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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)	COUNTY OF KAUAI HOUSING
AGENCY)	AGENCY'S OPPOSITION TO JEAN
)	NISHIDA SOUZA'S PETITION TO
To Amend the Agricultural Land Use)	INTERVENE FILED DECEMBER 22,
District Boundaries into the Urban Land)	2016; CERTIFICATE OF SERVICE
Use District for certain lands situated at)	
'Ele'ele, Kauai, Hawaii; consisting of)	
approximately 75 acres, Tax Map Key No.)	
(4) 2-1-001:054)	
_____)	

COUNTY OF KAUAI HOUSING AGENCY'S OPPOSITION TO
JEAN NISHIDA SOUZA'S PETITION TO INTERVENE FILED DECEMBER 22, 2016

The COUNTY OF KAUAI ("County"), a municipal corporation, through its Housing Agency, a political subdivision of the State of Hawaii ("Petitioner"), by and through its special legal counsel, Ashford & Wriston, a limited liability law partnership LLP, hereby opposes the petition to intervene of Jean Nishida Souza ("Souza") filed December 22, 2016 ("Petition to Intervene").

Most importantly, Souza has made no showing that she "will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly

distinguishable from that of the general public.” Hawaii Administrative Rules § 15-15-97(c)(2)(emphasis added). Petitioner has not made any showing of individualized harm or adverse effect she may suffer if the Commission were to reclassify the petition area. Further, she has not indicated that she in fact opposes the upcoming petition for reclassification that will be filed by the Petitioner. Instead, she simply states that

“[p]roposed intervenor Souza is interested that a complete record is established during the Land Use Commission’s deliberations on the petition such that direct and indirect impacts, on-site and off-site impacts, and short-term and cumulative impacts of the proposed project are adequately disclosed and addressed, and that appropriate conditions of approval are considered and imposed on the Petitioner by the Land Use Commission.”

See Petition to Intervene at 2. Respectfully, that is not an adequate ground for intervention.

Essentially, Souza wishes to enter the proceedings as a “kibitzer,” a person who wants to express her own views on how the Commission should act, without having any individualized standing different from members of the general public, or any showing of injury or adverse impact to herself personally. It is, however, already within this Commission’s competence to weigh the merits of the Petitioner’s petition for reclassification, and to make the determination as to whether Petitioner has met its burdens in showing whether the petition should be granted and that certain conditions be imposed.

HAR §15-15-97(d) also provides that the Commission may deny intervention when

- (1) The position of the applicant for intervention is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

Respectfully, Souza fails on both of these requirements. First, the Office of Planning will be present at the hearing of the petition for reclassification, and will be able to assert any objections

to the petition or request that proper conditions be imposed upon the Petitioner. Souza is saying that as a former employee of the Office of Planning, she has the expertise to also be allowed to participate. But her positions during the hearing would largely be redundant of what the Office of Planning already has the full ability and right to do.

Second, because the petition for reclassification will be filed pursuant to Hawaii Revised Statutes Chapter 201H, there will be extremely compressed time frames within which presentations can be made to the Commission and in which the Commission can render a decision. The Commission has 45 days within which to make a decision, in the absence of which the petition is deemed approved. HAR §15-15-97(o). Petitioner is concerned whether Souza will be able to meet the requirements of preparation and participation during the hearings, and whether her participation may unnecessarily delay the proceedings. Is her participation going to be evidentiary, or is she just going to give a personal opinion on each one of the requirements for reclassification?

Petitioner would request that at the hearing of this petition to intervene, the Commission closely inquire of Souza her reasons for intervention, what objections Souza actually has to the granting of the petition for reclassification, exactly why she should be allowed to intervene, and how she is going to demonstrate that her participation will be in compliance with the HAR procedural requirements. If Souza simply wants to state her personal position as to what considerations the Commission should take into account in ruling on the petition for reclassification, and the conditions the Commission should impose on reclassification, perhaps an alternative and more efficient procedure would be to allow her to state her viewpoints as a member of the public at the hearing without admitting her as a party to the contested case. This would allow the Commission to take Souza's points and positions into account when considering

the petition for reclassification, but would maintain the efficiency of the contested case proceedings, particularly in the expedited time frame.

Finally, Petitioner would note that employees and representatives of the Petitioner have met with Souza on a continuing basis in the past several years, and have tried to address and respond to the various concerns she has raised. Just as with any other member of the public, Petitioner will continue to dialogue with Souza and take her concerns into consideration as the project proceeds.

For the foregoing reasons, Petitioner respectfully requests the Petition for Intervention be denied.

DATED: Honolulu, Hawaii; December 29, 2016.



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SARAH M. SIMMONS
Attorneys for Petitioner
COUNTY OF KAUAI (“County”), a municipal
corporation, through its Housing Agency, a
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document will be duly served upon the following by mailing said copy, postage prepaid, first class, in a United States post office on December 29, 2016:

JEAN NISHIDA SOUZA
P.O. Box 450
Hanapepe, Hawaii 96716
(Proposed Intervenor)

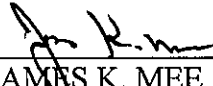
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KAUAI COUNTY PLANNING COMMISSION
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DATED: Honolulu, Hawaii; December 29, 2016.



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