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BEFORE THE LAND USE COMMISSION OF THE
STATE OF HAWAII

In the Matter of the Petition of:) DOCKET NO. A11-791
)
HG KAUI JOINT VENTURE, LLC) INTERVENOR'S SUBMISSION OF OFFER
To Amend the Land Use District Boundary of) OF PROOF FOR RELEVANCE OF
Certain Lands Situated at Kapa'a, Island of) EXHIBIT NOS. I-53, I-55, I-56, I-58, I-99;
Kauai, State of Hawai'i, consisting of) CERTIFICATE OF SERVICE
approximately 96 Acres, from the Agricultural)
Land Use District to the Urban Land Use) Hearing Dates: March 10-11 & 24-25, 2021
District, Kauai Tax Map Key 4-3-03: por 01.)

INTERVENOR'S SUBMISSION OF OFFER OF PROOF FOR RELEVANCE OF EXHIBIT
NOS. I-53, I-55, I-56, I-58, I-99

Intervenor LIKO MARTIN respectfully submits this offer of proof for the relevance of exhibit nos. I-53, I-55, I-56, I-58, I-99. This submission is filed pursuant to the Commission's oral orders at its meeting on March 10 and 11th, 2021 and Hawai'i Revised Statutes (HRS) §91-10.

Only evidence that is "irrelevant, immaterial, or unduly repetitious evidence" is to be excluded. HRS §91-10(1); *In re Waiola O Moloka'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664, 705-06 (2004) (Commission's hearing officer erred by precluding cross-examination of a witness on grounds other than irrelevance, immateriality, or repetitiousness) (footnote omitted); *Dependents of Cazimero v. Kobala Sugar Co.*, 54 Haw. 479, 481, 510 P.2d 89, 91 (1973) (agency's refusal "to hear the testimony of an expert witness because of internal, previously unpromulgated policy reasons" violated HRS §91-10(1)). If evidence that could have been admissible is excluded, "a new trial or rehearing cannot be avoided." *Cazimero*, 54 Haw. at 484, 510 P.2d at 93 quoting 3 Larson, Workmen's Compensation Law

§ 79.10 (1971). Evidence is material where it has “some logical connection with the facts of the case or the legal issues presented.” *Black’s Dictionary* at 676. Evidence is “relevant” where it “tend[s] to prove or disprove a matter in issue.” *Id.* at 677; Hawai‘i Rules of Evidence, Rule 401 (“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence). The following exhibits are “relevant” to this Commission’s deliberations on Petitioner HG KAUAI JOINT VENTURE, LLC’s (Petitioner) pursuant to HRS §205-17.

Exhibit No. I-53 consists in the article by Scot K. Izuka et al, “Effects of Irrigation and Rainfall Reduction on Ground-water Recharge in the Lihue Basin, Kauai, Hawai‘i” U.S. Geological Survey Scientific Investigations Report Number 2005-5146 (2005). This article describes relationship between surface and groundwater in the Līhu‘e basin and references geological conditions. Exh. I-53 at 4.¹ Geological conditions in the Līhu‘e Basin are relevant to groundwater development challenges and Petitioner’s proposal to develop groundwater in this area. *See* Exh. I-51 (Dr. Asquith witness statement); Exh. I-107 (Matt Rosener, P.E. witness statement). The relationship between surface and groundwater in Līhu‘e is relevant to whether the proposed well will have an impact on other wells or surface water resources. *Id.* Water is a cultural resource and a public trust resource. These facts have a logical connection with the facts of the case or the legal issues presented in these proceedings. *See* Hawai‘i Const. art. XI, §§1, 7, & 9; Hawai‘i Const. art. XII, §12; HRS §205-17(3)(A) (preservation or maintenance of important natural systems or habitats); HRS §205A-2(c)(4)(E) (“[p]romoting water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.”); HAR §15-15-18(2)(B) (availability of services); HAR §15-15-77(b)(3)(B) (preservation and maintenance of valued cultural resources and activities, and, historical, or natural resources, including water resource uses); *Ka Pa‘akai o Ka ‘āina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000) (implementing constitutional protections for cultural practitioners); *Lana‘ians for Sensible Growth v. Land Use Comm’n*, 146 Hawai‘i 496, 504–05, 463 P.3d 1153, 1162–62 (2020) (commission duties to public trust water resources).

Exhibit I-55 consists in the report *Mālama ‘Āina: A Conversation about Maui’s Farming Future*, a project of the Maui Tomorrow Foundation, prepared by Jennifer Pell (Oct. 2016). This report

¹ Pincites refer to pages as seen in an electronic PDF viewer.

discusses transitioning former sugarcane lands into regenerative agricultural projects, including planting multi-functional wind breaks to assist in crop growing. Exh. I-55 at 14; Exh. I-16 at 3, 5 (Martin witness statement). The report is relevant to the proposal to remove the parcel from the agricultural district and the agricultural resources that will be foreclosed should the Commission decide to grant the petition. *See* HRS §205-17(3)(C) (consider the “[m]aintenance of other natural resources relevant to Hawai‘i’s economy including, but not limited to agricultural resources”); HAR §15-15-77(b)(3)(C) (same); HRS chapter 165 (the Hawai‘i Right to Farm Act).

Exhibit I-56: consists in excerpts from the *Hawai‘i Housing Planning Study, 2019*, prepared by SMS Research & Marketing Services, Inc. for the Hawai‘i Housing Finance and Development Corp. (Dec. 2019). This housing study discusses housing needs and housing market trends, including “off-island and on-island demand for second homes and real estate investments[,]” which the Petitioner fails to establish will not result in investors and new residents “scooping up the supply and raising prices, thereby excluding local families that want to live and work in the Kapa‘a area from purchasing the units.” Exh. I-25 at 5 (Mayor Yukimura witness statement). The housing study is relevant to applicable standards. *See e.g.* HRS §205-17(3)(F) (consideration of “provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups”); HAR §15-15-77(b)(3)(F); HRS §205A-2(c)(5)(C)(iii) (providing a policy of consideration if a development is important to the State's economy).

Exhibit I-58 consists in a book chapter, Lance Collins, Ph.D., “Fast-Tracking the Luxury Housing Crisis in West Maui,” in *Social Change in West Maui* (North Beach West Maui Benefit Fund, Lahaina 2019). Exhibit I-58 describes how the production of market rate units accelerates the need for more affordable housing in Hawai‘i through a concomitant increase in the need for services and workers. The book chapter is relevant to applicable standards. *See e.g.* HRS §205-17(3)(F) (consideration of “provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups”); HAR §15-15-77(b)(3)(F); HRS §205A-2(c)(5)(C)(iii) (providing a policy of consideration if a development is important to the State's economy).

Exhibit I-99 consists in excerpts from chapter 7 from Dr. Chip Fletcher’s *On the Shores of Paradise* (University of Hawai‘i Press, 2010). Dr. Fletcher’s chapter describes water pollution consequent to sewage treatment in Hawai‘i, including the Wailua Wastewater Treatment Plan sewage outfalls at Wailua, Kaua‘i, which are in less than 130 feet of water. Exh. I-99 at 2, 5. The project proposes to utilize the Wailua Wastewater Treatment Plant. Dr. Fletcher’s information is relevant to applicable standards. Hawai‘i Const. art. XI, §§1, 7, & 9; Hawai‘i Const. art. XII, §12; HRS §205-

17(3)(A) (preservation or maintenance of important natural systems or habitats); HRS §205A-2(c)(4)(E) (“[p]romoting water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.”); HRS §205A-2(c)(1)(B)(v) (describing a policy inclusive of “regulating point and nonpoint sources of pollution to protect, and where feasible, restor[ing] the recreational value of coastal waters”); HRS §205A-2(c)(4)(D) (describing a policy to “[m]inimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs”; HAR §15-15-18(2)(B) (availability of services); HAR §15-15-77(b)(3)(B) (preservation and maintenance of valued cultural resources and activities, and, historical, or natural resources, including water resource uses); *Ka Pa‘akai o Ka ‘āina v. Land Use Comm’n*, 94 Hawai‘i 31, 7 P.3d 1068 (2000); *Lana‘ians for Sensible Growth v. Land Use Comm’n*, 146 Hawai‘i 496, 463 P.3d 1153 (2020).

DATED: Honolulu, Hawai‘i

March 16, 2021



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_____)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was served on the following via email pursuant to the Executive Director's email dated December 15, 2020:

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DATED: Honolulu, Hawaii

March 16, 2021

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