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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of

PŪLAMA LĀNA'I,

To Amend the Agriculture Land Use
District Boundaries into the Urban Land
Use District for Approximately 76 acres of
Land, Consisting of a Portion of Tax Map
Key No. (2) 4-9-002:061 (por.); (2) 4-9-
014:001 (por.); (2) 4-9-014:009 (por.) at
Lāna'i City, Island of Lāna'i, County of
Maui, State of Hawai'i.

DOCKET NO. A21-810

STATE OF HAWAI'I, DEPARTMENT
OF HAWAIIAN HOME LANDS'
PETITION TO INTERVENE;
MEMORANDUM IN SUPPORT OF
PETITION TO INTERVENE;
CERTIFICATE OF SERVICE

STATE OF HAWAI'I, DEPARTMENT OF HAWAIIAN HOME LANDS'
PETITION TO INTERVENE

In accordance with Hawaii Administrative Rules ("HAR") §§ 15-15-37 and 15-15-97, the
State of Hawai'i Department of Hawaiian Home Lands ("DHHL"), by and through their counsel,
hereby petitions to intervene in the above-referenced matter. While DHHL is not opposed to the

Hōkūao 201H Housing Project (“Hōkūao Project”), DHHL has concerns about the Hōkūao Project’s impact on water resources and wastewater infrastructure that will limit DHHL’s ability to develop its homesteads.

Petitioner Lāna‘i Resorts, LLC dba Pūlama Lāna‘i (“Petitioner”) intends to petition the Land Use Commission of the State of Hawai‘i (“LUC”) to amend the land use district boundary of approximately seventy-six acres of land at Lāna‘i City, Island of Lāna‘i, Hawai‘i (“Petition Area”) from the State Land Use Agricultural District to the State Land Use Urban District for the Hōkūao Project, which is a planned development of approximately 150 single-family rental homes. DHHL owns land in close proximity to the Petition Area, and a ruling in this matter will directly and immediately impact DHHL’s property interests. As such, DHHL is a necessary and proper party to this action and hereby requests that the LUC grant DHHL’s Petition to Intervene.

A denial of a petition to intervene may be appealed to the Circuit Court for the State of Hawai‘i pursuant to Hawaii Revised Statutes (“HRS”) § 91-14. DHHL asserts that its Petition to Intervene has been filed in response to Petitioner’s Notice of Intent to File a Land Use District Boundary Amendment Petition, and DHHL affirmatively requests that all proceedings in Docket No. A21-810 be conducted in a hearing before the LUC.

DATED: Honolulu, Hawai‘i, September 3, 2021.

/s/Alyssa-Marie Y. Kau
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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of

PŪLAMA LĀNA‘I,

To Amend the Agriculture Land Use District Boundaries into the Urban Land Use District for Approximately 76 acres of Land, Consisting of a Portion of Tax Map Key No. (2) 4-9-002:061 (por.); (2) 4-9-014:001 (por.); (2) 4-9-014:009 (por.) at Lāna‘i City, Island of Lāna‘i, County of Maui, State of Hawai‘i.

DOCKET NO. A21-810

MEMORANDUM IN SUPPORT OF
PETITION TO INTERVENE

MEMORANDUM IN SUPPORT OF PETITION TO INTERVENE

I. BACKGROUND

On August 19, 2021, Pūlama Lāna‘i ("Petitioner") filed a Notice of Intent to File a Land Use District Boundary Amendment Petition ("Notice of Intent") in this matter to obtain a Land Use District Boundary Amendment ("Boundary Amendment") to the land use district boundary of approximately seventy-six acres of land at Lāna‘i City, Island of Lāna‘i, Hawai‘i ("Petition Area") from the State Land Use Agricultural District to the State Land Use Urban District for the Hōkūao 201H Housing Project ("Hōkūao Project"), which plans for the development of approximately 150 single-family rental homes. *See* Notice of Intent filed August 19, 2021.

II. RELEVANT RULE PROVISIONS

Hawaii Administrative Rules ("HAR") § 15-15-97(c), (f), and (g) set forth the requirements and criteria for intervention, which provide as follows:

- (c) Persons who may intervene upon timely application include:
 - (1) All departments and agencies of the State and of the county in which the land is situated; and
 - (2) All persons who have a property interest in the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed

change that their interest in the proceeding is clearly distinguishable from that of the general public.

(f) The petition for intervention shall make reference to the following:

- (1) Nature of the proposed intervenor's statutory or other right;
- (2) Nature and extent of the proposed intervenor's interest, and if an abutting property owner, the tax map key description of the property; and
- (3) Effect of any decision in the proceeding on the proposed intervenor's interest.

(g) If applicable, the petition shall also make reference to the following:

- (1) Other means available whereby the proposed intervenor's interest may be protected;
- (2) Extent the proposed intervenor's interest may be represented by existing parties;
- (3) Extent the proposed intervenor's interest in the proceeding differs from that of the other parties;
- (4) Extent the proposed intervenor's participation can assist in development of a complete record;
- (5) Extent the proposed intervenor's participation will broaden the issues; and
- (6) Extent the proposed intervenor's intervention would serve the public interest.

III. ARGUMENT

On August 19, 2021, Petitioner filed a Notice of Intent with the Land Use Commission (“LUC”). The State of Hawai‘i Department of Hawaiian Home Lands (“DHHL”) is a state agency that owns land in close proximity to the Petition Area, and a ruling in this matter will directly and immediately impact DHHL’s ability to develop additional homesteads in the area. DHHL’s interests are clearly distinguishable from that of the general public. Thus, DHHL is entitled to intervene.

A. This Petition to Intervene is Timely

HAR § 15-15-97, which provides the procedures for processing petitions for housing projects under HRS § 201H-38, requires the filing of petitions to intervene and become a party within fifteen days after the notice of intent to file a petition is published pursuant to HAR § 15-

15-97(b)(2). Petitioner filed the Notice of Intent on August 19, 2021. As such, by filing its Petition to Intervene on or before September 3, 2021, DHHL's petition is timely.

B. The Nature of DHHL's Statutory Right

Pursuant to HRS § 205-4(a), the LUC adopted administrative rules to implement HRS § 201H-38, which are embodied in HAR Title 15, Chapter 15, Subchapter 13. HAR § 15-15-97(c)(1) expressly provides that “[a]ll departments and agencies of the State and of the county in which the land is situated” may intervene upon timely application. DHHL is an agency of the State that owns land in close proximity to the Petition Area. As such, DHHL is entitled to intervene upon timely application.

DHHL is an agency of the State of Hawai‘i that is charged with carrying out the State’s fiduciary duties under the the Hawaiian Homes Commission Act of 1920, as amended, (“HHCA”). In 1920, Congress enacted the HHCA, which set aside approximately 203,500 acres of public lands for a homesteading program for native Hawaiians. The primary purpose of the HHCA is the rehabilitation of native Hawaiians on public lands given the status of Hawaiian home lands. *Ahuna v. Dept. of Hawaiian Home Lands*, 64 Haw. 327, 336, 640 P.2d 1161, 1167 (1982). As a condition of statehood, Hawai‘i was required to adopt the HHCA as part of its state constitution. *Id.* To meet its mandate under the HHCA, DHHL leases available lands to native Hawaiians for residential, agricultural, and pastoral purposes. *See* HHCA § 207.

Moreover, DHHL’s Lāna‘i property intended for homesteading is in close proximity to the Petition Area. *See infra* Section III.C. DHHL’s ability to develop more homesteads on Lāna‘i will be impacted by the Hōkūao Project. As such, consistent with HAR § 15-15-97(c)(2), DHHL’s property interests would be directly and immediately affected by a decision in this matter, and DHHL’s interests – notably its trust duties under the HHCA- are clearly

distinguishable from the general public. *See generally Town v. Land Use Comm'n*, 55 Haw. 538, 524 P.2d 84 (1974). Given the foregoing, DHHL clearly has standing to intervene in this matter.

C. The Nature and Extent of DHHL's Interest

As noted above, DHHL owns property that is in close proximity to the Petition Area. The original Tax Map Key ("TMK") description for the DHHL property intended for residential homesteading was TMK No. (2) 4-9-02:57, comprised of two lots: Lots 1157 (28.068 acres) and 13-A-1-B (21.932 acres). Subsequent to transfer of title to DHHL from Castle and Cooke in 1999, the property was subdivided by DHHL into fifty-one lots for residential homesteading (Tax Map Key (2) 4-9-024:001 through 051). DHHL's property is less than 850 feet away from the Petition Area.

Thus far, DHHL has issued forty-five residential homestead leases on fifteen acres of its Lāna'i lands. DHHL is currently planning for the development of approximately seventy-eight to seventy-nine additional single family homes and a five-acre community use area on its remaining acreage. The Hōkūao Project's effects on water and wastewater infrastructure will impact DHHL's ability to develop homesteads on Lāna'i, and therefore impact the State's ability to carry out its fiduciary duties under the HHCA. DHHL clearly has a property interest directly and immediately affected by the Hōkūao Project, and that interest is clearly distinguishable from that of the general public.

Additionally, in 2010, DHHL agreed to assume an interest in the Agreement to Convey twenty-five acres of land previously entered into by the State of Hawai'i Board of Land and Natural Resources with the former owner of lands, now owned by Petitioner. This Agreement to Convey was made to satisfy Condition 1 of the LUC's April 16, 1991 Decision and Order for Docket No. A89-649 to provide economic development opportunities for native Hawaiian

beneficiaries on Lāna‘i. DHHL is currently pursuing subdivision of these twenty-five acres and working with the landowner to facilitate a transfer of title. Ten acres of these lands are located at the junction of Kaunalapau Highway and Manele Road, within TMK No. (2) 4-9-002:061, which is also in close proximity to the Petition Area – less than one thousand feet away.

1. Water

DHHL’s first concern is the impact of the Hōkūao Project on Lāna‘i’s water resources. The 2011 Lāna‘i Water Use Development Plan provides that the sustainable yield of Lāna‘i is six million gallons per day (“mgd”), which is divided into two aquifer systems with three mgd each. The Hōkūao Project falls within the Leeward Aquifer; however, water to support the project is intended to come from the Leeward and Windward aquifers. The estimated total water demand of the Hōkūao project is estimated at 121,700 gallons per day. The added water use of the Hōkūao project would increase the total estimated overall water usage for the island of Lāna‘i to approximately 1.590 mgd. DHHL’s water usage for its remaining homestead area for its seventy-eight residential homestead lots and the five acre park and community center is 0.0553 mgd.

Pursuant to HHCA § 221(c) and HRS § 174C-101(a), DHHL is entitled to reserve water for use on its lands. DHHL has a current groundwater reservation on Lāna‘i of 0.067 mgd with the Commission of Water Resource Management. At full buildout, DHHL’s Lāna‘i residential homesteads are projected to use .0577 mgd, leaving only .0093 mgd in its water reservation for its beneficiaries and future developments. DHHL’s reservations of water throughout the State are “entitled to the full panapoly of constitutional protections afforded the other public trust purposes.” *In re Waiola O Molokai, Inc.*, 103 Hawai‘i 401, 431, 83 P.3d 664, 694 (2004). While this protection does not preclude the controlled development of water resources for private use, there must be a balance between public and private purposes, the planning and allocation of

water resources must account for the public trust and protect public trust purposes to the extent feasible. Given the foregoing, DHHL's participation in this matter is necessary to ensure that its water rights are sufficiently accounted for and protected.

2. Wastewater

DHHL's second concern is the impact of the Hōkūao Project on Lāna'i's wastewater infrastructure. Per Maui County's Department of Environmental Management, Wastewater Reclamation Division, the current capacity of the Lāna'i Wastewater Reclamation Facility is 0.50 mgd. The Lāna'i Wastewater Reclamation Facility is currently servicing an average daily flow of approximately 0.315 mgd. Additional development allocations totaling 0.080 mgd have been granted.

The Hōkūao Project will yield an average daily flow of less than 0.070 mgd, which leaves a total post-project average daily flow of 0.465 mgd. The remaining capacity of the Lāna'i Wastewater Reclamation Facility will be merely 0.035 mgd. The total additional wastewater flows generated by DHHL's planned seventy-eight homestead lots and five-acre park and community center is 0.055 mgd. Therefore, the capacity of the Lāna'i Wastewater Reclamation Facility will be **exceeded** by 0.02 mgd. The Hōkūao Project's impact on wastewater infrastructure will limit DHHL's ability to develop its homesteads. DHHL's participation in this matter is necessary to ensure that the Hōkūao Project's impact on wastewater infrastructure does not inhibit native Hawaiian beneficiaries from receiving homesteads.

D. Effect of an LUC Decision on DHHL's Interest

An LUC decision in this matter will have an immediate and direct effect on DHHL as a nearby property owner to the Hōkūao Project. The Hōkūao Project will adversely impact water,

wastewater, and other infrastructure capacity for DHHL's future developments. As such, DHHL's interests are clearly distinguishable from the interests of the general public.

Moreover, DHHL's status as a nearby landowner with upcoming residential developments and its distinct trust responsibilities under the HHCA are clearly distinguishable from the interests of the agencies currently involved in this matter. Allowing DHHL to intervene in this matter will allow the LUC to receive meaningful input in the proceedings and aid the LUC in making its determination. The granting of DHHL's petition to intervene is necessary to ensure that DHHL can participate in this proceeding.

IV. CONCLUSION

DHHL has an interest in this matter, and the LUC's decision will have a direct impact and effect on DHHL's ability to carry out the State's trust responsibilities under the HHCA. Allowing DHHL's intervention in this matter will help ensure that the LUC is fully apprised of the Hōkūao Project's impacts on public water trust purposes and wastewater capacity for future development of DHHL's Lāna'i lands. Based on the foregoing, DHHL respectfully requests the LUC to grant its Petition to Intervene.

DATE: Honolulu, Hawaii, September 3, 2021.

/s/ Alyssa-Marie Y. Kau
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Lāna‘i City, Island of Lāna‘i, County of
Maui, State of Hawai‘i.

DOCKET NO. A21-810

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly served via U.S. mail and by email
upon the following parties:

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DATED: Honolulu, Hawai'i, September 3, 2021.

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