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WAIKOLOA HIGHLANDS, INC.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition Of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use District
Boundary Into the Rural Land Use District for
Approximately 731.581 Acres in South Kohala
District, Island of Hawaii, Tax Map Key No.
(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

WAIKOLOA HIGHLANDS, INC.'S
STATEMENT OF POSITION ON ORDER
TO SHOW CAUSE; EXHIBITS "1" - "17";
DECLARATION OF NATALIA
BATICHTCHEVA; DECLARATION OF
DEREK B. SIMON; CERTIFICATE OF
SERVICE

LAND USE COMMISSION
STATE OF HAWAII
2018 AUG - 8 P 4: 08

WAIKOLOA HIGHLANDS, INC.'S STATEMENT OF POSITION
ON ORDER TO SHOW CAUSE

I. INTRODUCTION

Pursuant to Hawai'i Administrative Rules ("HAR") § 15-15-55, Waikoloa Highlands, Inc. ("WHI"), as successor-in-interest to Petitioner Waikoloa Mauka, LLC ("WML") to that certain parcel of land consisting of approximately 731.581-acres and currently identified by TMK No. (3) 6-8-002: 016 (the "**Petition Area**"), by and through its legal counsel, Carlsmith Ball LLP, hereby respectfully submits this Statement of Position on the Order to Show Cause (the "**OSC**") issued by the State of Hawai'i Land Use Commission (the "**Commission**") on July

3, 2018.¹ The OSC is presently scheduled to be heard by the Commission on August 22-23, 2018 (the "**OSC Hearing**").

The Commission reclassified the Petition Area from the State Land Use ("SLU") Agricultural District to the SLU Rural District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A06-767, filed on June 10, 2008 ("**D&O**"). The original petitioner in this docket was WML, who sought the reclassification of the Petition Area to allow for the development of a 398-lot residential development (the "**Project**"). D&O at FOF 44. WHI took title to the Petition Area in 2014. See Exhibit 1 (Quitclaim Deed recorded in the State of Hawai'i Bureau of Conveyances ("**Bureau**") as Regular System Doc. No. A-54080020 on October 22, 2014).²

For years, WHL's and later WHI's efforts to advance the development of the Project were significantly hindered—if not entirely undermined—by the gross mismanagement and fraud committed by the former director of both entities, Stefan Martirosian, who was solely responsible for overseeing all aspects of the Project. See, e.g., Exhibit 2 (Summary of pending legal actions & Complaint for Damages, *Vitoil Corporation v. Stepan Martirosian*, et al. (Case No. BC714014)). WHI has since gone to great lengths to correct course, both internally and with respect to the Project, including hiring new management and engaging a Hawai'i-based project manager with extensive development experience. Armed with new management, WHI is competent and committed to developing the Project through completion.

While WHI is cognizant that WHI's (and previously WML's) failure to complete the Project by June 10, 2018 (as required under the D&O) warrants scrutiny from the Commission,

¹ Pending the outcome of the OSC, WHI will return to the Commission to request formal recognition as the petitioner in Docket No. A06-767 and leave to amend the caption to reflect the same.

² WHI provided notice of this transfer in ownership of the Petition Area to the Commission by way of letter dated June 8, 2018.

WHI believes good cause exists to maintain the Petition Area's current SLU Rural District classification. As discussed *infra*, under the circumstances, WHI has substantially commenced its development of the Project, and WHI's failure to timely complete the Project is largely the result of the mismanagement and fraudulent acts of Mr. Martirosian. For these reasons, WHI respectfully requests that the Commission maintain the Petition Area's present SLU Rural classification to allow for the continued development of the Project.

II. PRELIMINARY MATTERS

A. WHI'S MOTION TO CONTINUE HEARING ON THE OSC

On July 20, 2018, a little more than two weeks after the Commission filed the OSC, Commission Executive Director Daniel Orodener denied WHI's request for an administrative continuance of the hearing on the OSC. *See* Simon Decl. at ¶¶2-4. At that time, counsel for WHI informed Executive Director Orodener that WHI would be filing a motion requesting a continuance of the hearing on the OSC. *Id.* at ¶4. Shortly thereafter, WHI was informed that the Commission would not hear any such motion prior to the OSC Hearing on August 22, 2018, as opposed to the Commission's regularly scheduled hearing on August 8, 2018, for which there was still sufficient time for WHI to meet the ten (10) business day filing requirement for all motions to the Commission pursuant to HAR § 15-15-70(b)(5).

On July 24, 2018, WHI filed its Motion to Continue Hearing on Order to Show Cause (the "**Motion for Continuance**"). As noted in the Motion for Continuance, WHI strongly objects to the scheduling of the hearing on the Motion for Continuance on the same date as the OSC Hearing, as that will effectively deny the Commission its opportunity to consider the continuance requested in the Motion for Continuance.

As explained in the Motion for Continuance, WHI strongly believes that it was not provided sufficient time to prepare its response to the OSC, particularly given the significant

property, economic, and business interests as stake. *See, e.g., Bridge Aina Le 'a, LLC v. Hawaii Land Use Comm'n*, No. CV 11-00414 SOM-KJM, 2018 WL 3149489, at *21 (D. Haw. June 27, 2018) (noting that "testimony at trial indicated that the 1,060-acre property was 'worth \$40 million' if 'in the urban district' and '\$6.63 million' if 'in the agricultural district.' ***That represents an 83.5% diminution in value***[.]") (emphasis added). As of the time of the filing of this Statement of Position, WHI, its counsel, and consultants are still actively gathering the information necessary to adequately respond to the OSC. As explained in Section III.D, *infra*, given the mismanagement and fraudulent acts of Mr. Martirosian, every aspect of the Project and action taken by Mr. Martirosian must be painstakingly reviewed with the utmost caution, and often re-reviewed multiple times as additional information and facts become known.

In light of the foregoing, WHI hereby reserves its right to submit further evidence of good cause to maintain the Petition Area's SLU Rural District classification, of its substantial commencement of development of the Project, the mismanagement and fraudulent acts of Mr. Martirosian, and any other documents or information relevant to supporting WHI's position on the OSC. In addition, in the event that the Commission grants the Motion for Continuance, WHI further reserves its right to either supplement, withdraw and/or substitute this Statement of Position with additional filings and documents.

B. EXTENSION ON CONDITIONS OF REZONING FOR THE PETITION AREA

As discussed in greater detail in Section III.C, *infra*, one of the conditions attached to the rezoning of the Petition Area, which was first obtained by a predecessor-in-interest in 1990 and subsequently amended, requires that WHI obtain final subdivision approval for no less than fifty (50) lots by March 13, 2018, and final subdivision approval for the remainder of the lots within ten (10) years or by March 13, 2023. As the Commission is presumably aware, WHI did not obtain final subdivision approval for the first fifty (50) lots by March 13, 2018.

Accordingly, WHI will seek either a time extension of the lapsed March 13, 2018 deadline, or process a new rezoning application for the Petition Area. In order to do so, however, WHI must know whether the Petition Area will maintain its present SLU Rural District classification or be reverted by the Commission back to its former SLU Agricultural District classification, so that the Petition Area's SLU classification and Hawai'i County ("**County**") zoning classification remain consistent. Therefore, upon the Commission taking action on the OSC, WHI will return to the Hawai'i County Planning Commission and Hawai'i County Council ("**County Council**") to address the Petition Area's zoning, whether it be through an ordinance amendment extending the March 13, 2018 and March 13, 2023 deadlines, or process a new rezoning application of the Petition Area in the event that its SLU classification is reverted.

III. BACKGROUND

A. THE PETITION AREA

The Petition Area consists of approximately 731.581 acres of vacant and undeveloped land in the South Kohala District of the County of Hawai'i. D&O at FOF 34. The Petition Area is approximately 5.6 miles west and makai of Queen Ka'ahumanu Highway, and 4.6 miles east and mauka of Mamalahoa Highway. *Id.* at FOF 35. The lands surrounding the Petition Area are within the SLU Urban and Agricultural Districts. *Id.* at FOF 36.

The Petition Area historically has not been used for agricultural production due to poor soil quality and the limited rainfall in the Waikoloa area. The soil in the Petition Area is classified with an "E" rating by the Land Study Bureau's land classification system, which means that it is only marginally suitable for agricultural uses. *Id.* at FOF 42. The overwhelming majority of the Petition Area is unclassified under the Agricultural Lands of Importance to the State of Hawai'i classification system, with only a small portion classified as "other lands." *Id.* at FOF 43. The Waikoloa area is generally characterized as having a dry climate, with low

annual rainfall of only 10 to 15 inches. *Id.* at FOF 41.

The Petition Area is zoned RA-1a (Residential and Agricultural, with a one-acre minimum lot size) and O (Open) by the County. *See* Exhibit 3a; *see also* D&O at FOF 54, 157. The portions of the Petition Area zoned Open are intended to be used for open space and drainage, with the remaining Residential and Agricultural RA-1a areas to be developed as individual lots for sale. *See* D&O at FOF 157. The Petition Area is designated as Rural, Open and Extensive Agriculture in the County's General Plan Land Use Pattern Allocation Guide Map, and the Project is consistent with these designations. *See* Exhibit 3b; *see also* D&O at FOF 53, 156. The Petition Area is not located within the Special Management Area, and the Commission previously found that the Project is either supportive of or inapplicable to the objectives of the Coastal Zone Management Program. D&O FOF at 55.

B. RECLASSIFICATION OF THE PETITION AREA

As discussed, WML sought reclassification of the Petition Area from the SLU Agricultural District to the SLU Rural District to allow for the development of the Project. D&O at FOF 44. Full "buildout" of the Project was defined by the Commission to mean completion of the backbone infrastructure to allow for the sale of individual lots—*i.e.*, no "vertical" or above ground construction. D&O Condition No. 2.

The Project was proposed to be developed in two phases. *Id.* at FOF 158. Phase 1 was to involve the development of 149 vacant lots on approximately 319 acres, together with the necessary internal roads, infrastructure, and utilities. *Id.* Phase 2 was to include the development of 249 vacant lots on approximately 413 acres, as well as the remainder of the internal roads, infrastructure, and utilities. *Id.* at FOF 159.

WML elected to pursue reclassification of the Petition Area to the SLU Rural District, as opposed to the SLU Urban District, because WML's intent was to develop a low-density

development and preserve the overall character of the Petition Area and surrounding lands, which is reflected in the Project's one-acre minimum lot size. *Id.* at FOF 44. The SLU Rural Classification is also consistent with County's General Plan "Rural" designation for the Petition Area. *Id.* at 46.

C. REZONING AND SUBDIVISION APPROVAL HISTORY FOR THE PETITION AREA

In 1990, a former owner of the Petition Area, Waikoloa Development Company ("**WDC**"), obtained a rezoning of the Petition Area from U (Unplanned) and RM-1.5 (Multiple-Family Residential) to its current zoning designations of RA-1a (Residential-Agriculture) and O (Open) pursuant to County Ordinance No. 90-160 (together, with subsequent amendments, the "**Rezoning Ordinance**"). In 1995, WDC obtained amendments to the Rezoning Ordinance through the enactment of Ordinance No. 95-51, which included the requirement that final subdivision approval of not less than 175 lots be obtained within five (5) years, and that certain traffic improvements to the intersection of Waikoloa Road and Pua Melia Street/Paniolo Avenue be made at various phases of the development.

As provided at the time under the Rezoning Ordinance, WDC obtained an administrative time extension to receive final subdivision approval until March 21, 2005. On January 5, 2005, WDC requested an additional amendment to the Rezoning Ordinance to extend the deadline to receive final subdivision approval to March 21, 2015. While this request was pending, WML purchased the Petition Area (together with other lands) from WDC. The County Council subsequently approved the amendment to the Rezoning Ordinance to extend the final subdivision approval deadline to March 21, 2015, and added additional conditions of approval, including one that required WML to obtain reclassification of the Petition Area from the Commission prior to receiving final subdivision approval. Thereafter, WML prepared an Environmental Impact

Statement pursuant to Chapter 343, Hawai'i Revised Statutes ("**HRS**"), and after acceptance of the Final EIS by the Commission, WML submitted its petition to the Commission to reclassify the Petition Area from the SLU Agricultural District to the SLU Rural District (the "**Petition**").

In 2007, during the pendency of the Petition, WML requested further amendments to the Rezoning Ordinance, including, at the urging of community members and one County Councilmember, that the improvements to the intersection of Waikoloa Road and Pua Melia Street/Paniolo Drive be replaced with a roundabout system. WML also requested a second point of access to the Project off of Waikoloa Road. Although WML's request was granted, the County Council imposed new conditions that required that final subdivision approval be obtained within five (5) years or by September 28, 2012, with no allowance for an administrative time extension.

Thereafter, WML requested an additional extension of the deadline to obtain final subdivision approval, which was granted through Ordinance No. 13-29, effective as of March 13, 2013. See **Exhibit 4**. As amended by Ordinance No. 13-29, the Rezoning Ordinance presently requires WML to obtain final subdivision approval of no less than fifty (50) lots within five (5) years or by March 13, 2018, and final subdivision approval for the remainder of the lots within ten (10) years or by March 13, 2023. As noted *supra*, if the Commission reaches a favorable outcome on the OSC, WHI will apply to the County for a 5-year extension of time to obtain FSA for Phase 1, and a 10-year extension of time to obtain FSA for the remaining Phase(s) of the Project.

D. **GROSS MISMANAGEMENT OF THE PROJECT AND FRAUD
COMMITTED BY FORMER DIRECTOR OF WML AND WHI**

Mr. Martirosian was the director of WML from approximately 2000 to 2014, and WHI as its director from its inception in 2014 to May 8, 2016. Under Mr. Martirosian's management,

WML, and subsequently WHI, were grossly mismanaged in numerous ways, particularly in the development of the Project.

WHI recently discovered that for years, Mr. Martirosian had no actual interest in developing the Project on behalf of WML or WHI. In fact, he allegedly offered to sell the Petition Area for an unreasonably low price and without authorization from WHI, in order to later seize the Petition Area and develop it by himself. Mr. Martirosian did not provide any information on the status of business, terms and conditions, as well as regarding whether or not these terms and conditions have been fulfilled. *See* Batichtcheva Decl. ¶4.

Mr. Martirosian dealt only with his own projects and used WHI's land to finance them. For example, he mortgaged the Petition Area to Aclaime Debt Partners, LLC for \$1.1 million, without informing or seeking permission from WHI, and used the proceeds of the mortgage for his own purposes. *See Id.* ¶3. In addition, Mr. Martirosian also kept extremely poor records and almost never reported information up or down the chain of command at WML or WHI. Batichtcheva Decl. ¶4. Only in 2017 did WHI discover that terms and conditions of the Rezoning Ordinance were not met or fulfilled.

Among other things, Mr. Martirosian's fraudulent actions and mismanagement of the Project and both WML and WHI have resulted in a number of legal actions being initiated against him. *See* Exhibit 2.³ For example, in 2010, Mr. Martirosian convinced—under false pretenses—one of WHI's former parent companies, Arch Ltd. ("**Arch**"), through its affiliated entity Pulham Holdings, Ltd. ("**Pulham**"), into investing over \$92 million dollars in the U.S. movie industry to produce fourteen (14) motion pictures. *See id.* at 1. Mr. Martirosian represented to Pulham that the investments would be made through Envision Entertainment Inc.

³ Exhibit 2 attached hereto was filed as Exhibit D to WHI's Motion for Continuance, filed with the Commission on July 24, 2018.

("Envision"), a company Pulham associated with Mr. Jeff Hovard. Pulham later discovered that Envision was owned and directed by Mr. Martirosian. *Id.* Pulham later discovered, after repeated requests to Envision for transfer of the profits from the motion pictures and countless excuses by Envision as to why the money could not be transferred, that *all* contracts between Pulham and Envision were completely fake, and that Envision owned all rights to the motion pictures funded by Pulham's \$92 million investment. *Id.*

Arch also discovered that Mr. Martirosian used the Pulman funds to finance his own personal purchases of businesses and that Mr. Martirosian spent portions of the funds at casinos, thereby further defrauding Pulham and Arch of the \$92 million. *Id.* Upon discovering Mr. Martirosian's fraudulent activities, Pulham filed fraud claims with the Prosecutor's Office of the Republic of Armenia. *See id.* WHI principals sent a request to Russia to extradite Mr. Martirosian and, on October 25, 2017, the Domodedovsky Court of Moscow issued an order to detain and arrest Mr. Martirosian. *Id.* On May 25, 2018, the Moscow City Court sought to enforce the extradition order in Armenia, and Mr. Martirosian opposed the order. The complaint is presently pending before the Supreme Court of the Russian Federation. *See id.*

There are numerous other examples of Mr. Martirosian's fraudulent activities, and there are almost certainly many more that WHI has yet to discover. For example, Arch is also the parent company of Vitoil Corporation ("Vitoil"), which in turn is the parent company of WHI and another company that Mr. Martirosian was previously a director of. In 2005, Arch transmitted funds in the amount of \$1.625 million to Vitoil to purchase a 35-acre parcel of land in Malibu, California, and Mr. Martirosian registered Vitoil as the owner of the 35-acre parcel. In 2018, Arch discovered that its \$1.625 million investment actually purchased two parcels: the 35-acre parcel and another 17-acre parcel. However, Mr. Martirosian registered title to the 17-

acre parcel in the name of one of his own companies that was completely unrelated to Vitoil. *See id.* at 2. On July 16, 2018, Vitoil filed a suit against Mr. Martirosian in the Superior Court of the State of California for the County of Los Angeles. *See generally* Exhibit *id.*

The WHI principals also recently discovered that Mr. Martirosian listed a portion of the Petition Area for sale without WHI's authorization. WHI did not intend to list any portion of the Petition Area for sale and did not authorize Mr. Martirosian to do so.

E. CHANGE IN MANAGEMENT OF WHI AND THE PROJECT

Since taking title to the Petition Area in 2014 and discovering Mr. Martirosian's misdeeds, WHI has taken an active role in overseeing the development of the Project. On May 5, 2016, WHI's shareholders voted unanimously to engage Natalia Batichtcheva and appoint her to serve as WHI's secretary, chief financial officer, and director. *See* **Exhibit 5** (Shareholder's Action by Written Consent, dated May 9, 2016). In addition, WHI's shareholders also voted to dismiss Stefan Martirosian from the same positions. *See id.* Since her appointment, Ms. Batichtcheva has worked diligently to uncover Mr. Martirosian's mismanagement and fraud, get up to speed on the Project, and retain the necessary consultants to continue to advance the development of the Project.

As of July 10, 2018, WHI has also engaged Joel LaPinta to serve as the project manager for the Project. Mr. LaPinta is a commercial and investment real estate broker and developer with over 30 years of experience in Hawaii, and has completed—both personally and as an employee of a real estate investment and management company—residential subdivisions in Hawaii. *See* **Exhibit 6** (J.LaPinta CV). Mr. LaPinta will bring the expertise needed to ensure that the Project is properly developed and successfully marketed.

F. THE OSC

On May 23, 2018, the Commission held a status hearing on this Docket. Due to the

transition in management, no representative of WHI appeared at the status hearing. The Commission voted unanimously to issue the OSC. Although the Commission voted to issue the OSC on May 23, 2018, the Commission did not actually file the OSC until over a month later on July 3, 2018, and scheduled the OSC Hearing for less than two months later on August 22-23, 2018.

The OSC states that the Commission determined that there was reason to believe that the following D&O Conditions have been violated and/or not met:

- Condition 1 – Compliance with Representations to the Commission
- Condition 2 – Completion of Project
- Condition 3 – Reversion on Failure to Complete Project
- Condition 4 – Water Resource Allocation
- Condition 6 – Transportation
- Condition 9 – Affordable Housing
- Condition 11 – Archaeological Site 22
- Condition 12 – Drainage
- Condition 13 – Wastewater
- Condition 14 – Solid Waste
- Condition 20 – Notice of Change in Ownership
- Condition 21 – Annual Reports

IV. DISCUSSION

A. WHI HAS SUBSTANTIALLY COMMENCED ITS USE OF THE PETITION AREA

1. Substantial Commencement Under Hawai'i Law

The Commission may revert a property to its prior or a more proper SLU classification *without* following the procedures set forth in HRS § 205-4 *only if* the petitioner has not "substantially commenced [its] use of the land." *DW Aina Le 'a Dev., LLC v. Bridge Aina Le 'a, LLC*, 134 Hawai'i 187, 213, 339 P.3d 685, 711 (2014) ("*Aina Le 'a*") ("Thus, where the petitioner has substantially commenced use of the land, the LUC is required to follow the procedures set forth in HRS § 205-4 that are generally applicable when boundaries are

changed."). HRS § 205-4(g) does not define "substantial commencement"; however, "[i]n drafting HRS § 205-4(g), the legislature did not require that the use be substantially *completed*, but rather that it be substantially *commenced*." *Id.* at 214, 339 P.3d at 712 (emphases in original). "[A] determination of whether a party has substantially commenced use of the land *will turn on the circumstances of each case, not on a dollar amount or percentage of work completed*." *Id.* at 214, 339 P.3d at 712 n.16 (emphasis added).

While the Hawai'i Supreme Court's decision in *Aina Le'a* is the seminal case on the Commission's authority to revert a SLU classification pursuant to an order to show cause and provides the test for what constitutes "substantial commencement," the facts underlying that case are significantly different from this Docket. *Aina Le'a* involved a significantly larger proposed development initially of approximately 2,760 residential units on approximately 1,060 acres of land in Waikoloa. *Id.* at 191-92, 339 P.3d at 689-90. The proposed project was later amended to develop approximately 1,550 multi-family units and single-family lots as well as two world class golf courses. *Id.* at 192, 339 P.3d at 690. In 2005, the petitioners, DW Aina Le'a Development, LLC and Bridge Aina Le'a, LLC, sought to amend the affordable housing condition to reflect current market conditions. *Id.* at 194, 339 P.3d at 692.

In 2008, after *20 years* of no activity towards substantial commencement in the petition area with the exception of a number of affordable housing units, the Commission issued an order to show cause. *See id.* at 195-96, 339 P.3d at 693-94. Based on evidence provided by the petitioners at the OSC hearing, the Commission rescinded and vacated the OSC. *Id.* at 199, 339 P.3d at 697.

Additionally, all permits, including vertical construction permits for the affordable housing site, were prepared and submitted to the County, and that the developer was working

with the Office of Housing and Community Development on the terms of the affordable housing agreement. *Id.* at 200, 339 P.3d at 698. The Office of Planning commented that the petitioners' vertical construction was not accompanied by any utility connections resulting in the affordable housing units not being ready to be occupied. *Id.* The petitioners had spent \$19,000,000 to date at that time. *Id.* at 201, 339 P.3d at 699.

The Commission kept the OSC hearing open and after a motion by the petitioners to amend certain conditions, held, *inter alia*, that petitioners had "not substantially commenced use of the Petition Area in conformance with the representations made" to the Commission in 2005 and 2011 and voted to revert the petition area to its former SLU Agricultural District classification. *See id.* at 203-05, 339 P.3d at 701-03.

On appeal to the Hawai'i Supreme Court, a crucial point was whether or not petitioners had substantially commenced their use of the petition area in accordance with their representations to the Commission. *See id.* at 209, 339 P.3d at 707. The court held that the Commission erred in reverting the petition area without adhering to the procedures set forth in HRS § 205-4 because the petitioners had substantially commenced use of the land by the time the Commission reverted it. *Id.* Thus, the court held that where a petitioner has substantially commenced use of the land, the Commission is "required to find by a clear preponderance of the evidence that the reclassification is reasonable, not violative of HRS § 205-2, and consistent with the policies of HRS §§ 205-16 and 205-17." *Id.* at 213, 339 P.3d at 711 (citing to HRS § 205-4(h)). Critically, the Court also noted that whether or not a party has substantially commenced use of the land is determined on a case-by-case basis.

In evaluating "substantial commencement" of the development in *Aina Le 'a*, the court considered that the purpose of the development was a vertical construction project, and the intent

was to sell completed residential units connected to utilities and access roads to the final consumer. *See generally id.* at 213-16, 399 P.3d at 711-14.

2. Character of the Project

As explained *supra*, and in stark contrast to the development at issue in *Aina Le 'a*, the goal of this Project has always been to develop and ultimately sell approximately 398 *vacant* lots with a minimum lot size of one-acre. D&O at FOF 44, 158-59. The Commission recognized this in D&O Condition No. 2, which defines "full buildout" of the Project as the "completion of the backbone infrastructure to allow for the sale of individual lots." D&O Condition No. 2, at 37. Although the Commission required in Condition 2 of the D&O that WML "complete buildout of the Project no later than ten (10) years from the date of the Commission's decision and order," that Condition 2 requirement is not equivalent to the test for "substantial commencement" set forth in *Aina Le 'a*. As the Hawai'i Supreme Court explained,

In drafting HRS § 205-4(g), the **legislature did not require that the use be substantially completed, but rather that it be substantially commenced.** This is consistent with the concerns identified by the legislature in the legislative history of the statute, *i.e.*, **that it was trying to deter speculators who obtained favorable land-use rulings and then sat on the land for speculative purposes.**

Aina Le 'a, 134 Hawai'i at 214, 339 P.3d at 712 (emphases added). Thus, for purposes of determining whether WML/WHI has substantially commenced development of the Petition Area, no "vertical" or above-ground development should be considered or expected by the Commission, and D&O Condition No. 2 should be deemed completely satisfied upon WHI obtaining final subdivision approval for the Petition Area. Further support for the argument that no vertical construction or even any infrastructure work is required to satisfy substantial commencement is evidenced by the interplay between D&O Condition No. 2, which states that "buildout" is the completion of the backbone infrastructure to allow for the sale of individual

lots, and D&O Condition No. 3 which allows the Petitioner to secure a bond for the completion of construction of that infrastructure.

For developments like the Project, once tentative subdivision approval is obtained, the lots can be registered with the State of Hawai'i Department of Commerce and Consumer Affairs ("DCCA") and, if the necessary requirements are met, a Preliminary Order of Registration will be issued. *See* HRS 484-8.5(a). Once a Preliminary Order of Registration has been obtained, the developer can enter into either sale contracts (that provide for the right of rescission in the event final subdivision approval is not obtained) or nonbinding reservation agreements. *See id.* at § 484-8.5(c).

From this point, final subdivision can be obtained in either of two ways: (1) the developer can complete all required improvements; or (2) the developer can post a completion bond guaranteeing that all such improvements will be completed. In the latter option, which will be applicable to this Project, the developer will first prepare construction drawings and cost estimates for the subdivision and submit those drawings to the respective County agencies for processing. Once the County approves the construction drawings and cost estimates, the developer will then obtain a completion bond in an amount determined by the County based upon the approved cost estimates.

After the bond has been submitted to the County, and assuming all other requirements are satisfied, the County will then issue final subdivision approval and the developer can then process its application to the DCCA to obtain a Final Order of Registration. *See* HRS § 484-8.6(a). After obtaining the Final Order of Registration, the developer can then proceed to close upon all of the contracts that were entered into under the Preliminary Order of Registration. Therefore, under this process, the sale of Project lots can close prior to the actual

start or completion of all necessary infrastructure and related improvements, and without any horizontal or vertical construction (as none was contemplated in the D&O).

In light of the foregoing, WHI is not required to demonstrate to the Commission that the Project is substantially *complete*. Moreover, the Commission may not view a lack of vertical or above-ground construction within the Petition Area as evidence of a failure by WHI to substantially commence its development of the Project, because this Project does not involve vertical construction.

3. WHI Has Substantially Commenced its Development of the Project

As explained *infra*, WHI has substantially commenced its development of the Project. See Exhibit 7 (LUC Conditions of Approval Matrix Summary of Actions to Date).

a. Condition No. 9 – Affordable Housing

WHI has satisfied D&O Condition No. 9 relating to affordable housing. D&O Condition No. 9 provides that:

Petitioner shall provide affordable housing opportunities for residents in the State of Hawai'i in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. Petitioner shall provide the Commission with a fully executed copy of the affordable housing agreement within 30 days of the execution of the agreement.

WHI's obligations under Condition No. 9 are coextensive with its obligations under Condition E of Ordinance No. 13-29, which provides that:

To ensure that the goals and policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to final subdivision approval[.]

See Exhibit 4.

After months working with the County Office of Housing and Community Development,

WHI and the County executed an Affordable Housing Agreement (the "**AH Agreement**") on December 1, 2016. *See* **Exhibit 8**. The AH Agreement required WHI to subdivide an approximately 11.8 acres lot (the "**AH Lot**") from the Petition Area, and to convey the AH Lot to Plumeria at Waikoloa LLC ("**PWL**") within 180 days of the AH Agreement.

On May 15, 2017, the County issued final Subdivision Approval which created the AH Lot. *See* **Exhibit 9** (subdivision application dated March 22, 2017) & **Exhibit 14** (SUB-17-001716). On June 1, 2017, by Warranty Deed, WHI conveyed said land to Plumeria at Waikoloa, LLC. *See* **Exhibit 10**.⁴ Said Warranty Deed was recorded in the Bureau on January 29, 2018, as Regular System Document No. A-66030880. On July 20, 2017, the County and WHI executed the Affordable Housing Release Agreement. *See* **Exhibit 11**. Thus, as determined by the County, WHI has attained full satisfaction of the affordable housing requirements for the Project under D&O Condition No. 9. *See Aina Le 'a*, 134 Hawai'i at 210, 339 P.3d at 708 ("In general . . . enforcement of these conditions is left to the counties under HRS § 205-12, 10 and not the [Commission].").

b. Condition No. 4 – Water Resource Allocation

The Project is within the service area of the West Hawaii Water Company ("**WHWC**"). WHI has renewed its negotiations with WHWC to reach an agreement on a Contribution In Aid Of Construction fee and to secure a will-serve letter for the first fifty (50) lot phase of the Project. WHI is hopeful that these commitments can be reached in the very near term.

c. Condition No. 6 – Transportation

D&O Condition 6(a) required the construction of certain improvements to the intersection of Waikoloa Road and Queen Ka'ahumanu Highway. These improvements were

⁴ Although the Warranty Deed was not recorded until January 29, 2018, the actual conveyance, as required by the Agreement, was completed relatively within the time contemplated by the Agreement.

completed by Hilton Grand Vacation Corporation for its additional time share operations. Therefore, the requirement to enter into an agreement with the State Department of Transportation ("**DOT**") and construct these improvements is now moot.

D&O Condition 6(b) requires Mamalahoa Highway and Waikoloa road intersection improvements. WHI's project engineer R.M. Towill Corporation submitted to the DOT, the budgetary estimates for the Mamalahoa Highway and Waikoloa Road intersection improvements.

In addition, on March 17, 2008, the County Department of Public Works ("**DPW**") was provided with construction plans for the off-site roundabout at the intersection of Waikoloa Road and Pua Melia Street/Paniolo Avenue. See Exhibit 12. Due to current traffic conditions and the availability of land for the roundabout, WHI intends to confer with DPW on the most appropriate improvements for the intersection, and will full comply with all of DPW's requirements.

In addition, WHI has prepared on-site infrastructure construction plans, including traffic improvements.

d. Other Work Towards Developing the Project

In addition to satisfying the affordable housing condition, WHI has also: issued to the U.S. Army Corps of Engineers a right-of-access to the Petition Area for the purpose of conducting remedial investigation, which resulted in the removal of residual munitions and issuance of FUDS clearance; and completed the subdivision actions (SUB-09-000887 and 11-001060) to create the 10-acre future park site for dedication to the County of Hawai'i. Petitioner is exploring its options on the dedication of the 10-acre park site.

On July 30, 2009, WML received Final Subdivision Approval No. SUB-09-000887 for the Wailani Bulk Lots. See Exhibit 13 (Final Subdivision Approval SUB-09-000887 & Map). On May 15, 2017, WHI also received Final Subdivision Approval No. SUB-17-001716 of Lot 2-

B-2 (AH Lot). See Exhibit 14. On March 18, 2016, WHI received its second time extension of the deadline to obtain Final Subdivision Approval for not less than fifty (50) lots in Phase 1 until March 13, 2018. See Exhibit 15.

As further evidence of WHI's commitment to develop the Petition Area, on August 6, 2018, WHI paid all outstanding real property taxes for fiscal years 2017-2018 and the first half of fiscal year 2018-2019 in the amount of \$52,039.85, and filed its 2018 annual report with the DCCA. See Exhibits 16 (2018 DCCA Annual Report & Confirmation of Filing). WHI is in the process of obtaining financial commitments in the form of a guarantee from Arm Business Bank, a company whose total capital is approximately \$78 million.

On August 8, 2007, WML also executed an Educational Contribution Agreement with the State of Hawai'i Department of Education (the "DOE"). Under this agreement, WML and the DOE agreed that the educational contributions in the form of cash set forth in the agreement satisfies all of WML's fair-share requirements for the Project. Pending the Commission's decision on the OSC, Petitioner will be reviewing the terms of the 2007 Educational Contribution Agreement for updates to be consistent with DOE's current impact assessments.

e. Condition No. 11 – Archaeological Site 22

WHI continues to wait for a recommendation for the State Historic Preservation Division ("SHPD") regarding Site 22. WHI is in the process of engaging Robert Rechtman of ASM Affiliates, a local archaeologist, to obtain documentation from SHPD related to this condition. WHI is hopeful that it will receive SHPD's recommendation prior to or shortly after the OSC Hearing.

f. Condition No. 12 – Drainage

A Preliminary Drainage Report for Waikoloa Subdivision Increment 1 and 2 was prepared and submitted by R.M. Towill to DPW on June 22, 2007. See Exhibit 17. Pending the

Commission's decision on the OSC, WHI will continue working with DPW to finalize a drainage plan for the Project.

g. Condition No. 13 – Wastewater & Condition No. 14 – Solid Waste

WHI continues to work with the County Department of Environmental Management and State of Hawai'i Department of Health ("DOH") to construct adequate wastewater treatment, transmission and disposal facilities, as well as an integrated solid waste management plan for the Project. Preliminary discussions with DOH indicate that WHI will be permitted to develop Phase 1 of the Project utilizing septic tanks, and construct a wastewater treatment plant as needed for further phases of the Project.

h. Condition No. 20 – Notice of Change of Ownership

As discussed *supra*, WML conveyed the entirety of the Petition Area to WHI in 2014. Although untimely, WHI's counsel did provide the Commission with notice of this change in ownership by way of letter dated June 8, 2018.

i. Condition No. 21 – Annual Reports

Petitioner acknowledges that its annual report for the year 2017 is delinquent. The 2017 annual report will be provided together with WHI's 2017-2018 combined annual report.

j. Condition No. 1 – Compliance with Representations to the Commission

Based on the foregoing, WHI has or is in the process of complying with its representations to the Commission. See Exhibit 7 (2017/2018 REZ Compliance Matrix).

B. GOOD CAUSE EXISTS TO MAINTAIN THE PETITION AREA'S CURRENT SLU RURAL DISTRICT CLASSIFICATION

"The term 'good cause' has been defined to mean 'a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.'" *Miller v. Tanaka*, 80 Hawai'i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). "Good cause' also 'depends

upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed." *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). "As a general rule, 'good cause' means a substantial reason; one that affords a legal excuse." *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted).

First, as explained *supra*, because WHI has substantially commenced use of the land in the Petition Area in accordance with its representations to the Commission, good cause exists to maintain the SLU Rural District classification of the Petition Area. Second, as also explained *supra*, good cause also exist because both WML's and WHI's ability to timely develop Petition Area was significantly hindered—if not completely undermined—by the gross mismanagement of the Project and numerous acts of fraud committed by Mr. Martirosian. In the absence of Mr. Martirosian's complete abdication of his corporate duties and fraudulent activities, it is reasonable to conclude that the Project would be significantly more developed if not timely completed at this time.

C. NEITHER WML NOR WHI HAS SAT ON THE PETITION AREA FOR SPECULATIVE LAND-BANKING PURPOSES


In *Aina Le 'a*, the Hawai'i Supreme Court explained that the legislative intent behind HRS § 205-4(g) was to "deter speculators who obtained favorable land-use rulings and then sat on the land for speculative purposes." *Aina Le 'a*, 134 Hawai'i at 214, 339 P.3d at 712. WHI's failure to complete the buildout of the Project within the ten-year time period provided for under Condition No. 2 is not the result of speculative land-banking. Rather, the Project was not timely completed as a result of prior mismanagement of the Project and the fraud committed by Mr. Martirosian. WHI's intends to develop the Project. Accordingly, under these circumstances, reversion of the Petition Area to the SLU Agricultural District would not be consistent with the legislative intent

behind HRS § 205-4(g)—as explicitly explained by the Hawaii Supreme Court—and, would therefore inappropriate. *See Kanahele v. Maui Cnty. Council*, 130 Hawai'i 228, 244, 307 P.3d 1174, 1190 (2013), as corrected (Aug. 30, 2013) ("An agency's interpretation of a statute is palpably erroneous when it is inconsistent with the legislative intent underlying the statute.") (emphasis added) (citing *Gillan v. Gov't Emps. Ins. Co.*, 119 Hawai'i 109, 119, 194 P.3d 1071, 1081 (2008)); *Methven-Abreu v. Hawaiian Ins. & Guar. Co., Ltd.*, 73 Haw. 385, 392, 834 P.2d 279, 284 (1992) (the "primary duty in interpreting and applying statutes is to ascertain and give effect to the legislature's intention to the fullest degree.") (quoting *Kang v. State Farm Mut. Auto. Ins. Co.*, 72 Haw. 251, 254, 815 P.2d 1020, 1022 (1991)).

V. CONCLUSION

For the foregoing reasons, WHI respectfully requests that the Commission find that WHI has substantially commenced its use of the Petition Area and good cause exists to not revert the Petition Area to its former SLU Agricultural District classification. WHI reserves the right to file supplemental statements of position and supporting evidence as needed.

DATED: Honolulu, Hawai'i, August 8, 2018



STEVEN S.C. LIM
DEREK B. SIMON

Attorneys for
WAIKOLOA HIGHLANDS, INC.

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition Of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use District
Boundary Into the Rural Land Use District for
Approximately 731.581 Acres in South Kohala
District, Island of Hawaii, Tax Map Key No.
(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

DECLARATION OF NATALIA
BATICHTCHEVA

DECLARATION OF NATALIA BATICHTCHEVA

I, NATALIA BATICHTCHEVA, declare and state as follows:

1. I am the President of Waikoloa Highlands, Inc. ("**WHI**"), successor-in-interest to Waikoloa Mauka, LLC ("**WML**"), the original Petitioner in Docket No. A06-767.
2. When acquired the Petition Area in 2014, I became aware that the Project was mismanaged by the former manager, Mr. Stefan Martirosian.
3. Examples of Mr. Martirosian's mismanagement of the Project are: Mr. Martirosian mortgaged the Hawaiian lands to Aclaime Debt Partners, LLC for \$1.1 million USD, without having informed us, and used it for his own purposes.
4. Mr. Martirosian also kept extremely poor records related to this Project and almost never reported information up or down the chain of command at WHL or WHI. As an example, I recently found about subdivision tasks from one of our contractors.
5. Many of the records related to this Project are maintained in California and Russia.
6. Some records are maintained in Russian, and require translation to English prior to counsel's use.

7. Attached hereto as Exhibit D is a true and correct copy of a summary of the legal actions currently pending against Mr. Martirosian, prepared by Arch, Ltd.

8. On July 10, 2018, WHI retained the services of Mr. Joel LaPinta to assist WHI in development of the Project.

9. I am currently in Russia and am unable to submit the original copy of this Declaration to the Commission by the filing of the Motion for Continuance. Accordingly, this Declaration will be notarized and the original copy filed with the Commission as soon within one (1) week of the filing of the Motion.

I, NATALIA BATICHTCHEVA, do declare under the penalties of perjury that the foregoing is true and correct.

DATED: _____, July 24, 2018.



NATALIA BATICHTCHEVA
President
WAIKOLOA HIGHLANDS, INC.

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition Of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use District
Boundary Into the Rural Land Use District for
Approximately 731.581 Acres in South Kohala
District, Island of Hawaii, Tax Map Key No.
(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

DECLARATION OF DEREK B. SIMON

DECLARATION OF DEREK B. SIMON

I, DEREK B. SIMON, declare and state as follows:

1. I am an attorney with Carlsmith Ball LLP, attorneys for Waikoloa Highlands, Inc. ("WHI"), successor-in-interest to Waikoloa Mauka, LLC, the original Petitioner in Docket No. A06-767.
2. On July 20, 2018, I made a verbal request by way of telephone to Executive Director Daniel E. Orodener for an administrative continuance to the hearing on the Order to Show Cause ("OSC") issued by the Land Use Commission of the State of Hawai'i ("Commission") on July 3, 2018, which is presently scheduled to be heard by the Commission on August 22-23, 2018 (the "OSC Hearing").
3. During my conversation with Executive Director Orodener, I explained the circumstances underlying the present Motion, and explained why WHI believes that a continuance of the OSC Hearing is necessary for WHI to have a fair and meaningful opportunity to respond to the OSC, and that the requested continuance would also allow for a more complete record to be before the Commission at the OSC Hearing.

4. Executive Director Orodener stated that he was unwilling to administratively reschedule the OSC Hearing to a later date. At that time, I informed Executive Director Orodener that WHI would likely be proceeding with the present Motion.

5. On July 23, 2018, we received informal feedback from the Commission's staff that the hearing on this Motion will be scheduled immediately prior to the Commission's meeting on August 22, 2018.

6. Carlsmith Ball LLP was retained as counsel for WHI in June of 2018, just over one month ago. Counsel has been working diligently to obtain all relevant documentation related to the Project from WHI and its past consultants, but has been unsuccessful in locating all documents at the time of the filing of this Motion.

7. Attached hereto as **Exhibit 1** is a true and correct copy of the Quitclaim Deed dated October 16, 2014 and recorded in the State of Hawai'i Bureau of Conveyances ("**Bureau**") on October 22, 2014 as document Regular System Document No. A-66030880, obtained from Title Guaranty of Hawaii, LLC ("**TG**").

8. Attached hereto as **Exhibit 2** is a true and correct copy of a summary of some of Mr. Martirosian's mismanagement and fraudulent actions, including some pending legal actions against him, prepared by Arch, Ltd. and provided by WHI to Carlsmith Ball, and filed with the Commission as Exhibit D to WHI's Motion for Continuance filed on July 24, 2018.

9. Attached hereto as **Exhibit 3a** is a true and correct copy of map showing the County of Hawai'i ("**County**") zoning classification for Tax Map Key No. (3) 6-8-002:016 (the "**Petition Area**"), which was generated by my office from information obtained on the County GIS.

10. Attached hereto as **Exhibit 3b** is a true and correct copy of map showing the County's General Plan Land Use Pattern Allocation Guide Map classification for the Petition Area, which was generated by my office from information obtained on the County GIS.

11. Attached hereto as **Exhibit 4** is a true and correct copy of County Ordinance 13-29, obtained from the County Clerk on-line laserfiche.

12. Attached hereto as **Exhibit 5** is a true and correct copy of the WHI Shareholders' Action by Written Consent appointing Natalia Batichtcheva as Secretary, Chief Financial Officer, and Director of WHI, provided to Carlsmith Ball by WHI.

13. Attached hereto as **Exhibit 6** is a true and correct copy of the curriculum vitae of Mr. Joel La Pinta, provided to Carlsmith Ball by Mr. LaPinta on July 24, 2018.

14. Attached hereto as **Exhibit 7** is a true and correct copy of the Land Use Commission Conditions of Approval Matrix Summary of Actions to Date, which was prepared by my office.

15. Attached hereto as **Exhibit 8** is a true and correct copy of the Affordable Housing Agreement Waikoloa Highlands dated December 1, 2016, by and between WHI and the County of Hawai'i, obtained from the files of Mr. Sidney Fuke.

16. Attached hereto as **Exhibit 9** is a true and correct copy of the Subdivision Application to create the Affordable Housing Lot, dated March 22, 2017, obtained from the files of Mr. Sidney Fuke.

17. Attached hereto as **Exhibit 10** is a true and correct copy of the Warranty Deed dated June 1, 2017 and recorded in the Bureau on January 29, 2018, as Regular System Document No. A-66030880, obtained from TG.

18. Attached hereto as **Exhibit 11** is a true and correct copy of the Affordable Housing Release Agreement dated July 20, 2017, by and between the County of Hawai'i and WHI, obtained from the files of Mr. Sidney Fuke.

19. Attached hereto as **Exhibit 12** is a true and correct copy of the Letter of Transmittal from R.M. Towill Corporation to the County Department of Public Works ("DPW"), Engineering Division, dated March 17, 2008, transmitting the Waikoloa Roundabout At Waikoloa Road, Pua Melia Street & Paniolo Avenue Plans (Dated February 29, 2008), obtained from the files of Mr. Sidney Fuke.

20. Attached hereto as **Exhibit 13** is a true and correct copy of the Final Subdivision Approval No. SUB-09-000887 dated July 30, 2009 and the Final Subdivision Approval Map SUB-09-000887, obtained from the Planning Department, County of Hawai'i.

21. Attached hereto as **Exhibit 14** is a true and correct copy of the County Subdivision Approval creating the Affordable Housing Lot, Final Subdivision Approval No. SUB-17-001716 of Lot 2-B-2, dated May 15, 2017, obtained from the files of Mr. Sidney Fuke.

22. Attached hereto as **Exhibit 15** is a true and correct copy of the Second Time Extension Request from the County to Mr. Sidney Fuke, dated March 18, 2016, granting said extension of time, obtained from the County Planning Department.


23. Attached hereto as **Exhibit 16** is a true and correct copy of WHI's 2018 Department of Commerce and Consumer Affairs ("DCCA") Annual Report, dated August 6, 2018, obtained from DCCA's website.

24. Attached hereto as **Exhibit 17** is a true and correct copy of the Letter of Transmittal from R.M. Towill Corporation to DPW dated June 22, 2007, transmitting the

Preliminary Drainage Report for Waikoloa Highlands Subdivision, Increment 1 and 2 (Dated June 22, 2007), obtained from the files of Mr. Sidney Fuke.

I, DEREK B. SIMON, do declare under the penalties of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, August 8, 2018.



DEREK B. SIMON

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition Of
WAIKOLOA MAUKA, LLC

DOCKET NO. A06-767

CERTIFICATE OF SERVICE

To Amend the Agricultural Land Use District
Boundary Into the Rural Land Use District for
Approximately 731.581 Acres in South Kohala
District, Island of Hawaii, Tax Map Key No.
(3) 6-8-02:016 (por.)

CERTIFICATE OF SERVICE

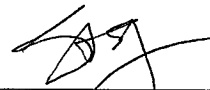
I hereby certify that a filed copy of the Statement of Position on Order to Show Cause,
was served upon the following by either hand delivery or depositing the same in the U.S. Postal
Service by regular or certified mail as noted:

<p>MICHAEL YEE, DIRECTOR Department of Planning, County of Hawai'i Aupuni Center 101 Pauahi Street, Suite 3 Hilo, HI 96720</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>JOSEPH K. KAMELAMELA, ESQ. Corporation Counsel Department of the Corporation Counsel County of Hawai'i Hilo Lagoon Centre, 101 Aupuni Street, Unit 325 Hilo, HI 96720 Attorneys for County of Hawai'i Department of Planning</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>LEO R. ASUNCION, JR. Director Office of Planning, State of Hawai'i 235 S. Beretania Street, Suite 600 Honolulu, HI 96813</p>	<p>HAND DELIVERY</p>

<p>DAWN TAKEUCHI APUNA, ESQ. Deputy Attorney General Department of the Attorney General, State of Hawai'i 425 Queen Street Honolulu, HI 96813</p> <p>Attorneys for Office of Planning, State of Hawai'i</p>	<p>HAND DELIVERY</p>
<p>Mr. Kevin C. Kellow Manager Waikoloa Mauka, LLC 1200 S. Brand Blvd. #202 Glendale, CA 91204</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>Parker Ranch, Inc. Attn: Nahua Guilloz 66-1304 Mamalahoa Hwy Kamuela, HI 96743</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>Time Warner Entertainment Company, L.P., dba Sun Cablevision 74-5605 Luhia Street Kailua-Kona, HI 96745</p> <p>and</p> <p>CSC Services of Hawaii, LLC 1600 Pauahi Tower 1003 Bishop St. Honolulu, HI 96813</p>	<p>U.S. MAIL, POSTAGE PREPAID</p> <p>HAND DELIVERY</p>
<p>Edwin DeLuz Trucking & Gravel, L.L.C. P.O. Box 9 Kamuela, HI 96743</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>Hawaii Electric Light Company, Inc. ATTN: Corporate Secretary P.O. Box 1027 Hilo, HI 96721</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>
<p>Transcontinental Development Co. HC02 P.O. Box 5050 Waikoloa, HI 96743</p>	<p>U.S. MAIL, POSTAGE PREPAID</p>

Waikoloa Village Association c/o Roger Wehrsig 68-1792 Melia St. Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID
GTE Hawaiian Telephone Company Incorporated c/o Hawaiian Telcom, Inc. Legal Department 1177 Bishop Street, Suite 15 Honolulu, HI 96813	U.S. MAIL, POSTAGE PREPAID
Waikoloa Water Co., Inc., dba West Hawaii Water Company P.O. Box 384809 Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID
Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Company P.O. Box 384809 Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID
Waikoloa Development Company Co. c/o Waikoloa Land Company 150 Waikoloa Beach Dr. Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID

DATED: Honolulu, Hawai'i, August 8, 2018.



STEVEN S.C. LIM
DEREK B. SIMON

Attorneys for
WAIKOLOA HIGHLANDS, INC.