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WAIKOLOA HIGHLANDS, INC.

LAND USE COMMISSION
STATE OF HAWAII

2018 NOV 20 P 3:23

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 Hawai'i, Tax Map Key No.
(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

WAIKOLOA HIGHLANDS, INC.'S LIST
OF EXHIBITS; LIST OF WITNESSES;
CERTIFICATE OF SERVICE

Hearing Date: November 28, 2018
Hearing Time: 9:30 a.m.

WAIKOLOA HIGHLANDS, INC.'S LIST OF EXHIBITS AND LIST OF WITNESSES

Waikoloa Highlands, Inc. ("WHI"), as successor-in-interest to Petitioner Waikoloa Mauka, LLC to that certain parcel of land consisting of approximately 731.581 acres and currently identified by Tax Map Key No. (3) 6-8-002: 016 (the "**Petition Area**"), by and through its legal counsel, Carlsmith Ball LLP, hereby respectfully submits to the Land Use Commission of the State of Hawai'i (the "**Commission**"), WHI's List of Exhibits and List of Witnesses to be called at the November 28, 2018 hearing in connection with the Order to Show Cause filed in this Docket on July 3, 2018, as directed by Commission Chair Jonathan Likeke Scheuer on November 2, 2018.

WHI reserves the right to amend its List of Exhibits and identify additional exhibits not expressly noted herein in response to any pleadings, arguments, exhibits or witnesses identified by any party.

WHI reserves the right to call as witnesses any witness named by any other party. WHI reserves the right to amend its List of Witnesses and identify additional witnesses not expressly noted herein in response to any pleadings, arguments, exhibits or witnesses identified by any party.

DATED: Honolulu, Hawai'i, November 20, 2018



STEVEN S.C. LIM
DEREK B. SIMON

Attorneys for
WAIKOLOA HIGHLANDS, INC.

**LAND USE COMMISSION DOCKET NO. A06-767
PETITIONER WAIKOLOA HIGHLANDS INC.'S LIST OF EXHIBITS**

Ex. No.	Description	Party Objections	Admit
Exhibits A-M were filed on July 24, 2018 with Waikoloa Highlands Inc.'s Motion to Continue Hearing on Order to Show Cause			
A.	Articles of Incorporation of Waikoloa Highlands, Inc., dated October 1, 2014, filed with Colorado Secretary of State		
B.	Quitclaim, Release and Assumption Agreement, dated October 15, 2014		
C.	Order to Show Cause, filed in Docket No. A06-767 on July 3, 2018		
D.	Statement in Relation of Legal Steps Undertaken Against Stefan Martirosian; Complaint for Damages and Declaratory Relief, <i>Vitoil Corporation v. Stepan Martirosian et al.</i> , Case No. BC714014, filed July 16, 2018 in the Superior Court of the State of California for the County of Los Angeles		
E.	Curriculum vitae of Joel K. LaPinta		
F.	County of Hawai'i Final Subdivision Approval No. SUB-09-000887 and the Final Plat Map, dated July 30, 2009		
G.	Affordable Housing Agreement, dated December 1, 2016, by and between Waikoloa Highlands, Inc. and the County of Hawai'i		
H.	County of Hawai'i Subdivision Application re Tax Map Key No. (3) 6-8-002:016, filed March 28, 2017		
I.	Warranty Deed, dated June 1, 2017 and recorded in the State of Hawai'i Bureau of Conveyances on January 29, 2018 as Regular System Document No. A-66030880		
J.	Joint Venture Agreement, dated April 29, 2017 and recorded in the State of Hawai'i Bureau of		

Ex. No.	Description	Party Objections	Admit
	Conveyances on May 7, 2010 as Regular System Document No. 2010-062607, by and between Waikoloa Mauka, LLC and Hawaiian Riverbend, LLC		
K.	2016 Annual Report for Docket No. A06-767, filed March 2, 2016		
L.	Affidavit of Chrystal Thomas Yamasaki, dated May 26, 2017, recorded in the State of Hawai'i Bureau of Conveyances on June 1, 2017 as Regular System Document No. A-63610545; County of Hawai'i Final Subdivision Approval No. SUB-17-001716 dated May 15, 2017 and Final Plat Map		
M.	Order to Show Cause, filed in Docket No. 05-755 on June 4, 2018		
Exhibits 1-17 were filed on August 8, 2018 with Waikoloa Highlands Inc.'s Statement of Position on Order to Show Cause in Docket No. A06-767			
1.	Quitclaim Deed, dated October 16, 2014 and recorded in the State of Hawai'i Bureau of Conveyances on October 22, 2014 as Regular System Document No. A-54080020		
2.	Statement in Relation of Legal Steps Undertaken Against Stefan Martirosian; Complaint for Damages and Declaratory Relief, <i>Vitoil Corporation v. Stepan Martirosian et al.</i> , Case No. BC714014, filed July 16, 2018 in the Superior Court of the State of California for the County of Los Angeles		
3.	3.a: Map showing the County of Hawai'i zoning designation for Tax Map Key No. (3) 6-8-002:016 3.b: Map showing the County of Hawai'i General Plan Land Use Pattern Allocation Guide designation for Tax Map Key No. (3) 6-8-002:016		
4.	County of Hawai'i Ordinance No. 13-29, effective March 13, 2013		
5.	Waikoloa Highlands, Inc. Shareholders' Action by Written Consent, dated May 9, 2016		
6.	Curriculum vitae of Joel K. LaPinta		

Ex. No.	Description	Party Objections	Admit
7.	Land Use Commission Conditions of Approval Matrix Summary of Actions to Date		
8.	Affordable Housing Agreement, dated December 1, 2016, by and between Waikoloa Highlands, Inc. and the County of Hawai'i		
9.	County of Hawai'i Subdivision Application re Tax Map Key No. (3) 6-8-002:016, filed March 28, 2017		
10.	Warranty Deed, dated June 1, 2017 and recorded in the State of Hawai'i Bureau of Conveyances on January 29, 2018 as Regular System Document No. A-66030880		
11.	Affordable Housing Release Agreement, dated July 20, 2017, by and between the Waikoloa Highlands, Inc. and the County of Hawai'i		
12.	Letter of Transmittal from R.M. Towill Corporation to the County of Hawai'i Department of Public Works, Engineering Division, dated March 17, 2008, transmitting the Waikoloa Roundabout At Waikoloa Road, Pua Melia Street & Paniolo Avenue Plans (dated February 29, 2008)		
13.	County of Hawai'i Final Subdivision Approval No. SUB-09-000887 and the Final Plat Map, dated July 30, 2009		
14.	County of Hawai'i Final Subdivision Approval No. SUB-17-001716 and Final Plat Map, dated May 15, 2017		
15.	Second Time Extension re SUB-89-000179 from the County of Hawai'i to Sidney M. Fuke, dated March 18, 2016		
16.	2018 State of Hawai'i Department of Commerce and Consumer Affairs Annual Report for Waikoloa Highlands, Inc., dated August 6, 2018		
17.	Letter of Transmittal from R.M. Towill Corporation to the County of Hawai'i, Department of Public		

Ex. No.	Description	Party Objections	Admit
	Works, dated June 22, 2007, transmitting the Preliminary Drainage Report for Waikoloa Highlands Subdivision, Increment 1 and 2 (dated June 22, 2007)		
Exhibits 18-37 were filed on October 12, 2018 with Waikoloa Highlands Inc.'s Supplemental Statement of Position on Order to Show Cause and Reversion of Petition Area in Docket No. A06-767			
18.	Waikoloa Highlands, Inc., Office of Planning, State of Hawai'i, and Planning Department County of Hawai'i's Joint Stipulation to Continue Hearing on Order to Show Cause and Reservation of Rights re Docket No. A06-767 (proposed/unexecuted)		
19.	Transcript of the State of Hawai'i Land Use Commission's September 6, 2018 hearing, prepared by Jean Marie McManus		
20.	Financing Commitment Letter from Armbusinessbank CJSC, dated August 13, 2018		
21.	Comment letter dated September 14, 2018, submitted on behalf of Waikoloa Highlands, Inc., to the State of Hawai'i Land Commission re Proposed Rule Amendments		
22.	<p>22: Summary of R.M. Towill Corporation Services Contract Amount (summary)</p> <p>22.a: Waikoloa Highlands Subdivision - Increment I (detailed accounting)</p> <p>22.b: Waikoloa Highlands Subdivision - Increment II (detailed accounting)</p> <p>22.c: SLU Boundary Amendment and EIS Preparation (detailed accounting)</p> <p>22.d: Waikoloa Highlands Subdivision - Off-Site Water (detailed accounting)</p> <p>22.e: Waikoloa Highlands Subdivision - Roundabout Design (detailed accounting)</p>		
23.	Affidavit of Paul J. Sulla Jr., Esq., dated October 10, 2018		
24.	State of Hawai'i Department of Land and Natural Resources, State Historical Preservation Division Preliminary Site Information Form for Requesting Hawai'i State Inventory of Historic Places		

Ex. No.	Description	Party Objections	Admit
	Numbers, filed August 8, 2018 by SM Affiliates on behalf of Waikoloa Highlands, Inc.		
25.	Map showing the Waikoloa Maneuver Area, provided by United States Army Corps of Engineers		
26.	English translations of court documents relating to the extradition of Stefan Martirosian, prepared by a certified translator at a translation bureau in Moscow, Russia		
27.	Resolution of Board of Directors of Arch, Ltd. Authorizing Stock Transfer, dated December 28, 2017		
28.	Corporate Structure of Waikoloa Highlands, Inc. as of October 11, 2018		
29.	Letter from Arch, Ltd. re Mr. Stefan Martirosian's involvement in the management of Arch, Ltd., dated October 3, 2018.		
30.	Letter re Resignation of Mr. Stefan Martirosian (from Waikoloa Mauka, LLC), dated June 19, 2017		
31.	Vitoil Corporation Shareholders' Action by Written Consent, dated June 19, 2017		
32.	Letter re Resignation of Mr. Stefan Martirosian (from Vitoil Corporation), dated June 19, 2017		
33.	Letter of Certification, dated October 12, 2018		
34.	Certificate of Incumbency for Arch, Ltd., dated July 18, 2018		
35.	Excerpts of County of Hawai'i Communication No. 45.30 re Bill No. 163, Draft 2 Relating to the General Plan, dated June 4, 2004		
36.	Map showing the Land Study Bureau classifications for Tax Map Key No. (3) 6-8-002:016		
37.	Map showing the Agricultural Lands of Importance to the State of Hawai'i classifications for Tax Map Key No. (3) 6-8-002:016		

Ex. No.	Description	Party Objections	Admit
Exhibits 38 was filed with the State of Hawai'i Land Use Commission at its October 24, 2018 hearing			
38.	Curriculum vitae of Irina Francis McGiff		
Exhibits 39-42¹ were filed on November 7, 2018 with Waikoloa Highlands Inc.'s Motion for Issuance of a Subpoena and Subpoena Duces Tecum			
39.	Excerpts of the transcript of the State of Hawai'i Land Use Commission's October 25, 2018 hearing, prepared by Jean Marie McManus		
40.	Three Copies ² of Subpoena for Representative of County of Hawai'i Office of Housing and Community Development re Docket No. A06-767		
41.	Three Copies of Subpoena <i>Duces Tecum</i> County of Hawai'i, Office of Housing and Community Development re Docket No. A06-767		
42.	Three Copies of Subpoena <i>Duces Tecum</i> County of Hawai'i, Mayor's Office re Docket No. A06-767		
Exhibits 43-44 were filed on November 15, 2018 with Waikoloa Highlands Inc.'s Motion for Issuance of a Subpoena to an Authorized Representative of the State of Hawai'i, Office of Planning			
43.	Email exchange between Derek B. Simon, Esq. and Dawn T. Apuna, Esq., re Waikoloa Highlands, Inc.'s request to examine a representative of the State of Hawai'i, Office of Planning, dated between November 11, 2018 and November 12, 2018		

¹ The numbering of Exhibits 39-42 were corrected (numbered 38-41 in error) through the Errata Statement Regarding Exhibit Numbering and Exhibit Copies for Waikoloa Highlands, Inc.'s Motion for Issuance of a Subpoena and Subpoenas Duces Tecum, filed November 7, 2018, filed with the Commission on November 8, 2018.

² Two additional copies (for a total of three) were filed through the Errata Statement Regarding Exhibit Numbering and Exhibit Copies for Waikoloa Highlands, Inc.'s Motion for Issuance of a Subpoena and Subpoenas Duces Tecum, filed November 7, 2018, filed with the Commission on November 8, 2018.

Ex. No.	Description	Party Objections	Admit
44.	Three copies of Subpoena for Representative of the State of Hawai'i Office of Planning re Docket No. A06-767		
Exhibits 45-64 were filed on November 19, 2018 with Waikoloa Highlands Inc.'s Second Supplemental Statement of Position on Order to Show Cause and Memorandum of Law			
45.	Transcript of the State of Hawai'i Land Use Commission's October 25, 2018 hearing, prepared by Jean Marie McManus		
46.	State of Hawai'i Land Use Commission's 2018 Proposed Administrative Rule Amendments to Section 15-15, HAR		
47.	State of Hawai'i Land Use Commission's Revision to LUC's Proposed Amendments to Chapter 15-15, HAR		
48.	<p>48a: Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment in Docket No. A05-755 (Hale Mua Properties, LLC), dated February 12, 2007</p> <p>48b: State of Hawai'i Land Use Commission's May 9, 2018 Meeting Minutes</p>		
49.	<p>49a: Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A92-680 (C. Brewer Properties, Inc.), dated January 7, 1993</p> <p>49b: Order Granting Motion to Withdraw Land Use Commission Approvals and Revert Land Use District Boundary Classification to Agriculture, filed September 20, 2000 in Docket No. A92-680</p>		
50.	<p>50a: Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment in Docket No. A06-770 (The Shopoff Group, L.P.), filed October 21, 2008</p> <p>50b: Central Pacific Bank's 2013 Annual Report</p> <p>50c: State of Hawai'i Land Use Commission's January 24, 2018 Meeting Minutes</p>		

Ex. No.	Description	Party Objections	Admit
51.	<p>51a: Amended Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A92-683 (Halekua Development Corporation), dated October 1, 1996</p> <p>51b: Order Granting Office of Planning's Motion for an Order to Show Cause to Rescind the Decision and Order dated on October 1, 1996, dated February 20, 2003</p> <p>51c: Halekua-Kunia, LLC's 2016 Annual Report</p> <p>51d: Halekua-Kunia, LLC's 2007 Annual Report</p> <p>51e: Order Granting Halekua Development Corporation's Oral Motion to Dismiss Order to Show Cause Proceeding, dated March 16, 2007</p> <p>51f: State of Hawai'i Land Use Commission's January 9, 2003 Minutes of Meeting</p>		
52.	<p>52a: Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A94-706 (Ka'ono'ulu Ranch), dated February 10, 1995</p> <p>52b: Piilani Promenade South, LLC and Piilani Promenade North, LLC's Motion to Stay Phase II of the Order to Show Cause Proceeding, filed April 8, 2013</p> <p>52c: Piilani Promenade South, LLC and Piilani Promenade North, LLC's 2012 Annual Report, filed August 30, 2013</p> <p>52d: State of Hawai'i Land Use Commission's August 23, 2012 Meeting Minutes</p> <p>52e: Status Report of Piilani Promenade South, LLC and Piilani Promenade North, LLC, Successor Petitioners to Kaonoulu Ranch, dated July 5, 2018</p> <p>52f: Findings of Fact, Conclusions of Law, and Decision and Order Denying the Acceptance of a Final Environmental Impact Statement, dated July 27, 2017</p> <p>52g: Piilani Promenade South, LLC and Piilani Promenade North, LLC's 2018 Annual Report, filed March 12, 2018</p>		
53.	<p>53a: Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A10-788 (Hawai'i Housing Finance and Development Corporation and Forest City Hawai'i Kona, LLC), dated</p>		

Ex. No.	Description	Party Objections	Admit
	<p>November 5, 2010</p> <p>53b: Hawai'i Housing Finance and Development Corporation's and Forest City Hawai'i Kona, LLC's 2017 Annual Report</p> <p>53c: State of Hawai'i Land Use Commission's January 24, 2018 Meeting Minutes</p> <p>53d: State of Hawai'i Land Use Commission's May 23, 2018 Meeting Minutes</p>		
54.	<p>54a: Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment in Docket No. A00-730 (Lanikai Properties, LLC), dated September 26, 2003</p> <p>54b: Lanikai Properties, LLC's 2017 Annual Report</p> <p>54c: State of Hawai'i Land Use Commission's January 24, 2018 Meeting Minutes</p> <p>54d: State of Hawai'i Land Use Commission's May 23, 2018 Meeting Minutes</p>		
55.	Transcript of the State of Hawai'i Land Use Commission's October 24, 2018 hearing, prepared by Jean Marie McManus		
56.	Written Direct Testimony of Joel K. LaPinta, dated November 18, 2018		
57.	Letter of Confirmation, dated November 9, 2018		
58.	Print out of the County of Hawai'i real property tax information for TMK No. (3) 6-8-002:057		
59.	<p>59a: Letter from Waikoloa Highlands, Inc. to Ikaika Ohana, dated November 16, 2018</p> <p>59b: Letter from Ikaika Ohana to Waikoloa Highlands, Inc., dated November 19, 2018</p>		
60.	Map showing portion of Tax Map Key No. (3) 6-8-002:016 identified in preliminary discussions between Waikoloa Highlands, Inc. and Ikaika Ohana for affordable housing development		
61.	Written Direct Testimony of Valery Grigoryants, dated November 16, 2018		

Ex. No.	Description	Party Objections	Admit
62.	Letter of Certification, dated November 8, 2018		
63.	63a: Letter of Certification, dated November 8, 2018 63b: Letter of Authorization, dated October 4, 2018		
64.	Written Direct Testimony of Natalia Batichtcheva, dated November 16, 2018		

**LAND USE COMMISSION DOCKET NO. A06-767
 WAIKOLOA HIGHLANDS, INC.'S LIST OF WITNESSES**

Name/Organization/Position	To Be Qualified as An Expert	Subject Matter	Exhibit Number(s)	Written Testimony	Length of Direct
Joel K. LaPinta	Real Estate Development and Sales	Marketing, development phasing, feasibility, and other related matters regarding the Project, the process of and respective timeline for developing the Project, and recent and ongoing discussions regarding the provision of affordable housing	<i>E.g.</i> , 6, 22-24, 56, 59	Yes	10- 20
Valery Grigoryants	N/A	WHI's corporate matters, decision-making, and Project history	<i>E.g.</i> , 2, 5, 20, 26-34, 57, 61-63	Yes	10- 20
Neil Gyotake or other representative(s) of the County of Hawai'i Office of Planning and Community Development	N/A	(i) WHI's satisfaction of Condition No. 9 under the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed in Docket No. A06-767 on June 10, 2008 (" D&O ") and other related matters; (ii) Plumeria at Waikoloa, LLC's (" PWL ") selection as the entity to take title to that certain 11.7-acre parcel of land (the " AH Parcel ") under that certain Affordable Housing	<i>E.g.</i> , 8-11, 14	No	10- 20

Name/Organization/Position	To Be Qualified as An Expert	Subject Matter	Exhibit Number(s)	Written Testimony	Length of Direct
		<p>Agreement, dated December 1, 2016 (the “AH Agreement”); (iii) the County of Hawai‘i’s involvement in the sale of the AH Parcel from PWL to Pua Melia LLC (“PML”); (iv) the number of affordable housing units WHI is required to provide to satisfy D&O Condition No. 9; (v) the number of affordable housing units the County of Hawai‘i will be approving for PML’s project on the AH Parcel; (vi) whether the County of Hawai‘i will be approving a hardware store and/or commercial uses as part of PML’s project on the AH Parcel and whether those uses will reduce the usable land for affordable housing units on the AH Parcel; (vii) the County of Hawai‘i’s knowledge of the drainage easement that purportedly traverses the AH Parcel at the time the AH Agreement and that certain Affordable Housing Release Agreement, dated July 20, 2017, were negotiated and executed; (viii) any negotiations between the County and PWL and/or PML regarding the</p>			

Name/Organization/Position	To Be Qualified as An Expert	Subject Matter	Exhibit Number(s)	Written Testimony	Length of Direct
		provision of affordable housing in the Waikoloa Area; and (ix) any other matters directly relevant and material to the Commission's Order to Show Cause, filed July 3, 2018.			
Leo R. Asuncion or other representative(s) of State of Hawai'i Office of Planning	N/A	All past, present and pending Commission proceedings on: (i) Status Reports or similar Commission actions relating to potential non-performance by petitioners with the conditions of approval for their respective D&Os; and (ii) Orders to Show Cause or other similar Commission actions that have resulted in, or may result in, reclassification or reversion of a D&O district boundary amendment.	N/A	No	10- 20

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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing in the U.S. Postal Service by regular or certified mail as noted to the following parties on the date below:

MICHAEL YEE, DIRECTOR
Department of Planning, County of Hawai'i
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720

U.S. CERTIFIED MAIL-RETURN RECEIPT
POSTAGE PREPAID

JOSEPH K. KAMELAMELA, ESQ.
Corporation Counsel
Department of the Corporation Counsel
County of Hawai'i
Hilo Lagoon Centre,
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Hilo, HI 96720

U.S. CERTIFIED MAIL-RETURN RECEIPT
POSTAGE PREPAID

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Glendale, CA 91204

U.S. MAIL, POSTAGE PREPAID

DATED: Honolulu, Hawai'i, November 20, 2018.



STEVEN S.C. LIM
DEREK B. SIMON

Attorneys for
WAIKOLOA HIGHLANDS, INC.