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Ref. No. P-15440

January 17, 2017

To: Daniel Orodener, Executive Officer
State Land Use Commission

From: Leo R. Asuncion, Director

Subject: Docket No.: A15-798 Waikapu Country Town
Petitioner: Waikapu Properties LLC and Waiale 905 Partners
Location: Waikapu, Maui
Acreage: Project Area 1,576 Acres; DBA Total Area 485 Acres;
Agricultural to Urban 335 Acres; Agricultural to Rural 150 Acres
TMK: (2) 3-6-005:007; (2) 3-6-002:003; (2) 3-6-004:003; (2) 3-6-002:001; (2) 3-6-006:036; (2) 3-6-004:006

The Office Planning (OP) has reviewed the Draft Final Environmental Impact Statement (DFEIS) for the above referenced project. The project area encompasses approximately 1,576 acres, of which 149.848 acres will be reclassified from the State Agricultural District to the State Urban District and 335.155 acres will be reclassified as State Rural District for a mixed-use residential community. Approximately 1,077 acres of the project area would remain in the State Agricultural District, and of those lands, approximately 800 would be permanently protected through a conservation easement, as an Agricultural Preserve. The remaining 14 acres of the project are already classified as State Urban and are utilized by the Maui Tropical Plantation. The Urban and Rural components of the project will include 1,433 residential units, in addition to 146 ohana units, neighborhood retail, commercial an elementary school, parks and open space.

OP provided comments on the Draft Environmental Impact Statement (DEIS) in a letter dated March 28th, 2016 to which the consultant replied and addressed in this DFEIS. The substantive comments and the manner in which they were addressed are discussed as follows.

- 1. Proposed District Reclassification Boundaries.** The previous description of the project in Chapter I of the DEIS did not clearly identify which lands are proposed for reclassification to the State Urban District and which lands are proposed for reclassification to the State Rural District.

The project description in the DFEIS now clearly identifies which parcels are proposed for reclassification in Chapter I, Section 9 entitled *State Land Use District*

Boundary Amendment (DBA) (see Table 8, page I-13) and also in Chapter 3, Part 5, Section D (see Table 23, page III-75).

2. **Housing.** The DEIS did not address the project's compliance the County's workforce housing ordinance (Chapter 2.96, MCC) and with Hawaii Administrative rules § 15-15-50 (C) (8). OP requested a description of how the Project will comply with the ordinance and the Land Use Commission (LUC) rules, particularly how the Project's proposed residential product types will be allocated among the market and various affordable housing target populations (income groups), the number of each housing type, the expected price ranges for the different product types, and the assumed household sizes of the housing types.

The DFEIS in Chapter 3, Part 2, Section B, Subsection 7 entitled *Phasing* (pages III-50 to III-53), Chapter 5, Part 2, Section B entitled *Housing* (page V-50 to V-55) and *Appendix A: Market Study, Economic Impact Analysis and Public Fiscal Assessment* now documents the Project's compliance with the County's workforce housing ordinance (Chapter 2.96, MCC) and with Hawaii Administrative rules § 15-15-50 (C) (8). The number of units, densities, intended markets and development timetables are included in these sections. The number of lots and lot sizes are not specified, however it is expected that this may be determined in the Residential Workforce Housing Agreement in coordination with the County prior to Final Subdivision Approval.

3. **Water Resources.** It was not clear from the DEIS whether there is sufficient potable and non-potable water available to meet the projected average daily water demand for Phases I and II of the project. OP requested clarification on applicable water sources, surface water and aquifer sustainable yields and current withdrawals. Specification on whether or not the project is within a designated Water Management Area; the permits and other approvals required for proposed water source use; and the consistency of the project and impact of the project in terms of proposed water use and system improvements and priorities contained in the county water use and development plan, prepared pursuant to the State Water Code, HRS Chapter 174C, was also requested from the Petitioner.

The DFEIS clarifies the existing sources of potable and non-potable water, and potential impacts and mitigation measures required to meet future demand. Sources of potable and non-potable water for the Project are well-documented in Chapter 5, Part 4, Section 4 entitled *Water* (pages V-105 to V-114).

Potable water for the Project will be sourced from wells that draw water from the Waikapu Aquifer. The DFEIS states that before drawing groundwater from the Aquifer, a permit will be required from the Commission on Water Resource Management (CWRM) which has regulatory jurisdiction over the aquifer. The CWRM will ensure that the use of the aquifer will not exceed its sustainable yield.

Non-potable water to be used for irrigation will come from three sources: 1) surface water from the Na Wai Eha large surface water system, 2) agricultural wells and 3) recycled wastewater from Waikapu Country Town's (WCT) wastewater reclamation facility. The Na Wai Eha has been designated by the CWRM as a Surface Water Management Area, and a surface water use permit will be required from the CWRM. The use of the agricultural wells will require a ground water use permit from the CWRM, as the water would be drawn from the Waikapu Aquifer, which has been designated by the CWRM as a Ground Water Management Area.

Anticipated increases in demand require the provision of a private onsite dual water supply system. The DFEIS notes that the County of Maui's Department of Water Supply is in the process of updating the Maui Island Water Use and Development Plan and is aware of the details of the Petitioner's proposed private water system.

4. **Agricultural Lands.** The DEIS did not include a discussion of how the agricultural conservation easement will be implemented and managed, and the OP noted that the DFEIS should include a discussion on management and implementation. Page III-34 of the DEIS states that the conservation easement will allow only agricultural subdivisions which serve the purpose of creating "agricultural enterprises." In order to prevent the occurrence of non-agricultural uses within the proposed conservation easement, a definition of "agricultural enterprises" was requested. OP also determined that a discussion was needed on the restrictions relating to solar energy facilities in the Agricultural District and required permitting pursuant to HRS Chapter 205. In

addition, OP stipulated that the conservation easement agreement require that the proposed solar farms be accessory to agricultural activities.

In the DFEIS, Chapter 3, Part 2 & Part 3, Section 5 (pages II-37 to III-44) provides a discussion of the *Agricultural Development Plan*. The DFEIS states that the conservation easement will limit the 800-acre preserve to only those uses permitted within the State Land Use Agricultural District and the County Agricultural District. In addition, the easement will prohibit farm and/or residential dwellings from being constructed and will only allow agricultural subdivisions which serve the purpose of creating agricultural enterprises. A definition of agricultural enterprises is provided in Footnote 5 (page III-37). Agricultural enterprises as defined by the Petitioner would be any business or non-profit entity engaged in any permitted agricultural and/or special use approved pursuant to HRS, Chapter 205 and/or MCC, Chapter 19.30A, except that "farm dwellings", as defined in HRS Chapter 205, or any other type of residential dwellings including "farm labor dwellings", would not be permitted within the Agricultural Preserve. Any other agricultural use, agricultural accessory use, and special use as permitted by the Hawaii Revised Statutes (HRS), Chapter 205 and MCC, Chapter 19.30A will be permitted.

The DFEIS also states that the Petitioner intends to maintain ownership of the agricultural preserve. However, it is possible that in the future the Petitioner may decide to deed a portion and or all of the preserve to the State and or County for the purpose of establishing an Agricultural Park.

The DFEIS in Chapter 3, Part 2 (page III-44) notes the applicable restrictions on solar energy facilities in the Agricultural District pursuant to HRS Chapter 205. The Petitioner also states in their comment letter dated December 12th, 2016 to the State Office of Planning that Project-designated Land Study Bureau (LSB) Detailed Land Classification "A" lands will not be impacted by solar facilities, and that these facilities will be limited to "B" lands. The DFEIS states that solar energy facilities on "B" rated land cannot comprise more than ten percent of the acreage of the parcel or 20 acres of land without the issuance of a special use permit.

5. **Wastewater Treatment and Disposal.** The DEIS on page V-92 identified the need for the Petitioner to construct a stand-alone private wastewater treatment facility or to partner with other projects in the area to construct a regional wastewater treatment facility. OP requested information on the wastewater system selected, specifically the type of plant to be used, permitting requirements, plans for reuse and/or disposal of treated effluent and waste solids, and operations and maintenance information on the private system.

Chapter 5, Part 4, Section 5 (pages V-114 to V-120) of the DFEIS includes a comprehensive description of the Project's preferred wastewater treatment plant design, alternatives, permitting requirements, wastewater reuse facility, management and operations. Chapter 3, Part 2, Section 8 entitled *Wastewater Treatment Plant* (pages III-55 to III-63) describes the wastewater treatment plant design and process in detail.

6. **Schools.** The DEIS did not include mention of an Educational Contribution Agreement (ECA) with the Department of Education (DOE) in Chapter 5. OP requested that the DFEIS include a discussion regarding the status of the ECA, and also a description of how the Petitioner is coordinating the development of the proposed elementary school. OP also noted that the calculation of the school impact fees for construction costs do not include the 146 ohana units in addition to the 1,433 single family and multi-family units (Table 37, page V-62). OP recommended that school facilities be added to the unresolved issues list in Chapter I.

The DFEIS in Chapter 5, Part 2, Section 5, entitled *Schools* notes that the Petitioner is still in the process of finalizing the ECA with the DOE (page V-72). Table 37 has been re-labeled as Table 42 (page V-72) and the construction cost impact fee is still based on a total of 1,433 units. An elementary school is proposed to be constructed in Phase I (2017 to 2021) of the development. However, the precise schedule for development of this facility will be dependent upon funding from the State Legislature, which the Petitioner has no control over. Moreover, the Educational Contribution Agreement (ECA) between the Applicant and the State Department of Education has not yet been executed. As such, school facility development has been added to the list of unresolved issues (Chapter 1, Section 8, page I-42).

7. **Waiale Bypass Road.** The Traffic Impact Analysis Report (TIAR) in the DEIS based its original 2014 analysis on the construction of the Waiale Bypass road, which had an expected completion date of 2022. OP requested that the completion date as expected by the county for the Bypass be specified in the DFEIS to ensure that traffic mitigation coincides with the development of the proposed project.

Since the DEIS was written, the Waiale Bypass improvement has been removed from the County's FY 2017 5-year Capital Improvement Program (CIP). The Project no longer assumes the construction of the Waiale Bypass, and a separate analysis was conducted by Fehr and Peers in 2016 that addresses the Project traffic impacts at build-out. This separate analysis has been incorporated into Chapter 5, Part Two, Section D (V-75 to V-97) of the DFEIS, and is also provided in Appendix L. The DFEIS notes that three more study intersections will be significantly impacted under this scenario than in the "with Bypass" scenario analyzed in the December 2014 TIAR. However, LOS D can still be achieved at the impacted locations with an expanded program of roadway improvements as mitigation.

8. **Hawaii State Planning Act Priority Guidelines.** The analysis on the Hawaii State Planning Act Priority Guidelines (pages VII-71 -83) in the DFEIS did not include a specific analysis on sustainability (HRS § 226-108) and climate change adaptation (HRS § 226-109). Although a separate Sustainability Plan is currently in preparation (page III-45), the proposed sustainability goals, objectives and strategies in the Draft FEIS are not consistent with the Hawaii State Planning Act Priority Guidelines.

The Sustainability Plan elements listed in the DFEIS consist of urban design, energy use, water use, storm drainage, waste management, agricultural development and local food, and health and wellness guidelines. The Hawaii State Planning Act Priority Guidelines (HRS § 226-108) on sustainability are more specific in that they address a balanced economic, social, community, and environmental priorities; planning that respects and promotes living within the natural resources and limits of the State; a diversified and dynamic economy; respect for the host culture; promoting decisions based on meeting the needs of the present without compromising the needs of future generations; the consideration of the principles of the ahupuaa system; and

emphasizing that everyone, including individuals, families, communities, businesses, and government, have the responsibility for achieving a sustainable Hawaii. However, these inconsistencies should not have a negative impact on the applicant's petition to the Land Use Commission for a district boundary amendment.

9. **Coastal Zone Management (CZM).** Chapter 7, Section E entitled *Coastal Zone Management* (page VII-96 to VII-106) of the DFEIS examines the project's consistency with HRS § 205A-2. OP has found that the DFEIS has adequately addressed the concerns of the CZM program.

10. **Other comments.** OP requested that the DFEIS maps be in color whenever possible and include a legible scale, north arrow and a legend. OP also noted an error with regard to the inclusion of an ALISH map (page V-40), and it was requested that the DFEIS include the correct ALISH map.

The maps provided in Chapter 1 do not have a scale or a legend, however most maps are now in color. An ALISH map has been added (Figure 42, page V-43).

Based on the Petitioner's additional information and clarification provided in response to OP's comments of March 28, 2016, we recommend that the Land Use Commission accept the Petitioner's Final Environmental Impact Statement at this time.

We appreciate the opportunity to provide a recommendation on the DFEIS. If you have any questions, please contact Nicola Szibbo of our Land Use Division at (808)587-2883 or Josh Hekeka of our Coastal Zone Management (CZM) Program at (808)587-2845.