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LAND USE COMMISSION
STATE OF HAWAII

2018 NOV 14 A 11:39

Attorneys for the OFFICE OF PLANNING
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A06-767
)	
WAIKOLOA MAUKA, LLC)	OFFICE OF PLANNING'S RESPONSE
)	TO WAIKOLOA HIGHLANDS, INC.'S
To amend the Agricultural Land Use District)	MOTION FOR ISSUANCE OF A
Boundary Into the Rural Land Use District)	SUBPOENA AND SUBPOENAS DUCES
for Approximately 731.581 in South Kohala)	TECUM; CERTIFICATE OF SERVICE
District, Island of Hawaii, Tax Map Key No.)	
(3) 6-8-002:016 (por.))	
)	
)	
)	

**OFFICE OF PLANNING'S RESPONSE TO WAIKOLOA HIGHLANDS, INC.'S
MOTION FOR ISSUANCE OF A SUBPOENA AND SUBPOENAS DUCES TECUM**

The Office of Planning ("OP") provides this response to Waikoloa Highlands, Inc.'s ("WHI's" or "Petitioner's") Motion for Issuance of a Subpoena and Subpoenas Duces Tecum, filed with the Land Use Commission ("Commission") on November 7, 2018 ("Motion").

OP takes no position on the Subpoena compelling the attendance and oral testimony of a representative of the County Office of Housing and Community Development ("OHCD").

However, OP objects to the Subpoenas Duces Tecum compelling the OHCD and the Office of

the Mayor to produce “copies of their respective files relating to” the following seven listed issues:

- (1) the AH Agreement;
- (2) the June 1, 2017 conveyance of the AH Parcel by WHI to Plumeria at Waikoloa, LLC;
- (3) the AH Release;
- (4) the April 24, 2018 conveyance of the AH Parcel from PWL to Pua Melia LLC;
- (5) PML’s proposed mixed-use development on the AH Parcel;
- (6) any negotiations between the County and PWL and/or PML regarding the provision of affordable housing in the Waikoloa area; and
- (7) any other matters directly relevant and material to the Commission’s Order to Show Cause, filed July 3, 2018 (“seven issues”).

Page 2 of Petitioner’s Motion.

The Subpoenas Duces Tecum compelling the OHCD and the Office of the Mayor to produce “copies of their respective files relating to” the seven issues fails to comply with Hawaii Administrative Rules (“HAR”) § 15-15-69(b), which governs the issuance of subpoenas duces tecum in Commission hearings. HAR § 15-15-69(b) states, in pertinent part, that motions for the issuance of subpoenas shall, “[s]pecify the particular document or records, or part thereof, desired to be produced.” Petitioner’s request for the “files relating to” the seven issues fails to “specify the particular document or records.” It is a general description of information rather than a request for a particular document. On that basis alone, therefore, the Subpoena Duces Tecum should be denied.

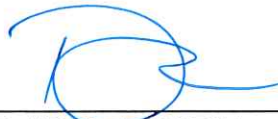
Notably, the Commission has already admitted into evidence through the Petitioner’s exhibits and without objection by any of the Parties, the AH Agreement, the AH Release, as well as other documents related to the affordable housing requirement D&O Condition No. 9. If there is a specific document or record relevant to the affordable housing requirement that Petitioner is seeking, Petitioner should have specified it within the Subpoenas Duces Tecum.

In addition, the Subpoenas Duces Tecum is duplicative of the Subpoena. Petitioner cites its reasons for the production of the “files relating to” the seven issues as “the reasons discussed in Section IV.A., supra.” *Pgs. 9-10 of the Petitioner’s Memorandum in Support of Motion.* Section IV.A pertains to the discussion of the “Subpoena For Representative of OHCD to Appear and Orally Testify at the OSC Hearing”. *Id.* Therefore, Petitioner’s reasons for the Subpoenas Duces Tecum are identical to those reasons for the Subpoena of the OHCD witness. HAR § 15-15-63(b) states that “the [C]ommission shall as a matter of policy provide for the exclusion of... unduly repetitious evidence...” Petitioner has failed to demonstrate that the reasons for, or the evidence it seeks through, the Subpoenas Duces Tecum is not repetitious or duplicative of the Subpoena.

Petitioner has cast a wide net with the phrase “files relating to” rather than specifically identifying documents and their relevancy to the particular issues it wishes to examine. In launching a fishing expedition for unspecified information, the Motion for Subpoenas Duces Tecum is noncompliant with HRS § 15-15-69(b), duplicative of the Subpoena, and runs counter to the interests of quasi-judicial efficiency. Therefore, the Commission should deny the Motion for Subpoenas Duces Tecum.

DATED: Honolulu, Hawai‘i, November 14th, 2018.

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STATE OF HAWAII



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Of Land At South Kohala, Island Of Hawaii,)
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CERTIFICATE OF SERVICE

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

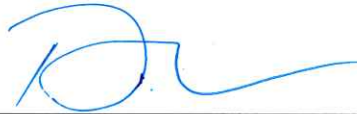
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DATED: Honolulu, Hawai'i, November 14th, 2018.

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