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BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition) DOCKET NO. A05-756
)
of)
)
KAANAPALI DEVELOPMENT CORP., a)
Hawaii corporation, to Amend the)
Agricultural Land Use District Boundary for)
approximately 849.77 acres of land at)
Honokowai, Hanakoo, Kuhua and)
Kapunakea, Kaanapali, Island and County of)
Maui, State of Hawaii, bearing tax map key)
numbers 4-4-2:39, 4-4-2:40, 4-4-2:41, 4-4-)
2:42 and 4-4-6: portion of 70 (Second)
Taxation Division))
)

(KDC.3)Petition

PETITION FOR DISTRICT BOUNDARY AMENDMENT

EXHIBITS "A" – "M"

VERIFICATION

PETITION FOR DISTRICT BOUNDARY AMENDMENT

KAANAPALI DEVELOPMENT CORP. ("Petitioner"), a Hawaii corporation, by its attorney, David H. Nakamura, hereby petitions the Land Use Commission of the State of Hawaii (the "Commission"), pursuant to §§205-4 and 343-5, HAW. REV. STAT., and the rules promulgated thereunder, for: (a) a determination that the Commission is the "accepting authority" for the environmental impact statement preparation notice and the environmental impact statement for the Petitioner's project further described herein; and (b) a decision and order amending the land use classification, from the state land use agricultural district to the state land use urban district, of approximately 849.77 acres of land situate at Honokowai, Hanakoo, Kuhua and Kapunakea, Kaanapali, Island and County of Maui, State of Hawaii. Petitioner states as follows in support of this Petition For District Boundary Amendment (the "Petition"):

I.

IDENTITY OF PETITIONER

Petitioner is a Hawaii corporation, whose principal place of business is in Chicago, Illinois, and whose place of business and mailing address in the State of Hawaii is 10 Hoohui Road, Suite 304 and 305, Lahaina, Maui, Hawaii 96761.

II.

COMMUNICATIONS TO PETITIONER

All communications and correspondence in regard to this Petition should be delivered to David H. Nakamura, attorney for Petitioner, whose mailing address is 38 South Market Street, Wailuku, Maui, Hawaii 96793.

III.

DESCRIPTION OF PETITION LANDS

Petitioner owns the following parcels of land variously situated at Honokowai, Hanakoo, Kuhua and Kapunakea, Kaanapali, Island and County of Maui, State of Hawaii (collectively the "KDC Lands").

(a) An approximately 224.195 acre parcel of land, bearing tax map key number 4-4-2:39 (Second Taxation Division), and more particularly described on Exhibit "A" attached hereto and made a part hereof ("Lot 39");

(b) An approximately 93.243 acre parcel of land, bearing tax map key number 4-4-2:40 (Second Taxation Division), and more particularly described on the attached Exhibit "A" ("Lot 40");

(c) An approximately 16.300 acre parcel of land, bearing tax map key number 4-4-2:41 (Second Taxation Division), and more particularly described on the attached Exhibit "A" ("Lot 41");

(d) An approximately 1.203 acre parcel of land, bearing tax map key number 4-4-2:42 (Second Taxation Division), and more particularly described on the attached Exhibit "A" ("Lot 42"); and

(e) An approximately 520.043 acre portion of a parcel of land, bearing tax map key number 4-4-6:70 (Second Taxation Division), and more particularly described on the attached Exhibit "A" ("Lot 70").

The County of Maui owns an approximately 4.252 acre parcel of land, which encompasses Puukolii Road, a public highway (the "County Parcel"). Being owned by the County of Maui, the County Parcel does not have a tax map key number.

The locations of the KDC Lands are shown on the tax maps attached hereto as Exhibits "B-1" and "B-2" and made a part hereof. The location of the County Parcel is shown on the attached Exhibit "B-1".

Petitioner seeks the reclassification, from the state land use agricultural district to the state land use urban district, of the entire portions of Lot 39, Lot 40, Lot 41, Lot 42 and the County Parcel, and most of Lot 70 (collectively the "Petition Area").

The Petition Area comprises an area of approximately 849.77 acres. A survey map and metes and bounds description of the Petition Area are respectively attached hereto as Exhibits "C" and "D" and made a part hereof. The Petition Area is also outlined on the tax maps attached hereto as Exhibits "B-1" and "B-2".

IV.

PETITIONER'S INTEREST IN PETITION AREA

Petitioner is the fee simple owner of the KDC Lands, which includes, as noted above, the entire Petition Area with the exception of the County Parcel. A true and correct copy of the deed evidencing Petitioner's ownership of the KDC Lands is attached hereto as Exhibit "E" and made a part hereof.

The County of Maui is the fee simple owner of the County Parcel. The County of Maui has authorized Petitioner to file the Petition for the reclassification of the County Parcel, as

shown by the instrument executed by a duly authorized official of the County of Maui attached hereto as Exhibit "F" and made a part hereof.

V.

PRESENT USES AND EXISTING MAUI COUNTY
LAND USE ENTITLEMENTS OF PETITION AREA

During the two (2) year period immediately preceding the filing of this Petition, a portion of the Petition Area has been, and is now being, used for the cultivation of seed corn, with the balance fallow and not currently in any agricultural or other productive use. The County Parcel is now being used as a public highway known as Puukolii Road.

The existing land use designations of the Petition Area under the West Maui Community Plan and the Maui County Comprehensive Zoning Ordinances are shown on Exhibits "G-1" and "G-2" attached hereto and made a part hereof.

VI.

LAND USE DESIGNATIONS AND USES OF AREAS SURROUNDING PETITION AREA

The state land use district, West Maui Community Plan, and Maui County comprehensive zoning ordinance designations and the existing uses of the lands surrounding the Petition Area are as follows:

(a) West of the Petition Area:

State Land Use District
classification:

Urban

West Maui Community Plan
designation:

Single/Multi-Family, Open
Space, PK (Golf Course),
Hotel, Light Industrial and
Public/Quasi-Public

	Maui County Comprehensive Zoning Ordinance designation:	R-3 Residential, H-M Hotel, M-1 Light Industrial, P-1 Public/Quasi-Public
	Existing uses:	Single and Multi-Family Residential, Open Space, Golf Course, Lahaina Waste Water Facility and car rental facilities
(b)	<u>North of the Petition Area:</u>	
	State Land Use District classification:	Agricultural
	West Maui Community Plan designation:	Agricultural
	Maui County Comprehensive Zoning Ordinance designation:	Agricultural
	Existing uses:	Agricultural
(c)	<u>East of the Petition Area:</u>	
	State Land Use District classification:	Agricultural
	West Maui Community Plan designation:	Agricultural
	Maui County Comprehensive Zoning Ordinance designation:	Agricultural
	Existing uses:	Agricultural
(d)	<u>South of the Petition Area:</u>	
	State Land Use District classification:	Urban and Agricultural
	West Maui Community Plan designation:	Agricultural and Public/Quasi-Public

Maui County Comprehensive
Zoning Ordinance designation:

Agricultural and Interim

Existing uses:

Fallow agricultural land and
Lahaina Civic Center

VII.

LOCATION OF PETITION AREA IN RELATION TO EMPLOYMENT AND TRADING CENTERS

The Petition Area is located adjacent to the Kaanapali resort destination area, four (4) miles north of Lahaina town, two (2) miles south of the Honokowai-Kahana residential/resort area, and five (5) miles south of the Kapalua resort destination area.

The Kaanapali and Kapalua resort destination areas are characterized by a mix of hotels, golf courses, commercial areas, and single-family and multi-family dwellings, catering mainly to tourists and second-home residents. Lahaina town is the primary commercial, full-time residential, and governmental center in West Maui. The Honokowai-Kahana area includes a mix of hotels, both transient and full-time residential dwellings, and pockets of commercial areas.

VIII.

SOIL AND ALISH CLASSIFICATION, PRODUCTIVITY RATINGS, FLOOD AND DRAINAGE CONDITIONS AND TOPOGRAPHY OF PETITION AREA

The Petition Area slopes in a westerly direction, with elevations ranging from approximately six hundred (600) feet above mean sea level at the upper-most eastern boundary of the Petition Area to about forty (40) feet at its lowest western portion.

Underlying the Petition Area are soils of the Pulehu-Ewa-Jaucas and the Waiakoa-Keahua-Molokai associations. Soils association and classification maps for the Petition Area are attached hereto as Exhibits "H-1" and "H-2" and made a part hereof.

The classifications of the Petition Area under the Agricultural Lands of Importance to the State of Hawaii's classification system are shown on Exhibit "I" attached hereto and made a part hereof. The University of Hawaii Land Study Bureau's Overall Productivity Rating system classifies most of the Petition Area as "A", with the balance rated as "B", "C" or "E" or unrated.

The designations of the Petition Area on the Flood Insurance Map are shown on Exhibit "J" attached hereto and made a part hereof.

IX.

THE "ACT 15" PUUKOLII VILLAGE AND KAA NAPALI 2020 PROJECTS

Pursuant to the joint petition of Amfac Property Investment Corp, an affiliate and predecessor in title of Petitioner, and the Housing Finance and Development Corporation of the State of Hawaii, now known as the Housing and Community Development Corporation of Hawaii, the Commission entered, in Docket No. A-92-686, its "Findings Of Fact, Conclusions Of Law, And Decision And Order" (the "Puukolii D & O"), which, among other things, reclassified from the state land use agricultural district to the state land use urban district, approximately 298.93 acres of land at Hanakoo, Lahaina, Maui, Hawaii (the "Puukolii Lands"). The Puukolii Lands consist of an approximately 58.286 acre area makai of the proposed Lahaina Bypass Highway ("Puukolii Triangle"), and an approximately 240.707 acre area mauka of the

Lahaina Bypass Highway (“Puukolii Mauka”). Development of the Puukolii Lands, however, proved to be economically infeasible due to the cost of the on-site and off-site infrastructure.

As a result of a community-based planning process where unanimity was required for any land use decision making, representatives of government, business, labor and environmental organizations, among others, and Petitioner formulated and adopted the Kaanapali 2020 Plan (the “2020 Plan”). The 2020 Plan proposes a planned development, known as “Kaanapali 2020”, composed of single and multi-family residential, mixed-use, commercial, golf course, open space, public and quasi-public, and other improvements and uses on the Petition Area, the Puukolii Lands, and relatively small areas of Petitioner’s already urbanized lands (collectively the “2020 Lands”). The 2020 Lands are outlined on “Exhibit K” attached hereto and made a part hereof.

Petitioner proposes to develop the 2020 Plan during a twenty (20) year period. During the first ten (10) year period, Petitioner will implement the 2020 Plan on the entire 849.77 acre Petition Area, the 58.286 acre Puukolii Triangle site and Petitioner’s already urbanized lands of about 9.544 acres, which collectively comprise approximately nine hundred seventeen (917) acres makai of the proposed Lahaina Bypass Highway (the “First Project Increment”). During the next succeeding ten (10) year period, Petitioner will complete the 2020 Plan on the approximately 240.707 acre Puukolii Mauka site (the “Second Project Increment”). The First Project Increment and the Second Project Increment are shown on the attached Exhibit “K”.

Because the Puukolii D & O approved uses and included conditions at variance with the 2020 Plan, Petitioner intends to seek, before or concurrently with the Commission's decision and order on this Petition, certain necessary amendments to the Puukolii D & O.

X.

THE PETITION AREA DEVELOPMENT

Petitioner proposes single and multi-family, mixed-use, commercial, golf course, open space, public and quasi-public and other improvements and uses in the approximately 849.77 acre Petition Area, all of which, together with the approximately 58.286 acre Puukolii Triangle and about 9.544 acres of already urbanized lands, constitute the First Project Increment.

Petitioner proposes to develop about 857 single-family and approximately 1,243 multi-family dwelling units in the First Project Increment. Of the 857 single-family and 1,243 multi-family dwellings, Petitioner has not determined the specific number of dwellings that will be in the approximately 849.77 acre Petition Area. But given the size of the Petition Area compared to that of the approximately 58.286 area Puukolii Triangle and the about 9.544 acres of already urbanized lands, the vast majority of the single and multi-family dwellings will be in the Petition Area.

Single, and possibly multi-family, dwellings, as well as portions of the golf course, are proposed on the Puukolii Triangle site. The commercial, mixed-use and public and quasi-public improvements are all proposed in the Petition Area. A breakdown of the uses, land areas and number of dwelling units in the First Project Increment, as well as the Second Project Increment, is shown on Exhibit "L" attached hereto and made a part hereof.

Petitioner intends to build affordable single and multi-family dwellings in the Petition Area and on other West Maui lands owned by Petitioner and its affiliates. The number of affordable housing units to be developed by Petitioner will be equal to twenty percent (20%) of the total number of market priced dwellings developed in the Petition Area, as well as in other parts of the 2020 Lands. Petitioner's affordable housing units will consist of the following:

(a) Ten percent (10%) of the units for families earning between sixty percent (60%) and eighty percent (80%) of the median annual income for a family of four (4), as determined by the Department of Housing and Human Concerns of the County of Maui at the time the units are marketed (the "Median Annual Income");

(b) Thirty percent (30%) of the units for families earning between eighty-one percent (81%) and one hundred percent (100%) of the Median Annual Income; and

(c) Sixty percent (60%) of the units for families earning between one hundred one percent (101%) and one hundred twenty percent (120%) of the Median Annual Income.

The "market priced" single-family and multi-family units in the Petition Area (as well as on other portions of the 2020 Lands) will be priced based on the market conditions existing at the time the housing units are completed.

The average density of the single-family dwelling units in the Petition Area is expected to be not more than 2.85 dwellings per acre. An average density of not more than 8.5 dwelling units per acre is anticipated for the multi-family areas in the Petition Area.

The primary intended market for both the affordable and market-priced housing units are Maui residents who currently work in the Kaanapali Beach and the greater West Maui areas. A secondary market for the market-priced dwelling units are Maui residents currently residing in West Maui who desire to “trade-up”, as well as “second-home” non-Hawaii residents.

XI.

PETITIONER’S FINANCIAL CONDITION AND PROJECT FINANCING

Petitioner’s financial statement is attached hereto as Exhibit “M” and made a part hereof.

Petitioner intends to use its own capital sources to finance the on-site and off-site infrastructure improvements for the initial stages of the proposed development in the Petition Area. Profits generated from the sale of the dwelling units and the subdivided portions of the Petition Area, together with Petitioner’s own capital sources, will be used to finance later stages of the development in the Petition Area.

XII.

APPLICABILITY OF CHAPTER 343, HAWAII REVISED STATUTES

In order to develop the project contemplated under the 2020 Plan (the “2020 Project”), the Petitioner requires, among other land use entitlements, an amendment of the West Maui Community Plan (the “Community Plan Amendment”). The Petitioner further proposes to construct the following improvements in conjunction with the 2020 Project (collectively the “Off-Site Improvements”):

(a) Improvements to, or a replacement of, wastewater pump station no. 1 on a parcel of land, owned by the County of Maui, bearing tax map key number 4-4-2:33 (Second Taxation Division);

(b) Improvements to wastewater pump station no. 2 on a parcel of land, owned by the County of Maui, bearing tax map key number 4-4-2:29 (Second Taxation Division);

(c) Improvements to the Lahaina Wastewater Reclamation Facility on two (2) parcels, both owned by the County of Maui, respectively bearing tax map key numbers 4-4-1:104 and 4-4-2:29 (Second Taxation Division);

(d) Improvements to the County Parcel, owned by the County of Maui; and

(e) Improvements to Honoapiilani Highway, a State highway.

The 2020 Project constitutes an “action”, as this term is defined in §343-2, HAW. REV. STAT. and the regulations promulgated thereunder. Section 343-5(c), HAW. REV. STAT. and the regulations promulgated thereunder, provide that KDC must prepare an environmental impact statement (the “EIS”) (and an environmental impact statement preparation notice [the “EISPN”]) because the “action” to be requested by KDC proposes the amendment of the West Maui Community Plan and the use of state or county lands or funds for the Off-Site Improvements.

The Hawaii Supreme Court and various Hawaii circuit courts have held that the EIS, and the EISPN, must be prepared “at the earliest practicable time” prior to any governmental approval to the Project. See e.g. Sierra Club v. Land Use Commission of the State of Hawaii, Civil No. 02-1-1759-07, First Circuit Court of the State of Hawaii.

Further, the EISPN and the EIS must be filed with and approved by the “agency receiving the request for approval”. §343-5(c), HAW. REV. STAT. Where approval is requested from two (2) or more agencies (as is the case with the Petition, the Community Plan Amendment and the Off-Site Improvements), the various approving agencies may agree upon a single agency to be the “accepting authority” for the EISPN and EIS, §343-5(d), HAW. REV. STAT., and §11-200-4(b), Hawaii Administrative Rules.

The various agencies which must approve the 2020 Project, with the exception of the Commission, earlier agreed that the Commission should be the “accepting authority” for the EISPN and the EIS, consistent with the requirements of Chapter 343, HAW. REV. STAT., the regulations promulgated thereunder, and the decision reached in Malama Maui vs. Maui Planning Department, et al., Civil No. 02-1-0500(1), Second Circuit Court of the State of Hawaii.

Based on the applicable statutory and regulatory provisions and the decision entered by the courts of the State of Hawaii in the Sierra Club, Malama Maui and other proceedings, Petitioner believes that the Commission must be the accepting authority for the EISPN and the EIS, and must ultimately approve the EIS, all before entering a decision and order on the reclassification requested by this Petition.

Petitioner has filed the EISPN for the 2020 Project concurrently with this Petition, but notes, however, that the EIS may be subject to further revision depending upon the action taken during and after its comment period. Given that the EIS will assess, among other things, the matters required in a petition under §15-15-50(b)(4), (10), (11), (13), (15), (16), (17), (18) and (20), Hawaii Administrative Rules, Petitioner cannot make, with any degree of finality, such

required assessments in this Petition. After the final EIS has been approved by the Commission, Petitioner will file with the Commission any amended pleading, which the Commission deems necessary, to incorporate as a part of this Petition the final assessments in the EIS.

At this juncture, however, and subject to amendment based on the matters in the final EIS approved by the Commission, Petitioner incorporates, as a part of this Petition, the EISPN, and notes the following:

(a) Conformity Of Reclassification To District Boundary Amendment Standards.

The reclassification sought by the Petitioner conforms to the standards for determining a change to the urban district under §205-17, HAW. REV. STAT., and §§15-15-18 and 15-15-77, Hawaii Administrative Rules, in, among others, the following respects:

(1) The project proposed in the Petition Area, with its district communities, integrated transportation system and range of uses, constitutes a “city-like concentration” of people, structures, streets, urban level of services and other related land uses.

(2) Adjacent to the Kaanapali resort area and the Lahaina Civic Center, and near to the Kapalua, Lahaina and Honokowai-Kahana areas, the Petition Area is not only in close proximity to existing centers of trade and employment, but also, with its proposed golf course, commercial and public and quasi-public areas, will become a new center for trade and employment.

(3) The Petition Area in close proximity to existing available public services. The project planned for the Petition Area will also include school, park and health care facilities.

(4) The Petition Area is contiguous to already urbanized lands to the south and west.

(b) Impacts To Environment, Recreational, Cultural And Other Area Resources.

The Petition Area does not include any important animal or plant habitats. Hanakao'o and Hanakea gulches, which are important natural systems in the Petition Area, will continue as open spaces and maintain their natural drainage functions.

Based on the findings in an already completed archeological survey of the Petition Area, an archeological mitigation and preservation plan will be developed. The Petition Area is not currently being used for cultural practices. The project proposed in the Petition Area will not impact access to upland gathering and hunting areas.

(c) Availability Of Public Services And Facilities.

The Petition Area is in close proximity to existing potable water, wastewater and roadway facilities. Petitioner will either directly, or in conjunction with public agency projects, improve the existing wastewater, drainage, and roadway systems for the project in the Petition Area. Fire and police protection services are available at the Lahaina Civic Complex adjacent to the Petition Area.

(d) Economic Impacts Of Reclassification.

The 2020 Project will create approximately 940 construction-related jobs on Maui during its approximately 20 year build out period, and 750 permanent jobs upon its completion.

Upon its completion, the 2020 Project will result in net revenues to the County of Maui of about \$1.96 million per year, and \$4.1 million per year to the State of Hawaii.

(e) Relationship Of Project To Other Existing And Proposed Projects.

There is an existing shortage of both market-priced and affordable housing on the island of Maui. The supply of land is particularly acute in the West Maui area of the island. The project proposed in the Petition Area and on the other 2020 Lands, as well as the Pulelehua project proposed by Maui Land and Pineapple Company, would partially, but not totally, satisfy the demand for housing.

The project planned in the Petition Area and on the balance of the 2020 Lands would also improve the quality of the Kaanapali resort, once the premier visitor destination area on the island of Maui.

(f) Conformity To Hawaii State Plan.

The project proposed in the Petition Area conforms to various policies and objectives in Chapter 226, HAW. REV. STAT., commonly known as the Hawaii State Plan, in that, among other things, it assists in accommodating the housing needs for Hawaii residents, increases housing choices for low-income, moderate income and gap-group households, improves the quality of existing visitor destination areas, and encourages urban developments in close proximity to existing services and facilities.

(g) Conformity With The SMA Law.

An approximately 17.5 acre portion of the Petition Area is within the “special management area”, as delineated on the maps adopted by the Maui Planning Commission.

The EIS will assess the conformity of the 2020 Project to the objectives and policies under Chapter 205A, HAW. REV. STAT., and the regulations promulgated thereunder.

(h) Conformity Of Reclassification To Maui General And Community Plans And Zoning Ordinances.

Upon the Commission’s approval to the Petition, Petitioner will seek appropriate amendments to the West Maui Community Plan and the land zoning map for the Petition Area and other portions of the 2020 Lands, to bring the land use designations thereunder in conformity with the uses proposed in the Petition Area and other parts of the 2020 Lands.

(i) Hawaiian Customary And Traditional Rights.

Most of the Petition Area was used for sugar cane cultivation in the 19th and 20th centuries. As such, it is assumed that many cultural sites were destroyed or buried as a part of the agricultural activities on the Petition Area.

There are, however, trails and old sugar plantation roads used to access traditional Hawaiian sites in Honokowai Valley (outside the Petition Area) and upland gathering and hunting areas.

A development plan will be prepared and will include an interpretive plan on significant cultural and archaeological sites, and provisions for access to Honokowai Valley, areas upland of the Petition Area, and Puukoolii cemetery. Aside from the afore-mentioned sites and as to be further discussed in the EIS, Petitioner is not aware of any rights under Article XII,

Section 7, of the Hawaii State Constitution, which will be affected by either the reclassification requested by the Petition, and, to the best of Petitioner's knowledge, there are no other traditional and customary subsistence, cultural or religious rights exercised by Native Hawaiians in the Petition Area.

(j) Impacts To Agricultural Resources.

The development of the project proposed in the Petition Area will not impact sugar cane and pineapple operations since none exist in the Petition Area. While there will be an impact on the land available for diversified agriculture, the 1999 closure of sugar operations in West Maui and the ongoing contraction of pineapple farming there has resulted in the release of vast quantities of agricultural land to accommodate the growth of diversified agriculture.

XIII.

COMMENTS TO PETITION ON PROPOSED RECLASSIFICATION

Petitioner has received a number of written comments from public and private agencies, organizations and individuals on the 2020 Project. Further, Petitioner anticipates additional comments during the EISPN and EIS review and comment period. All of these comments will be addressed in the final EIS.

XIV.

REPRESENTATION OF TIMELY PROJECT DEVELOPMENT

Petitioner hereby represents that the development proposed in the Petition Area shall be completed within ten (10) years after the date the Commission enters a decision and order approving the reclassification requested by this Petition.

WHEREFORE, based upon the matters set forth in this Petition and the exhibits attached hereto, and the testimony and other evidence to be presented by the Petitioner in the proceedings herein, Petitioner respectfully prays that the Commission:

1. Be the "accepting authority" (as this term is used in §11-200-2, Hawaii Administrative Rules) for the EISPN and the EIS, and, after its submission and review, approve the EIS; and
2. Enter a decision and order approving the amendment of the land use district boundary for the Petition Area from the state land use agricultural district to the state land use urban district.

DATED: Wailuku, Maui, Hawaii, February 17, 2005.

David H. Nakamura
DAVID H. NAKAMURA
Attorney for Petitioner Kaanapali
Development Corp.