

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of The)	DOCKET NO. A17-802
)	
COUNTY OF KAUA'I HOUSING)	FINDINGS OF FACT, CONCLUSIONS
AGENCY)	OF LAW, AND DECISION AND
)	ORDER FOR A STATE LAND USE
To Amend The Agricultural Land Use)	BOUNDARY AMENDMENT; AND
District Boundaries Into The Urban)	CERTIFICATE OF SERVICE
Land Use District For Certain Lands)	
Situated At 'Ele'ele, Kaua'i, Hawai'i)	
Consisting Of Approximately 75 Acres,)	
Tax Map Key No. (4) 2-1-001:054)	
_____)	

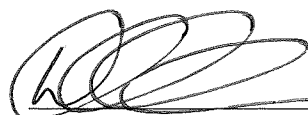
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A
STATE LAND USE BOUNDARY AMENDMENT

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct
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State Land Use Commission, Honolulu, Hawai'i

7/24/17 by


Executive Officer



LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION 2017 JUL 24 A 8:11

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COUNTY OF KAUA'I HOUSING)	FINDINGS OF FACT, CONCLUSIONS
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Tax Map Key No. (4) 2-1-001:054)	
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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A
STATE LAND USE DISTRICT BOUNDARY AMENDMENT

The County of Kaua'i Housing Agency ("Petitioner") filed a Petition for Land Use District Boundary Amendment on June 13, 2017 ("Petition"), pursuant to Hawai'i Revised Statutes ("HRS") §§205-4 and 201H-38 and Hawai'i Administrative Rules ("HAR") chapter 15-15, to reclassify approximately 75 acres of land situated at 'Ele'ele, Kaua'i, Hawai'i, Tax Map Key No. (4) 2-1-001:054 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District. The reclassification is necessary to allow for development of the Lima Ola Workforce

Housing Development ("Lima Ola" or "Project").

The State of Hawai'i Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 7, 2016, Petitioner filed a Notice of Intent to File a Land Use District Boundary Amendment Petition ("Notice of Intent") pursuant to HAR §15-15-97(b). Pursuant to HAR §15-15-97(b)(2)(G), the Notice of Intent specified February 6, 2017, as the date Petitioner proposed to file the Petition with the Commission.
2. On December 7, 2016, Petitioner filed Affidavit of James K. Mee Attesting to Publication of Notice of Intent to File a Land Use District Boundary Amendment Petition.
3. On December 7, 2016, the Notice of Intent was published in *The Honolulu Star-Advertiser* and *The Garden Island*.¹

¹ The Notice of Intent was not published in the *Hawai'i Tribune-Herald*, *West Hawai'i Today*, and *The Maui News* as required by HAR §15-15-97(b)(2).

4. On December 7, 2016, Petitioner filed Affidavit of James K. Mee Attesting to Service of Notice of Intent to File a Land Use District Boundary Amendment Petition.

5. On December 7, 2016, copies of the Notice of Intent were mailed to the State of Hawai'i Office of Planning ("OP") Director, the County of Kaua'i Planning Department ("County Planning Department"), all persons with a property interest in the Petition Area, and all persons on the chief clerk's mailing lists.

6. On December 7, 2016, Petitioner filed a Petition for Declaratory Order and Memorandum in Support of Petition for Declaratory Order. Petitioner requested that the Commission waive the requirements contained in HAR §15-15-50(c)(20) that Petitioner submit a schedule and a map for development of the Project in increments in order that Petitioner may request the Commission to reclassify the entire Petition Area as set forth in HAR §15-15-78(a)(1).

7. On December 14, 2016, OP filed a Statement of No Opposition to Petitioner's Petition for Declaratory Order.

8. On December 20, 2016, the County Planning Department filed a Statement of No Opposition to Petitioner's Petition for Declaratory Order.

9. On December 22, 2016, the Commission held a meeting to consider the Petition for Declaratory Order.

10. On December 22, 2016, the Commission granted Petitioner's Petition for Declaratory Order.

11. On December 22, 2016, Jean Nishida Souza ("Souza" or "Intervenor") filed a Petition to Intervene.

12. On December 29, 2016, Petitioner filed its Opposition to Souza's Petition to Intervene.

13. On January 6, 2017, the County Planning Department filed its Joinder with Petitioner's Opposition to Souza's Petition to Intervene.

14. On January 9, 2017, Petitioner filed Affidavit of James K. Mee Attesting to Publication of Notice of Hearing.

15. On January 9, 2017, the Notice of Hearing was published in the *Honolulu Star-Advertiser*, *Hawai'i Tribune-Herald*, *West Hawai'i Today*, *The Maui News*, and *The Garden Island* in compliance with HAR §15-15-51.

16. On January 9, 2017, Petitioner filed Affidavit of James K. Mee Attesting to Service of Petitioner's Notice of Hearing.

17. On January 9, 2017, copies of the Notice of Hearing were mailed to the OP Director, the County Planning Department, the County Planning Commission, the Intervenor, all persons with a property interest in the Petition Area, and all persons on the chief clerk's mailing lists.

18. On January 11, 2017, OP filed a Statement of No Objection to Souza's Petition to Intervene.

19. On January 18, 2017, Petitioner filed its Affidavit of Publication of the Notice of Intent for publication in *The Garden Island* and the *Honolulu Star-Advertiser*.

20. On January 19, 2017, Souza filed Proposed Intervenor Jean Nishida Souza's Responses to the Office of Planning's, Petitioner County of Kaua'i Housing Agency's, and County of Kaua'i Planning Department's Positions on Souza's Petition to Intervene in County of Kaua'i Housing Agency's Petition for State Land Use District Boundary Amendment.

21. On January 19, 2017, the Commission held a meeting in Līhu'e, Kaua'i, Hawai'i, to consider Souza's Petition to Intervene. Petitioner, OP, the County Planning Department, and Souza entered into an oral stipulation to admit Souza as an intervenor.

22. On January 23, 2017, Petitioner filed its Affidavit of Publication of the Notice of Hearing for publication in *The Garden Island*, the *Honolulu Star-Advertiser*, *West Hawai'i Today*, and *Hawai'i Tribune-Herald*.

23. On January 24, 2017, the Commission issued its Order Accepting Oral Stipulation to Accept Jean Nishida Souza as an Intervenor in the District Boundary Amendment Proceeding. The Commission ordered that Intervenor's

intervention in the proceeding is limited to the following seven (7) areas of concern: (1) traffic impacts and mitigation measures; (2) impacts and mitigation measures affecting 'Ele'ele Elementary School; (3) drainage and flooding impacts and mitigation measures; (4) impacts and mitigation measures for offsite recreation facilities; (5) impacts and mitigation measures related to emergency shelters; (6) relationship of Lima Ola to development plans for adjacent properties; and (7) timely public notice and opportunities to testify and comment on Lima Ola.

24. On January 31, 2017, Petitioner filed its Affidavit of Publication of Notice of Hearing for publication in *The Maui News*.

25. Petitioner did not file the Petition on February 6, 2017, as specified in the Notice of Intent. Pursuant to HAR §15-15-97(j), Petitioner was required to refile a Notice of Intent in the manner set forth in HAR §15-15-97.

26. On February 8, 2017, the Commission issued its Order Granting the Petition for Declaratory Order.

27. On April 13, 2017, Petitioner refiled the Notice of Intent with the Commission pursuant to HAR §15-15-97(b).

28. On April 13, 2017, Petitioner filed Affidavit of Kanani Fu Attesting to Service of Notice of Intent to File a Land Use District Boundary Amendment Petition.

29. On April 13, 2017, Petitioner filed Affidavit of Kanani Fu Attesting to Publication of Notice of Intent to File a Land Use District Boundary Amendment Petition.

30. The Notice of Intent was published in the *Honolulu Star-Advertiser* and *The Garden Island* on April 13, 2017, and published in *Hawai'i Tribune-Herald*, *West Hawai'i Today*, and *The Maui News* on April 14, 2017.

31. On April 13, 2017, copies of the Notice of Intent were mailed to the OP Director, the County Planning Department, all persons with a property interest in the Petition Area, Intervenor, and all persons on the chief clerk's mailing lists.

32. On April 26, 2017, Ashford & Wriston LLLP filed a Notice of Withdrawal and Substitution of Counsel.

33. On April 28, 2017, the Executive Officer of the Commission conducted a pre-application meeting in this proceeding pursuant to HAR §15-15-97(i) for the purpose of determining information requirements, possible issues, proposed stipulations, and other matters, including the timely submission of position statements, witness lists, exhibit lists, and exhibits of the respective parties, and to set schedules which may assist in contributing to a more orderly hearing process.

34. On May 1, 2017, a Pre-Application Order was issued by the Executive Officer of the Commission.

35. On May 4, 2017, Petitioner filed Affidavits of Publication of Notice of Intent for *The Garden Island*, the *Honolulu Star-Advertiser*, *Hawai'i Tribune-Herald*, *West Hawai'i Today*, and *The Maui News*.

36. On May 10, 2017, Petitioner filed the draft Petition pursuant to the Pre-Application Order.

37. On May 12, 2017, Petitioner filed Petitioner's Exhibit List, Witness List, and Exhibits "1" through "25" pursuant to the Pre-Application Order.²

38. On May 18, 2017, the County Planning Department filed its Position Statement, Witness List, Exhibit List, and Exhibits 1 and 2 pursuant to the Pre-Application Order.

39. On May 18, 2017, Intervenor filed her Position Statement pursuant to the Pre-Application Order.

40. On May 19, 2017, OP filed its Position Statement pursuant to the Pre-Application Order.

41. On May 25, 2017, Intervenor filed her Witness List, Exhibit List, and Exhibits 1 and 2 pursuant to the Pre-Application Order. Intervenor's Exhibit 2, consisting of Intervenor's written testimony, included recommended conditions in support of the partial or full approval of the Petition.

² Petitioner's Exhibit 8 consisted of a draft proposed findings of fact, conclusions of law, and decision and order. As required by the Pre-Application Order, the document was filed with the Commission and served on all the other parties. All parties were subsequently afforded an opportunity to respond to the document through their respective filings.

42. On May 25, 2017, copies of the Notice of Hearing were mailed to the OP Director, the County Planning Department, the County Planning Commission, all persons with a property interest in the Petition Area, Intervenor, and all persons on the chief clerk's mailing lists.

43. On May 26, 2017, OP filed its List of Witnesses, List of Exhibits, and Exhibits 1 through 13 pursuant to the Pre-Application Order. OP's Exhibit 2, consisting of OP's written testimony, included recommended proposed conditions in support of the approval of the Petition.

44. On May 27, 2017, the Notice of Hearing was published in the *Honolulu Star-Advertiser*, *Hawai'i Tribune-Herald*, *West Hawai'i Today*, *The Maui News*, and *The Garden Island* in compliance with HAR §15-15-51.

45. On May 30, 2017, a copy of the Notice of Hearing was filed with the Office of the Lieutenant Governor.

46. On May 31, 2017, Petitioner filed its Affidavit of David J. Minkin Attesting to Service of Petitioner's Notice of Hearing.

47. On June 2, 2017, Petitioner filed its Response to Intervenor Jean Nishida Souza's Statement of Position.

48. On June 2, 2017, Petitioner filed its Response to OP's Statement of Position.

49. On June 2, 2017, Petitioner filed its Rebuttal Exhibits "26" through "32."

50. On June 2, 2017, Intervenor filed her Errata Corrections to Written Testimony.

51. On June 5, 2017, Petitioner filed its Affidavit of Kanani Fu Attesting to Publication of Notice of Hearing.

52. On June 13, 2017, Petitioner filed its Petition, Exhibit List, and Exhibits "1" through "50" with the Commission.

53. On June 13, 2017, Petitioner filed its Affidavits of Publication of Notice of Hearing – (1) *The Garden Island*; (2) *The Honolulu Star-Advertiser*; (3) *Hawai'i Tribune-Herald*; (4) *West Hawai'i Today*; and (5) *The Maui News*.

54. On June 13, 2017, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of June 13, 2017.

55. On June 14, 2017, the Commission conducted a site visit to the Petition Area and surrounding areas.

56. On June 23, 2017, OP filed its Amended Testimony in Support of Petition with Conditions, Amended List of Exhibits, and Exhibits 14 through 17.

57. The Commission opened the evidentiary hearing in this docket on June 28, 2017, in Līhu'e, Kaua'i, Hawai'i. At the meeting, the Commission entered into the record written public testimony from Kaua'i councilmember JoAnn A. Yukimura,

State Senate President Ronald D. Kouchi, Juan Wilson, Anne Walton, Wilma H. Holi, Ken Taylor, and the Hanapēpē-'Ele'ele Community Association. The Commission also heard public testimony from Mayor Bernard Carvalho; Milani Pimental; Mahina Anguay; Paul Zina; Maka'ala Ka'aumoana; Susan Remoaldo; Wilma H. Holi; Wayne H. Souza; Kaua'i councilmembers JoAnn A. Yukimura, Ross Kagawa, Mel Rapozo, and Arthur Brun; Ken Taylor; Kirk Saiki; Delilah Pundyke; and Fred Cowell (also read the written public testimony of Randall Francisco). Following the receipt of public testimony, Petitioner informed the Commission that the parties had reached an oral stipulation to enter into evidence all exhibits identified by all parties in their respective Exhibit Lists and to deem all witnesses identified by all parties in their respective Witness Lists as experts in their respective subject areas for purposes of this proceeding. Following discussion, the Commission accepted the parties' stipulation. Thereafter, Petitioner commenced with its case-in-chief with witnesses Thomas W. Holliday, Cathleen Dagher, Travis Braswell, and Max Solmssen. The Commission subsequently recessed the hearing to June 29, 2017.

58. On June 29, 2017, the Commission resumed the hearing.³ Petitioner continued with its case-in-chief with the following witnesses: James Powell, Missy Kamai, Janet Kahalekomo, Leina'ala Jardin, Sabra Kauka, Thomas Nizo, Max Solmssen,

³ Kaua'i councilmember JoAnn A. Yukimura submitted written public testimony, which the Commission entered into the record.

Marie Williams,⁴ and Anson Murayama. Messrs. Powell and Nizo and Ms. Kamai, Kahalekomo, Jardin, and Kauka were not previously identified among Petitioner's witnesses on its Witness List, and therefore they were not part of the oral stipulation of the parties presented to the Commission on June 28, 2017. After discussion, it was agreed among the parties that each witness would be offered by Petitioner as an expert in his or her subject area at the time of their testimony and qualified accordingly. Mr. Powell and Ms. Kamai were accepted as experts in archaeology. Ms. Kamai was also accepted as an expert in traditional and customary Native Hawaiian practices as were Ms. Kahalekomo, Jardin, and Kauka. The expertise of Ms. Kahalekomo and Jardin was further identified as being specific to the west side of Kaua'i. The Commission subsequently recessed the hearing to July 7, 2017.

59. On July 7, 2017, the Commission reconvened the hearing on the Petition in Lihu'e, Kaua'i, Hawai'i.⁵ Petitioner resumed its case-in-chief with its remaining witnesses: Gary Mackler, Michael Dahilig, and Kanani Fu.⁶ The other parties then presented their cases-in-chief. The County Planning Department presented no witnesses and expressed its full support of the Petition. OP also offered its support of

⁴ During the cross-examination of Ms. Williams, Intervenor referenced Table 1.1 taken from the Planning Department's draft General Plan update. Following discussion, the parties stipulated to the admission of the table with certain changes. With this understanding, the Commission accepted the table into the record as Intervenor's Exhibit 3.

⁵ Kaua'i councilmember JoAnn A. Yukimura and Sabra Kauka submitted written public testimony, which the Commission entered into the record.

⁶ Ms. Fu was offered as a witness by Petitioner to specifically address questions raised by OP.
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the Petition and presented Rodney Funakoshi as its witness. Prior to her presentation, Intervenor informed the Commission that since the recess of the hearing on the Petition, she had transferred her PowerPoint presentation, previously identified as Intervenor's Exhibit 1, onto images on a poster board and separated them into Exhibits 1a, 1b, and 1c. She also introduced Exhibits 4 through 10, consisting of various photographs. There being no objections by the other parties, the Commission admitted these exhibits into the record. Intervenor then provided a presentation of her case-in-chief. Upon the completion of Intervenor's case-in-chief, the Commission closed the evidentiary portion of the proceeding and conducted deliberations on the matter. Thereafter, a motion was made and seconded to grant the Petition in its entirety subject to the conditions specified in Petitioner's proposed findings of fact, conclusions of law, and decision and order with certain amendments and additional conditions. After discussion, a friendly amendment was made and seconded to the motion. After further discussion, the motion was amended and seconded once more. There being a vote tally of 8 ayes, 0 nays, and 1 excused, the twice amended motion carried.

60. On July 19, 2017, the Commission met in Līhu'e, Kaua'i, Hawai'i, to consider the adoption of the proposed findings of fact, conclusions of law, and decision and order approving the Petition. At the meeting, the Commission afforded the parties the opportunity to present closing arguments. After hearing from Petitioner, the

County Planning Department,⁷ OP, and Intervenor,⁸ the Commission conducted its deliberations. Thereafter, a motion was made and seconded to adopt the proposed findings of fact, conclusions of law, and decision and order as is with a modification to proposed Condition Number 13. Following discussion, an amendment to the motion was made and seconded to also include a modification to proposed Condition No. 10. There being a vote tally of 7 ayes, 0 nays, and 2 excused, the amended motion carried.

DESCRIPTION OF THE PETITION AREA

61. The Petition Area consists of approximately 75 acres located in ʻEleʻele, Kauaʻi, Hawaiʻi, and is identified by Tax Map Key No. (4) 2-1-001:054.

62. The Petition Area is owned in fee simple by Petitioner.

63. The Petition Area is subject to a perpetual nonexclusive easement for utility purposes held in favor of Kauaʻi Island Utility Co-Op ("KIUC"); easements for drainage, a drainage detention basin, and waterline purposes held in favor of Kauaʻi Habitat for Humanity; and easements W-1 and W-2 held in favor of the County Board of Water Supply.

64. Petitioner licensed the Petition Area to McBryde Sugar Company, Limited ("McBryde"), and Kauai Coffee Company, LLC ("Kauai Coffee") holds a sublicense to the Petition Area. The license and sublicense will terminate upon notice to

⁷ The County Planning Department filed a Written Closing Argument at the meeting.

⁸ Intervenor filed Proposed Findings of Fact on July 17, 2017.

the licensees that the County requires possession of the Petition Area to commence development of the Project.

65. The Petition Area is presently used for coffee production pursuant to the license and sublicense with McBryde and Kauai Coffee.

66. Use of the Petition Area is restricted to affordable housing purposes or agricultural uses pursuant to the Warranty Deed with Restrictions and Covenants between McBryde, as grantor, and the County, as grantee. There is no reversion clause in the Warranty Deed if the Petition Area is not used for affordable housing or agriculture.

67. The Petition Area is located adjacent to a subdivision being developed by Kaua'i Habitat for Humanity and the 'Ele'ele Nani subdivision. Lands to the northeast of the Petition Area were designated Important Agricultural Lands ("IAL") by the Commission. Lands located to the south and southeast of the Petition Area are owned by A&B Properties, Inc., and are expected to be the site of a mixed-use development.

68. The Petition Area is located approximately 0.8 miles from the 'Ele'ele Shopping Center, approximately 0.9 miles from the Port Allen Marina Center and from the Port Allen Industrial Center, approximately 3 miles from Hanapēpē, and less than 7 miles from Waimea.

69. The Petition Area is within the State Land Use Agricultural District.

The subdivisions to the west/southwest of the Petition Area are within the State Land Use Urban District. The lands to the east and south are within the State Land Use Agricultural District.

70. The Petition Area contains two types of soil within the Makaweli series: Makaweli silty clay loam, 0 to 6 percent slopes (MgB) and Makaweli silty clay loam, 6 to 12 percent slopes (MgC). MgB is the predominant soil type at the Petition Area, and is characterized by its moderate permeability, slow runoff, and slight erosion hazard.

71. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i system established a classification system, consisting of the following types of agricultural lands, for identification of agriculturally important lands primarily based on soil characteristics: Prime Agricultural Land, Unique Agricultural Land, and Other Important Agricultural Land. The land within the Petition Area is considered Prime Agricultural Land.

72. Soils within the Petition Area are classified as A and B pursuant to the University of Hawai'i Land Study Bureau Detailed Land Classification A to E rating system, with A indicating the most productive soil.

73. The Petition Area ranges in elevation from approximately 175 to 275 feet above mean sea level, and has an average slope of 4 percent.

74. The Petition Area is located on the leeward side of Kaua`i, which is generally characterized as dry and sunny. The Petition Area is located between isohyets where median annual rainfall ranges between 29.5 to 34.4 inches.

75. According to Federal Emergency Management Agency records, the Petition Area is located within Flood Zone X, designated as "areas outside of the 0.2 percent annual chance floodplain."

PROPOSAL FOR RECLASSIFICATION

76. Petitioner seeks to have the Petition Area reclassified from the State Land Use Agricultural District to the State Land Use Urban District to develop the Project in `Ele`ele, Kaua`i, Hawai`i.

77. Lima Ola is an affordable housing development that, when fully builtout, will consist of approximately 550 residential units (single and multi-family). All of the units will be offered for sale or rent to buyers/renters who earn no more than 140 percent of the Kaua`i median household income. Under Ordinance 860, relating to the housing policy for the County of Kaua`i, the restriction document that is recorded on all fee-simple housing unit sales to qualified buyers requires, among other things, owner occupancy for a term of 20 years for sales to residents where income limits are imposed on the buyer. In the event the owner elects to sell the unit after the 20-year period, the County has the first option to purchase the housing unit from the owner

subject to the County's buyback rights and to resell the unit to an income qualified buyer so that the unit remains affordable.

78. The Project is anticipated to have densities of six units per acre for single-family homes and ten units per acre for multi-family units.

79. A variety of residential types will be offered for sale and rent at Lima Ola. These include single-family detached units, duplexes, and complex housing.

80. Subject to Ordinance 860, or other financing restrictions as amended, and based on the current Kaua'i median household income, the proposed unit inventory pricing is as follows: studios will rent from \$976 to \$1,445 per month; one-bedroom units will rent for \$1,037 to \$1,540 per month; two-bedroom units will rent for \$1,235 to \$1,838 per month; and three-bedroom units will rent for \$1,413 to \$2,110 per month.

81. Subject to Ordinance 860, or other financing restrictions as amended, and based on the current Kaua'i median household income, the projected sales prices for multi-family units is as follows: \$177,150 to \$347,900 for one-bedroom units; \$231,800 to \$436,800 for two-bedroom units; and \$282,800 to \$519,450 for three-bedroom units. If the units are under a condominium property regime, the unit owners will be subject to monthly maintenance and association fees.

82. Subject to Ordinance 860, or other financing restrictions as amended, and based on the current Kaua'i median household income, the projected

sales prices for single-family homes is as follows: \$274,500 to \$479,400 for a two-bedroom home; \$304,150 to \$562,150 for a three-bedroom home; and \$369,300 to \$590,400 for a four-bedroom home.

83. The Project will include a 3.1-acre community park, a community center, space for community gardens, vegetated drainage swales, landscaped areas, a water storage tank, and pathways (bike and pedestrian).

84. Petitioner, as the County Housing Agency, has certified that the Project is a HRS §201H-38 Affordable Housing Project.

85. The Kaua'i County Council has authorized exemptions from certain land use and zoning standards needed to accommodate the development of the Project.

86. By Order Granting the Petition for Declaratory Order filed on February 8, 2017, the Commission granted Petitioner's request for a waiver of the incremental development schedule and map requirements.

87. The Project will be completed in four phases. The development timetable will vary depending upon a number of variables, including access to funding and affordable housing needs.

88. The Lima Ola Workforce Housing Infrastructure Delivery Plan sets forth the projected phases of development of the Project. The breakdown of each phase is as follows:

Phase 1

Approximately 25 acres

38 single-family homes

111 multi-family units

Civil on and offsite work, community park, offsite roadway improvements, multi-use community center, bus stop and shelter

Phase 2

Approximately 21 acres

75 single-family homes

97 multi-family units

Civil site work, offsite water system

Phase 3

Approximately 17 acres

34 single-family homes

102 multi-family units

Civil site work

Phase 4

Approximately 11 acres

18 single-family homes

75 multi-family units

Civil site work, offsite roadway improvements

89. Pre-development and Phase 1 costs are to be funded by the Build America Bond, Housing and Community Development Revolving Fund, American Recovery and Reinvestment Act Grant, Housing Development Fund, County Bond Fund, and the State of Hawai'i Dwelling Unit Revolving Fund ("DURF").

90. Petitioner estimates that the first phase of development will total \$20,093,950; the second phase will total \$14,778,041; the third phase will total \$6,916,615; and the fourth phase will total \$11,288,456.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

91. Petitioner is acting through its Housing Agency, an agency of the County, and is therefore exempt from the requirement that it demonstrate its financial condition pursuant to HAR §15-15-50(c)(9).

STATE AND COUNTY PLANS AND PROGRAMS

92. The Petition Area is within the State Land Use Agricultural District.

93. Under the County General Plan, the Petition Area was designated for agricultural use. The Kaua'i County Council approved an exemption to the County General Plan to amend the land use area map designation from Agricultural to Residential.

94. The Petition Area is zoned for agriculture use. Petitioner received an exemption from Section 8-2.2 of the Kaua'i County Code, pursuant to HRS §201H-38, to permit the development and use of the parcels for single-family and multi-family residential purposes, including supporting infrastructure requirements.

95. The Petition Area is not located in the Special Management Area.

NEED FOR THE PROJECT

96. CBRE, Inc., prepared a market study for the Project dated May 25, 2017.

97. There is expected to be a demand for 8,550 additional housing units (mid-point) in the Lihu'e-Kekaha area between 2014 and 2040. Of this projected

housing need, about 70 percent (5,985 units) will be for units priced to be affordable for households making 140 percent or less of the Kauaʻi median income.

98. Excluding the Project, there are approximately 6,455 additional units proposed for the region. It is anticipated that more than a third of the planned units will be in developments oriented towards visitors and vacation/second-home buyers or with inventory at such high price points as to be unaffordable to almost all Kauaʻi resident households.

99. Within the ʻEleʻele-Hanapēpē area, there is a demand for about 970 additional units by 2040. Without the Project, less than 250 units are projected to be added to the ʻEleʻele-Hanapēpē area.

100. Between 2015 and 2025, the demand for additional housing units is estimated to be 5,287 residential units on the island of Kauaʻi. Of that demand, 3,926 units are needed by households earning 80 percent or less of the Kauaʻi median household income.

101. The other developments in the ʻEleʻele-Hanapēpē area that are expected to contribute new housing units include Kauaʻi Habitat for Humanity's planned residential development with an additional 48 units and the anticipated mixed-use development of a proposed 201 homes on lands owed by A&B Properties, Inc.

SOCIO-ECONOMIC IMPACTS

102. CBRE, Inc., prepared an economic analysis of the Project dated May 25, 2017.

103. The Project will provide affordable housing for Kauaʻi's workforce. The influx of additional residents is expected to bring greater economic vitality to the region.

104. Construction activities will result in the short and long-term creation of jobs and materials spending, which will continue until full buildout of the Project is completed.

105. The development of Lima Ola will bring in an estimated \$190 million of new, direct capital investment with significant unquantified indirect expenditures into Kauaʻi's real estate market and generate approximately \$391.7 million in total new economic activity islandwide during its buildout over a 12-year period (circa 2018 to 2029). The Project will contribute approximately \$21.9 million in annual economic activity on a stabilized basis thereafter.

106. The construction of Lima Ola infrastructure, completed single-family homes and multifamily units will directly create an estimated 1,057 "worker-years" of employment in the trades and supply businesses during buildout. This total number of worker-years averages to approximately 88 worker-years annually, with an estimated \$83.6 million in wages, or \$7 million in wages per year.

107. The community homeowners' association, the condominium owners' association, and the upkeep, maintenance, and renovations of the approximately 550 units are anticipated to create 455 worker-years of employment from 2020 through 2030, with associated wages of \$15.1 million. Once stabilized, these activities will create approximately 61 full-time positions and estimated annual wages of \$2 million.

108. Associated secondary/offsite employment during the overall development and absorption timeframe will total approximately 504 worker-years with estimated wages of \$27.3 million. Once stabilized, approximately 20 full-time positions in associated secondary/off-site employment will be created, with anticipated annual wages of \$1 million.

109. The cumulative resident household income during the first 11 years of occupancy will total \$375.2 million and is expected to stabilize at approximately \$42.1 million annually thereafter.

110. Discretionary spending into Kaua'i businesses by the Lima Ola resident population will be approximately \$150.1 million during buildout, and an average \$16.8 million annually on a stabilized basis.

111. The new homes at Lima Ola will add to the real property tax base of the County. The County will realize "new" real property taxes in the amount of approximately \$5.7 million from 2017 to 2030, with annual collections of \$826,509

thereafter. Secondary receipts and development fees will total an estimated \$9 million from 2018 to 2030, and \$1.3 million annually on a stabilized basis thereafter.

112. Due to ongoing maintenance and renovations of the homes within the Project over time, the State is anticipated to receive “new” gross excise and income taxes and secondary revenues of \$20.2 million from 2017 to 2030, and \$319,000 per year thereafter.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

113. Island Planning prepared an agricultural impact assessment for the Project.

114. The Project will not significantly impact agricultural resources. There is an adequate amount of available agricultural lands surrounding the Petition Area and within the County of Kauaʻi and the State of Hawaiʻi.

115. Of the approximately 3,000-plus acres currently being utilized for coffee farming by Kauai Coffee, the approximately 75 acres of the Petition Area represents less than 3 percent of the total area farmed.

116. The acreage to be disrupted by the Project is too small to negatively affect current or realistic future coffee plantation operations. There is ample acreage of fallow land in the IAL area to make up for the lands lost due to the development of the Petition Area.

117. The lack of affordable housing has made it more difficult for Kauai Coffee to recruit and retain employees. Development of County workforce housing at Lima Ola may help secure a portion of the labor pool needed to keep Kauai Coffee operational.

118. The Petition Area has not been designated as IAL pursuant to HRS chapter 205.

Flora and Fauna

119. SWCA Environmental Consultants prepared a biological resource assessment for the Project dated October 2013.

120. No state or federally-listed threatened, endangered, or candidate plant species, or rare native Hawaiian plant species were observed within the Petition Area, and no designated critical plant habitat occurs within the Petition Area. Of the 66 plant species observed at the Petition Area, only two species, `uhaloa (*Waltheria indica*) and moa (*Psilotum nudum*) are native to the Hawaiian Islands.

121. The Petition Area does not include a designated critical habitat for any protected species.

122. Thirteen bird species were documented during the survey. These species are typically found in agricultural areas, and included one migrant shorebird species: the Pacific golden plover (*Pluvialis fulva*), which was primarily observed on roads.

123. The native Hawaiian short-eared owl or *pueo* (*Asio flammeus sandwichensis*) and the introduced barn owl (*Tyto alba*) may use the Petition Area for hunting and roosting.

124. Seabirds, especially the endangered Hawaiian petrel (*Pterodroma sandwichensis*) and threatened Newell's shearwater (*Puffinis auricularis newelli*), may fly over the Petition Area at night while traveling between their upland nesting sites to the ocean.

125. The Hawaiian hoary bat (*Lasiurus cinereus semotus*) is believed to be present at the Petition Area due to the detection of multiple bat calls through the use of bat detectors.

126. Construction activities planned for the Petition Area may impact the Hawaiian hoary bat, the Hawaiian petrel, and the Newell's shearwater.

127. The United States Fish and Wildlife Service ("USFWS") recommended several control measures to minimize or avoid possible impact to these species. Measures include restricting the trimming or removal of trees taller than 15 feet within the Petition Area between June and September 15 when non-volant juvenile bats may be roosting in the trees. Another measure includes limiting any fences erected as part of the Project to those that have a barbless top-strand wire to prevent entanglements of the Hawaiian hoary bat on barbed wire. The top strand of barbed wire on existing fences at the Petition Area should be removed or replaced with

barbless wire. To minimize the impact to the two bird species, the USFWS recommended that construction activity be limited to daylight hours during the seabird breeding season (April to November) to avoid the use of nighttime lighting, and that outdoor lights be shielded. Outside lights that are not needed for security and safety should also be turned off from dusk to dawn during the fledgling fallout period (September 15 to December 15). The USFWS also recommended that activities be coordinated with their agency during construction to avoid creating standing water and other attractive nuisances that could attract protected waterbirds to unsafe construction conditions. The agency further recommended that a qualified biologist survey the Petition Area prior to construction and after a delay of least three days in construction for the presence of Hawaiian goose nests. Work should immediately stop if a nest is discovered and the agency should be contacted for further guidance. It is expected that the implementation of these control measures will reduce the impact to biological resources from the Project to insignificant levels.

128. Petitioner will comply with the recommendations of the USFWS.

Archaeological and Historical Resources

129. Scientific Consultant Services ("SCS") prepared an Archaeological Inventory Survey ("AIS") for the Project in September 2013 and April 2014. The scope of the work included historic and archaeological background research, ground surveillance and subsurface testing.

130. No pre-contact archaeological sites were identified.

131. A single, historic plantation-era site, designated as State Site Number 50-30-09-2219, Pump No. 1 Ditch. This site has been documented, plotted on maps, photographed, and described in pamphlets and books.

132. SCS recommends no further historic preservation work is necessary in the Petition Area.

133. The State Historic Preservation Division ("SHPD") accepted the AIS on June 5, 2017.

134. The SHPD requested the following:

- Archaeological monitoring and historical data recovery mitigation commitments be imposed on the project as Commission conditions to be conducted during the construction phase;
- Petitioner and archaeological firm consult with SHPD regarding an appropriate monitoring and historical data recovery scope prior to development of the mitigation plan;
- The mitigation plan be submitted to SHPD for review and acceptance prior to project initiation; and
- SHPD be notified at the initiation of the Project.

135. Petitioner will comply with the request of the SHPD.

136. Petitioner will prepare an updated AIS for any phases beyond Phase 1 of the Project.

Cultural Resources

137. In order to fulfill its duty to preserve and protect customary and traditional Native Hawaiian rights to the extent feasible, pursuant to the Hawai'i Supreme Court's holding in Ka Pa'akai O Ka'Aina v. Land Use Com'n, State of Hawai'i, 94 Hawai'i 31, 7 P.3d 1068 (2000), the Commission must make specific findings and conclusions as to the following:

- (1) The identity and scope of "valued cultural, historical, or natural resources" in the Petition Area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the Petition Area;
- (2) The extent to which those resources - including traditional and customary Native Hawaiian rights - will be affected or impaired by the proposed action; and
- (3) The feasible action, if any, to be taken by the Commission to reasonably protect Native Hawaiian rights if they are found to exist.

138. SCS completed a Cultural Impact Assessment ("CIA") for the Petition Area in June 2014.

139. Based on the testimony of several experts in traditional and cultural Native Hawaiian practices, and particularly of those knowledgeable about such practices on the west side of Kauaʻi, the Commission finds that there are no trails in the Petition Area and no valued cultural, historical, or natural resources in the Petition Area. There are also no traditional and customary Native Hawaiian rights currently being exercised in the Petition Area.

140. The Project will not have any adverse impacts to valued cultural, historical, or natural resources nor to any traditional and customary Native Hawaiian rights on the Petition Area.

141. Based on the testimony of several experts in traditional and customary Native Hawaiian practices, and particularly of those experts knowledgeable about such practices on the west side of Kauaʻi, the Commission finds that there are traditional and customary Native Hawaiians rights currently being exercised in the region, including at Wahiawa Bay, such as the subsistence gathering of limu and fishing. Wahiawa Bay is located to the south and downslope of the Petition Area. There is also salt gathering at Hanapēpē Bay located to the southwest of the Petition Area.

142. The Project could adversely impact any valued, historical, or natural resources or any traditional and customary Native Hawaiian rights in the region at Wahiawa Bay from runoff if that runoff is not appropriately controlled. Petitioner will

incorporate drainage improvements and Best Management Practices ("BMPs") in accordance with the standards of the County of Maui Department of Public Works ("DPW") and maintain them for the life of the Project.

143. Petitioner will continue to have ongoing consultation with adjoining landowners, Native Hawaiian cultural practitioners, fishermen, and any other relevant or appropriate group or individuals on the health and sustainability of the nearshore marine resources, including limu and fish, at Wahiawa Bay.

144. Petitioner will prepare an updated CIA for any phases beyond Phase 1 of the Project.

Groundwater Resources

145. The northwestern portion of the Petition Area is located in the Hanapēpē Aquifer system of the Waimea aquifer sector and the southern portion is located in the Kōloa Aquifer system of the Līhu'e Aquifer sector.

146. Given the estimated depth to groundwater of approximately 100 feet below the surface, groundwater is not anticipated to be encountered. The Project is not expected to cause significant impacts to groundwater resources.

147. The proposed housing units of the Project will be serviced by drinking water provided by the County of Kaua'i Department of Water ("DOW"), which regularly monitors water quality parameters to ensure adherence to all State and federal standards.

Scenic Resources

148. The Petition Area is not located in a sensitive visual setting. The surrounding area is moderately urbanized, and there is currently no public access to the Petition Area.

149. The residential units will adhere to county height restrictions, thus preserving the existing visual assets of the Petition Area. The Project will not substantially affect the visual aesthetics of the surrounding area.

150. The Project will be compatible with the County General Plan (2000), which calls for the use of green open space, small, low buildings, and the presence of natural vegetation along roads.

Recreational Resources

151. Public access to the Petition Area is currently restricted, and the Petition Area has no recreational use at this time.

152. The recreational activities located closest to the Petition Area are those of the `Ele`ele Nani community across Kaumuali`i Highway. Considering the physical separation from the Petition Area, recreational activities in the `Ele`ele Nani community are not anticipated to be impacted.

153. The Project will include a “network of shared use paths, open play spaces, passive leisure parks and community gardens” for residents and visitors to enjoy.

154. The Project will develop and increase recreational resources in the Petition Area with its proposed paths, play spaces, parks, and gardens.

ENVIRONMENTAL QUALITY

Noise

155. D. L. Adams Associates, Ltd., prepared a noise assessment report for the Project in 2014.

156. The Project will incorporate design considerations to control the noise emanating from stationary mechanical sources. Design features that may be incorporated into the Project include sufficient spacing between noise sources and receptors; and installing controls such as mufflers, silencers, acoustical enclosures, or noise barrier walls.

157. The greatest increase of noise levels to the surrounding community will be two decibels for the homes adjacent to Mahea Road. This increase is considered less than the threshold of human perception.

158. Noise impacts occurring during the construction process will be addressed through BMPs, monitoring, and compliance to applicable regulations.

159. Noise from future traffic volume increases due to the Project will not be significant.

Air Quality

160. B. D. Neal & Associates conducted an air quality study for the Project in 2014.

161. The Project will result in less than significant short-term impacts to air quality from construction activities. The major potential impacts will occur from the generation of fugitive dust. Uncontrolled fugitive dust emissions from construction activities are estimated to be approximately 1.2 tons per acre per month depending on rainfall at the Petition Area. BMPs will need to be implemented during construction to control fugitive dust emissions. Such BMPs include watering active work areas and unpaved work roads; using wind screens; establishing a routine road cleaning and/or tire washing program; paving of parking areas; establishing landscaping early in the construction schedule; and monitoring of dust at the boundary of the Project.

162. The use of construction equipment and personal vehicles to access the Petition Area could lead to temporary increases in vehicular airborne pollutant concentrations. Carpooling and ensuring that equipment is functioning properly are measures that can be undertaken to mitigate these increases and should be included in regular construction work practices. In addition, moving equipment and personnel to the Petition Area during off-peak traffic hours will address increased vehicular emissions due to the additional traffic from construction equipment and commuting construction workers.

163. The Project will result in increased annual emissions. However, worst-case projected concentrations should remain well within both the State and

national ambient air quality standards. Direct long-term impacts to air quality will not be significant.

164. Petitioner will participate in an air quality monitoring program as required by the State of Hawai'i Department of Health ("DOH").

Water Quality

165. There are no surface water resources, listed natural wetlands, or wetland habitats within the Petition Area.

166. The Hanapēpē River is located 1,000 feet northwest of the Petition Area. Wahiawa Stream is located approximately 1,000 feet east of the Petition Area. Both the Hanapēpē River and Wahiawa Stream flow into the Pacific Ocean, which is located approximately 0.5 miles south of the Petition Area.

167. During high intensity storm events, it is possible that sheet flow through the Pump No. 1 Ditch may introduce suspended and dissolved solids into the receiving Wahiawa Stream.

168. Water quality will be incorporated into the design of the Project's onsite detention basin. The outlet for the detention basin will integrate a perforated riser inside of a drainage manhole and will be designed to limit the outflow of the detention basins to existing flow rates to meet water quality requirements established by the County of Kaua'i Storm Drainage Standards. To aid water quality with the Project, grass swales will be constructed along the roadways throughout the Project to

help treat surface water runoff and reduce flow velocities into the onsite detention basin. The Project's park will also act as a sediment basin to assist in water quality for the Project.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

169. Hatch Mott McDonald prepared a Traffic Impact Analysis Report ("TIAR") for the Project in 2014.

170. The Petition Area is flanked by Kaumuali'i Highway, a State highway, to the northwest; and Halewili Road, a County road, to the south. The main entry point for Phase 1 of the Project will be Mahea Road, a County road connecting to Kaumuali'i Highway.

171. Kaumuali'i Highway is a two-lane State highway within 'Ele'ele. This roadway is the primary highway along the southern coast of the island of Kaua'i, roughly extending between Waimea to the west and Lihu'e to the east.

172. Halewili Road is a two-lane, east-west State highway leading into and out of western 'Ele'ele. It connects to Kaumuali'i Highway at each end – the western intersection is in 'Ele'ele, and the eastern intersection is just west of Kalaheo.

173. The TIAR reviewed the four intersections located at Waialo-'Ele'ele/Kaumuali'i, Kaumuali'i/Halewili, Kaumuali'i/Laulea (South) - Mahea, and Kaumuali'i/Laulea (North).

174. The TIAR was reviewed by the State of Hawai'i Department of Transportation ("DOT") and its analyses were found satisfactory with respect to Phase 1 of the Project.

175. The TIAR considered the traffic conditions with the Project at full buildout in 2040. Each of the intersections is projected to operate at Level of Service ("LOS") F, both in its overall or side-street operations. LOS F represents highly congested traffic conditions that is commonly considered to result in unacceptable delay to drivers.

176. Based on its analysis, the TIAR recommended the following improvements for the intersections:

- Waialo-`Ele`ele/Kaumuali`i: (1) add a second westbound left-turn lane on Kaumuali`i Highway; (2) add a second southbound through lane on Waialo Road.
- Kaumuali`i/Halewili: (1) add a southbound median acceleration lane along Kaumuali`i Highway; (2) add a southbound left-turn lane along Kaumuali`i at this intersection.
- Kaumuali`i/Laulea (South)-Mahea: (1) signalize intersection; (2) lengthen the existing southbound Kaumuali`i Highway left-turn lane to provide a minimum of 100 feet of vehicle storage.

- Kaumuali'i/Laulea (North): (1) signalize intersection; (2) convert the existing northbound median acceleration lane on Kaumuali'i Highway into a southbound left-turn lane.

177. Petitioner will complete a follow-up traffic study prior to each of Phases 2, 3, and 4.

178. Petitioner intends to implement the recommendations of the TIAR during the appropriate phases.

179. The County Transportation Agency operates The Kaua'i Bus, the public transit system within the County.

180. Two bus routes are located near the Petition Area: Routes 100 and 200. Route 100 travels eastbound between Kekaha and Līhu'e via 'Ele'ele, and Route 200 travels westbound along the same route.

181. A bus stop is located less than one-half mile away from the Petition Area, on the westbound lane of Kaumuali'i Highway.

182. An additional bus stop on the east lane of Kaumuali'i Highway will be installed during Phase 1 of the Project. The new bus stop will fill a major gap in transit service to the community, as there is currently no eastbound bus stop in 'Ele'ele, and will facilitate access to transit for residents within the Petition Area.

Schools

183. Students living in the Petition Area will be served by three State of Hawai'i Department of Education ("DOE") schools: (1) 'Ele`ele Elementary School; (2) Waimea Canyon Middle School; and (3) Waimea High School.

184. 'Ele`ele Elementary School is approximately one-half mile from the Petition Area and has a total enrollment of 503 students (Spring 2017). The DOE estimates that Phase 1 of the Project may add an estimated 25 additional students; at full buildout, over the several decade timespan, the DOE estimates an additional 77 students may enroll.

185. At this time, there is adequate capacity to support the anticipated additional enrollment for Phase 1 at 'Ele`ele Elementary School, but the school may be at full capacity toward the later phases of the Project. Petitioner will continue to coordinate with the DOE throughout the planning and development process to prevent a significant impact to the school.

186. Waimea Canyon Middle School is approximately seven miles from the Petition Area and has a total enrollment of 416 students (Spring 2017). At full buildout, the DOE anticipates an additional 22 students attending Waimea Canyon Middle School. There is sufficient capacity to accommodate the additional students.

187. Waimea High School is approximately six miles from the Petition Area and has a total enrollment of 575 students (Spring 2017). The DOE has anticipated

an additional 40 students in attendance at the full build-out of the Petition Area. There is sufficient capacity to accommodate the additional students.

188. The principals of `Ele`ele Elementary School, Waimea Canyon Middle School, and Waimea High School support the development of the Petition Area.

Parks

189. The Petition Area is located on the western edge of the Kōloa District and the most eastern edge of the Waimea District. It is anticipated that residents of the Project will utilize parks and recreation facilities in both districts.

190. The County of Kaua`i Department of Parks and Recreation administers 16 neighborhood parks, seven beach parks, four district parks, two passive parks, one cultural preserve, and seven neighborhood centers, totaling almost 206 acres of park and recreational facilities, within the Kōloa and Waimea Districts.

191. Parks located nearby the Petition Area include: (1) `Ele`ele Nani Park, which includes a 7.50-acre neighborhood park with playground equipment; (2) `Ele`ele Park, which includes a 2.86-acre neighborhood park, multi-purpose field, comfort station, pavilion and basketball court; and (3) Hanapēpē Stadium, which provides active recreation facilities for a variety of sports.

192. A 3.1-acre community park and multi-use building will be developed and built within the Project during Phase 1.

193. The County Subdivision Ordinance, Section 9-2.8, requires 1.75 acres of land for park and playground purposes for each one thousand persons or fraction thereof.

194. The total stabilized resident population of the Project is estimated to be 1,508 from 2029 onward. Based on this estimated population, and the required 1.75 acres per one thousand persons, the total acreage of required park lands is 2.639 acres. Accordingly, the Project will exceed the required park space under the Kaua'i County Code by more than 0.4 acres.

Water Supply

195. Water resource and distribution systems for the Petition Area are managed by the DOW. Four wells in the Hanapēpē-ʻEleʻele Water System, which is part of the DOW system, provide all of the drinking and non-drinking water to meet the demand in the vicinity of the Petition Area. The Water Master Plan for the Petition Area was completed in September 2015. The Water Master Plan takes into consideration the Project's drinking and non-drinking water demands.

196. The Project will increase the water demand of the Hanapēpē-ʻEleʻele Water System by approximately 304,380 gallons per day ("GPD"), or approximately 456,570 GPD during maximum daily demand flows, and approximately 913,140 GPD during peak hour demand flows at the full buildout of the Petition Area.

197. The DOW has conditionally approved water service for Phase 1 of the Project.

198. The Water Master Plan indicates that the current pumping capacity and source availability are adequate to accommodate the demand for Phase 1 of the Project.

199. Subsequent phases of the Project will be re-evaluated when planning for that phase commences. It is likely that the subsequent phases will require some level of source and/or transmission improvements. If additional sources are necessary at the time of re-evaluation, then Petitioner will discuss the viable options with the DOW.

Solid Waste Disposal

200. The DPW, Solid Waste Division, will provide residential solid waste services in accordance with current collection policies.

201. The County has a variety of solid waste services that include a landfill, green waste diversion, refuse collections, refuse transfer stations, and recycling waste management programs.

202. The Project is anticipated to generate approximately 444.4 tons of solid waste annually from 2019 to 2024; approximately 533.2 tons annually from 2024 to 2029; approximately 405.2 tons annually from 2029 to 2034; and approximately 273.7 tons annually from 2034 to 2039.

203. According to the DPW, the Solid Waste Division will have sufficient operational capacity to handle the anticipated solid waste generated annually by the Project.

204. The Project will incorporate proactive waste minimization strategies. These strategies will include a recyclables collection station within the community and the conversion of green waste into mulch that will be locally available for residents and community gardens.

205. The Project is not expected to generate significant long-term impacts on the County solid waste collection and landfill.

Wastewater Systems

206. The wastewater collection, treatment, and disposal system servicing the 'Ele'ele area is owned and operated by the County.

207. Currently, the 'Ele'ele Wastewater Treatment Plant has a wastewater capacity of 0.8 million gallons per day ("MGD") with a current usage of approximately 0.4 MGD (50 percent below capacity).

208. The Project is anticipated to generate an average flow of 0.16 MGD, which is within the treatment capacity of the 'Ele'ele Wastewater Treatment Plant.

209. A connection point with adequate capacity for the full buildout of the Project is located within three hundred feet of the Petition Area.

210. No expansion of the 'Ele'ele Wastewater Treatment Plant will be needed upon the full buildout of the Project.

Drainage

211. The Petition Area does not have any permanent surface water bodies or natural wetlands. A man-made irrigation ditch, Pump No. 1 Ditch, used historically for agricultural purposes, is located within the Petition Area. This ditch is classified by the USFWS as an intermittent, man-made riverine, which is occasionally flooded.

212. The Project will include the construction of a surface water drainage system to collect stormwater flow. Stormwater will initially enter vegetated drainage swales located along internal roadways, which will provide natural filtering.

213. Low-impact development and sustainable features, such as bioswales and rain gardens, will be incorporated into the design of the Project and be maintained for the life of the Project to provide stormwater treatment and to reduce the quantity of runoff discharged from the Petition Area. The reduction in runoff generated onsite will help reduce the size of the stormwater drainage system.

214. Water will collect into subsurface pipe culverts, which will channel water to an onsite vegetated detention basin, which allows for further natural filtration as well as groundwater recharge and particle deposition. The detention basin will be designed for a two-year, 24-hour storm recurrence interval.

215. All features of the proposed surface water drainage system will be designed in accordance with the standards of the DPW.

216. Prior to construction of the Project, a stormwater prevention plan will be developed to identify sources of stormwater pollution, describe the practices used to prevent stormwater pollution, and identify BMPs and procedures Petitioner will implement to comply with a National Pollution Discharge Elimination permit.

217. With the proposed drainage system in place and maintained for the life of the Project, it is anticipated that the Project will not have significant impacts on surface water at the Petition Area nor within the surrounding environment.

Police and Fire Protection Services

Police Protection

218. The Kaua'i Police Department ("KPD") serves as the primary law enforcement agency for 'Ele'ele and the entire island of Kaua'i. The Petition Area is in the Waimea District, which provides police services from the Halfway Bridge on Kaumuali'i Highway to the west side of the island (Polihale), including Kōke'e State Park.

219. The KPD operates a sub-station in the town of Waimea located approximately seven miles to the west of the Petition Area. Another sub-station is located approximately 11 miles to the east in the Kōloa District.

220. The KPD recommends that at full buildout a 7,000-square-foot sub-station and six police officers be added to the police force. Petitioner will communicate the Project's proposed phase density to the County administration and KPD prior to development of subsequent phases.

221. Because the Project will be located within close proximity of existing towns that are currently patrolled ('Ele`ele and Hanapēpē), it will not represent a significant impact to existing law enforcement services during the first phase of the Project.

Fire Protection

222. Fire service is provided by the Kaua'i Fire Department. The fire station located nearest to the Petition Area is the Hanapēpē Fire Station, which is approximately one mile west of the Petition Area.

223. Because the Project will generally conform to County fire protection standards, including the installation of fire hydrants and smoke alarms, and is in close proximity to an existing fire station, it will not represent a significant impact to existing fire protection services.

Medical Services

224. The primary medical facility for the region is Kaua'i Veterans Memorial Hospital ("KVMH"), which is located in Waimea, approximately seven miles from the Petition Area. KVMH is a full-service critical access hospital that includes 24-

hour emergency services, a family birth center, outpatient clinics, imaging, surgery, orthopedic, rehabilitation therapies, skilled nursing, and intermediate and long-term acute and intensive care. The Kawaiola Medical Office adjacent to the KVMH houses a dialysis center, retail pharmacy, and outpatient clinical labs services. In addition, the KVMH Port Allen Clinic is located less than one mile from the Petition Area and includes an outpatient clinic and rehabilitation therapies. A pharmacy is also located in the 'Ele'ele Shopping Center, less than one mile from the Petition Area.

225. The Project is not anticipated to adversely impact the medical facilities in the region. The existing facilities are adequate to serve the residents of the Project.

Electricity and Telephone Service

226. The existing KIUC electrical distribution service will be extended into the Project. Electrical service will be extended from overhead lines to underground conduits into the Petition Area.

227. The estimated electrical demand for the Project based on the latest development design is 1,150 kilowatts, or 843,000 kilowatt-hour/month.

228. When the total estimated electrical demand for the Project is added to the current average demand for electricity on KIUC's system, the total estimated demand is well within the range of KIUC facilities. The Project's demand will not significantly impact the existing KIUC electrical grid.

229. Hawaiian Telcom Inc. ("HT") will provide telephone services and Spectrum (fka Oceanic Time Warner Cable) will provide television services.

230. HT and Spectrum will follow KIUC's overhead lines into underground conduits upon entering the Petition Area.

Emergency Management

231. The closest County evacuation shelter to the Petition Area is located at 'Ele'ele Elementary School, which has a capacity of 1,468 persons.

232. The 'Ele'ele Elementary School shelter is intended to be used only by residents living in homes with older construction, or who would otherwise remain in an inundation area. Residents and visitors should retreat to this evacuation shelter only if they do not have safer options, such as shelter-in-place practices.

233. Due to the safer standards of the current building code, the Kaua'i Emergency Management Agency ("KEMA") intends to advise residents of the Project to remain in their units in the event of a natural disaster.

234. KEMA does not anticipate that the Project will lead to overcrowding at the 'Ele'ele Elementary School shelter.

235. KEMA recommended that the Project's proposed community center be constructed to allow it to serve as an emergency shelter, as there is a general

need in the County for additional evacuation shelters. Petitioner is considering KEMA's recommendation.

236. Petitioner will continue to consult with KEMA on an appropriate facility within the Project to serve as an emergency shelter.

COMMITMENT OF STATE FUNDS AND RESOURCES

237. Petitioner entered into a Memorandum of Agreement ("MOA") with the Hawai'i Housing Financing & Development Corporation ("HHFDC").⁹ HHFDC requested a DURF infusion from the Hawai'i State Legislature to be loaned to Petitioner for infrastructure for the Project. HHFDC has obtained an initial reservation of DURF funds in the amount of \$13,000,000. Petitioner may thus apply for up to \$13,000,000 in DURF funds for Phase 1 of the Project.

238. Funding for future phases of the Project will be determined during pre-development planning.

CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

239. The Petition Area is presently classified in the State Land Use Agricultural District.

240. The neighboring parcels to the east and south are within the State Land Use Agricultural District. The parcels to the west/southwest are within the State Land Use Urban District.

⁹ The HHFDC Board of Directors approved the MOA on July 14, 2016.
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Findings Of Fact, Conclusions Of Law, And Decision And Order For A State Land Use District Boundary Amendment

241. The proposed reclassification of the Petition Area is in general conformance with HAR §15-15-18, standards for determining Urban District Boundaries as follows:

Criterion 1. The Project will be characterized by “city-like” concentrations of people, structures, streets, and urban levels of services. The Project will support approximately 550 households, ranging from keiki to kūpuna. A community center will be located at the center of the development, and will be used for community meetings, enrichment classes, and social gatherings. Other potential activities located at the community center would include self-service postal services and a drop-off recycling station. As part of the Project, the intersections of Mahea Road/Kaumuali`i Highway, Laulea Street/Kaumuali`i Highway, and a connection to Halewili Road are expected to be signalized. Mahea Road will be extended as a major access road for the Project.

Criterion 2. The Petition Area is located approximately one mile from key community facilities in the `Ele`ele/Port Allen area. `Ele`ele’s main commercial district is located at the intersection of Kaumuali`i Highway and Waialo Road. The shopping area contains a supermarket, hardware store, specialty stores, and restaurants. The `Ele`ele Post Office is also located within the commercial district. Another commercial district is

located in nearby Port Allen at the makai portion of Waialo Road. The Port Allen Marina Center and the Port Allen Industrial Center are each located less than one mile from the Petition Area. Sufficient reserve areas for foreseeable urban growth are available. In preparing the Draft General Plan, the County examined areas on Kaua'i that are appropriate for future urban growth, and recognized the Project and its proposed land use changes. Transportation systems, schools, parks, public utilities solid waste disposal, wastewater systems, and police and fire services will be available to residents of the Petition Area.

Criterion 3. The land of the Petition Area has satisfactory topography and drainage. The Petition Area is not located within the tsunami evacuation zone identified by the National Oceanic and Atmospheric Administration. The Petition Area also has a limited chance of flooding as it is located within Flood Zone X, designated as "areas outside of the 0.2 percent annual chance floodplain." In regards to the dangers of earthquake activity, Kaua'i lies in a seismic zone designated as Zone 1, which indicates that ground accelerations of 7.5 percent of the acceleration due to gravity are likely to occur at a probability of 10 percent in a 50-year exposure time. Kaua'i Ordinance No. 808, Sediment and Erosion Control, describes proper procedures necessary for grading, soil erosion, and

sediment control during earthwork activities. All work will be completed in accordance with current construction standards and all applicable County, State, and federal regulations.

Criteria 4 and 5. The Project is an extension of urban development to the west. The Project is contiguous with the neighboring Kaua'i Habitat for Humanity subdivision that is being developed and the 'Ele'ele Nani residential subdivision is located on the opposite side of Kaumuali'i Highway from the Petition Area. The Project conforms to the policies of the County General Plan 2000, the draft General Plan that the County Planning Department has begun, and the Hanapēpē-'Ele'ele Community Development Plan.

Criterion 7. The Petition Area is adjacent to existing and planned residential areas. Furthermore, the Petition Area is within existing service areas for public infrastructure and support services.

Criterion 8. Slopes within the Petition Area are less than 20 percent. The Petition Area has an average slope of 4 percent.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE
HAWAII STATE PLAN; RELATIONSHIP WITH THE APPLICABLE PRIORITY
GUIDELINES AND FUNCTIONAL PLANS

242. The proposed reclassification of the Petition Area actively supports or is in general conformance with the following goals, objectives, policies and priority guidelines of the Hawai'i State Plan.

Goals and Objectives of Hawai'i State Plan

HRS §226-5, Objectives and Policies for Population

- (b)(1) Manage population growth statewide in a manner that provides increased opportunities for Hawai'i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.
- (b)(2) Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.
- (b)(3) Promote increased opportunities for Hawai'i's people to pursue their socio-economic aspirations throughout the islands.
- (b)(7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

HRS §226-6, Objectives and Policies for the Economy – In General

- (b)(9) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

Development of affordable housing for residents earning less than 140 percent of the median Kaua'i household income will enable them to pursue social and economic opportunities relating to homeownership. Discretionary spending into Kaua'i businesses by the Lima Ola resident population are estimated to be \$150.1 million during buildout, and an average \$16.8 million annually on a stabilized basis.

Construction activities relating to the Project will result in the short and long-term creation of jobs and materials spending, which will continue until full buildout of the Project. The creation of construction jobs will help to reduce the higher than national and State average unemployment in the census tract area.

HRS §226-13, Objective and Policies for the Physical Environment—Land, Air, and Water Quality

- (b)(2) Promote the proper management of Hawai'i's land and water resources.
- (b)(6) Encourage design and construction practices that enhance the physical qualities of Hawai'i's communities.
- (b)(7) Encourage urban developments in close proximity to existing services and facilities.

The Project will include narrower streets that require less asphalt, thereby reducing heat islands. The use of recycled asphalt will be encouraged. The Project will also promote a distribution system of managing stormwater, including landscaped swales, bio-retention, rain gardens, and other low impact development collection mechanisms. The stormwater system will control erosion and reduce natural and urban pollutants at their source. Community facilities will be located within walking or biking distance from homes to reduce car usage and will be designed for flexible use. Additional urban design considerations will include the construction of buildings so as to face toward the street to create inviting entrances and to take advantage of prevailing trade winds for the best overall distribution of air movement within interior spaces. Basic services including transportation systems, schools, parks, wastewater systems, and solid waste disposal are available and accessible to residents of the Petition Area.

HRS §226-15, Objective and Policies for Facility Systems—Solid and Liquid Wastes

- (a)(1) Maintenance of basic public health and sanitation standards relating to treatment and disposal of solid and liquid wastes.
- (a)(2) Provision of adequate sewerage facilities for physical and economic activities that alleviate problems in housing, employment, mobility, and other areas.
- (b)(2) Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic.

HRS §226-16, Objective and Policies for Facility Systems—Water

- (b)(1) Coordinate development of land use activities with existing and potential water supply.
- (b)(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.

Petitioner has engaged in coordination discussions with State and County agencies regarding facilities. The DPW, Solid Waste Division, will provide residential solid waste services and the Project intends to utilize proactive waste minimization strategies. The 'Ele'ele Wastewater Treatment Plant has adequate capacity to accommodate the Project. The Project will provide homeowner awareness on programs to promote recycling as an important part of the community culture. Onsite residential composting will also be encouraged. The Project will be serviced by drinking water provided by the DOW, which regularly monitors water quality parameters to ensure adherence to all State and federal standards. Possible strategies to reduce water use within the Project include the use of water catchment for irrigation and control panels to monitor water use.

HRS §226-18, Objective and Policies for Facility Systems—Energy

- (a)(3) Greater diversification of energy generation in the face of threats to Hawai'i's energy supplies and systems.
- (a)(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.
- (c)(2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth.

One of the goals of the Project is to design and develop a community that allows building "green" and is environmentally sustainable. Design elements that serve this goal include orienting roof surfaces to provide maximum exposure for solar water heating and photovoltaic systems, incorporating skylights and solar tubes for natural day lighting, and designing outdoor lighting systems using fewer, but more effective, lighting fixtures that require the least amount of energy, including solar powered lighting. Other measures to produce a home that uses less energy and reduces the carbon footprint include the use of design overhangs to shade the home, control panels to monitor electricity use, and ENERGY STAR appliances.

HRS §226-19, Objective and Policies for Socio-Cultural Advancement—Housing

- (a)(1) Greater opportunities for Hawai'i's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawai'i's population.
- (a)(2) The orderly development of residential areas sensitive to community needs and other land uses.
- (a)(3) The development and provision of affordable rental housing by the State to meet the housing needs of Hawai'i's people.
- (b)(1) Effectively accommodate the housing needs of Hawai'i's people.

- (b)(2) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households.
- (b)(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.
- (b)(5) Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.
- (b)(7) Foster a variety of lifestyles traditional to Hawai'i through the design and maintenance of neighborhoods that reflect the culture and values of the community.

The Project when fully builtout, will consist of approximately 550 residential units (single and multi-family). All of the units will be offered for sale or rent to buyers/renters who earn no more than 140 percent of the Kaua'i median household income. A variety of residential types will be offered for sale and rent at Lima Ola.

HRS §226-23, Objective and Policies for Socio-Cultural Advancement—Leisure

- (b)(3) Enhance the enjoyment of recreational experiences through safety and security measures, educational opportunities, and improved facility design and maintenance.

The Project will include a network of shared use paths, open play spaces, passive leisure parks and community gardens, as well as a community center, to provide additional recreational experiences.

HRS §226-24, Objective and Policies for Socio-Cultural Advancement—Individual Rights and Personal Well-being

- (b)(4) Ensure equal opportunities for individual participation in society.

HRS §226-25, Objective and Policies for Socio-Cultural Advancement—
Culture

- (b)(4) Encourage the essence of the aloha spirit in people's daily activities to promote harmonious relationships among Hawai'i's people and visitors.

By providing affordable housing, the Project will provide an equal opportunity to all households to obtain housing. One of the goals of the Project is to create a "close-knit community where gathering places encourage social interaction."

HRS §226-26, Objective and Policies for Socio-Cultural Advancement—
Public Safety

- (a)(1) Assurance of public safety and adequate protection of life and property for all people.
- (a)(2) Optimum organizational readiness and capability in all phases of emergency management to maintain the strength, resources, and social and economic well-being of the community in the event of civil disruptions, wars, natural disasters, and other major disturbances.
- (a)(3) Promotion of a sense of community responsibility for the welfare and safety of Hawai'i's people.

Petitioner has consulted with KEMA, which has addressed the emergency management issues relating to the Project. Petitioner will continue to consult with KEMA on an appropriate facility within the Project to serve as an emergency shelter. Fire and police services are available to provide assurance of public safety and adequate protection for residents of the Project. KPD recommends that at full buildout, a 7,000-square-foot substation and six police officers be added to the police force. Petitioner will communicate the Project's proposed phase density to the County administration and the KPD prior to development of subsequent phases.

Priority Guidelines of Hawai'i State Plan

243. The Hawai'i State Plan sets forth Priority Guidelines to improve the quality of life for Hawai'i's present and future population. The Project conforms to and supports following Priority Guidelines:

HRS §226-103, Economic Priority Guidelines

- (a)(5) Streamline the processes for building and development permit and review and telecommunication infrastructure installation approval and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where scientific evidence indicates that public health, safety, and welfare would not be adversely affected.

The Project is a certified HRS §201H-38 Affordable Housing Project, and has utilized the streamlined process permitted for such developments.

HRS §226-104, Population Growth and Land Resources Priority Guidelines

- (a)(3) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State.
- (b)(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.
- (b)(12) Utilize Hawai'i's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.

Solid waste disposal, wastewater systems, transportation systems, public utilities, and other facilities will be available to residents of the Project.

The Petition Area is currently used for agriculture but is appropriate for urban uses. The County has identified the Petition Area as the most suitable location for the Project, and has allocated sufficient alternative lands in the area, as well as additional lands in the County, for agricultural use. The Project is not anticipated to adversely impact agricultural production in the vicinity of the Petition Area, and in the County of Kauaʻi and the State of Hawaiʻi.

The Project will provide much needed affordable housing on the ʻEleʻele-Hanapēpē area of Kauaʻi. The Project will also generate short and long-term employment opportunities and bring in direct capital investment, providing new economic activity islandwide. The use of BMPs and low-impact development features will be incorporated in the Project and be maintained for the life of the Project to provide stormwater treatment and to reduce the quantity of runoff discharged from the Petition Area. The Project will incorporate sustainable principles, including but not limited to waste minimization strategies, recycling, solar water heating, and photovoltaic systems.

HRS §226-106, Affordable Housing

- (1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.
- (2) Encourage the use of alternative construction and development methods as a means of reducing production costs.
- (7) Encourage improved coordination between various agencies and levels of government to deal with housing policies and regulations.

- (8) Give higher priority to the provision of quality housing that is affordable for Hawai'i's residents and less priority to development of housing intended primarily for individuals outside of Hawai'i.

The Petition Area is currently used for agriculture, but the Project will provide 550 residential units for households earning 140 percent or less of the Kaua'i median household income. Petitioner has engaged in coordination discussions with State and County agencies regarding development of the Project. One of the goals of the Project is to provide a range of rental and homeownership opportunities for Kaua'i's 'ohana.

HRS §226-108, Sustainability

- (2) Encourage planning that respects and promotes living within the natural resources and limits of the State.
- (5) Promote decisions based on meeting the needs of the present without compromising the needs of future generations.

Petitioner will comply with the goals and objectives of its Sustainability Plan dated April 2017. One of the goals of the Project is to design and develop a community that allows building "green" and is environmentally sustainable. Design elements that serve this goal include orienting roof surfaces to provide maximum exposure for solar water heating and photovoltaic systems, incorporating skylights and solar tubes for natural day lighting, and designing outdoor lighting systems using fewer, but more effective, lighting fixtures that require the least amount of energy, including solar powered lighting.

State Functional Plans

244. The State has prepared functional plans to define and implement statewide goals, objectives, policies, and priority guidelines. This boundary amendment request is consistent with the objectives of the State Employment, Housing, and Recreational Functional Plans.

245. State Employment Functional Plan. Policy C(2) of the State Employment Functional Plan supports increasing the pool of resident jobseekers. As the Plan explains, one strategy to increase the labor pool is through the provision of adequate and affordable housing. Action C(2)(f) states that the “State Land Use Commission and counties [should] impose realistic and fair employee housing requirements on projects seeking land use redesignations, general or development plan amendments, rezoning, SMA permits, and building permits.” Here, the Project is intended to be a workforce housing development, which will provide affordable housing for Kauaʻi residents.

246. State Housing Functional Plan. The Project, as an affordable housing development with rental and for-sale housing units, supports the following State Housing Functional Plan objectives and supporting policies:

- Increase and sustain the supply of permanent rental housing that is affordable and accessible to Hawaiʻi residents, particularly those with incomes at or below 80% AMI. This objective is supported by the policies to “[d]irect Federal, state, and county resources toward the financing and development of rental housing projects,” to “[e]nsure that (1)

housing projects and (2) projects which impact housing provide a fair share/adequate amount of affordable housing opportunities, including rental housing opportunities,” and to “[s]ustain a long-term supply of rental housing.”

- Increase the homeownership rate. This objective is supported by the policies to “[d]irect Federal, State and county resources and efforts toward the development of affordable for-sale housing units,” to “[a]ssist moderate and above-moderate first-time homebuyers to become successful homeowners,” and to “[e]nsure that housing projects provide a fair share of affordable for-sale housing opportunities.”
- Address barriers to residential development. This objective is supported by the policies to “[u]tilize state and county land for mixed-use and mixed-income housing development with focus on rental housing” and to “[a]ddress regulatory barriers including the lengthy land use entitlement process, lack of consistency and coordination in state and county agency reviews, impact fees and exactions, fiscal policy, and administrative processes that add to the cost of housing.”

247. State Recreational Functional Plan. One of the objectives of the State

Recreational Functional Plan is to “improve and expand the provision of recreation facilities in urban areas and local communities.” Implementing actions of this objective include developing bikeways in residential areas, providing additional playing fields and upgrading existing fields for youth and adult sports leagues, and providing urban trails and walkways. The Project will include a permanent greenway system that will extend through the Petition Area, and will include a network of shared use paths, open play spaces, passive leisure parks, and community gardens. The paths and streets will be pedestrian and bike-friendly.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM, HRS
CHAPTER 205A

248. The Project will not impact coastal recreation opportunities, historic resources, scenic and open space resources, coastal ecosystems, or marine resources, impede economic uses, increase coastal hazards, or otherwise conflict with the objectives of the Coastal Zone Management Program.

249. In accordance with the objectives of managing development and public participation, the public has been invited to participate in review of the Project.

CONFORMANCE WITH THE COUNTY GENERAL PLAN, HANAPĒPĒ-`ELE`ELE
DEVELOPMENT PLAN, AND COUNTY ZONING DESIGNATION

County General Plan 2000

250. The County General Plan (2000) ("General Plan") guides the location and character of new development through graphic and textual policy.

251. The agricultural zoned land located east of `Ele`ele was not designated for future residential development in the General Plan. However, the Kaua`i County Council has approved Petitioner's requested exemption to amend the land use area map designation pursuant to HRS §201H-38.

252. The Project supports the following policies of the General Plan:

- 5.1.1(b) Promote compact urban settlements in order to limit public service costs and to preserve open space.
- 5.1.2(d) In the outlying West Side and North Shore districts, plan for additional residential use to meet regional demands for housing.

- 5.1.2(e) Expansion contiguous to an existing town or residential community is preferred over a new residential community.
- 8.1.10(a) Increase the supply of affordable rental housing, as indicated by market conditions.
- 8.1.10(b) Increase opportunities for moderate- and low-income households to become homeowners. Work from the bottom up, serving the 35 percent of residents whose income is 80 percent of the median or less. The intent is to move families out of expensive rental subsidy programs into homeownership, developing housing at a very low cost through self-help programs and reduced-rate mortgage financing.
- 8.1.10(c) Acquire and bank land and infrastructure improvements for future housing development.

253. The County Planning Department began updating the General Plan in 2015 and a draft is undergoing Planning Commission and County Council review.

254. The draft Future Land Use Map designates Lima Ola as a “residential community” and sets policy supporting the eastward expansion of Port Allen and `Ele`ele.

255. The Draft General Plan sets forth 20 policies to guide growth on Kaua`i; the following nine policies are supported by the Project:

1. Manage Growth to Preserve Rural Character:
Petitioner seeks to use the Petition Area to develop affordable housing in a rural community that meets the housing needs of the island.
2. Provide Local Housing: The intent of the Project is to provide affordable housing to households earning 140

percent or less of the Kaua'i median household income.

3. Recognize the Identity of Kaua'i's Individual Towns and Districts: One of the goals of the Project, creating a close-knit community, supports the identity of the area.
4. Design Healthy and Complete Neighborhoods: The Project seeks to support healthy lifestyles inspired through open spaces, walking paths, and recreational areas.
14. Complete Kaua'i's Shift to Clean Energy: The Project will use green sustainable features that are environmentally responsible and lower energy costs.
18. Nurture Our Keiki: Schools are located nearby the Petition Area, and the middle school and high school have sufficient capacity to support students housed in the Project at full buildout. The elementary school has capacity for additional enrollment through Phase I, and Petitioner will continue to coordinate with DOE to prevent a significant impact to the elementary school.
20. Communicate with Aloha: Petitioner has held community meetings and received comments from the community throughout the environmental assessment and 201H application processes.

256. Based on the Draft General Plan, 'Ele'ele is suited for incremental change and there is opportunity for Port Allen and the 'Ele'ele Shopping Center to connect to new neighborhoods, such as Lima Ola.

Hanapēpē-ʻEleʻele Community Development Plan

257. The Project conforms to the vision of the Hanapēpē-ʻEleʻele Community Development Plan (December 1974) (“Community Plan”).

258. The Community Plan states that “Residential development in the study area should occur on State lands or in other areas such as that proposed by McBryde (A&B) where economic hardship is not created by removal of cane lands.”

259. The Petition Area is located on former cane lands purchased from McBryde but is now utilized by Kauai Coffee under a sublicense agreement with the County.

260. Kauai Coffee is aware of the Project and has no objections to the reclassification of the Petition Area.

261. A change of land use at the Petition Area will not significantly impact agricultural production, because Kauai Coffee has sufficient access to alternate land in the area. The approximately 75-acre Petition Area constitutes less than 3 percent of the total area farmed by Kauai Coffee.

Zoning Ordinance

262. The Petition Area is currently zoned for agricultural use under County zoning regulations.

263. The County has identified the Petition Area as the most suitable location for the proposed affordable housing community, and has allocated sufficient

alternative lands in the area, as well as additional lands in the County, for agricultural use.

264. Petitioner received an exemption from Section 8-2.2 of the Kaua'i County Code, pursuant to HRS §201H-38, to permit the development and use of the Petition Area for single-family and multi-family residential purposes, including supporting infrastructure requirements.

INCREMENTAL DISTRICTING

265. The development of the Petition Area is anticipated to occur in a series of four phases.

266. Some of the infrastructural components are planned to be developed by the County of Kaua'i, while other elements will be constructed by third-party developers. The Project is envisioned as a land bank, providing entitled land to expedite affordable housing production. There are several factors that will influence the pace of the buildout of the Project, including the availability of funding.

267. Incremental districting of the Petition Area would adversely impact the ability to finance the Project. Pursuant to the MOA between Petitioner and the HHFDC, Petitioner is obligated to, among other things, convey in fee simple to HHFDC one or more finished lots in the Project entitled for multi-family housing in repayment of all or a portion of the HHFDC's DURF loan. The HHFDC has obtained an initial reservation of DURF funds in the amount of \$13,000,000. Petitioner may thus apply for

up to \$13,000,000 in DURF funds for Phase 1 of the Project. Because multi-family housing units are proposed for all four phases of the Project, future funding for the remainder of the Project may be in jeopardy if the entire Petition Area is not reclassified to the State Land Use Urban District and subsequent phases are not developed for multi-family units.

268. Phase 1 of the Project requires a substantial amount of capital investment in infrastructure. The affordability of the residential units will be adversely affected if the planned phases beyond Phase 1 of the Project are not developed. The cost per unit will substantially increase as the costs will not be spread across all of the units within the four phases of the Project.

269. The Commission granted Petitioner's request for a waiver of the incremental development schedule and map requirements on February 8, 2017.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HRS chapter 205 and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS §205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 75 acres of land, situated in 'Ele`ele, Kaua`i, Hawai`i, Tax Map Key No. (4) 2-1-001:054 to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS §205-2 and Part III of HRS chapter 205, and is consistent with the policies and criteria established pursuant to HRS §§201H-38, 205-16, 205-17, and 205A-2.

2. Pursuant to HAR §15-15-78(a)(1), the Commission has the authority to reclassify the entire Petition Area.

3. Although full development of the Petition Area cannot be reasonably completed within ten years after the date of the Commission's decision in this matter, reclassification of the entire Petition Area is reasonable, not violative of HRS §205-2 and Part III of HRS chapter 205, and is consistent with the policies and criteria established pursuant to HRS §§201H-38, 205-16, 205-17, and 205A-2.

4. The Commission is empowered to preserve and protect customary and traditional rights of Native Hawaiians. Ka Pa`akai O Ka`Aina v. Land Use Com'n, State of Hawai`i, 94 Hawai`i 31, 7 P.3d 1068 (2000).

5. Article XI, Section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

6. Article XI, Section 1, of the Hawai`i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and require reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain. Kauai Springs, Inc. v. Planning Com'n of Cty. of Kaua`i, 133 Hawai`i 141, 324 P.3d 951 (2014).

7. Article XI, Section 3, of the Hawai`i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

8. The Petition Area is not designated as IAL under Part III of HRS chapter 205.

9. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people.

10. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. Pub. Access Shoreline Hawai'i v. Hawai'i Cty. Planning Com'n, 79 Hawai'i 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (1995), *certiorari denied*, 517 U.S. 1163 (1996).

11. Based on the facts of this case and the conditions imposed, the reclassification is consistent with the requirements of Article XI, Sections 1, 3, and 7, and Article XII, Section 7 of the Hawai'i State Constitution, and Ka Pa`akai O Ka`Aina v. Land Use Com'n, State of Hawai'i, 94 Hawai'i 31, 7 P.3d 1068 (2000).

12. The Commission concludes that it has observed and complied with its duties arising from Article XI, Section 1; Article XI, Section 3; Article XI, Section 7; and Article XII, Section 7 of the Hawai'i State Constitution.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 75 acres of land, situated in `Ele`ele, Kaua`i, Hawai`i, Tax Map Key No. (4) 2-1-001:054, and shown on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. Affordable Housing. Petitioner shall provide affordable housing opportunities in accordance with the certification of the Project as an HRS §201H-38 housing project.

2. Highway and Roadway Facilities.

A. Petitioner shall be responsible for the cost of all transportation improvements provided in the TIAR for Phase 1, and for all costs for the construction of the

remaining phased improvements for the Project.

- B. An updated TIAR shall be prepared prior to the execution of Phase 2 of the Project and before all subsequent phases to re-evaluate the validity of the TIAR, and revised if necessary and determine whether the previously proposed improvements are adequate or require revision. The TIAR shall be submitted to the DOT for review and acceptance, specifically for proposed transportation improvements in the State Highway right-of-way.

- C. The phase-related improvements shall be accepted by the DOT prior to the issuance of a Certificate of Occupancy for the Project phase.

3. Schools. Petitioner shall provide the DOE with estimates of the anticipated population densities prior to each phase of development. Petitioner shall coordinate all mitigation measures with the DOE and fund any school impact fees that are assessed.

4. Archaeological and Historic Preservation.

- A. For Phase 1 of the Project, Petitioner shall consult with the SHPD regarding an appropriate monitoring and historical data recovery scope prior to development of the mitigation

plan. The mitigation plan shall be submitted to the SHPD for review and acceptance prior to the initiation of the Project. Petitioner shall comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the SHPD. Petitioner shall confirm in writing to the Commission that the SHPD has found Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The SHPD shall be notified at the initiation of the Project.

- B. Prior to the commencement of any phases beyond Phase 1 of the Project, Petitioner shall prepare an updated AIS and CIA for the Project. The AIS and CIA shall be submitted to the SHPD and the Kaua'i Island Burial Council for review and to the SHPD for acceptance of the AIS prior to the commencement of ground disturbance for any phases beyond Phase 1 of the Project.

5. Previously Unidentified Burials and Archaeological/Historic Sites.

In the event that historic resources, including human skeletal remains, are identified

during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Kaua'i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

6. Established Access Rights Protected. Pursuant to Article, XII, Section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas. Petitioner shall facilitate consultation with adjoining landowners, Native Hawaiian cultural practitioners, local fishermen, and any other relevant or appropriate group or individuals on the health and sustainability of the nearshore marine resources, including limu and fish, at Wahiawa Bay.

7. Endangered Species. Petitioner shall comply with the following:

- A. Construction activity shall be restricted to daylight hours as much as practicable during the seabird breeding season (April through November) to avoid the use of nighttime lighting that could be an attraction to seabirds.

- B. For any nighttime work required during construction, all outdoor lighting shall be shielded to prevent upward radiation so as to reduce the potential for interactions of nocturnally flying Hawaiian petrels and Newell's shearwaters with external lights and man-made structures.
- C. Outside lights that are not needed for security and safety shall be turned off from dusk through dawn during the fledging fallout period (September 15-December 15).
- D. To avoid potential impacts to the Hawaiian hoary bat, no trees taller than 15 feet within the Petition Area shall be trimmed or removed between June 1 and September 15 when non-volant juvenile bats may be roosting in the trees.
- E. Any fences that are erected as part of the Project shall have a barbless top-strand wire to prevent entanglements of the Hawaiian hoary bat on barbed wire. For existing fences at the Petition Area, the top strand of barbed wire shall be removed or replaced with barbless wire.
- F. All outdoor lighting at the Project shall be shielded to prevent upward radiation so as to reduce the potential for seabird attraction. Shielding shall conform to the County's

standards for street lights to prevent light diffusion
upward into the night sky.

Petitioner shall coordinate construction activities with the USFWS during construction of the Project to avoid creating standing water and other attractive nuisances that could attract protected waterbirds to unsafe construction conditions. A qualified biologist shall survey the Petition Area prior to construction and after a delay of at least three days in construction for the presence of Hawaiian goose nests. Work shall immediately stop if a nest is discovered and the USFWS shall be contacted for further guidance.

8. Air Quality Monitoring. Petitioner shall participate in an air quality monitoring program as required by the DOH.

9. Water. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed uses for each phase of the Project. Water transmission facilities shall be coordinated and approved by the appropriate State and County agencies. The County's water use and development plan shall be amended to reflect changes in water demand forecasts and to supply the proposed uses.

10. Stormwater Management and Drainage. Petitioner shall fund, design and construct stormwater and drainage system improvements in compliance with applicable federal, State, and County laws and rules, and maintain the

improvements, or cause them to be maintained, as designed. Petitioner shall mitigate non-point source pollution by incorporating Best Practices for low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to reduce runoff and prevent pollution of affected State highway facilities, downstream properties, receiving gulches and streams, and estuaries that connect with coastal waters. Petitioner shall submit the drainage plan to the appropriate State and County agencies for review and approval.

11. Water Conservation Measures. Petitioner shall implement water conservation measures and BMPs, such as use of endemic, indigenous, and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscaping. BMPs shall include the maintenance of the swales, as appropriate, for the life of the Project.

12. Compliance with HRS Section 205-3.5, Relating to Agricultural Uses on Adjacent Agricultural Land. For all land in the Petition Area or any portion thereof that is adjacent to land in the State Agricultural District, Petitioner shall comply with the following:

- A. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices

on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS §165-2; and

- B. Petitioner shall notify all prospective developers or purchasers of land or interests in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS chapter 165, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

13. Emergency Management. Petitioner shall consult with KEMA on an appropriate facility within the Project to serve as an emergency shelter.

14. Airports. Petitioner shall follow the guidelines contained in the

FAA's Advisory Circular (AC) 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports*. Plant and grass varieties used in the park shall not be attractive to wildlife which may create hazardous conditions for aircraft operations at the Port Allen Airport.

15. BMPs. Petitioner shall implement and maintain applicable BMPs to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate the potential for soil erosion and groundwater pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines and County ordinances and rules.

16. Notification of Potential Nuisances. Petitioner shall properly disclose to all prospective purchasers, residents and/or occupants in the Petition Area of the potential adverse impacts of aircraft activity at and from Port Allen Airport, such as but not limited to noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

Petitioner shall provide as part of any grant or transfer of interests in the Petition Area the notification of potential aircraft and airport activity by including it in any disclosure required for the sale or transfer to buyers and lessees and to other future owners, lessees, or occupants.

17. Energy Conservation Measures. Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar water heating and

photovoltaic systems, into the design and construction of the Project. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by the individual homeowners.

18. Sustainability Plan. Petitioner shall comply with the goals and objectives of its Sustainability Plan dated April 2017.

19. Public Information. Petitioner shall provide educational information about the environment and marine resources, including the protection of the Salt Ponds as valuable cultural and natural resources and the impacts of the overuse of certain suntan lotions on ocean resources. Petitioner shall regularly update the County website to include updates on the Project status.

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

21. Notice to Commission. 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 Petition Area, prior to completion of development of the Petition Area.

22. Annual Reports. Petitioner shall timely provide without any prior

notice, annual reports to the Commission, OP, the County Planning Department, and Intervenor in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

24. Notice of Imposition of Conditions. Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) shall file a copy of such recorded statement with the Commission.

25. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR §15-15-92.

ADOPTION OF ORDER

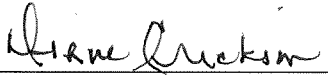
This ORDER shall take effect upon the date this ORDER is certified by this Commission.


Done at Honolulu, Hawai'i, this 24 th, day of July, 2017, per motion on July 19, 2017.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


Deputy Attorney General

By 
EDMUND ACZON
Chairperson and Commissioner

Filed and effective on:

7/24/2017

Certified by:


DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of

DOCKET NO. A17-802

COUNTY OF KAUA'I HOUSING AGENCY

CERTIFICATE OF SERVICE

To Amend The Agricultural Land Use District
Boundaries Into The Urban Land Use District
For Certain Lands Situated At 'Ele'ele, Kaua'i,
Hawai'i; Consisting Of Approximately 75
Acres, Tax Map Key No. (4) 2-1-001: 054

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A STATE LAND USE BOUNDARY
AMENDMENT in the above referenced-docket was duly served upon the following
by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified
mail as noted.

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
LEO ASUNCION, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
DAWN TAKEUCHI-APUNA, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
MAUNA KEA TRASK, ESQ. Office of the County Attorney, County of Kauai 4444 Rice Street, Suite 220 Lihue, Hawai'i, 96766		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
MICHAEL DAHILIG Director, Department of Planning, County of Kaua'i 4444 Rice Street Lihue, Hawai'i 96766		X	
KAUAI COUNTY PLANNING COMMISSION c/o Planning Department County of Kaua'i 4444 Rice Street Lihue, Hawai'i 96766			X
COUNTY OF KAUAI HOUSING AGENCY 4444 Rice Street, Suite 330 Lihue, Hawai'i 96766			x
DAVID MINKIN, ESQ. c/o McCorriston Miller Mukai MacKinnon LLP Five Waterfront Plaza, 4 th Floor 500 Ala Moana Boulevard Honolulu, HI 96813			X
JEAN NISHIDA SOUZA PO Box 450 Hanapepe, Hawaii 96716			X

Honolulu, Hawai'i, July 24, 2017



DANIEL ORODENKER
Executive Officer