

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII



In the Matter of the Petition of)	DOCKET NO. A11-790
)	
KULA RIDGE, LLC)	OFFICE OF PLANNING AND
)	SUSTAINABLE DEVELOPMENT'S
)	AMENDED STATEMENT OF POSITION
To Amend the Land Use District Boundaries)	TO THE ORDER TO SHOW CAUSE;
Of Approximately 34.516 Acres Of Land)	AMENDED LIST OF EXHIBITS;
From The Agricultural Land Use District)	EXHIBITS 1A, 1B, 2 AND 3; AND
Into The Urban Land Use District And)	CERTIFICATE OF SERVICE
Approximately 16.509 Acres Of Land From)	
The Agricultural Land Use District Into The)	
Rural Land Use District At Kula, Makawao,)	
Maui, Hawaii, Tax Map Key: 2-3-01: Por.)	
23 And 174)	
)	

OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S
AMENDED STATEMENT OF POSITION TO THE ORDER TO SHOW CAUSE

The Office of Planning and Sustainable Development ("OPSD") has no objection to the Order To Show Cause ("OSC") issued by the Land Use Commission ("LUC") dated June 3, 2021.

Based on information provided to OPSD by various State agencies regarding the Petitioner Kula Ridge, LLC's ("Petitioner") performance according to conditions imposed or the representations or commitments made by the Petitioner in the Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment ("D&O"), dated February 21, 2012, OPSD finds that conditions remain unfulfilled by the Petitioner. OPSD therefore has no objection to the Land Use Commission's ("LUC") reversion of the approximately 51.025 acres of land at Kula, Makawao, Maui, Hawaii, identified as Tax Map Key

Nos. (2) 2-3-001-023 (por.) and 174 (the “Petition Area”) from the Urban District (34.516 acres) and Rural District (16.509 acres) to its former Agricultural District land use classification.

- I. Condition 1. Affordable Housing. *Petitioner shall design and construct, or have constructed, for occupancy, 70 affordable housing units within the Petition Area. Fifty-nine of the affordable units will be constructed as set forth in Resolution No. 10-57, dated October 19, 2010, and the Residential Workforce Housing Agreement, as approved by the Maui County Council and shall satisfy in full the affordable housing requirements under Resolution No. 10-57. Petitioner shall construct the 59 affordable units at a rate of two single-family homes or one senior duplex for each market rate home built, or market lot sold, as required by Resolution No. 10-57.*

The remaining 11 affordable housing units to be constructed on the Petition Area are not required under Resolution No. 10-57, and may be available as affordable housing credits to satisfy affordable housing requirements for other property, if permitted by County law.

To the extent practicable, the 70 affordable units shall be sold for less than the maximum amounts established by the DHHC’s Sales Price Guidelines matrix.

The State Hawaii Housing Finance and Development Corporation (“HHFDC”) by letter dated June 30, 2021, (Exhibit 1A), indicated that while they are concerned with Petitioner’s non-compliance, they “take no position on the reversion of the Petition Area to its Agricultural Classification.” Furthermore, in an email dated June 30, 2021, HHFDC also indicated that they and the County of Maui Department of Housing & Human Concerns, are not interested in taking over the housing project. (Exhibit 1B).

- II. Condition 3. Wastewater Facilities. *Petitioner shall design and install IWS for all housing units in the Project in accordance with DOH Variance Application No. WW 242, granted on June 20, 2007. Each IWS shall be required to have an active and continuous O&M service program, to include annual inspection and reporting to DOH, provided through a single entity for all Project IWSs, to ensure optimal, safe, successful, and long-term use of the IWS. The O&M service program requirement shall be written into each initial deed for each unit sold in the Project and into the Project CC&R’s.*

The State Department of Health (“DOH”) advised OPSD via letter dated June 25, 2021 that the variance for individual wastewater systems has expired. DOH further states that they are

no longer monitoring the progress of the conditions to this Petition, and that Petitioner will need to apply for a new variance, which may not be granted. (Exhibit 2)

III. Condition 4. Traffic Impact Mitigation. *Petitioner shall mitigate all Project-generated transportation impacts in accordance with a TIAR, and any updates thereto, that has been reviewed and approved by the DOT and the County of Maui Department of Public Works (“DPW”). Petitioner shall fund, construct, and implement all transportation improvements and other measures recommended and/or required in the approved TIAR, or any updated TIARs, as determined by DOT and the DPW. Petitioner shall submit an updated TIAR for DOT review and acceptance, which must be accepted by DOT. The accepted TIAR shall be submitted to the DPW for review and acceptance prior to final subdivision approval. Upon request by DOT and the DPW, additional updates to the TIAR shall be submitted every five years after the date of this Decision and Order approving the Petition, until the mitigation measures have been completed.*

Petitioner shall submit the updated TIAR to the DOT and the DPW for their review and approval within six months of the effective date of the Decision and Order approving the Petition.

The State Department of Transportation has informed OPSD that the updated TIAR was accepted, however the Petitioner has not fulfilled the required improvements. “However, we confirm that if the land is reverted back to its State Agricultural classification[s] and the improvements are not fulfilled, this will not affect any of our long range, improvement plans for our State infrastructure on Maui.” Furthermore, DOT does not have any records of the Petitioner submitting any subdivision application or County review requests to DOT. (Exhibit 3).

IV. Condition 10. Water System Improvements and Condition 11. Water Supply Plan. At a Land Use Commission status hearing on this Petition on April 14, 2021, the Petitioner indicated that they had difficulty in obtaining appropriate infrastructure for water and sewer connections from the County of Maui.

V. Conditions 23. Notice of Imposition of Conditions and Condition 24. Recordation of Conditions. The 2020 Annual Report indicates that Petitioner has complied with these conditions.

- VI. Condition 20. Compliance with Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classifications, or change to a more appropriate classification.

POSITION

Petitioner's non-fulfillment of the above referenced conditions of the D&O demonstrates Petitioner's failure to develop the reclassified area in substantial compliance with Petitioner's representations made to the LUC. Accordingly, OPSD does not oppose the LUC's reversion of the Petition Area to its former Agricultural Land Use District classification.

DATED: Honolulu, Hawaii, July 8, 2021.

OFFICE OF PLANNING AND
SUSTAINABLE DEVELOPMENT
STATE 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, Hawaii, July 8, 2021.

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