

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII

2019 SEP -6 P 3:46

In the Matter of the Application of)
)
LĀNA`I RESORTS, LLC, dba PŪLAMA) Docket No. A19-809
LĀNA`I)
)
To Amend the Land Use District)
Boundaries of certain land situated at)
Lāna`i City, Island of Lāna`i, consisting of)
approximately 200 acres from the)
Agricultural District to the Urban District,)
Tax Map Key No. (2) 4-9-02:01 (por.))
_____)

**PETITIONER'S AMENDED MOTION REQUESTING THE LAND USE
COMMISSION TO BE THE APPROVING AGENCY FOR AN ENVIRONMENTAL
ASSESSMENT AND FOR ISSUANCE OF ANTICIPATED NEGATIVE
DECLARATION OR ANTICIPATED FINDING OF NO SIGNIFICANT IMPACT;
MEMORANDUM IN SUPPORT OF PETITIONER'S AMENDED MOTION**

AND

CERTIFICATE OF SERVICE

MORIHARA LAU & FONG LLP

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Attorneys for Petitioner
LĀNA`I RESORTS, LLC

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Petitioner LĀNA`I RESORTS, LLC, a Hawai`i limited liability company, doing business as PŪLAMA LĀNA`I (“Petitioner”), whose address is 733 Bishop Street, Suite 2000, Honolulu, Hawai`i 96873, by and through its attorneys, Morihara Lau & Fong LLP, respectfully requests the State Land Use Commission (“LUC”) to grant the following relief:

1. That the Petitioner’s Motion Requesting the [LUC] to be the Approving Agency for an Environmental Assessment (“EA”), filed on August 23, 2019 (“Motion”) be amended to include a request that the LUC also: (a) determine that an anticipated negative declaration or anticipated finding of no significant impact pursuant to Chapter 343, Hawaii Revised Statutes (“HRS”), is warranted in this docket; and (b) file notice thereof, together with a draft EA, with the State of Hawai`i

Department of Health, Office Environmental Quality Control (“OEQC”).

2. The Motion was filed pursuant to Chapters 205 and 343, HRS, Hawai'i Administrative Rules (“HAR”) Chapter 15-15 (“LUC Rules”), and Chapter 11-200 (“Old EA/EIS Rules”) and must now be amended to reflect the repeal of the Old EA/EIS Rules that were replaced by HAR Chapter 11-200.1 (“New EA/EIS Rules”), effective August 9, 2019, signed into law on July 30, 2019 by Governor David Ige.¹ As such, the New EA/EIS Rules provide, in pertinent part, that they “shall apply immediately upon taking effect” and that the Old EA/EIS Rules “shall continue to apply to environmental review of agency and applicant actions which began prior to the adoption of” the New EA/EIS Rules. See HAR § 11-200.1-32(a), (b). For the purposes of HAR § 11-200.1-32, OEQC has clarified that the “environmental review of . . . applicant actions” commences upon, among other things, the publication of a draft EA with OEQC.

3. Petitioner has not yet published a draft EA with OEQC. Therefore, environmental review of Petitioner's Motion will be processed under the New EA/EIS Rules, and Petitioner hereby amends the Motion to conform to the New EA/EIS Rules to the extent necessary for full consideration of and action on the Motion at the LUC's meeting presently scheduled for September 25, 2019.

4. Such other and further relief as the LUC deems just and proper.

These amendments are being requested pursuant to HAR § 15-15-70, and are supported by the Memorandum in Support of Petitioner's Amended Motion attached

¹ On September 4, 2019, Petitioner filed the Errata to note that all repealed administrative rules referencing HAR Chapter 11-200 in the Motion were to be replaced with the corresponding provision set forth under HAR Chapter 11-200.1.

hereto and incorporated herein. Petitioner notes that, with respect to the significance criteria set forth in HAR § 11-200.1-13, the analysis and conclusions set forth in (a) Petitioner's Memorandum in Support of Motion, filed on August 23, 2019, and (b) the draft EA attached as Exhibit 1 to the Motion ("Draft EA") remains valid and well supported. Petitioner further notes that the substantive contents of the Draft EA comply with the New EA/EIS Rules, and that any necessary revisions to the Draft EA will be made prior to publication of Petitioner's draft EA with OEQC.

Petitioner hereby requests a hearing pursuant to HAR § 15-15-70(c).

DATED: Honolulu, Hawaii, September 6, 2019.



YVONNE Y. IZU
KRIS N. NAKAGAWA
LIANNA L. FIGUEROA

Attorneys for Petitioner
LĀNA'I RESORTS, LLC

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MEMORANDUM IN SUPPORT OF PETITIONER’S AMENDED MOTION

Petitioner LĀNA`I RESORTS, LLC, a Hawai`i limited liability company, dba PŪLAMA LĀNA`I (“Petitioner”) respectfully submits this Memorandum in Support of Petitioner’s Amended Motion.

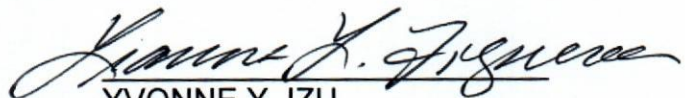
In the Petitioner’s Amended Motion, Petitioner requests to amend Petitioner’s Motion Requesting the Land Use Commission (“LUC”) to be the Approving Agency for an Environmental Assessment (“EA”) and Memorandum in Support of Motion filed on August 23, 2019 (“Motion”) by also requesting that the LUC determine that an anticipated negative declaration or anticipated finding of no significant impact pursuant to Chapter 343, Hawaii Revised Statutes (“HRS”), is warranted in this docket.

Based on the information contained in, and the technical studies in support of, the draft environmental assessment (“Draft EA”) for the Miki Basin Industrial Park, which was attached as Exhibit 1 to the Motion, the development of the Miki Basin Industrial Park will not have a significant effect, and, therefore, it is not anticipated that

an environmental impact statement will be required. Specifically, Chapter 6 of the Draft EA (pp. 123-128) applies the significance criteria set forth under Hawai'i Administrative Rules ("HAR") § 11-200.1-13 and provides the bases for an anticipated Finding of No Significant Impact ("FONSI").

Therefore, Petitioner respectfully requests that the LUC agree to be the Approving Agency for the EA prepared on behalf of Petitioner to assess the environmental effects of the district boundary amendment and the development of the Miki Basin Industrial Park.

DATED: Honolulu, Hawaii, September 6, 2019.



YVONNE Y. IZU
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LIANNA L. FIGUEROA
Attorneys for Petitioner

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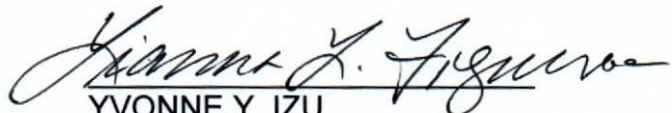
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following by depositing the same in the U.S. Postal Service.

Office of Planning
State Office Tower
235 S. Beretania Street
Suite 600
Honolulu, HI 96813

County of Maui Planning Department
2200 Main Street
One Main Plaza, Suite 315
Wailuku, HI 96793

DATED: Honolulu, Hawaii, September 6, 2019.



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