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LAND USE COMMISSION
STATE OF HAWAII

2017 MAY 19 P 2:57

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A17-802
)	
COUNTY OF KAUAI HOUSING)	OFFICE OF PLANNING'S STATEMENT
AGENCY)	OF POSITION; CERTIFICATE OF
)	SERVICE
To Amend the Agricultural Land Use)	
District Boundaries into the Urban Land Use)	
District for certain lands situated at Eleele,)	
Kauai, Hawaii; consisting of approximately)	
75 acres, Tax Map Key No. (4)2-1-001:054)	
)	

OFFICE OF PLANNING'S STATEMENT OF POSITION

Pursuant to Hawaii Administrative Rules (HAR) § 15-15-55, the Office of Planning (“OP”) submits this Statement of Position of support for the reclassification of the Petition Area, subject to certain conditions. This Statement of Position summarizes OP’s position and describes the position of State departments impacted by the proposed boundary amendment, to the extent this information is currently available. OP’s position is based on the representations of the Petitioner and documents filed in these proceedings, coordination with the Petitioner and affected government agencies, and the statutes and regulations applicable to these proceedings. Additional information that may become available will be reflected in OP’s written testimony.

PETITION OVERVIEW

General Information

The County of Kauai Housing Agency (“Petitioner”) requests that the Land Use Commission (“Commission”) reclassify approximately 75 acres of land from the State Agricultural District to the State Urban District at Eleele, Kauai, Hawaii.

The Petitioner, a county housing agency, is the fee owner of the parcel, Tax Map Key (“*TMK*”) No. (4) 2-1-001: 054, being proposed for reclassification under this Petition. The Petition Area is intended to be developed as a 100% affordable housing project pursuant to Hawaii Revised Statutes (“HRS”) Chapter 201H.

Proposed Use of the Petition Area

The Petitioner proposes to amend the land use district boundary to reclassify approximately 75 acres of lands situated at Eleele, Kauai, Hawaii from the State Agricultural District to the State Urban District. The reclassification is necessary to allow the development of the Lima Ola Workforce Housing Development. There is expected to be a demand for 9,038 additional housing units (mid-point) in the Lihue-Kekaha area between 2014 and 2040. A reasonable portion of households would consider Eleele as a potential housing location. Within the Eleele-Hanapepe area, there is demand for about 760 additional units by 2040. Without the Lima Ola Project, only 308 units are projected to be added to the Eleele-Hanapepe area. When fully built-out, the Project will add approximately 550 residential units.

The Petitioner, as the County Housing Agency, has certified that the Project is a HRS § 201H-38 Affordable Housing Project. All units will be offered for sale or rent to buyers/ renters who earn no more than 140% of the Kauai median household income. The Project is anticipated to have densities of six (6) units per acre for single family homes and ten (10) units per acre for multi-family units. 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. The proposed unit pricing is subject to Ordinance 860, or other financing restrictions as amended. The Petition Area is restricted to affordable housing purposes or agricultural uses pursuant to Warranty Deed with Restrictions and Covenants between McBryde, as grantor, and the County, as grantee.

The Project will be completed in multiple phases over several decades. The development timetable will vary depending upon a number of variables, including access to funding and

affordable housing needs. The Lima Ola Workforce Housing Infrastructure Delivery Plan sets forth the projected phases of development of the Project. The Commission granted the Petitioner's request for a waiver of the incremental development schedule and map requirements on February 8, 2017. 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).

Petition Area Description and County Land Use Designations

The Petition Area is currently zoned for agricultural use under County zoning regulations. 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. The Petitioner received an exemption from Section 8-2.2 of the Kauai County Code, Agricultural Districts, 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.

The Petition Area is presently used for coffee production pursuant to a license and sublicense with McBryde and Kauai Coffee. The license and sublicense will terminate upon notice to the licensees that the County requires possession of the Petition Area to commence development of the Project. The Petition Area is also subject to a perpetual nonexclusive easement for utility purposes held in favor of Kauai Island Utility Co-Op, easements for drainage, a drainage detention basin, and waterline purposes held in favor of Kauai Habitat for Humanity, and easements W-1 and W-2 held in favor of the County Board of Water Supply.

The Petition Area is located 0.8 miles from the Eleele Shopping Center, 0.9 miles from the Port Allen Marina Center, and from the Port Allen Industrial Center, 3 miles from Hanapepe, and less than 7 miles from Waimea. It is also adjacent to a subdivision being developed by Kauai Habitat for Humanity and the Eleele Nani subdivision. Lands northeast of the Petition Area have been designated Important Agricultural Lands ("*IAL*"), whereas lands located south and southeast are owned by A&B Properties, Inc and are expected to be the site of a mixed-use development. The subdivisions to the west/northwest of the Petition Area are within the State Urban Land Use District, and the lands to the east and south are within the State Agricultural Land Use District. The lands within the Petition Area are considered Prime Agricultural Land

according to the State Department of Agricultural Lands of Importance to the State of Hawaii (“ALISH”). Soils within the Petition Area are classified as A and B pursuant to the University of Hawaii Land Study Bureau Detailed Land Classification A to E rating system, with A indicating the most productive soil. MgB is the predominant soil type at the Petition Area, and is characterized by its moderate permeability, slow runoff, and slight erosion hazard. The Petition Area ranges in elevation from approximately 175 to 275 feet above mean sea level, and has an average slope of four percent (4% grade). According to Federal Emergency Management Agency records, the Petition Area is located within Flood Zone X, designated “areas outside of the .2 annual chance floodplain.”

KEY ISSUES IDENTIFIED BY THE OFFICE OF PLANNING

The following key issues of statewide concern are categorized by the land use commission decision-making criteria enumerated under HRS § 205-17.

Potential Impacts on Areas of State Concern

Natural Systems and Habitats

A biological resource assessment for the Petition Area was conducted in October 2013 by SWCA Environmental Consultants. No State or federally-listed threatened, endangered, or candidate plant species, or rare native Hawaiian plant species were observed within the surveyed area, and no designated critical plant habitat occurs within the area. Of the 66 plant species observed at the Petition Area, only two species are native to the Hawaiian Islands. The Petition Area does not include a designated critical habitat for any protected species. Thirteen (13) bird species were documented during the survey. These bird species are typically found in agricultural areas, and included one migrant shorebird species: the Pacific golden plover, which was primarily observed on roads. The native Hawaiian short-eared owl or pueo and the introduced barn owl may use the project area for hunting and roosting. Seabirds, especially the endangered Hawaiian petrel and threatened Newell’s shearwater, may fly over the Petition Area at night while traveling between their upland nesting sites to the ocean. The Hawaiian hoary bat is believed to be present at the Petition Area due to the detection of multiple bat calls through the use of bat detectors. Construction activities planned for the Petition Area may impact the

Hawaiian hoary bat, the Hawaiian petrel, and the Newell's shearwater. Recommended mitigation measures for the above impacted species have been provided by the consultant.

Archaeological, Historic, and Cultural Resources

An Archeological Inventory Survey (“*AIS*”) was prepared by Scientific Consultant Services (“*SCS*”) in September 2013 and April 2014. The scope of the work included historic and archaeological background research, ground surveillance and subsurface testing. No pre-Contact archaeological sites were identified. The *AIS* identified 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. *SCS* recommended that no further historic presentation work is necessary in the Petition Area. The Petitioner should comply with all interim and/or permanent mitigation and preservation measures recommended and approved by the State Department of Land and Natural Resources, State Historic Preservation Division (“*SHPD*”). The Petitioner should confirm in writing to the Commission that the *SHPD* has found the Petitioner's preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented.

In the event that historic resources, including human skeletal remains, are identified during construction activities, all work should cease in the immediate vicinity of the find, the find protected from additional disturbance, and the *SHPD*, Kauai Island Section, contacted immediately. 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 should stop until the issuance of an archaeological clearance from the *SHPD* that mitigation measures have been implemented to its satisfaction.

SCS completed a Cultural Impact Assessment (“*CIA*”) for the Petition in June 2014. The *CIA* determined that the Petition Area has not been, and is not currently, used for traditional cultural purposes and there are no “valued cultural, historical, or natural resources” in the Petition Area.

Natural Resources Relevant to Hawai'i's Economy

Agricultural Resources

The subject petition abuts the Agricultural District to the east and designated Important Agricultural Land (DR08-37, Alexander and Baldwin, Inc. 3,773 acres, Decision and Order dated March 10, 2009) to the northeast. These agricultural lands are cultivated in coffee. Of the 3,000-plus acres currently being utilized for coffee farming by Kauai Coffee, the approximately 75 acres to be reclassified represents less than three percent (3%) of the total area farmed. The Petition Area has not been designated as Important Agricultural Lands (“IAL”) pursuant to HRS Chapter 205.

OP received comments from the Department of Agriculture (“DOA”) on May 17, 2017, noting that § 205-3.5, HRS requires that any decision approving a petition for a boundary amendment pursuant to Chapter 205, HRS where lands in the Petition Area are contiguous to or adjacent to lands in the Agricultural District shall include the following conditions in the decision granting approval:

(1) A prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the Agricultural District; and

(2) Notification to all prospective developers or purchasers of land or interest in land in the Petition Area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the Agricultural District are protected under Chapter 165, HRS, the Hawaii Right To Farm Act, and that the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

Groundwater Resources

The estimated depth to groundwater is approximately 100 feet below the surface. The proposed housing units of the Project would be serviced by potable water provided by the County Department of Water (“DOW”), which regularly monitors water quality parameters to ensure adherence to all State and Federal standards. The Commission on Water Resource

Management (“CWRM”) in comments to OP dated January 27, 2017, recommended the use of water-efficient fixtures and water efficient practices implemented throughout the development. Also, that best management practices be used for stormwater management to minimize the impact to the area’s hydrology while maintaining on-site infiltration and preventing polluted runoff from storm events. CWRM requested that the proposed source for irrigation water be identified, and that the potable and non-potable water demands be provided for each phase. Nonpotable demands should be met with alternative sources of water to the greatest extent possible, and the use of plantings appropriate for the area’s rainfall regime are encouraged to lessen the need for irrigation water.

Adequacy of Public Services and Facilities

Highway and Roadway Facilities

OP received written comments from the Department of Transportation (“*HDOT*”) on April 13, 2017, and March 17, 2017. The HDOT provided comments on the various recommended highway improvements for the Project which is expected to be constructed in four phases (1A & B, 2, 3, and 4).

HDOT affirmed the transportation improvements for the intersections as provided in the Traffic Impact Analysis Report (“*TIAR*”), and confirmed that Phase 1 improvements will be funded by the County. HDOT stated that the County will be responsible for all costs for the construction of the remaining phased improvements for the Project.

HDOT requires an updated *TIAR* to 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*, revise if necessary, and determine whether the previously proposed improvements are adequate or require revision. The updated *TIAR* will be submitted to HDOT for review and acceptance, specifically for proposed transportation improvements in the State Highway right-of-way. HDOT recommends prior to the issuance of a Certificate of Occupancy for that specific Project Phase, that the Phase-related transportation improvements be accepted by the HDOT.

Airport Facilities

HDOT provided airports related comments as follows: (1) that the project will be subject to noise due to aircraft and helicopter overflights from Port Allen Airport, (2) the need to comply

with Federal regulations for construction within 20,000 feet of a public use airport, and (3) that plants and grasses used for the proposed park not be attractive to wildlife which may create hazardous conditions for aircraft operations at the Airport.

Schools

Students living in the Petition Area would be served by three State Department of Education (“DOE”) schools: 1) Eleele Elementary School, 2) Waimea Canyon Middle School, and 3) Waimea High School. The DOE in a letter to OP dated January 19, 2017, noted that the Project will take up all excess capacity at Eleele Elementary School, and at its mature stage, increase enrollment by approximately 77 students. The DOE is also concerned for a larger A&B project currently on hold that may include as many as 4,000 homes. At this time, there is adequate capacity to support the anticipated enrolment for Phase 1 at Eleele Elementary School, but the school may be at full capacity toward the later phases of the Project. The student enrollment expected from the entire A&B project will likely require an additional elementary school, but DOE is concerned that any further division of the large project, after the Lima Ola project, will generate student enrollment beyond what can be handled at Eleele, but not sufficient to require a request for school land.

Parks

The Petition Area is located on the western edge of the Koloa 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. A 3.1-acre community park and multi-use building will be developed and built for residents within the Project during Phase 1.

Water Resource and Distribution

Water resource and distribution systems for the Petition Area are managed by the County Department of Water (“DOW”). The DOW has conditionally approved water service for Phase 1 of the Project. The Water Master Plan for the Petition Area completed in September 2015 indicates that the current pumping capacity and source availability are adequate to accommodate the demand for Phase 1 of the development. Subsequent phases will be re-evaluated when planning for that phase commences. If additional sources are necessary at the time of re-evaluation, then the Petitioner will discuss the viable options with DOW.

Wastewater Systems

The Project is anticipated to generate an average flow of 0.16 mgd, which is within the treatment capacity of the Eleele Wastewater Treatment Plan (WWTP). The FEA for the Project in Section 4.3.7.2 states that wastewater generated by the Proposed Action would be serviced by the County of Kauai Wastewater Management Division Eleele WWTP. The Proposed Action would require the design and installation of sewer lines at the project site. The wastewater generated by the Lima Ola Housing Development would gravity flow towards the connection point (i.e., an existing 12-inch polyvinyl chloride (PVC) county sewer line located at the eastern end of Mahea Road, near the Project boundary). The proposed development would generate an average wastewater flow of 0.16 mgd, which combined with the current usage of 0.4 mgd in the area, is well within the treatment capacity of the Eleele Wastewater Treatment Plant of 0.8 mgd. Therefore, the Proposed Action would have a less than significant impact on the county wastewater system. A connection point with adequate capacity for the full build-out of the Petition Area is located within three hundred feet of the Project. No expansion of the Eleele Wastewater Treatment Plant would be needed upon the full-build-out of the Project.

Drainage

No permanent surface water bodies or natural wetlands are located within the Petition Area. However, a man-made irrigation ditch, Pump No. 1 Ditch, which was previously used for agricultural purposes, is located in the Petition Area. The U.S. Fish and Wildlife Service classifies Pump No.1 Ditch as an intermittent, man-made riverine, which is occasionally flooded.

The development of the Project will include the construction of a surface water drainage system to collect storm water flow. Storm water would initially enter vegetated drainage swales located along internal roadways, and provide natural infiltration. Low-impact development, such as bioswales and rain gardens, will be incorporated into the Project to provide storm water treatment and to reduce the size of the storm water drainage system. Water will be collected in subsurface pipe culverts, which would channel water to an on-site 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. All features proposed above are to be designed in accordance with the standards of the County Department of Public Works.

Civil Defense

The closest County evacuation shelter to the Petition Area is located at Eleele Elementary School. The Eleele Elementary school shelter is considered to be a “Shelter of Last Resort” by the Kauai Emergency Management Agency (“*KEMA*”). The shelter is intended to be used only by residents living in homes with older construction, or who would otherwise remain in an inundation area. Due to the safer standards of the current building code, *KEMA* intends to advise the residents of the Project to remain in their units in the event of a natural disaster. *KEMA* does not anticipate that the Project will lead to overcrowding at this shelter. *KEMA* also recommends that the proposed Community Center be constructed in a way that would allow it to serve as a Civil Defense Shelter.

The Hawaii Emergency Management Agency (“*HI-EMA*”) concurs with the *KEMA* comments and also recommends incorporating hardening measures for safe rooms within planned residential facilities, and the hardening of proposed community facilities so as to withstand high-wind and/or seismic events.

Commitment of State Funds and Resources

The Petitioner has entered into a Memorandum of Agreement with the Hawaii Housing Finance and Development Corporation (“HHFDC”). HHFDC requested a Dwelling Unit Revolving Fund (“DURF”) infusion from the Hawaii State Legislature to be loaned to the Petitioner for infrastructure for the project. HHFDC has obtained a commitment of DURF funds in the amount of \$13,000,000. The Petitioner may thus apply for up to \$13,000,000 in DURF funds. In addition to DURF funds, 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, the Housing Development Fund, and the County Bond Fund. Funding to support development of additional phases of the Project will be sought from the State. The Petitioner estimates that the first phase of development will total \$17,831,274; the second phase will total \$16,050,197; the third phase will total \$7,365,756; and the fourth phase will total \$10,262,567.

Provision for Employment Opportunities and Economic Development

The Project will provide affordable housing for Kauai’s workforce. The influx of new residents is expected to bring greater economic vitality to the region. Construction activities would result in the short- and long-term creation of jobs and materials spending, which would continue until full build-out of the Project is completed in several decades.

Provision for Housing Opportunities

The Project when fully built-out, 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% of the Kauai median household income. A variety of residential types will be offered for sale and rent at Lima Ola. The Market Study for the Project Area provides additional detail of the proposed Lima Ola Unit Inventory pricing, including information on tenure type and pricing. The development timetable for housing will vary depending upon variables such as access to funding affordable housing needs. The Commission has granted the Petition for Declaratory Order to waive the incremental development schedule for this Project.

To facilitate the development of Lima Ola, the HHFDC and the Petitioner entered into a Memorandum of Agreement effective August 11, 2016. The Agreement establishes a

cooperative relationship between HHFDC and the Petitioner and defines the roles and responsibility of both parties for the development of Lima Ola. By providing affordable housing, the Project will provide an equal opportunity for all households to obtain housing.

SUMMARY OF CONFORMITY WITH APPLICABLE DISTRICT STANDARDS, STATE PLANNING STATUTES, COUNTY PLANS, AND OTHER DECISION-MAKING CRITERIA

The Petition Area is surrounded by lands classified as State Urban District to the west/northwest, and the Petition generally meets the standards for determining State Urban District boundaries set forth in HAR § 15-15-18. With appropriate mitigation, the proposed reclassification is generally consistent with one or more objectives, policies, and priority guidelines of HRS Chapter 226, the Hawaii State Plan—in particular, the development of affordable housing. The Project is also consistent with the State Housing Functional Plan, the State Recreational Functional Plan, and the State Employment Functional Plan. The proposed Project also complements the Administration’s priorities by building workforce housing. The Project generally conforms to the CZM objectives and policies set forth in HRS § 205A-2. The Petition Area is not within the County’s Special Management Area.

With respect to areas of State concern, the Project contributes favorably to the creation of affordable housing, and with appropriate mitigation, the Petitioner can minimize impacts on other areas of State concern identified herein.

The Petition is consistent with policies in the County’s current General Plan and the draft update of the General Plan. The Kauai County Planning Department began updating the General Plan in 2015 and a draft is undergoing Planning Commission and County Council review. The draft Future Land Use Map designates Lima Ola as a “residential community” and sets forth policy supporting the eastward expansion of Port Allen and Eleele. The Project also conforms to the vision of the Hanapepe-Eleele Community Development Plan.

CONCLUSION


Based on our preliminary assessment of the Project with respect to the Commission’s decision-making criteria, OP supports the proposed boundary amendment with conditions that will address the concerns raised herein. The proposed boundary amendment does not conflict

with HRS Chapter 205, and generally meets the Commission's decision-making criteria contained in HRS Chapter 205 and HAR Chapter 15-15. OP's position is contingent on the Petitioner's commitment to avoid, minimize, or mitigate Project impacts identified by the State herein and in this proceeding to the satisfaction of the relevant State agencies prior to the close of the Petitioner's case-in-chief, or by agreed-to conditions of approval.

OP distributed the Petition to State agencies for their review and comments; additional information or concerns may be forthcoming. OP reserves the right to amend this Position Statement based on any forthcoming information. Specific impacts on areas of State concern and recommendations on conditions to mitigate Project impacts will be discussed further in OP's written testimony.

DATED: Honolulu, Hawai'i, this 19th day of May, 2017.

OFFICE OF PLANNING
STATE OF HAWAI'I



LEO R. ASUNCION
Director

Docket No. A17-802

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing were served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawai'i, this 19th day of May, 2017.


LEO R. ASUNCION
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