

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)	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 BOUNDARY
To Amend the Agricultural Land Use)	AMENDMENT; EXHIBIT A;
District Boundaries into the Urban Land Use)	CERTIFICATE OF SERVICE
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

Exhibit 8

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

I. INTRODUCTION

Petitioner filed a Petition for Land Use District Boundary Amendment on June 13, 2017 (“*Petition*”), pursuant to Hawai'i Revised Statutes (“*HRS*”) Section 205-4, and Hawai'i Administrative Rules (“*HAR*”) Chapter 15-15, to amend the land use district boundary to reclassify approximately 75 acres of lands 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 the “*Project*”).

The 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.

II. FINDINGS OF FACT

A. 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).

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

3. The Notice of Intent was published in The Honolulu Star-Advertiser and The Garden Island on December 7, 2016.

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. 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 on December 7, 2016.

6. On December 7, 2016, Petitioner filed a Petition for Declaratory Order and Memorandum in Support of Petition for Declaratory Order. [Pet. Ex. 12]

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 hearing 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. 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 on January 9, 2017.

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 Affidavit of Publication of the Notice of Intent for publication in The Garden Island and The Honolulu Star-Advertiser.

20. The Petition was not filed in accordance with the Notice of Intent because Petitioner did not publish the Notice of Intent in accordance with HAR § 15-15-97(b)(2).

21. 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.

22. On January 19, 2017, the Commission held a hearing 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.

23. On January 23, 2017, Petitioner filed 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.

24. 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 the Lima Ola project to development plans for adjacent properties; and (7) timely public notice and opportunities to testify and comment on the proposed Lima Ola project.

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

26. On February 8, 2017, the Commission issued its Order Granting the Petition for Declaratory Order. [Pet. Ex. 12]

27. On April 13, 2017, Petitioner filed a Notice of Intent with the Commission pursuant to HAR § 15-15-97(b). [Pet. Ex. 7-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. [Pet. Ex. 7-D]

31. 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, the Intervenor, and all persons on the chief clerk's mailing lists on April 13, 2017. [Pet. Ex. 7-C]

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, a draft Petition for Land Use District Boundary Amendment ("**Petition**") was submitted to and time-stamped by the Commission.

37. On May 12, 2017, Petitioner's Exhibit List, Witness List, and Exhibits "1" through "25" of the Petition were submitted to and time-stamped by the Commission.

38. On May 18, 2017, the County Planning Department filed its Position Statement, Witness List, Exhibit List, and Exhibits "1" and "2".

39. On May 18, 2017, Intervenor filed her Position Statement.

40. On May 19, 2017, OP filed its Position Statement.

41. On May 25, 2017, Intervenor filed her Witness List, Exhibit List, and Exhibits "1" and "2".

42. 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, the Intervenor, and all persons on the chief clerk's mailing lists on May 25, 2017.

43. On May 26, 2017, OP filed its List of Witnesses, List of Exhibits, and Exhibits "1"- "13".

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 Affidavit of David J. Minkin Attesting to Service of Petitioner's Notice of Hearing.

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

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

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

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

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

52. On June 14, 2017, the Commission conducted a site visit in this matter. In attendance were Petitioner, and its attorneys, Intervenor, members of the Commission, and _____.

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

54. The Commission held the evidentiary hearing in this docket on June 28-29, 2017 in Līhu'e, Kaua'i, Hawai'i.

55. On June 29, 2017, the Commission closed the evidentiary portion of the proceedings.

B. Description of the Petition Area

56. The Petition Area consists of approximately 75 acres located in ‘Ele‘ele, Kaua‘i, Hawai‘i, and is identified by Tax Map Key No. (4) 2-1-001:054.

57. The Petition Area is owned in fee simple by Petitioner. [Pet. Ex. 6]

58. The Petition Area is subject to a perpetual nonexclusive easement for utility purposes held in favor of Kaua‘i Island Utility Co-Op; easements for drainage, a drainage detention basin, and waterline purposes held in favor of Kaua‘i Habitat for Humanity; and easements W-1 and W-2 held in favor of the County Board of Water Supply. [Pet. Ex. 6]

59. 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 the licensees that the County requires possession of the Petition Area to commence development of the Project. [Pet. Ex. 2-A; Pet. Ex. 2-B]

60. The Petition Area is presently used for coffee production pursuant to the license and sublicense with McBryde and Kauai Coffee. [Pet. Ex. 2-A; Pet. Ex. 2-B]

61. 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. [Pet. Ex. 6]

62. The Petition Area is located adjacent to a subdivision being developed by Kaua‘i Habitat for Humanity and the ‘Ele‘ele Nani subdivision. Lands northeast of the Petition Area have been designated Important Agricultural Lands (“*IAL*”), whereas lands located 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. [Pet. Ex. 13-A, Chapter 3]

63. The Petition Area is located 0.8 miles from the ‘Ele‘ele Shopping Center, 0.9 miles from the Port Allen Marina Center and from the Port Allen Industrial Center, 3 miles from Hanapēpē, and less than 7 miles from Waimea. [Pet. Ex. 4]

64. The Petition Area is within the State Agricultural Land Use District. [Pet. Ex. 3, Section 3.3] The subdivisions to the west/southwest of the Petition Area are within the State Urban Land Use District; the land to the east and south are within the State Agricultural Land Use District.

65. The Petition Area contains two types of soil within the Makaweli series: Makaweli silty clay loam, 0-6% slopes (MgB) and Makaweli silty clay loam, 6-12% slopes (MgC). MgB is the predominate soil type at the Petition Area, and is characterized by its moderate permeability, slow runoff and slight erosion hazard. [Pet. Ex. 3, Section 4.2.1.1]

66. The State Department of Agriculture’s Agricultural Lands of Importance to the State of Hawai‘i (“*ALISH*”) 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. [Pet. Ex. 13-B, Ex. 3]

67. 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. [Pet. Ex. 13-B, Ex. 3]

68. 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. [Pet. Ex. 3, Section 4.2.1.1]

69. According to Federal Emergency Management Agency records, the Petition Area is located within Flood Zone X, designated as “areas outside of the 0.2 annual chance floodplain.” [Pet. Ex. 3, Section 4.2.4.1]

C. Proposal for Reclassification

70. Petitioner seeks to have the Petition Area reclassified from the Agricultural Land Use District to the Urban Land Use District to develop the Project in ‘Ele‘ele.

71. Lima Ola is an affordable housing project that, 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 Kaua‘i median household income. [Pet. Ex. 13-A]

72. 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. [Pet. Ex. 11-C]

73. 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. [Pet. Ex. 13-A]

74. 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-\$1,445 per month; one-bedroom units will rent for \$1,037-\$1,540 per month; two-bedroom units will rent for \$1,235-\$1,838 per month; and three-bedroom units will rent for \$1,413-\$2,110 per month. [Pet. Rebuttal (“*PR*”) Ex. 30; Pet. Ex. 34]

75. 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-\$347,900 for one-bedroom units; \$231,800-\$436,800 for two-bedroom units; and \$282,800-\$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. [PR Ex. 30; Pet. Ex. 34]

76. 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-\$479,400 for a two-bedroom home; \$304,150-\$562,150 for a three-bedroom home; and \$369,300-\$590,400 for a four-bedroom home. [PR Ex. 30; Pet. Ex. 34]

77. 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). [Pet. Ex. 13-A]

78. Petitioner, as the County Housing Agency, has certified that the Project is a HRS § 201H-38 Affordable Housing Project. [Pet. Ex. 10]

79. The Kaua‘i County Council has authorized exemptions from certain land use and zoning standards needed to accommodate the development of the Project. [Pet. Ex. 5]

80. The Commission granted the Petitioner’s request for a waiver of the incremental development schedule and map requirements on February 8, 2017. [Pet. Ex. 12]

81. The Project will be completed in multiple phases. The development timetable will vary depending upon a number of variables, including access to funding and affordable housing needs. [Pet. Ex. 13-B, Ex. 2; Pet. Ex. 4]

82. The Lima Ola Workforce Housing Infrastructure Delivery Plan sets forth the projected phases of development of the Project. [Pet. Ex. 13-B, Ex. 2]

83. 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*”). [Pet. Ex. 4, Attachment A]

84. 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. [Pet. Ex. 13-B, Ex. 2]

D. Petitioner's Financial Capability to Undertake the Project

85. 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. See HAR § 15-15-50(c)(9).

E. State and County Plans and Programs

86. The Petition Area is within the State Agricultural Land Use District. [Pet. Ex. 3, Section 3.3]

87. Under the County General Plan, the Petition Area was designated for agricultural use. [Pet. Ex. 22] 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. [Pet. Ex. 5]

88. The Petition Area is zoned for agriculture use. [Pet. Ex. 3, Section 5.3.1.2] The 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. [Pet. Ex. 5]

89. The Petition Area is not located in the Special Management Area. [Pet. Ex. 3, Section 4.3.1.2]

F. Need for the Proposed Development

90. There is expected to be a demand for 8,550 additional housing units (mid-point) in the Līhu‘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% or less of the Kaua‘i median income. [PR Ex. 30]

91. 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 Kaua‘i resident households. [PR Ex. 30]

92. Within the ‘Ele‘ele-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 ‘Ele‘ele-Hanapēpē area. [PR Ex. 30]

93. Between 2015 and 2025, the demand for additional housing units is estimated to be 5,287 residential units on the island of Kaua‘i. Of that demand, 3,926 units are needed by households earning 80% or less of the Kaua‘i median household income need. [Pet. Ex. 14]

94. The other projects in the ‘Ele‘ele-Hanapēpē area that are expected to contribute new housing units include Kaua‘i 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. [PR Ex. 30]

G. Social and Economic Impacts

95. The Project will provide affordable housing for Kaua‘i’s workforce. The influx of new residents is expected to bring greater economic vitality to the region. [Pet. Ex. 13-A]

96. 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. [Pet. Ex. 3, Section 4.3.4.2]

97. The development of Lima Ola will bring in an estimated \$190 million of new, direct capital investment with significant unquantified indirect expenditures into Kaua'i'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 development will contribute approximately \$21.9 million in annual economic activity on a stabilized business thereafter. [PR Ex. 30]

98. 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. [PR Ex. 30]

99. 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. [PR Ex. 30]

100. Associated secondary/off-site employment during the overall development and absorption time frame 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. [PR Ex. 30]

101. 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. [PR Ex. 30]

102. 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. [PR Ex. 30]

103. 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. [PR Ex. 30]

104. Due to maintenance and renovations, 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. [PR Ex. 30]

H. Impacts Upon Resources of the Area

1. Agricultural Resources

105. 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. [Pet. Ex. 3, Section 5.3.1.2]

106. Of the 3,000-plus acres currently being utilized for coffee farming by Kauai Coffee, the approximately 75 acres represents less than three percent (3%) of the total area farmed. [Pet. Ex. 13-B, Ex. 3]

107. The acreage to be disrupted by the Project are 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. [Pet. Ex. 13-B, Ex. 3]

108. Development of County workforce housing at Lima Ola may help secure a portion of the labor pool needed to keep Kauai Coffee operational. [Pet. Ex. 13-B, Ex. 3]

109. The Petition Area has not been designated as Important Agricultural Lands pursuant to HRS Chapter 205. [Pet. Ex. 13-B, Ex. 3]

2. Flora and Fauna

110. 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, *uhaloa (Waltheria indica)* and *moa (Psilotum nudum)* are native to the Hawaiian Islands. [Pet. Ex. 3, Appendix C]

111. The Petition Area does not include a designated critical habitat for any protected species. [Pet. Ex. 3, Appendix C]

112. Thirteen (13) 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. [Pet. Ex. 3, Appendix C]

113. The native Hawaiian short-eared owl or *pueo (Asio flammeus sandwichensis)* and the introduced barn owl (*Tyto alba*) may use the project area for hunting and roosting. [Pet. Ex. 3, Appendix C]

114. 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. [Pet. Ex. 3, Appendix C]

115. 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. [Pet. Ex. 3, Appendix C]

116. Construction activities planned for the Petition Area may impact the Hawaiian hoary bat, the Hawaiian petrel, and the Newell's shearwater. [Pet. Ex. 3, Section 4.2.3.2]

3. Archaeological and Historical Resources

117. An Archaeological 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. [Pet. Ex. 3, Appendix G-2]

118. No pre-Contact archaeological sites were identified. [Pet. Ex. 3, Appendix G-2]

119. 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. [Pet. Ex. 3, Appendix G-2]

120. SCS recommends no further historic preservation work is necessary in the Petition Area. [Pet. Ex. 3, Appendix G-2]

121. The State Historic Preservation Division (“*SHPD*”) accepted the AIS on June 5, 2017. [Pet. Ex. 33]

122. SHPD requested the following:

- Archaeological monitoring and historical data recovery mitigation commitments be imposed on the project as LUC conditions to be conducted during the construction phase;
- The project proponent 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.

[Pet. Ex. 33]

4. Groundwater Resources

123. 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. [Pet. Ex. 3, Section 4.2.4.1]

124. Given the estimated depth to groundwater of approximately 100 feet below the surface, groundwater is not anticipated to be encountered. The Project would cause less than significant impacts to groundwater. [Pet. Ex. 3, Section 4.2.4.2]

125. 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. [Pet. Ex. 3, Section 4.2.4.2; Pet. Ex. 18]

5. Cultural Resources

126. 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 Commission, 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.

See Ka Pa‘akai, 94 Hawai‘i at 47, 7 P.3d at 1084.

127. SCS completed a Cultural Impact Assessment (“*CIA*”) for the Petition in June 2014. [Pet. Ex. 3, Appendix G-1]

128. The CIA determined that the Petition Area has not been, and is not currently, used for traditional cultural purposes. The CIA stated “it is reasonable to conclude that . . . the exercise of native Hawaiian rights, or any ethnic group, related to [] traditional cultural practices . . . will not be impacted” by the development of the Project. [Pet. Ex. 3, Appendix G-1]

6. Scenic Resources

129. 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. [Pet. Ex. 3, Section 4.3.6.2]

130. The residential units will adhere to county height restrictions, thus preserving the existing visual assets of the Petition Area. The Project would not substantially affect the visual aesthetics of the area. [Pet. Ex. 3, Section 4.3.6.2]

131. The Project would 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. [Pet. Ex. 22]

7. Recreational Resources

132. Public access to the Petition Area is currently restricted and the site has no recreational use at this time. [Pet. Ex. 3, Section 4.3.5.2]

133. 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. [Pet. Ex. 3, Section 4.3.5.2]

134. 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. [Pet. Ex. 13-A]

135. Development of the Project will develop and increase recreational resources in the Petition Area. [Pet. Ex. 13-A]

8. Coastal Resources

136. The Petition Area is not located along the coast. [Pet. Ex. 3, Section 4.3.1.2]

I. Environmental Quality

137. Noise. 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. [Pet. Ex. 3, Appendix F]

138. 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. [Pet. Ex. 3, Appendix F]

139. Air quality and noise impacts occurring during the construction process will be addressed through best management practices, monitoring, and compliance to applicable regulations. [Pet. Ex. 3, Appendix F]

140. Noise from future traffic volume increases due to the development of the Project would be less than significant. [Pet. Ex. 3, Section 4.2.7.2]

141. Air. The Project would 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 would be less than significant. [Pet. Ex. 3, Section 4.2.6.2; Pet. Ex. 3, Appendix D]

142. Water. There are no surface water resources, listed natural wetlands, or wetland habitats within the Petition Area. [Pet. Ex. 3, Section 4.2.4.1]

143. 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. [Pet. Ex. 3, Section 4.2.4.1]

144. 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. [Pet. Ex. 3, Section 4.2.4.1]

J. Adequacy of Public Services and Facilities

1. Highway and Roadway Facilities

145. 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. [Pet. Ex. 3, Appendix E]

146. 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 Līhu‘e to the east. [Pet. Ex. 3, Appendix E]

147. 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. [Pet. Ex. 3, Appendix E]

148. The Lima Ola Workforce Housing Project Traffic Impact Analysis Report (“**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). [Pet. Ex. 25]

149. The TIAR was reviewed by the State Department of Transportation and its analyses were found satisfactory. [Pet. Ex. 25]

150. The TIAR considered the traffic conditions with the Project at full build-out in 2040. Each of the intersections would 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. See Exhibit 3 at Appendix E.

151. 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)-Maheha: (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.

[Pet. Ex. 3, Appendix E]

152. Petitioner intends to implement the recommendations during the appropriate phases.

[Pet. Ex. 13-B, Exhibit 2]

153. Petitioner will complete a follow-up traffic study prior to Phases 2, 3, and 4. [Pet. Ex. 3, Appendix E; Pet. Ex. Exhibit 13-B, Exhibit 2]

154. Transit Systems. The County Transportation Agency operates The Kaua‘i Bus, the public transit system within the County. [Pet. Ex. 3, Appendix E]

155. Two bus routes traverse the study 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. [Pet. Ex. 3, Appendix E]

156. A bus stop is located less than one-half mile away from the Petition Area, on the westbound lane of Kaumuali‘i Highway. [Pet. Ex. 3, Appendix E]

157. 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. [Pet. Ex. 3, Appendix E]

2. Schools

158. Students living in the Petition Area would be served by three State Department of Education (“**DOE**”) schools: (1) ‘Ele‘ele Elementary School; (2) Waimea Canyon Middle School; and (3) Waimea High School: [Pet. Ex. 3, Section 4.3.4.2]

159. ‘Ele‘ele Elementary School is approximately one-half mile from the Petition Area and has a total enrollment of 503 students (Spring 2017). [Pet. Ex. 3, Section 4.3.4.1] DOE estimates that Phase 1 of the Project may add an estimated 25 additional students; at full build-out, over the several decade timespan, DOE estimates an additional 77 students may enroll. [Pet. Ex. 15-A]

160. 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. The Petitioner will continue to coordinate with DOE throughout the planning and development process to prevent a significant impact to the school. [Pet. Ex. 3, Section 4.3.4.2; Pet. Ex. 15-A]

161. Waimea Canyon Middle School is approximately seven miles from the Petition Area and has a total enrollment 416 students (Spring 2017). [Pet. Ex. 3, Section 4.3.4.1] At full build-out, DOE anticipates an additional 22 students attending Waimea Canyon Middle School. There is sufficient capacity to accommodate the additional students. [Pet. Ex. 15-A]

162. Waimea High School is approximately six miles from the Petition Area and has a total enrollment of 575 students (Spring 2017). [Pet. Ex. 3, Section 4.3.4.1] 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. [Pet. Ex. 15-A]

163. The principals of ‘Ele‘ele Elementary School, Waimea Canyon Middle School, and Waimea High School support the development of the Petition Area. [Pet. Ex. 15-B]

3. Parks

164. 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. [Pet. Ex. 16]

165. The County Department of Parks and Recreation administers 16 neighborhood parks, 7 beach parks, 4 district parks, 2 passive parks, 1 cultural preserve, and 7 neighborhood centers, totaling almost 206 acres of park and recreational facilities within the Kōloa and Waimea Districts. [Pet. Ex. 16]

166. 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. [Pet. Ex. 3, Section 4.3.5.1; Pet. Ex. 16]

167. A 3.1-acre community park and multi-use building will be developed and built within the Project during Phase 1. [Pet. Ex. 11-C; Pet. Ex. 13-B, Ex. 2]

168. 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. Kaua'i County Code § 9.2.8(d)(1).

169. The total stabilized resident population 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. [PR Ex. 30]

4. Water

170. Water resource and distribution systems for the Petition Area are managed by DOW. The Water Master Plan for the Petition Area was completed in September 2015. [Pet. Ex. 18]

171. The proposed development of the Petition Area will increase the water demand of the Hanapēpē-'Ele'ele Water System by 304,380 gallons per day ("**GPD**") on an average day, or 456,570 GPD during maximum daily demand flows, and 913,140 GPD during peak hour demand flows at the full build-out of the Petition Area. [Pet. Ex. 18]

172. DOW has conditionally approved water service for Phase 1 of the Project. [Pet. Ex. 19]

173. The Water Master Plan indicates that the current pumping capacity and source availability are adequate to accommodate the demand for Phase 1 of the development. [Pet. Ex. 18]

174. 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. [Pet. Ex. 18]

5. Solid Waste Disposal

175. The County Division of Solid Waste will provide residential solid waste services in accordance with current collection policies. [Pet. Ex. 3, Section 4.2.5.2]

176. 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. [Pet. Ex. 3, Appendix H]

177. The Project is anticipated to generate 444.4 tons of solid waste annually from 2019-2024; 533.2 tons annually from 2024-2029; 405.2 tons annually from 2029-2034; and 273.7 tons annually from 2034-2039. [Pet. Ex. 17-A]

178. According to the County Department of Public Works, the Solid Waste Division will have sufficient operational capacity to handle the anticipated solid waste generated annually by the Project. [Pet. Ex. 17-A]

179. The Project intends to undertake proactive waste minimization strategies. These strategies would include a recyclables collection station within the community and the conversion of green waste into mulch that would be locally available for residents and community gardens. [Pet. Ex. 3, Section 4.2.5.2]

180. The Project is expected to result in less than significant long-term impacts on the County solid waste collection and landfill. [Pet. Ex. 3, Section 4.2.5.2]

6. Wastewater Systems

181. The wastewater collection, treatment, and disposal system servicing the ‘Ele‘ele area is owned and operated by the County. [Pet. Ex. 3, Section 4.3.7.1]

182. 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 (fifty percent (50%) below capacity). [Pet. Ex. 3, Section 4.3.7.1]

183. The Project would generate an average flow of 0.16 MGD, which is within the treatment capacity of the ‘Ele‘ele Wastewater Treatment Plant. [Pet Ex. 25]

184. A connection point with adequate capacity for the full build-out of the Petition Area is located within three hundred feet of the Project. [Pet. Ex. 4, Exhibit 10]

185. No expansion of the ‘Ele‘ele Wastewater Treatment Plant would be needed upon the full-build out of the Project. [Pet. Ex. 3, Section 4.3.7.2; Pet. Ex. 17; Pet. Ex. 25]

7. Drainage

186. 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, which would provide natural filtering. [Pet. Ex. 3, Section 4.3.7.2; Pet. Ex. 13-A, Chapter 5; Pet. Ex. 13-B, Ex. 5]

187. Low-impact development and sustainable features, such as bioswales and rain gardens, will be incorporated into the design of the Project to provide storm water treatment and to reduce the quantity of runoff discharged from the site. The reduction in runoff generated on-site will help reduce the size of the storm water drainage system. [Pet. Ex. 3, Section 4.3.7.2; Pet. Ex. 13-A, Chapter 5; Pet. Ex. 13-B, Ex. 5]

188. Water would collect into 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. [Pet. Ex. 3, Section 4.3.7.2; Pet. Ex. 13-A, Chapter 5; Pet. Ex. 13-B, Ex. 5]

189. All features of the proposed surface water drainage system would be designed in accordance with the standards of the County Department of Public Works. [Pet. Ex. 3, Section 4.2.4.2]

190. Prior to construction of the Project, a storm water prevention plan would be developed to identify sources of storm water pollution, describe the practices used to prevent storm water pollution, and identify best management practices and procedures the contractor would implement to comply with a National Pollution Discharge Elimination permit. [Pet. Ex. 13-B at Ex. 1; Pet. Ex. 13-B at Ex. 2]

191. With the proposed drainage system in place, the Project would have less than significant impacts on surface water at the Petition Area, as well as within the surrounding environment. [Pet. Ex. 3, Section 4.2.4.2]

8. Police and Fire Protection

192. Police. 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. [Pet. Ex. 3, Section 4.3.7.2]

193. Approximately seven miles to the west of the Petition Area, in the town of Waimea, KPD operates a sub-station. Another sub-station is located approximately 11 miles to the east in the Kōloa District. [Pet. Ex. 3, Section 4.3.7.2]

194. KPD recommends that at full build-out a 7,000 square foot sub-station and six police officers be added to the police force. [Pet. Ex. 4, Ex. 8] The Petitioner will communicate the

Project's proposed phase density to the County administration and KPD prior to development of subsequent phases.

195. Because the Project would be located within close proximity of existing towns that are currently patrolled ('Ele'ele and Hanapēpē), it would not represent a significant impact to existing law enforcement services. [Pet. Ex. 3, Section 4.3.7.2]

196. Fire. Fire service is provided by the Kaua'i Fire Department ("**KFD**"). The fire station located nearest to the Petition Area is the Hanapēpē Fire Station, which is approximately one mile west of the Petition Area. [Pet. Ex. 3, Section 4.3.7.2]

197. 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 would not represent a significant impact to existing fire protection services. [Pet. Ex. 3, Section 4.3.7.2]

9. Electricity and Telephone Service

198. The existing Kaua'i Island Utility Cooperative ("**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. [Pet. Ex. 3, Section 4.3.7.2; Pet. Ex. 4, Ex. 10]

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

200. 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 would not significantly impact the existing KIUC electrical grid. [Pet. Ex. 3, Section 4.3.7.2]

201. Hawaiian Telcom Inc. (“*HT*”) will provide telephone services and Oceanic Time Warner Cable (“*Oceanic*”) will provide television services.

202. HT and Oceanic will follow KIUC’s overhead lines into underground conduits upon entering the Project. [Pet. Ex. 3, Section 4.3.7.2]

10. Civil Defense

203. The closest County evacuation shelter to the Petition Area is located at ‘Ele‘ele Elementary School, which has a capacity of 1,468 persons. [Pet. Ex. 3, Section 4.3.7.1]

204. 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. [Pet. Ex. 20]

205. Due to the safer standards of the current building code, KEMA intends to advise residents of the Project to remain in their units in the event of a natural disaster. [Pet. Ex. 20]

206. KEMA does not anticipate that the Project will lead to overcrowding at the ‘Ele‘ele Elementary School shelter. [Pet. Ex. 20]

K. Commitment of State Funds and Resources

207. Petitioner has entered into a Memorandum of Agreement with Hawai‘i Housing Financing & Development Corporation (“*HHFDC*”). [Pet. Ex. 25] HHFDC requested a DURF infusion from the Hawai‘i State Legislature to be loaned to the Petition 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. [PR Ex. 29]

L. Conformance with Urban District Standards

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

[Pet. Ex. 3, Section 3.3]

209. 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. [Pet. Ex. 13-A; Kaua‘i Land Use District Map, [available at www.arcgis.com](http://www.arcgis.com)]

210. 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. [Pet. Ex. 13-A, Chapter 4]

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. [Pet. Ex. 13-A, Chapter 3] 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. [Pet. Ex. 4] 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. [Pet. Ex. 23] Transportation systems, schools, parks, public utilities solid waste disposal, wastewater systems, and police and fire services would be available to residents of the Petition Area. See ¶¶ 109-165.

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 annual chance floodplain.” [Pet. Ex. 3, Section 4.2.4.1] 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% of the acceleration due to gravity are likely to occur at a probability of 10% in a 50 year exposure time. [Pet. Ex. 3, Section 4.2.1.1] 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. [Pet. Ex. 3, Section 4.2.1]

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. [Pet. Ex. 13-A, Chapter 3] 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. [Pet. Exs. 22-24]

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. See ¶¶ 109-165.

Criterion 8. Slopes within the Petition Area are less than 20%. The Petition Area has an average slope of four percent (4%) grade. [Pet. Ex. 3, Section 4.2.1.1]

M. Conformance with the Goals, Objectives, and Policies of the Hawai'i State Plan; Relationship with Applicable Priority Guidelines and Functional Plans

211. 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.

1. 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% 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. [PR Ex. 30] Construction activities relating to the development of

the Project 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. The creation of construction jobs would help to reduce the higher than national and State average unemployment in the census tract area. [Pet. Ex. 3, Section 4.3.4.2]

HRS § 226-11, Objectives and Policies for the Physical Environment—Land-based, Shoreline, and Marine Resources

- (a)(1) Prudent use of Hawai‘i’s land-based, shoreline, and marine resources.
- (b)(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

HRS § 226-12, Objective and Policies for the Physical Environment—Scenic, Natural Beauty, and Historic Resources

- (b)(5) Encourage the design of developments and activities that complement the natural beauty of the islands.
-

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.

Development of the Petition Area is consistent with sound planning principles for the prudent use of land-based resources. A Final Environmental Assessment was completed and a Finding of No Significant Impact was issued for the Project. [Pet. Ex. 3]

Basic services including transportation systems, schools, parks, wastewater systems, solid waste disposal are available and accessible to residents of the Petition Area. See ¶¶ 109-165.

HRS § 226-14, Objective and Policies for Facility Systems—In General

- (b)(1) Accommodate the needs of Hawai‘i’s people through coordination of facility systems and capital improvement priorities in consonance with state and county plans.
- (b)(2) Encourage flexibility in the design and development of facility systems to promote prudent use of resources and accommodate changing public demands and priorities.
- (b)(3) Ensure that required facility systems can be supported within resource capacities and at reasonable cost to the user.
- (b)(4) Pursue alternative methods of financing programs and projects and cost-saving techniques in the planning, construction, and maintenance of facility systems.

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. See ¶¶ 109-165. The County Division of Solid Waste will provide residential solid waste services and the Project intends to utilize proactive waste minimization strategies. [Pet. Ex. 3, Section 4.2.5.2; Pet. Ex. 13-A] The ‘Ele‘ele Wastewater Treatment Plant has adequate capacity to accommodate the Project. [Pet. Ex. 3, Section 4.3.7.2; Pet. Ex. 17; Pet. Ex. 25] The Project will include a surface water drainage system that will be designed in accordance with the standards of the County Department of Public Works. [Pet. Ex. 3, Section 4.2.4.2]

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

- (b)(3) Greater diversification of energy generation in the face of threats to Hawai‘i’s energy supplies and systems;
- (b)(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use; and
- (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. [Pet. Ex. 13-B, Ex. 1]

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 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 Kaua‘i median household income. A variety of residential types will be offered for sale and rent at Lima Ola. [Pet. Ex. 13-A]

HRS § 226-20, Objective and Policies for Socio-Cultural Advancement—Health

- (a)(2) Maintenance of sanitary and environmentally healthful conditions in Hawai‘i’s communities.

HRS § 226-21, Objective and Policies for Socio-Cultural Advancement—Education

- (b)(2) Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.

The Petition Area is located nearby ‘Ele‘ele Elementary School; Waimea Canyon Middle School; and Waimea High School. Although ‘Ele‘ele Elementary School may reach capacity

during the later phases of the development, the Petitioner will coordinate with DOE to prevent a significant impact to the school. There is sufficient capacity at Waimea Canyon Middle School and Waimea High School to accommodate enrollment of students at full build-out of the Project. [Pet. Ex. 3, Section 4.3.4.2; Pet. Ex. 15-A]

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

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.” [Pet. Ex. 13-B]

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. [Pet. Ex. 20] Fire and police services are available to provide assurance of public safety and adequate protection for residents of the Project. [Pet. Ex. 3, Section 4.3.7.2]

2. Priority Guidelines of Hawai‘i State Plan

212. 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 such projects. [Pet. Ex. 5; Pet. Ex. 10]

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

- (a)(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai‘i’s people.
- (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.

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 proposed affordable housing community, and has allocated sufficient alternative lands in the area, as well as additional lands in the County, for agricultural use. [Pet. Ex. 3, Section 5.3.1.2]

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 proposed use is to provide 550 residential units for households earning 140% 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. See ¶¶ 109-165. One of the goals of the Project is to provide a range of rental and homeownership opportunities for Kaua‘i’s ‘ohana. [Pet. Ex. 13-B]

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 implement control measures recommended by the U.S. Fish and Wildlife Service to minimize or avoid possible impacts to biological resources. [Pet. Ex. 3, Section 4.2.3.2; Pet. Ex. 13-B, Ex. 1] Due to the estimated depth of the groundwater, there would be no impact from construction activities. [Pet. Ex. 3, Section 4.2.4.2] No permanent surface water bodies, natural wetlands, or wetland habitats are present at the Petition Area. [Pet. Ex. 13-B, Ex.1]

3. State Functional Plans

213. The State has prepared functional plans to define and implement statewide goals, objectives, policies, and priority guidelines. HRS § 226-56. This boundary amendment request is consistent with the objectives of the following State Functional Plans.

214. 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 Kaua‘i residents.

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

- Homeownership for at least sixty percent, or roughly 248,500 households by the year 2000. Supporting policies of this objective include “[d]irect[ing] Federal, State

and county resources and efforts toward the development of affordable for-sale housing units.”

- Sufficient amount of affordable rental housing units by the year 2000 so as to increase the State’s rental vacancy rate to at least 3%. This objective is supported by the policy to “[d]irect State, county and federal resources toward the financing and development of rental housing projects.”
- Acquire and designate lands suitable for housing development in sufficient amount to locate the deficit in housing units by the year 2000. The supporting policy suggests the promotion of “design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, employment and other concerns of existing communities and surrounding areas.”

216. 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 development, 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. [Pet. Ex. 13-A]

N. Conformance With The Coastal Zone Management Act, HRS Chapter 205A

217. The Petition Area is not located on the shoreline or within the County Special Management Area. [Pet. Ex. 3, Section 4.3.1.2]

218. Development of 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. [Pet. Ex. 3, Section 4.3.1.2]

219. In accordance with the objectives of managing development and public participation, the public has been invited to participate in review of the Project. [Pet. Ex. 3, Appendix B; Pet. Ex. 4, Ex. 8; Pet. Ex. 8; Pet. Ex. 25]

O. Conformance with the County General Plan, Hanapēpē-‘Ele‘ele Development Plan, and County Zoning Designation

1. County General Plan 2000

220. The County General Plan (2000) (the “*General Plan*”) guides the location and character of new development through graphic and textual policy. [Pet. Ex. 22]

221. 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 the Petitioner’s requested exemption to amend the land use area map designation pursuant to HRS § 201H-38. [Pet. Ex. 5]

222. 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.

[Pet. Ex. 22]

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

224. 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. [Pet. Ex. 23]

225. The Draft General Plan sets forth twenty (20) policies to guide growth on Kaua‘i; the following nine (9) 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. [Pet. Ex. 13-A]
2. Provide Local Housing: The intent of the Project is to provide affordable housing to households earning 140% 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. [Pet. Ex. 13-B]

4. Design Healthy and Complete Neighborhoods: The Project seeks to support healthy lifestyles inspired through open spaces, walking paths, and recreational areas. [Pet. Ex. 13-B]

14. Complete Kaua‘i’s Shift to Clean Energy: The Project will use green sustainable features that are environmentally responsible and lower energy costs. [Pet. Ex. 13-B]

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 build-out. 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. [Pet. Ex. 3, Section 4.3.4.2]

20. Communicate with Aloha: Petitioner has held community meetings and received comments from the community throughout the environmental assessment and 201H application processes. [Pet. Ex. 3, Appendix B; Pet. Ex. 4, Ex. 8; Pet. Ex. 10; Pet. Ex. 25]

226. In regards to the Hanapēpē and ‘Ele‘ele area, the Draft General Plan concludes that ‘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. [Pet. Ex. 23, Section 4.4.2]

2. Hanapēpē-‘Ele‘ele Community Development Plan

227. The Project conforms to the vision of the Hanapēpē-‘Ele‘ele Community Development Plan (December 1974) (the “*Community Plan*”). [Pet. Ex. 24]

228. 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.” [Pet. Ex. 24, Section 5]

229. 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. [Pet. Ex. 2-B]

230. Kauai Coffee is aware of the Project and has no objections to the re-zoning of the Petition Area. [Pet. Ex. 25-A]

231. A change of land use at the Petition Area would not significantly impact agricultural production because Kauai Coffee has sufficient access to alternate land in the area. [Pet. Ex. 13-B, Ex. 3] The approximately 75-acre Petition Area constitutes less than three percent (3%) of the total area farmed by Kauai Coffee. [Pet. Ex. 13-B, Ex. 3]

3. Zoning Ordinance

232. The Petition Area is currently zoned for agricultural use under County zoning regulations. [Pet. Ex. 3, Section 5.3.1.2]

233. 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. [Pet. Ex. 3, Section 5.3.1.2]

234. 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. [Pet. Ex. 5]

P. Incremental Districting

235. The development of the Petition Area is anticipated to occur in a series of phases. [Pet. Ex. 13-B, Ex. 2]

236. The Commission granted the Petitioner's request for a waiver of the incremental development schedule and map requirements on February 8, 2017. [Pet. Ex. 12]

III. 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.

IV. 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, Hawaii, 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 §§ 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 is consistent with the policies and criteria established pursuant to HRS Chapter 201H-38 and HRS §§ 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 Comm'n, 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. Kaua'i Springs v. Planning Comm'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 Important Agricultural Land 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 Comm’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 Commission, 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.

V. 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. Transportation. Petitioner shall complete an updated Traffic Impact Analysis Report (“*TIAR*”) prior to Phases 2, 3, and 4 of the Project and submit the same to the State Department of Transportation (“*DOT*”) for its review and approval. Petitioner shall mitigate all project-generated traffic impacts as recommended and/or required by the *TIAR* approved by the *DOT*.

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. Petitioner shall 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*”). 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.

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. Petitioner shall preserve and protect any established gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence, cultural, and religious practices on the Petition Area.

7. Endangered Species. Petitioner shall complete the following:

A. Construction activity should 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 should 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 should 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 should 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 should be removed or replaced with barbless wire.

F. All outdoor lighting 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.

8. Air Quality Monitoring. Petitioners shall participate in an air quality monitoring program as required by the State Department of Health.

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. Drainage. Petitioner shall 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 to be maintained, as designed. To the extent feasible, Petitioner shall mitigate nonpoint source pollution by incorporating low impact development practices for on-site 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 Best Management Practices ("**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.

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 or 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. 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.

14. 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.

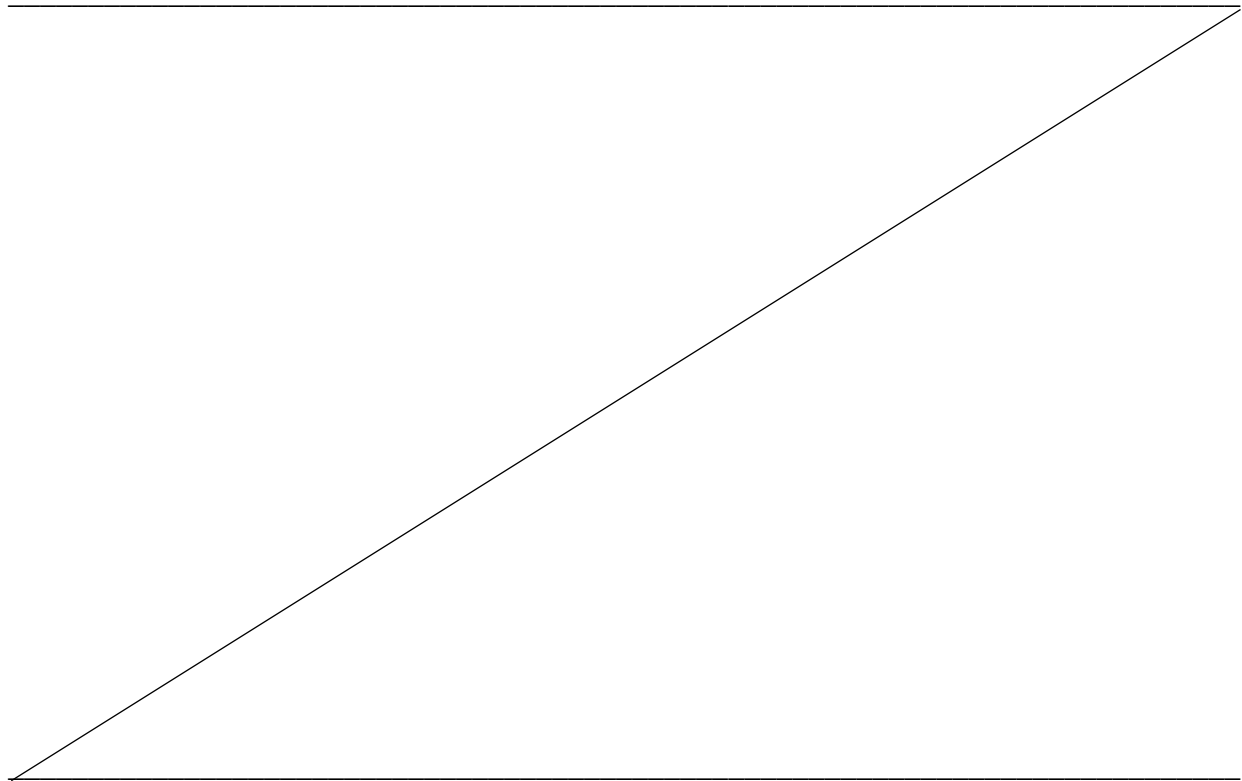
15. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County Planning Department in connection with the status of the development of the Petition Area and Petitioner’s progress in complying with the

conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

16. 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.

17. 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.

18. 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 _____ day of _____, 2017, per motion on

_____.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAI‘I

Deputy Attorney General

EDMUND ACZON
Chairperson and Commissioner

JONATHAN LIKEKE SCHEUER
Vice Chair and Commissioner

ARNOLD WONG
Vice Chair and Commissioner

DAWN N. S. CHANG
Commissioner

KENT HIRANAGA
Commissioner

GARY Y. OKUDA
Commissioner

LINDA ESTES
Commissioner

AARON D. MAHI
Commissioner

NANCY CABRAL
Commissioner

Filed and effective on:

Certified by:

DANIEL ORONDEKER
Executive Officer

Exhibit "A"

Map of Petition Area

