSIONS OF LAW**

1. The generally applicable formal requirements for a petition for special

permit are set forth in HAR§ 15-15-95.

2. Under HRS§ 205-6 and HAR§ 15-15-95, the LUC's review is based solely on the Record received from the County Planning Commission.

3. Pursuant to HAR§ 15-15- 96(a), the Commission is to consider the county planning commission's decision and the complete record of the proceeding within forty-five days after receipt of the complete record.

### **DECISION AND ORDER**

This Commission, having duly considered the Petition, the oral and/or written comments of Petitioner, OPSD, and the County and the motion having been submitted to the Commission on April 25, 2023, in Honolulu, Hawai'i, and the Motion having received the affirmative votes required by HAR§ 15-15-13 and HRS§ 205-45, and there being good cause for the motion;

HEREBY ORDERS Docket number SP23-415 requesting an after-the-fact State Special Use Permit (SUP) to bring the existing Waiawa Correctional Facility (WCF) into compliance with respect to State Land Use Law, Chapter 205, Hawai'i Revised Statutes (HRS) **be remanded** to the City and County of Honolulu's Planning Commission to supplement the record and including evidence regarding input from the State of Hawai'i Correctional System Oversight Committee; Chapter 343 compliance and environmental assessment concerns; social impacts; whether a special permit is the appropriate action (after review of *Neighborhood Board No. 24 vs. LUC*- aka 1982 Kapolei Water Park case) to address a facility which appears to be permanent use; and any other matter necessary to complete the record.

**ADOPTION OF ORDER**

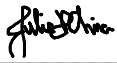
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER on May 3, 2023. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this day of May 3, 2023, per motion on April 26, 2023.

APPROVED AS TO FORM

LAND USE COMMISSION

STATE OF HAWAI'I



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Julie China  
Deputy Attorney General

By Dan V. Giovanni  
DAN GIOVANNI  
Chairperson and Commissioner

Filed and effective on:

May 3, 2023

Certified by:



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DANIEL E. ORODENKER  
Executive Officer







HAND DEL.: LINDA L.W CHOW, Esq.  
Deputy Attorney General  
425 Queen Street  
Honolulu, Hawai'i 96813

CERTIFIED MAIL: DAWN TAKEUCHI-APUNA, Director  
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CERTIFIED MAIL: HONOLULU PLANNING COMMISSION C/O  
City and County of Honolulu, Department of Planning and Permitting  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, Hawai'i 96813

Dated May 3, 2023  
Honolulu, Hawai'i.



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DANIEL E. ORODENKER  
Executive Officer