BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

2003 MAY 30 PM 1 18
PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A00-733
	)	
HARRISON J. & SHARENE Z. KLEIN	)	ORDER GRANTING RELEASE,
	)	DISCHARGE, AND DELETION OF
To Amend the Conservation Land Use	)	CONDITION NOS. 1 AND 2
District Boundary into the Urban Land Use	)	IMPOSED IN DOCKET NO. A00-733
District for Approximately 2.621 acres of	)	
land at Keonepoko Iki, District of Puna,	)	
Island, County and State of Hawaii.	)	
TMK No: (3) 1-5-09: 39	)	

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, Hawaii.

MAY 29 2003 by Anthony J. H. Ching
Date Executive Officer

ORDER GRANTING RELEASE, DISCHARGE, AND DELETION OF CONDITION NOS. 1 AND 2 IMPOSED IN DOCKET NO. A00-733

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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

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ORDER GRANTING RELEASE, DISCHARGE, AND DELETION OF CONDITION NOS. 1 AND 2 IMPOSED IN DOCKET NO. A00-733

On April 15, 2003, Harrison J. and Sharene Z. Klein ("Petitioner"), filed their Motion to Release, Discharge, and Delete Condition Nos. 1 and 2 Imposed In Docket No. A00-733; Memorandum in Support of Motion; Affidavit of Steven S. C. Lim; and Exhibit A ("Motion"), pursuant to sections 15-15-70, and 15-15-94, Hawaii Administrative Rules ("HAR").

The Motion requested the release, discharge, and deletion of Condition Nos. 1 and 2, set forth in the Findings of Fact, Conclusions of Law, and Decision and Order of the State Land Use Commission ("LUC" or "Commission") issued on November 5, 2001, and as amended by the Commission on February 20, 2003 ("Decision and Order").

Condition Nos. 1 and 2 of the Decision and Order read as follows:

1. 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.

2. 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.

The Motion asserted that development of the Petition Area was substantially completed in compliance with representations made to the Commission and thus the aforementioned conditions were satisfied. The Motion included a stipulation with the Planning Department, County of Hawaii ("County"), and the Office of Planning, Department of Business and Economic Development and Tourism ("OP") in support of Petitioner's request (Exhibit A).

The Motion came on for hearing before this Commission on April 25, 2003, in Honolulu, Hawai`i, with appearances by Petitioner, the County, and OP. At the hearing, Petitioner stood by its position in the Motion and stated that its intention was to clear Condition Nos. 1 and 2 off the title of the Petition Area because it believed the proposed development has been substantially completed. Petitioner clarified that it had established the proposed ti-leaf plantation, but the proposed interior stairway has not been completed due to cost reasons. Petitioner believed its request will not diminish its

responsibilities to comply with representations made to the Commission, because it will be subject to the Commission's enforcement of conditions, representations, or commitments pursuant to Section 15-15-93 HAR, in cases of a motion for order to show cause. Petitioner also believed that the County's authority in Shoreline Management Areas provided an additional means for enforcement.

The County and OP did not have any objections to the Motion and acknowledged Exhibit A as verifying their support.

The Commission raised issues regarding procedural matters, status of the project, and clarification of Petitioner's request.

Thereafter, a motion was made and seconded to delete Condition Nos. 1 and 2 on the subject docket. There being a vote tally of 6 ayes, 0 nays, the motion carried.

ORDER

Having duly considered Petitioner's Motion, the oral and written arguments presented by the parties, and further representations made by Petitioner during the hearing, and a motion having been made at a hearing on April 25, 2003, in Honolulu, 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 hereby GRANTS Petitioner's Motion and ORDERS release of condition nos. 1 and 2 imposed by the Decision and Order. All other conditions to the Decision and Order are affirmed and continue in effect, and are renumbered as follows:

1. Petitioner shall provide a 10-foot lateral corridor along the shoreline edge of its property for access to surrounding shoreline areas that may be used by the general public and practitioners of traditional and customary native Hawaiian gathering practices.

2. Should any previously unidentified human burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings or walls be found, Petitioner shall stop work in the immediate vicinity and contact the State historic preservation Division (SHPD) of the Department of Land and Natural Resources. The significance of these finds shall then be determined and approved by the SHPD. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

3. The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

Dated: Honolulu, Hawai`i, May 29, 2003

LAND USE COMMISSION
STATE OF HAWAI`I

By P. Roy Catalani
Presiding Commissioner on April 25, 2003

APPROVED AS TO FORM:

Deputy Attorney General

Filed and effective on
May 29, 2003

Certified by:

Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. A00-733
	)	
HARRISON J. & SHARENE Z. KLEIN	)	CERTIFICATE OF SERVICE
	)	
To Amend the Conservation Land Use District Boundary into the Urban Land Use District for Approximately 2.621 acres of land at Keonepoko Iki, District of Puna, Island, County and State of Hawaii. TMK No: (3) 1-5-09: 39	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Release, Discharge, and Deletion of Condition Nos. 1 and 2 Imposed in Docket No. A00-733 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 29th day of May, 2003.

ANTHONY J. H. CHING
Executive Officer