

CADES SCHUTTE
A Limited Liability Law Partnership

CALVERT G. CHIPCHASE 7757
CHRISTOPHER T. GOODIN 8562
STACEY F. GRAY 11125
MOLLY A. OLDS 11330

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4212
Telephone: (808) 521-9200
Fax: (808) 521-9210
Email: cchipchase@cades.com
cgoodin@cades.com
sgray@cades.com
molds@cades.com

Attorneys for Petitioner
PŪLAMA LĀNAʻI



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

PŪLAMA LĀNAʻI,

To Amend The Agriculture Land Use District Boundaries Into the Urban Land Use District for approximately 56.436 acres of land, consisting of a portion of Tax Map Key No. (2) 4-9-002:061 (por.) and (2) 4-9-014:001 (por.) Lānaʻi City, Island of Lānaʻi, County of Maui, State of Hawaiʻi.

DOCKET NO. A21-810

PETITIONER'S RESPONSE TO THE STATE OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S POSITION STATEMENT, FILED OCTOBER 20, 2021 AND TESTIMONY FILED OCTOBER 27, 2021

CERTIFICATE OF SERVICE

Hearing:

Date: November 10, 2021

Time: 9:00 a.m.

**PETITIONER'S RESPONSE TO THE STATE OFFICE OF PLANNING
AND SUSTAINABLE DEVELOPMENT'S
POSITION STATEMENT AND TESTIMONY**

The Office of Planning and Sustainable Development (“**OP**”) filed its Position Statement Regarding Petitioner’s Request for the State Land Use District Boundary Amendment (“**OP Statement**”) with the State Land Use Commission (“**Commission**”) on October 20, 2021. OP filed its Testimony Summarizing Its Position (“**OP Testimony**”) with the Commission on October 27, 2021. Petitioner LĀNA’I RESORTS, LLC dba PŪLAMA LĀNA’I, a Hawai’i limited liability company (“**Pūlama Lāna’i**” or “**Petitioner**”), respectfully submits this response.

In its Testimony, OP explained that it supports Pūlama Lāna’i’s Petition for Land Use District Boundary Amendment, filed on October 18, 2021 (“**Petition**”) for approximately 56.436 acres of land, comprised of a portion of Tax Map Key Nos. (2) 4-9-002:061 (por.) and (2) 4-9-014:001 (por.), situated at Lāna’i City, County of Maui, State of Hawai’i (the “**Petition Area**”), to allow construction of the Hōkūao 201H Housing Project (“**Project**” or “**Hōkūao**”).

I. RESPONSE

As a commenting agency, OP identified the following six key issues of concern to the State: (1) Natural Systems and Habitats; (2) Archaeological, Historic and Cultural Resources; (3) Natural Resources Relevant to Hawai’i’s Economy; (4) Commitment of State Funds and Resources; (5) Provision for Housing Opportunities; and (6) Conformity with State Planning Statutes, County Plans and Other Decision-Making Criteria. Importantly, OP agrees with the management and mitigation approaches discussed in the Petition and the other documents in the record for each area of concern. Based on its assessment of the Project and representations made by Petitioner, OP also provided eight suggested conditions.

Petitioner accepts conditions 1, 2, 3, 4, 5 and 7 proposed by OP. Petitioner offers alternative language with respect to conditions 6 and 8.

A. Natural Systems and Habitats.

In its Testimony, OP reviews five categories of natural systems and habitats addressed by the Petition. Each is addressed in turn.

1. Flood Tsunami Hazards and Sea Level Rise

OP notes that the project is located within Zone X on the Flood Insurance Rate Map for the County of Maui, an area of minimal flood hazard higher than the elevation of the .02% annual chance flood. *See* OP Testimony at 4. The project site is approximately 4.3 miles inland from the western shoreline and not within the tsunami inundation zone. The project is outside of the 3.2-foot sea level rise hazard area. *Id.*

Petitioner agrees with OPs observations.

2. Carbon Footprint

OP notes that “even if the project does not attain a carbon neutral footprint, its footprint will be significantly reduced by the proposed mitigation measures.” OP Testimony at 4. These measures include solar photovoltaic on-site generation with individual home battery energy storage, low-energy site lighting, Energy Star fixtures, LED lighting, interior fans and on-demand hot water heaters. Other energy reduction measures incorporated into the design and construction of the units will contribute to the overall efficiency of the Project. For example, units will be designed to increase air flow. In addition, R-19 insulation, roof ventilators and reflective roof heat barriers will be incorporated into unit construction to limit the amount of energy needed for cooling. *Id.*

Petitioner agrees with OPs observations, is dedicated to sustainability and will advance the proposed carbon mitigating measures as practicable.

3. Flora and Fauna

OP notes that “[n]o rare or protected native species were found in or near the area. No listed endangered Hawaiian hoary bats were observed. No listed threatened or endangered species of birds were found in the project area.” OP Testimony at 5. OP expresses concerns regarding the potential presence of the Hawaiian hoary bat, the potential for nighttime work to impact seabirds and invasive species being

introduced to the Project site through the movement of soils and plants containing invasive fungal pathogens. *Id.*

OP proposes three conditions to address these concerns:

6. Endangered Hawaiian Hoary Bat. Because of the potential for the State listed Hawaiian Hoary Bat to occur in the vicinity of the project area, the Petitioner shall avoid removing any trees during the bat birthing and pup rearing season (June 1 through September 15). If this cannot be avoided, woody plants greater than 15 feet tall shall not be disturbed, removed, or trimmed without consulting the State DLNR-DOFAW.

7. Impacts to Seabirds. For nighttime lighting that might be required, Petitioner shall install fully shielded lights to minimize adverse impacts to passing seabirds. Petitioner shall also avoid nighttime work that requires outdoor lighting during the seabird fledging season from September 15 through December 15.

8. Invasive Species. The Petitioner shall minimize the movement of plant or soil material between worksites, such as in fill, so as to prevent the spread of invasive fungal pathogens, and avoid importing soil or other plant material from off-island.

Petitioner does not object to OP's condition 7 regarding seabirds and plans to implement the suggested mitigation.

Regarding OP's condition 6 concerning Hawaiian Hoary bats, the Final Environmental Assessment did not identify Hawaiian hoary bats in the Project Area. Nevertheless, in the interest of preventing any potential disturbance to the species, Petitioner proposes the following condition:

6. Endangered Hawaiian Hoary Bat. Because of the potential for the State listed Hawaiian Hoary Bat to occur in the vicinity of the project area, the Petitioner shall avoid removing any trees during the bat birthing and pup rearing season (June 1 through September 15) unless surveyed with thermal cameras within 24 hours prior to the removal.

Regarding OP's condition 8 concerning invasive species, Petitioner already implements stringent quarantine protocol for all imported plants to ensure that no invasive species are introduced. Petitioner commits to continuing quarantine practices for all imported plants use in the Project and offers the following condition to capture OP's intention:

8. Invasive Species. The Petitioner shall minimize the movement of plant or soil material between worksites, such as in fill, so as to prevent the spread of invasive fungal pathogens and minimize importing soil or other plant material from off-island.

Petitioner's proposed condition addresses OPs concerns regarding invasive species introduction when coupled with Petitioner's strict quarantine protocols for importing plants.

4. Drainage

OP notes that three retention basins will be built to mitigate any increase in stormwater runoff and flow from the project. Surface drainage improvements will consist of shallow cutoff swales between the new residential area and Fraser Avenue to capture and direct flow around the project or into the new drainage system. Roadway drains will be provided along the new roadway to direct flow to the retention basins and roads will have grassed shoulder swales without curb and gutter to route runoff to the underground drainage system. OP Testimony at 5.

OP also references feedback from the State Department of Transportation ("DOT") that the Preliminary Engineering Report for the Project identifies an increase in stormwater flow to Kaumalapau Highway. *Id.* To mitigate this potential impact, OP proposes the following condition:

2. Stormwater Management. The Petitioner shall implement BMPs for stormwater management to minimize the impact of the project to the existing area's hydrology while maintaining on-site filtration and preventing polluted runoff from storm events. The Petitioner shall also contain, manage, and mitigate all stormwater run-off generated by the project onsite so as not to impact Kaumalapau Highway Right-of-Way, including existing State drainage culverts, ditches, and channels.

Petitioner agrees to this condition. In addition, Petitioner notes that as a result of requirement to add sidewalks on both sides of the streets, Petitioner has updated its plans to include the construction of curbs and gutters and raised sidewalks in lieu of grass shoulders. The curbs and gutters will replace the road shoulder swales, and stormwater will be conveyed by the concrete curbs and gutters along the edge of the pavement to the underground drainage system. Stormwater will be diverted to

the retention basins through this system. A fourth drainage pond is also currently planned. All other drainage features noted by the OP are current. The proposed Project plans indicate there will be adequate retention basin capacity to mitigate any stormwater runoff and allow for infiltration into the aquifer.

5. Wastewater

The Department of Health, Wastewater Branch (“**DOH-WWB**”), submitted a letter stating that the Lana‘i Wastewater Reclamation Facility (“**WWRF**”) is currently under an Informal Notice of Violation for effluent exceedances at the facility. The letter cites a DOH-WWB inspection in 2018 that found the WWRF exceeded (a) the effluent limits for biochemical oxygen demand (“**BOD**”) and (b) total suspended solids (“**TSS**”). An updated comment letter from DOH-WWB included with OPs Testimony, dated October 27, 2021, clarified that DOH-WWB has no objection to the Project or to the district boundary amendment and notes that wastewater connections from the Project to WWRF will not be approved unless the WWRF is in compliance with applicable Hawaii Administrative Rules (“**HAR**”) § 11-62. OP Testimony at 18.

In its Initial Position Statement, OP recommended coordinating the marketing of the units with the County’s schedule for addressing long-term solutions. That recommendation has been dropped from OP’s Testimony. *See* OP Testimony at 6. In light of the updated letter from DOH-WWB, such a requirement is unnecessary.

B. Archaeological, Historic and Cultural Resources.

OP acknowledges the Archaeological Impact Survey (“**AIS**”) and Cultural Impact Assessment (“**CIA**”) completed by Petitioner. First, OP agrees that the three historic-era artifacts in the Petition Area are too dilapidated to preserve. The two wood-frame buildings have already been demolished consistent with applicable laws. After further investigation, it has been determined that the pineapple harvester will also be disposed of in accordance with applicable laws.

Second, OP notes that the CIA did not identify any cultural resource, practice or belief connected to the Petition Area. The CIA did recommend that a specific *kukui*

nut tree be relocated within the Petition Area, if possible. OP Testimony at 7. OP concludes there will be no impact on the exercise of native Hawaiian customary or traditional cultural practices in the Petition Area.

Petitioner commits to disposing of the pineapple harvester in accordance with applicable laws and to the preservation by relocation of the *kukui* nut tree, if possible.

C. Natural Resources Relevant to Hawai‘i’s Economy.

OP notes that the water for the Project will come from the Lāna‘i Water Company and that the Project will activate the existing but not regularly used Well No. 7 to provide additional source capacity and reliability to the Lāna‘i City distribution system. OP Testimony at 7. OP also recognizes a recommendation by the Commission on Water Resource Management (“CWRM”) that water efficient fixtures and practices be implemented, the use of alternative water sources wherever practical and the use of landscape irrigation conservation BMPs. OP proposes a condition to address each of CWRM’s concerns:

1. Preserving Water Resources. The Petitioner shall install water efficient fixtures and implement water efficient practices throughout the development to reduce the increased demand on the area’s freshwater resources. Alternative water sources shall be used wherever practicable. The Petitioner shall adopt landscape irrigation conservation best management practices (BMPs) endorsed by the Landscape Industry Council of Hawai[‘i].

Petitioner accepts this condition. Petitioner reaffirms its intent to implement several water conservation measures in its construction and maintenance of the Project. Homes will adhere to County requirements for low-flow fixtures and fittings and generated gray and black water will be treated to an R-1 level to be used by Pūlama Lāna‘i for irrigation purposes. Site design will incorporate low-water and drought tolerant plants to minimize the need for irrigation. Additionally, homes will use a post and beam construction to minimize fine grading, maintain soil permeability, enhance aquifer recharge and incorporate landscaping to help absorb solar radiation and release moisture into the atmosphere.

D. Commitment of State Funds and Resources.

1. *Educational Facilities*

OP notes there is sufficient capacity for any increased school enrollment the Project might generate. OP Testimony at 8.

Petitioner agrees with OP's conclusion.

2. *Transportation Facilities*

OP raises concerns with the proximity of the Project to the Lānaʻi Airport. Given that the Project is approximately 8,030 feet from the airport, OP is concerned with the following: (1) that residents may be subject to potential single event noise from aircraft operations; (2) landscaping plans should consider the height of trees to ensure they do not obstruct aircraft operations or create wildlife attractants; (3) the photovoltaic (“**PV**”) roof shingles may create glint and glare conditions for pilots; (4) and the PV systems may also emit radio frequency interference (“**RFI**”) to aviation radio signals. OP also raised concerns with unexpected traffic impacts. OP Testimony at 9.

In response to the concerns raised by the DOT, OP proposes the following conditions:

3. FAA Notice of Construction. Prior to construction, the Petitioner shall submit FAA Form 7460-1 Notice of Construction or alteration pursuant to the Code of Federal Regulations, Title 14, Part 77.9. Construction equipment and staging area heights, including heights of temporary construction cranes, shall be included in the submittal.

4. Notification of Proximity to Lanai Airport. The Petitioner shall notify and disclose to all prospective lessees within the Project, as part of any conveyance document (lease, rental agreement, etc.) required for the transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from the Lanai Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

5. Hazards to Aircraft Operations. The Petitioner shall work with DOT to minimize hazards to aircraft operations from Lanai Airport, including but not limited to impacts from wildlife attractants, maturity heights of trees, photovoltaic systems glint and glare, and radio frequency interference. Stormwater retention basins shall be designed, engineered, constructed, and

maintained to prevent standing water from accumulating for periods longer than 48 hours after a storm event. The Petitioner shall mitigate any hazardous conditions to aircraft operations from the Airport upon notification by the Hawaii Department of Transportation, Airports Division and/or the FAA.

Petitioner agrees to the proposed conditions.

3. *Provision for Housing Opportunities*

OP notes that the Project will provide a range of affordable housing options. The Project itself will provide for 76 units of privately financed, affordable rental housing for low-moderate and moderate-income households in perpetuity. In addition, Petitioner has also committed to reserving 39 units at the existing Iwiole Hale rental project for rent to very-low and low-income households in perpetuity. By adding the Iwiole Hale units for very-low and low-income households to the affordable units in Hōkūao, Petitioner offers the entire spectrum of income ranges of affordable housing on Lānaʻi.

OP recognizes that the Project conforms to Objective A and Policies A(2) and A(3) of the State Housing functional Plan by encouraging participation from private developers to increase the amount of affordable rental housing. OP Testimony at 10.

E. *Conformity with State Planning Statutes, County Plans and Other Decision Making Criteria.*

Petitioner agrees with the conclusions noted by OP in regard to the Project's conformance with the Hawaii State Plan and State Functional Plan, Hawaii Revised Statutes ("HRS") § 205A, the Hawaii 2050 Sustainability Plan, the removal of lands designated as "Important Agricultural Lands," and the County Plans.

First, OP notes that the Petition Area is currently located in the State Agricultural District. Petitioner has explained that the Petition Area conforms to the standards set forth in HAR § 15-15-18. OP Testimony at 11.

Second, OP notes that the Project conforms to the Hawaii State Plan, HRS Chapter 226, especially HRS §§ 226-4, 226-5, 226-6, 226-13, 226-15, 226-16, 226-19, 226-103, 226-104 and 226-106 and to the State Employment, Energy, Housing and Recreation Functional Plans. *Id.*

Third, OP notes that the Project is not located on the shoreline and is not within the Special Management Area and that it does not conflict with the objectives and policies of the Coastal Zone Management Program. *Id.*

Fourth, OP notes that the Project aligns with Focus Areas 2, 3 and 5 of the *Hawaii 2050 Sustainability Plan: Charting a Course for a Decade of Action (2020-2030)* Focus Areas for the Decade of Action by 2030. *Id.* at 12-13. OP also explains that the proposed project aligns with the following:

- Part III of the Hawaii State Planning Act HRS § 226-108, the Sustainability Priority Guidelines paragraph 1, 2, 3, 4, 5 and 7.
- The Commission's administrative rules HAR § 15-15-50 (c) (25) (a), (b), (d) and (e) by including a statement and analysis pursuant to Part III of the Hawaii State Planning Act, HRS § 226-108 the Sustainability Priority Guidelines.
- Part III of the Hawaii State Planning Act, HRS § 226-109, the Climate Change Adaptation Priority Guidelines paragraphs 5 and 10.
- Commission's administrative rules HAR § 15-15-50 (c) (24) (a), (b), (c) and (d).

The Project will help the state meet its goals and targets for efficiency and sustainability. Specifically, the Project will assist the State in meeting the goals set by the Statewide Energy Efficiency Portfolio Standard, Statewide Renewable Portfolio Standard and Zero Emissions Clean Economy Target. Of particular importance,

OP[]strongly supports the Petitioner's intent for the installation of solar photovoltaic on-site generation with individual home battery storage to satisfy most of the energy demand *for each unit* and appreciates the Petitioner's assistance to the State of Hawaii in meeting its clean energy statutory sustainability targets and reduce the state's overall dependence of fossil-fuel based energy.

OP Testimony at 15 (quotation marks omitted).

Fifth, OP notes that the reclassification of the Petition Area from the Agricultural District to the Urban District will not result in a loss of quality lands for agricultural use. The soil quality of the agricultural lands in the Petition Area is

poor. Moreover, there is an abundance of higher quality agricultural lands on Lānaʻi. *Id.*

Sixth, OP recognizes the Project is consistent with County Plans. Specifically, the Project conforms to the objectives and policies of the Maui Countrywide Policy Plan and the Lānaʻi Community Plan. *Id.* Petitioner further notes that the Project will proceed as proposed under the exemptions from County zoning granted by the County Council.


II. CONCLUSION

Petitioner is committed to avoiding, minimizing and mitigating impacts identified by OP. Consistent with this effort, Petitioner has committed to implementing certain actions and has discussed these commitments in this Response. In light of these commitments, there is no need to impose conditions on these issues.

Based on the foregoing, Petitioner respectfully requests that the LUC find that the Petition complies with the necessary requirements of a petition for boundary amendment pursuant to HAR §15-15-50. Petitioner also respectfully requests that the LUC find the proposed development meet the standards for determining Urban District boundaries pursuant to HAR §15-15-18 and, therefore, grant the reclassification of the Petition Area from the Agricultural District to the Urban District.

DATED: Honolulu, Hawaiʻi, October 27, 2021.

CADES SCHUTTE
A Limited Liability Law Partnership



CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
STACEY F. GRAY
MOLLY A. OLDS
Attorneys for Petitioner
PŪLAMA LĀNAʻI

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

PŪLAMA LĀNAʻI,
To Amend The Agriculture Land Use
District Boundaries Into the Urban Land
Use District for approximately 56.436 acres
of land, consisting of a portion of Tax Map
Key No. (2) 4-9-002:061 (por.) and (2) 4-9-
014:001 (por.) at Lānaʻi City, Island of
Lānaʻi, County of Maui, State of Hawaiʻi.

DOCKET NO. A21-810

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certify that on this date, a copy of the foregoing document was duly served on the following persons at their last known address by depositing a copy in the U.S. mail, postage prepaid:

County of Maui Corporation Counsel

MOANA LUTEY
Corporation Counsel
MICHAEL HOPPER
Deputy Corporation Counsel
200 S. High St
Kalana O Maui Bldg, 3rd Fl
Wailuku, HI 96793
Email: michael.hopper@co.maui.hi.us

County of Maui Planning Department

MICHELE McLEAN
Director
2200 Main Street
One Main Plaza, Suite 315
Wailuku, HI 96793
Email: michele.mclean@co.maui.us

State Office of Planning and Sustainable Development

MARY ALICE EVANS

Director

RODNEY FUNAKOSHI

Administrator I

Office of Planning

P.O. Box 2359

Honolulu, HI 96804-2359

Email: maryalice.evans@hawaii.gov

rodney.y.funakoshi@hawaii.gov

Office of the Attorney General

ALISON KATO

Deputy Attorney General

425 Queen Street

Honolulu, HI 96813

Email: alison.s.kato@hawaii.gov

Department of Hawaiian Homelands

CRAIGY. IHA

RYAN KP. KANAKA'OLE

ALYSSA-MARIE KAU

Deputy Attorneys General

425 Queen Street

Honolulu, HI 96813

Email: craig.y.ih@hawaii.gov

ryan.kp.kanakaole@hawaii.gov

alyssamarie.kau@hawaii.gov

DATED: Honolulu, Hawai'i, October 27, 2021.

CADES SCHUTTE
A Limited Liability Law Partnership

A handwritten signature in black ink, appearing to read 'Calvert G. Chipchase', is written over a horizontal line.

CALVERT G. CHIPCHASE
CHRISTOPHER T. GOODIN
STACEY F. GRAY
MOLLY A. OLDS
Attorneys for Petitioner
PŪLAMA LĀNA'I