

DEPARTMENT OF PLANNING AND PERMITTING
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

IN THE MATTER OF THE APPLICATION)

OF

FILE NO. 2019/DEC-3(MS)

KUILIMA ESTATES COALITION

FOR A DECLARATORY RULING

W

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECLARATORY RULING

1. PETITION

A.

Basic Information:

PETITIONER:

Kuilima Estates Coalition LANDOWNERS:

AOAO of Kuilima Estates East and

AOAO of Kuilima Estates West LOCATION:

57-077 Eleku Kuilima Place and

57-101 Kuilima Drive - Koolauloa (Exhibit A) TAX MAP KEYS:

5-7-001: 027 and 029 LOT AREA:

32.439 acres EXISTING

ZONING:

A-1 Low Density Apartment District (Exhibit B) EXISTING USE:

Multi-family dwelling, short-term rental SURROUNDING LAND

USES: Hotel, retail establishment, restaurants, golf

course, wastewater Treatment Plant, James Campbell National Wildlife Refuge

On December 11, 2019, the Department of Planning and Permitting ("DPP") received a petition for a declaratory ruling from Kuilima Estates Coalition ("Petitioner"). The Petitioner requests a declaratory ruling to determine whether short-term rental is a permissible use at Kuilima Estates East and Kuilima Estates West ("Kuilima Estates") in accordance with Ordinance No. 19-18, specifically Land Use Ordinance ("LUO") Section 21-5.__(a). This declaratory ruling is issued pursuant to Chapter 3 of the Rules of Practice and Procedure ("Rules") of the DPP.

Statement of Petitioners' Interest: The Petitioner includes members who own property at Kuilima Estates, business owners and other people interested in real estate and short-term rental. The interpretation of LUO Section

21-5. (a) impacts the Petitioner's **business and the use** of their properties.

Applicable Ordinance: The Ordinance relevant to the Petitioner's argument is LUO Section 21-5. (a). Ordinance No. 19-18, relating to short-term rentals, added a new section in the LUO, which states:

"Section 21-5. ___ Bed and breakfast homes and transient vacation units.

(a)

Bed and breakfast homes and transient vacation units are permitted in the A-1 low-density apartment zoning district and A-2 medium-density apartment zoning district provided:

They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

(2)

The resort district and the A-1 or A-2 district, as applicable, **were** rezoned pursuant to the same zone change application as part of a master-planned resort community."

C.

Documents: The Petitioner argues that transient vacation units ("TVU") should be allowed at Kuilima Estates. The Petitioner identifies various documents that supports Kuilima Estates qualification of the two criteria under LUO Section 21-5. (a). The Petitioner submitted their Exhibits A through R, which included:

"A"

Kuilima Resort Declaration of Covenants, Conditions, and Restrictions (recorded December 30, 1988);

Letter requesting for a boundary reclassification - request for boundary Reclassification (dated January 17, 1985);

Zone Change Application Form;

DPP Zone Change Director's Report - summary description page;

Ordinance. No 4300 (1973) - Amendment to revise Chapter 21 relating to conditional zoning;

Unilateral Agreement ("UA") No. 5532 (recorded September 23, 1986);

Ordinance No. 86-99;

"H"

Amendment to UA;

"I"

Trustee's Limited Warranty Deed;

"J"

1999 Koolauloa Sustainable Communities Plan ("KSCP");

Turtle Bay Resort ("TBR") Master Landscaping Plan (portion);

2011 Supplemental Environmental Impact Statement ("SEIS") Preparation Notice ("Preparation Notice");

"M"

Public Utilities Commission Decision and Order No. 35648;

Bill 89 (2018), CD1 Status Report;

Hawaii News Now article (posted June 25, 2019);

Email excerpt from DPP staff, Ms. Malynne Simeon (dated July 15 and 17, 2019);

"Q"

Star Advertiser Article (dated August 10, 2019); and

"R"

Letter from Council Member Heidi Tsuneyoshi to Acting Director Kathy Sokugawa (dated November 20, 2019).

D.

D.

Background: Below is a chronological list of the zoning history for Kuilima Estate and the surrounding TBR, formerly known as the Kuilima Resort.

BackgroundBeling is er

Approval

Date

File No.

Ordinance

No.

Description

Zone Change Application

No.

Rezone a portion of R-6 Residential District situated at Kuilima Point Fronting Turtle Bay at Kahuku, Oahu, Hawaii, to H-1 Hotel District. Involved 43.2 acres of land.

10/3/1969

3475

69/Z-43

Note that Ordinance No. 3475 was voided on November 24, 1971. Then, the boundaries were adjusted under Ordinance No. 3881 (see below).

3855

Rezone a portion of AG-1 Restricted Agricultural District situated at Kahuku, Koolauloa, Oahu, Hawaii, to H-1 Resort Hotel District No. R-11. Involved 8 acres of land (see Exhibit C).

Zone Change Application

No. 71/Z-33

12/21/1971

Rezone portions of R-6 Residential District and AG-1 Restricted Agricultural District situated at Kahuku, Koolauloa, Oahu, Hawaii, to A-1 Apartment District Nos. R-44 A, B, C, D and E. Involved a total of 129.10 acres of land. R-44 B is currently known as Kuilima Estates West and R-44 C is currently known as Kuilima Estates East (see Exhibit D).

3856

Note that the zone change application (No. 71/Z-33) is missing from the file.

Redefine boundaries of H-1 Resort Hotel District No. R-9 situated at Kahuku, Koolauloa, Oahu, Hawaii. As a result of adjusting the boundaries, the zone change involved effectively reduced the area from Ordinance No. 3475 to 42.4 acres of land.

3881

Zone Change Application

No. 69/Z-43

2/7/1972

Note that the same zone change application : (No. 69/Z-43) was applied to both Ordinance Nos. 3475 (to rezone parcels of land at Kuilima Point) and 3881 (to redefine) (see Exhibit E).

4/25/1972

Building Permit (BP)

Nos. 117983 to 118005

Allow two-story wood frame condominiums on Parcel 29 (formerly identified as TMK 5-7-001: 022) - Building Nos. 1 to 23.

Approval

Date

File No.

Ordinance

No.

Description

12/10/1973

BP Nos. 21480 to

21482, 21490 to 21497, and 21499 to 21501

Allow two-story wood frame condominiums on Parcel 27 - Building Nos. 1 to 15.

3/1/1984

Adopt Zoning Map No. 19, Kahuku-Laie. Kuilima Estates land and Kuilima Point (hotel property) remained the same Zoning District, A-1 Apartment and H-1 Resort Hotel Districts, respectively.

84-15

Rezone certain parcels of land situated at Kahuku, Koolauloa, Oahu, Hawaii, from R-6 Residential, AG-1 Restricted Agricultural, P-1 Preservation, A-1 Low-Density Apartment and H-1 Resort Hotel Districts to P-1 Preservation, H-1 Resort Hotel, and B-1 Neighborhood Business Districts. According to the application, the proposal was for 578 acres of land, but rezoned only 295 acres. In addition to those lands, another 236 acres of adjoining lands are to be developed later.

86-99

Zone Change Application

No. 85/Z-11

8/14/1986

This is the zone change for Kuilima Expansion area with Council approved UA, recorded on September 23, 1986.

9/29/1986

86-120

The LUO was adopted (Ordinance No. 86-96) and as a result, amendments to the zoning map were required to implement various provisions of the LUO. Ordinance No. 86-120 amended portions of Zoning Map No. 19, Kahuku-Laie, City and County of Honolulu, which was adopted by Ordinance No. 84-15. Kuilima Point (hotel property) was identified as an existing Resort District, and Kuilima Estates properties were identified as existing A-1 Low-Density Apartment District. . .

Additionally, on May 10, 1999, Ordinance No. 99-12 was adopted to make various amendments to and reorganize the LUO, including adding LUO Section 21-5.640, which states:

“Section 21-5.640 Time sharing and transient vacation units.

Time sharing and transient vacation units shall be permitted in the A-2 medium density apartment zoning district provided:

(a)

They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

(b)

The Resort District and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.”

Finally, on June 25, 2019, Ordinance No. 19-18 was adopted to better regulate short-term rentals. Ordinance No. 19-18 added Section 21-5. to the LUO. Refer to the aforementioned language above in Section I. item C.

II. FINDINGS OF FACT

A.

Description of Site and Surrounding Area: Kuilima Estates is located on three parcels recognized by Tax Map Keys 5-7-001: 027 (Kuilima Estates East) and 028 and 029 (Kuilima Estates West). The irregularly shaped parcels are collectively 33.055 acres and are located in the A-1 Low Density Apartment District. Kuilima Estates includes 368-individually-owned units in multiple one- and two-story structures. Kuilima Estates also includes common areas, parking lots, tennis courts, and swimming pools. The property to the north of Kuilima Estates includes the 500-unit Turtle Bay Hotel and Ocean Villas, to the east and west are golf courses, and to the south is Kamehameha Highway. Kuilima Drive bisects Kuilima Estates (see Exhibit A).

Nonconformities: The LUO requires a Nonconforming Use Certificate (NUC) to operate a bed and breakfast (“B&B”) home or TVU. Ordinance No. 89-154 established a process by which an operator of a lawfully established TVU could obtain a NUC to operate legally in areas that would no longer allow transient accommodations. Pursuant to LUO Sections 21-4.110-1(b) and (c), the owner, operator, or proprietor of the TVU must obtain and retain a valid NUC for the unit in order to continue the operation of the TVU. Of the 368 units at Kuilima Estates, approximately 10 percent, or 34 units, have been operating a legal TVU since

October 22, 1986, with a valid NUC, as of July 18, 2019.

III. ANALYSIS

A.

Kuilima Estates and the Two Requirements of LUO Section 21-5. (a): The Ordinance states that the DPP has interpreted LUO Section 21-5. (a) (Ordinance 19-18) in a way that precludes TVUs at Kuilima Estates unless the operator or owner has a NUC. LUO Section 21-5. (a) is two-pronged and both requirements must be met.

1. Resort District Distance and Size Criteria: B&Bs and TVUs are permitted in the A-1 Low-Density Apartment and A-2 Medium-Density Apartment Districts when the units are within 3,500 feet of a Resort District that is greater than 50 contiguous acres. The first part of this criteria applies to the distance between the A-1 zoning at Kuilima Estates and the Resort zoning in the TBR as measured on the current zoning map. The distance is measured from the closest point of Kuilima Estates A-1 zoning property line to TBR Resort zoning property line. The distance between the property lines is 431 feet. The second part of the criteria is whether the TBR zoning is greater than 50 contiguous areas. According to the zoning map, the Resort District is located makai of Kuilima Estates and is greater than 50 contiguous acres (see Exhibit B). Therefore, the first criteria is met.

Zone Change Application of a Master-Planned Resort Community Criteria: The second prong of LUO Section 21-5. (a) requires that the Resort District and the A-1 or A-2 Districts were rezoned pursuant to the same zone change application reflecting a master-planned resort community.

The Petitioner submitted a copy of the Kuilima Resort Declaration of Covenants, Conditions and Restrictions (Exhibit A, dated December 30, 1988) that included a description of the leases between the hotel, Kuilima Estates East and Kuilima Estates West. The document identified the joint venture between Del E. Webb Corporation ("Webb") and Prudential Insurance Company of America ("PIC"), which formed INSCON Development Company ("INSCON"), on July 25, 1968. This joint venture entered into an agreement with the Estate of James Campbell ("Campbell Estate") to lease, and/or purchase various portions of land in Kahuku. According to a letter, dated May 23, 1969, to the City's Planning Director from Webb, Webb was the "managing partner for development, construction, and operation, while Prudential is the financial partner."

The initial effort of creating the joint venture was the development of the first phase of a "long-range development program for the Kahuku beach area of the Campbell Estate property..."

a.

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Zone Change Application No. 69/Z-43: According to letters found in zone change application No. 69/Z-43, the Applicant (Webb) had arranged to develop approximately 900 acres of the Campbell

Estate. This included the area that is currently known as TBR and Kuilima Estates. Since a major portion of the Project was scheduled for construction beyond five years and extends up to 1989, Webb decided that the rezoning for the resort development should be processed in phases. In order to facilitate development of the first phase, which included the hotel, cabanas, cottages, parking area, service roads, retail shops, recreational facilities, and restaurants/bars, multiple zone change applications had to be submitted.

According to the first zone change application (No. 69/Z-43) of the entire resort development, Webb requested to change the zoning of approximately 43 acres at Kuilima Point (the existing Turtle Bay. Hotel site only and did not include Kuilima Estates sites). The request was approved on October 3, 1969 (Ordinance No. 3475), then voided on

November, 24, 1971, and finally the boundaries **were redefined** (Ordinance No. 3881) on February 7, 1972 in accordance with the same zone change application (No. 69/Z-43) (see Exhibit E). Ultimately, the Council rezoned 42.4 acres of the 900-acre Project from R-6 Residential District to H-1 Resort District. The 1969 zone change application file did not include an explanation for voiding Ordinance No. 3475.

b.

Zone Change Application No. 71/Z-33: The Applicant, INSCON, of Zone Change Application No. 71/Z-33 requested the rezoning of an eight-acre portion of AG-1 Restricted Agricultural District to H-1 Resort Hotel District, and five parcels of R-6 Residential District and AG-1 Restricted Agricultural District to A-1 Apartment District. Two of the five parcels rezoned to the A-1 Apartment District pursuant to Ordinance No. 3856 are the Kuilima Estates (see Exhibit D). Pursuant to Ordinance No. 3855, an eight-acre portion that adjoined the existing H-1 resort zoned parcel at Kuilima Point was rezoned to H-1 Resort Hotel (see Exhibit C). The DPP does not have a copy of the zone change application that would provide detailed information regarding the request. However, minutes from the Planning Commission public hearing, held on September 29, 1971, documented the conversation at the meeting (see Exhibit F). The minutes states that "Mr. Bruce Duncan, staff planner, explained the proposal involving the zoning of five parcels of land containing a total area of approximately 127 acres to A-1 Apartment District and one parcel containing approximately eight-acres to H-1 Resort-Hotel District. Approximately 1,360 apartment units are to be developed while approximately 500 more rooms will be added to the existing hotel use of the area." The request to change the zoning was intended to allow resort-oriented apartment and hotel development next to the existing resort hotel. The eight-acre parcel

and the remaining five other parcels were rezoned under separate ordinances (Ordinance Nos. 3855 and 3856, respectively) on December 21, 1971. It is unclear why the adoption of this zone change application was done under separate ordinances; this information was not included in the file. As such, the Resort District and the A-1 District parcels were rezoned pursuant to the same zone change application (No. 71/Z-33) as part of a master-planned resort community. Therefore, the second criteria is met.

Zone Change Application No. 85/Z-11: The application, Kuilima Development Company, of Zone Change Application No. 85/Z-11 rezoned a portion of R-6 Residential, AG-1 Restricted Agricultural, P-1 Preservation, A-1 Low Density Apartment, and H-1 Resort-Hotel to P-1 Preservation, H-1 Resort-Hotel, and B-1 Neighborhood Business Districts. The rezoning was adopted on July 9, 1986, and it took effect on August 16, 1986. (Ordinance No. 86-99). Since this zone change did not include the hotel and Kuilima Estates, the rezoning did not affect these properties.

According to the information above, both requirements of LUO Section 21-5. (a) are met. Current zoning map shows Kuilima Estates is within 3,500 feet of a Resort District that is over 159 contiguous acres in size. Plans to develop a resort community was evident in the late 1960s. In preparation for the closing of the Kahuku Sugar Plantation and the need for a new source of employment for the residents in the Kahuku area, a resort development that would include hotels, retail, residential, golf courses, and parks was planned at Kuilima Point and the surrounding parcels. This is now known as TBR. The zone change application material provided supporting information that the rezoning of the resort development needed to be handled in phases. Therefore, the zone change application (No. 71/Z-33) included Kuilima Estates parcel and a resort zoned parcel.

Other Evidence Raised by the Petitioner: The Petitioner provided evidence that support the Kuilima Estates is part of a master-planned resort community.

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Koolauloa Sustainable Communities Plan, 1999 (KSCP): The Petitioner contends that the KSCP recognizes and supports resort use at Kuilima Estates. The KSCP contains language and exhibits that generally support TVUS in Kuilima Resort (i.e., Turtle Bay area), although not explicitly for Kuilima Estates. The Master Plan that is referenced in the KSCP (Section 3.8.1 Kuilima Resort) describes integrating resort uses (e.g., hotel, condominium, and commercial), recreational uses (e.g., golf and tennis), and wetland and shoreline preserve areas at Kuilima. The KSCP does not describe Kuilima Estates as containing a residential component (meaning strictly residential). On the other hand, there is no textual language that support or prohibit TVUs in Kuilima Estates. This evidence

does not contribute to the determination that Kuilima Estates is part of a master-planned resort community.

2006 Turtle Bay Master Landscaping Plan: The Petitioner contends that the DPP approved the Master Landscaping Plan, which recognized Kuilima Estates as "Existing Resort Condo." Condition J of the Special Management Area Use Permit and Shoreline Setback Variance (adopted under Resolution No. 86-308) ("Resolution") required the Applicant to submit a landscape plan for the TBR. The landscape master plan, submitted on February 24, 2006, labeled Kuilima Estates as "Existing Resort Condo." The DPP determined that the proposed landscaping on the plans adequately met Condition J of the Resolution, provided the

· Applicant submit detailed landscape plans for each phase of development within the TBR. Since the review of this document was for compliance with the condition (landscaping at TBR), the DPP did not address Kuilima Estates. Moreover, acceptance of the landscape master plan does not recognize Kuilima Estates as being a "resort" use merely because of an erroneous notation. Therefore, this evidence does not support the Petitioner's claim that Kuilima Estates **meets** the two criteria of LUO Section 21-5.__(a).

2011 SEIS Preparation Notice for the Turtle Bay Resort Expansion: The Petitioner contends that the 2011 SEIS Preparation Notice and the SEIS excluded Turtle Bay Hotel, Ocean Villas, and Kuilima Estates from the review, thereby suggesting Kuilima Estates is part of the Turtle Bay master-planned resort community. This evidence does not contribute to the determination that Kuilima Estates is part of a master-planned resort community.

IV. CONCLUSIONS OF LAW

The Director concludes:

A.

The Petitioner has standing.

B.

Del E. Webb Corporation, the Applicant for zone change application No. 69/Z-43, and Prudential Insurance Company of America, entered a joint venture creating INSCON. INSCON is the Applicant of zone change application No. 71/Z-33.

Zone change application Nos. 69/Z-43 and 71/Z-33 were reviewed simultaneously by the Planning Commission.

Zone change Application No. 69/Z-43 rezoned a 43.2 acre portion of R-6 Residential District to H-1 (Ordinance No. 3475) on October 3, 1969. Ordinance No. 3475 was voided on November 24, 1971.

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Ordinance No. 3881 redefined the area of Zone Change Application No. 69/Z-43. A 42.4-acre portion of R-6 Residential District was rezoned to H-1 Resort-Hotel District.

Zone Change Application No. 71/2-33 rezoned:

1. An eight-acre portion of AG-1 Restricted Agricultural District to H-1 Resort-Hotel District (Ordinance No. 3855) on December 21, 1971;
and

Portions of R-6 Residential District and AG-1 Restricted Agricultural District to A-1 Apartment District, including the Kuilima Estates (Ordinance No. 3856) on December 21, 1971.

G.

Zone Change Application No. 85/Z-11 rezoned certain parcels of land from the R-6 Residential District, AG-1 Restricted Agricultural, P-1 Preservation, A-1 Low Density Apartment and H-1 Resort-Hotel District to P-1 Preservation,

H-1 Resort-Hotel, and B-1 Neighborhood Business Districts (Ordinance No. 86-99) on July 9, 1986 (effective date August 14, 1986).

The Kuilima Estates is zoned A-1 Apartment District and is located within 3,500 feet of a resort zoning district of greater than 50 contiguous acres.

The Resort District that is of greater than 50 contiguous acres and within 3,500 feet of the Kuilima Estates was rezoned pursuant to the same zone change application (File No. 71/Z-33) as part of a master-planned community

V. DECLARATORY RULING

Based on the facts presented in this case, the Director of the Department of Planning and Permitting hereby makes the following declaratory ruling:

Bed and breakfast homes and transient vacation units are permitted in the Kuilima Estates East and Kuilima Estates West, located on Tax Map Keys 5-7-001: 027 through 029, pursuant to Ordinance No. 19-18. The zoning map shows that Kuilima Estates is within 3,500 feet of a resort zoning district of greater than 50 contiguous acres. And the Kuilima Estates was rezoned to A-1 Low Density Apartment District (Zone Change Application No. 71/Z-33) pursuant to the same zone change application that rezoned the Resort District at Turtle Bay Resort, which was to be part of a

master-planned resort community.

Dated at Honolulu, Hawaii, this 10th day of February, 2020.

Department of Planning and Permitting City and
County of Honolulu State of Hawaii

Karlshamur

By

Kathy K. Bokugawa Acting Director

Enclosure

