

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
A&B PROPERTIES, INC., )  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban )  
Land Use District For Approximately )  
62.994 Acres At Haliimaile, )  
Makawao, Island of Maui, County of )  
Maui, Tax Map Key No. 2-5-03: )  
portion of 10. )  
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DOCKET NO. A98-723  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER

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LAND USE COMMISSION  
STATE OF HAWAII

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A&B Properties, Inc. ("Petitioner"), a Hawai'i corporation, filed this Petition for District Boundary Amendment on May 6, 1998, pursuant to Chapter 205, Hawai'i Revised Statutes ("HRS"), and Title 15, Subtitle 3, Chapter 15, Hawai'i Administrative Rules ("HAR") to amend the Land Use District Boundary of certain lands at Haliimaile, Makawao, Island of Maui, County of Maui, Tax Map Key No. 2-5-03: portion of 10, covering approximately 62.994 acres of land from the Agricultural Land Use District to the Urban Land Use District ("Property" or "Petition Area") for development of a planned residential community to include single-family residential, park, drainage and wastewater treatment facility uses.

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence and argument of the parties, both written and oral, presented during the hearing held on July 30,

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The Land Use Commission ("Commission"), having heard and examined the testimony, evidence and argument of the parties, both written and oral, presented during the hearing held on July 30,

1998; and having reviewed Petitioner's Proposed Findings of Facts, Conclusions of Law, and Decision and Order, the Office of Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order, the County of Maui Department of Planning's Response to Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order and the record herein, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On May 6, 1998, a Petition for District Boundary Amendment was filed with the Land Use Commission ("Commission") in which Petitioner sought to amend the Agricultural District boundary at Haliimaile, Island of Maui, County of Maui, to reclassify approximately 63 acres into the Urban District.

2. On July 14, 1998, a prehearing conference was conducted in Conference Room 405 of the Leiopapa A Kamehameha Building, 235 South Beretania Street, in Honolulu, Hawai'i, with representatives of the Petitioner and the Office of Planning, State of Hawai'i, present.

3. On July 30, 1998, the Commission conducted a hearing on this Petition at its meeting in Waikapu, Maui, pursuant to a notice published in the Honolulu Star Bulletin and Maui News on May 15, 1998.

4. Entering appearances at the hearing were Benjamin M. Matsubara, Esq. and Stanley M. Kuriyama for Petitioner; Brian Moto, Esq., Ann Cua and Lisa Nuyen for the County of Maui Department of

Planning ("Maui Planning Department"); and Ann Ogata-Deal, Esq., Abe Mitsuda, and Lorene Maki for the Office of Planning, State of Hawai'i ("Office of Planning").

5. The Maui Planning Department supported the Petition and filed Position Of The Maui Planning Department on June 5, 1998. The Maui Planning Department also filed Testimony Of The Maui Planning Department on June 22, 1998.

6. The Office of Planning supported the Petition and filed its Statement of Position In Support Of The Petition with conditions on June 5, 1998. The Office of Planning also filed its Testimony In Support Of The Petition with conditions on June 25, 1998.

7. No person appeared and testified as a public witness and/or submitted written testimony at the hearing.

8. No requests for intervention were filed.

#### DESCRIPTION OF THE PROPERTY

9. The Property is located at Haliimaile, on the northern slopes of Haleakala, District of Makawao, Island and County of Maui, State of Hawai'i. The Property consists of approximately 62.994 acres, and is specifically identified as Tax Map Key No. 2-5-03: portion of 10. The Property is located within the State Agricultural District and is zoned "Interim" under the County of Maui zoning ordinance.

10. The Property is bordered on the northern and western boundaries by sugarcane fields. The eastern boundary is adjacent to a Maui Land & Pineapple Company maintenance yard and HC&S irrigation reservoir. To the east of the maintenance yard and

reservoir is the existing Haliimaile residential community. The southern boundary is across the street from a Maui Land & Pineapple Company maintenance yard and a smaller single-family residential subdivision.

11. The existing Haliimaile residential community contains approximately 175 single-family residences, a five-acre park, a neighborhood commercial area, and the maintenance facilities for Maui Land & Pineapple Company. The smaller residential subdivision contains 15 single-family residences.

12. An HC&S irrigation reservoir is located approximately 160 feet away and to the southwest of the Petition Area. The irrigation reservoir is man-made and used by HC&S for its sugarcane operations. Due to the topography of the Property and surrounding area, the irrigation reservoir is not visible from the Property nor is it an amenity to the residential development.

13. The Property is situated approximately 3-1/2 miles from Pukalani, 2-1/2 miles from Makawao, 4 miles from Paia, 9 miles from Kahului, and 10 miles from Wailuku.

14. The Property has been in sugarcane cultivation over the past two years and is currently in sugarcane cultivation.

15. The Property is owned by A & B-Hawaii, Inc. ("A&B"), a Hawai'i corporation, which in turn is a wholly-owned subsidiary of Alexander & Baldwin, Inc., a Hawai'i corporation.

16. The Petitioner is a wholly-owned subsidiary of A&B, and has been authorized by A&B to submit the Petition as set forth in the authorization letter dated October 20, 1997.

17. The elevation of the Property is from 950 feet above mean sea level ("msl") to approximately 1,075 feet msl in the southeastern corner of the Petition Area.

18. The Property has a gently sloping terrain, with slopes averaging five percent. The Property does not consist of lands having a slope of twenty percent or more.

19. According to the Atlas of Hawaii rainfall maps, the average annual rainfall in the vicinity of the Petition Area is between 30 to 40 inches.

20. According to the Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, soils at the site are the Haliimaile Soil Series, types HhB and HhC. This soil series has a moderately rapid permeability. Runoff is slow to moderate and the erosion hazard is slight to moderate. These soils are developed from weathered igneous rock, are approximately 60 inches or more in depth and are well-drained. During construction the soils will be graded and compacted for house pads and roadway construction. The soil provides very good foundation for structures.

21. The Land Study Bureau's Detailed Land Classification, Island of Maui, classifies the Property's productivity rating as "C" with a land type of "21". Due to the drip-irrigation system installed by HC&S, the Property's overall productivity rating improves from "C" to "A".

22. The Agricultural Lands of Importance to the State of Hawai'i ("ALISH") system classifies approximately one half of the

Property as "Prime Agricultural Lands." The remaining half of the Property is designated "Other Important Agricultural Lands".

23. According to the flood insurance rate map prepared by the Federal Emergency Management Association, the Property is located within Zone "C" ("area of minimal flooding"). There are no designated floodways through the Property.

#### PROPOSAL FOR RECLASSIFICATION

24. The Petitioner proposes to develop the Property as a single-family residential subdivision (45 acres), park space (10 acres), a drainage basin with buffer/maintenance road (7 acres) and a wastewater treatment facility (1 acre) (collectively "Project"). The total Project will consist of approximately 62.994 acres.

25. The proposed Project is currently planned to consist of approximately 196 single-family residential lots, thereby creating a density of approximately 4.4 lots per acre.

26. Residential lots within the Project are proposed to range in size from approximately 6,000 square feet to approximately 10,000 square feet, with an average size of 7,780 square feet per lot.

27. The Petitioner intends to seek a change in zoning designation from the County of Maui from "Interim" to "R-1 Residential" and "P-1 Park" districts.

28. At today's prices, the Petitioner projects that (a) the lots may be sold at prices ranging from approximately \$90,000 to approximately \$140,000 per lot, with an average price of approximately \$115,000 per lot, and (b) house and lot packages may



be sold at prices ranging from approximately \$180,000 to approximately \$270,000 per house and lot package.

29. The intended market for the residential lots will be Maui residents.

30. The Petitioner intends to provide a broad range of housing prices. At currently projected prices, approximately one-third of the units could be priced for persons in the 100% to 120% of median income category, a third could be priced for persons in the 120% to 140% of median income category, and the final third could be priced in excess of 140% of median income category.

31. The Petitioner estimates the total cost of the Project at \$35.8 million. The cost for the residential development is estimated at \$20.8 million. The cost for site development of the Project is estimated at \$15 million.

32. The Petitioner's proposed development timetable, besides this Petition, includes submitting applications for approvals and permits from the County of Maui within the following timeframes:

Zoning Change/Community Plan Amendment (if necessary)	24 months
Subdivision approval (including preparation of construction plans)	24 months
Building/grading permits	3 months

33. Once approvals have been received from the Commission and the County Zoning Application, it is estimated that the Project schedule will be as follows:

Project's design, engineering, and construction plans	12 months
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County approval of the  
subdivision construction plans

12 months

Construction of the Project  
infrastructure

1-2 years

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

34. The Petitioner's 1996 and 1995 balance sheet and income statement reflect Petitioner's pre-tax income in 1996 of \$12.9 million, total assets of \$92.4 million and shareholder's equity of \$70.1 million. The Petitioner's 1997 and 1996 balance sheet and income statement reflect Petitioner's pre-tax income in 1997 of \$16.6 million, total assets of \$94.4 million and shareholder's equity of \$80.4 million.

35. The Petitioner intends to finance the development of the Property from internally generated funds.

STATE AND COUNTY PLANS AND PROGRAMS

36. The Project is consistent with the policies and objectives of the Hawai'i State Plan.

37. The Project is consistent with the policies and objectives of the Maui County General Plan (1990 Update).

38. The County of Maui's Makawao-Pukalani-Kula Community Plan ("Community Plan") was approved by the County of Maui in July 1996 and has designated the Property for single-family and park uses as configured on the Community Plan Map.

39. The Project was the only project proposed by the Petitioner which received approval in this Community Plan region.

40. The Property is currently within the State Land Use Agricultural District as shown on the Land Use District Boundary Maps (USGS Quad) M-7 (Paia).

41. The Property is currently designated as Single-Family and Park under the County's Makawao-Pukalani-Kula Community Plan, as configured in the plan. The Petitioner has represented that it will seek necessary amendments to the Community Plan or modification to the configuration of the Project in order to conform the Project to the Community Plan.

42. The County zoning for the Property is currently "Interim." The Petitioner has represented that it will seek a change in zoning from the County upon obtaining reclassification of the Property from the State Land Use Agricultural District to the State Land Use Urban District.

#### NEED FOR THE PROPOSED DEVELOPMENT

##### Residential Market

43. The Petitioner's market consultants, RE<sup>2</sup> and Mikiko Corporation, prepared a market assessment report in July 1997 to analyze the existing and projected housing demand for the Project's 196 units. The study identified planned projects and projected the absorption of these units based on a number of factors, such as population growth, housing supply, home prices and location.

44. The study indicates that in 1990 through 1996 there was a surplus of units on the housing market. This was due partly to the substantial increase in home prices in the late 1980s. The median single-family home price doubled from the early 1980s to 1990 from \$120,000-\$150,000 to \$280,000. However, the median home

price has been falling recently, reflecting a price correction from the peak in the late 1980s, and home sales have been accelerating over the past few quarters.

45. By the year 2000, it is anticipated that there will be a shortfall of 2,000 housing units to satisfy the projected growth in the number of households, and there will still be a shortfall of units by the year 2010 of 1,300 units.

46. Comparable housing projects on Maui were analyzed to develop potential unit price ranges and absorption rates. Based on the analysis, house and lot prices could range from \$180,000 to \$270,000 in 1997 dollars, and lot-only prices could range from \$90,000 to \$140,000. These units are anticipated to be sold within 3 to 4 years, at a rate of 4 to 5 units per month.

47. Based on anticipated sales prices, lot sizes, locations and convenience to the Wailuku-Kahului urban core, the anticipated market for residences of this Project is Maui residents.

48. Mikiko Corporation prepared an updated report for the proposed Project in July 1998. The current market data supported the same conclusions reached in the original report.

ECONOMIC IMPACTS

49. The average annual per capita income for the County of Maui in 1994 was \$24,011, compared to \$27,734 for the City and County of Honolulu. The State's annual average was \$26,738.

50. Based on site development costs of \$15 million and approximately \$20.8 million for housing construction, it is estimated that approximately 240 cumulative full-time construction

jobs will be generated during the four to six year construction phase of the Project (40 to 60 jobs per year). This number is based on 50 percent of the development cost attributable to labor wage and benefits at \$74,000 per worker.

51. Indirect employment generated by the construction of the Project is estimated at an additional 189 full-time positions, based on 0.79 indirect jobs per full-time job. Thus a total of 429 cumulative full time jobs are estimated over the four to six year construction time period (70 to 100 jobs per year).

52. Assuming that direct construction jobs have an income of \$50,000 (exclusive of benefits) and the indirect jobs generate an income based on 1994 average annual per capita income for the County of Maui, direct and indirect jobs would generate approximately \$16.5 million in aggregate personal income during the four to six year construction phase of the Project. Much of the money earned from these jobs is expected to be spent on the island of Maui.

53. The 1997 real property taxes allocated to the 45 acre area planned for single-family use is currently estimated at \$130 per year. Based on a finished house and lot value of \$250,000 per home at full build-out, the Project will generate taxes of \$230,000 per year, based on 1997 dollars and tax rates.

54. Development of this Project will have a positive impact on the County of Maui because of both the short-term jobs generated during the construction period of the Project, and the higher real property taxes permanently generated by the improved condition of the land.

## SOCIAL IMPACTS

55. Of the four major Hawaiian Islands, the island of Maui had the third largest population count of 100,504 people in 1990 (State Data Book, 1995). From April 1990 to July 1994, the population of Maui increased by 12.5 percent to 113,000 people, as compared to a 4.6 percent increase for the City and County of Honolulu.

56. The population of the existing Haliimaile town in 1990 was 841 people, which represented a 100-person increase in population during the decade 1980 to 1990. Based on the average statewide household size of approximately three persons per household, the population of Haliimaile is anticipated to be increased by approximately 600 people at full build-out and full occupancy of the proposed Project.

## IMPACTS UPON RESOURCES OF THE AREA

### Agricultural Resources

57. On the island of Maui, A&B has 53,000 acres of its 69,000 acres designated for agriculture or pasture use. The balance of 16,000 acres are in conservation use.

58. Of the 53,000 acres, approximately 35,000 acres are used by HC&S for its sugarcane operations, about 2,000 acres are leased out for various diversified agricultural uses, and 6,300 acres are leased out for pasture purposes. The remaining lands are unused.

59. Since 1990, HC&S has been expanding its operation by the addition of over 2,000 acres in newly cultivated lands. A&B has leased 1,200 acres of former pineapple lands from C. Brewer and

approximately 1,200 leased from the State of Hawai'i. In total, HC&S has approximately 37,000 acres in sugarcane production.

60. In expanding its sugarcane operations, A&B has invested \$2 million in improving the leased lands from C. Brewer and approximately \$1 million jointly with Maui Land & Pineapple Company to convert an additional 300 acres of land that was not in any agricultural use into sugarcane production.

61. Over the past 10 years, A&B has invested over \$74 million in capital in HC&S's operations. This money was spent on equipment replacement, creating new fields to farm, conversion to drip irrigation, compliance with environmental laws, as well as in research and development to increase the yield per acre. The objective is to make HC&S as efficient and productive as possible.

62. HC&S foresees putting an additional 500 acres into sugarcane production over the next five-year time horizon. HC&S is constantly looking for areas that are currently not farmed, but with some capital expenditure can be rendered into farmable condition.

63. On the island of Kauai, A&B has approximately 8,000 acres of its 22,000 acres in agricultural use, approximately 13,000 acres are in conservation use, and approximately 1,000 acres comprise the Kukuiula project.

64. As part of its diversification plan to keep agricultural lands productive after McBryde Sugar Company, Limited discontinued its sugar operations, A&B pursued the development of alternative crops such as coffee and macadamia nuts in the late 1980s.

65. A&B had approximately 600 acres in macadamia nuts, all of which were destroyed by Hurricane Iniki after the first crop was harvested. As a result, the operation had to be abandoned.

66. A&B continued with its coffee operation on Kauai, and today A&B is the largest coffee grower in the State, having 3,800 acres in coffee and producing about 60% of the State's coffee production in 1997. Approximately \$52 million of capital has been invested to date in A&B's coffee operation. However, coffee has yet to show a profit.

67. In considering the withdrawal of agricultural lands for nonagricultural uses, A&B evaluates the impacts that each project has on its overall economic viability and HC&S's long-term plans. These withdrawals are carefully reviewed to ensure that they are mutually supportive of, and will not in any manner jeopardize A&B's agricultural operations.

68. In evaluating the proposed Project, A&B considered the impacts of the removal of the approximately 62.994 acres from sugarcane production. A&B determined the conversion of the Property to urban development will not have a significant adverse impact on HC&S's sugarcane operation.

#### Flora and Fauna

69. Char & Associates conducted a botanical survey of the Property on May 16, 1997 to inventory and assess the botanical resources on the Property.

70. The botanical survey found a weedy assortment of species associated with agricultural lands along the margins of the actively cultivated sugarcane fields, and alongside the roads and



irrigation ditches. Almost all of the plants found on the Property are introduced or alien species.

71. Three native species were observed on the Property during the field studies. These are two small shrubs: popolo (*Solanum americanum*) and 'uhaloa (*Walteria indica*); and *Pycnus polystachyos*, a sedge. The 'uhaloa and popolo were traditionally used by Hawaiians for their medicinal properties.

72. All three species are indigenous, that is, they are native to the Hawaiian Islands and found throughout the Pacific. These native species can also be found throughout Maui and are usually associated with disturbed open areas, such as along the perimeter of cultivated fields and in the scrub area that borders roadways.

73. The botanical survey did not encounter any rare, threatened or endangered plants on the Property. No adverse flora impacts are anticipated.

74. A faunal (bird and mammal) field survey was conducted by Phil Bruner, environmental consultant, on April 19-20, 1997.

75. The faunal field survey identified 14 species of introduced (non-native birds), two species of migratory birds and two native species.

76. The two native species, the Black-necked Stilt (*Himantopus mexicanus*) and the Black-crowned Night Heron (*Nycticorax nycticorax*) were observed foraging on the mud flats at the reservoir located to the southwest of the Property. The Black-

necked Stilt is listed as endangered, but the Black-crowned Night Heron is not considered threatened or endangered in Hawai'i.

77. While the man-made reservoir near the Property offers foraging opportunities for shorebirds and water birds, it is not part of the Petition Area. A 160-foot buffer zone separates the reservoir from the Property. The construction and presence of the proposed Project is not anticipated to disturb or affect the birds.

78. Other animals found on the Property included feral cats and the Small Indian Mongoose (*Herpestes auropunctatus*). Rats and mice undoubtedly occur in the sugarcane fields.

79. The endangered native Hoary Bat (*Lasiurus cinereus semotus*) occurs on Maui, but none were observed on an examination of the Property at dusk on April 19, 1998. The distribution, abundance and ecology of this species has not been well studied.

80. The faunal field survey concluded that conversion of sugarcane fields to residential sites will alter the species composition and relative abundance of some birds, but these local changes are unlikely to have any negative impact on bird or mammal activity in the region.

#### Archaeological and Historic Resources

81. Cultural Surveys Hawaii, Inc. conducted an archaeological inventory survey of the Property, which included a field inspection on May 19, 1997 and a historic background research of the Property and surrounding ahupua'a of Haliimaile. The archaeological field survey findings and recommendations are

described in the report dated June 27, 1997 and in an amended report dated July 1998.

82. Historical features found on the Property consisted of man-made irrigation ditches associated with the ongoing cultivation of sugarcane and a ditch-water control gate near the southwest corner of the parcel at the intersection of the ditch from Reservoir 20 and the ditch to Reservoir 16.

83. The ditches and ditch gate within the study area are typical of those found throughout other plantations on Maui and therefore, their preservation is not necessary since other examples are in existence. Also, these ditches are short, inter-reservoir connections and their removal will not impact the longer source ditches such as the Hamakua, Kauhikoa, Lowrie or Haiku. These ditches are quite common throughout Maui plantations.

84. There are no known historic features on the Property that may be impacted by development or use of the land. The Property is located 4.5 miles from the nearest shoreline and contains no trails, gulches, streams, hills or natural water features of historical or cultural significance. Additional work or preservation initiatives for the Property are unnecessary due to the absence of culturally significant sites and the lack of any impact from the removal of actively used irrigation ditches.

85. The historical records reveal that the Property and surrounding area were not settled by Hawaiians. Historical maps dating back to the 1870s indicate that the Property was used by Grove Ranch, then by T. Hobron's and Sharrat's Plantations in the mid to late 1870s. Therefore, the site has historically been used

for agricultural purposes, and to date continues to be used for agricultural purposes by HC&S.

86. The absence of historical sites or features on the Property also indicates the absence of any cultural and/or spiritual practices thereon.

87. The Property, therefore, contains no features or other evidence indicating any customary and traditional use of the Property by Hawaiians for subsistence, cultural or religious purposes, or for any other historically or culturally significant use, requiring protection or regulation under Article XII, Section 7 of the Hawai'i State Constitution.

#### Groundwater Resources

88. The effluent from the proposed wastewater treatment facility will have no adverse impact on the groundwater aquifer in the area.

89. Storm water and wastewater effluent (treated to State Department of Health standards) will evaporate or be absorbed by the plants or by the soil before reaching the groundwater, which is about 1,000 feet below the surface.

#### Recreational and Scenic Resources

90. The Petitioner's planned new 10-acre park is proposed to be dedicated to the County of Maui. The additional park space will add to existing recreational resources in the immediate vicinity of the proposed Project, and represents four times the amount of land required to be dedicated under the County of Maui's park dedication ordinance.

91. An existing 5.2-acre county park is located immediately to the east of the Petition Area. Other recreational facilities that can be utilized by the residents of this community are located in close proximity to the proposed Project. Makawao and Pukalani offer a number of land-based indoor and outdoor facilities (such as Eddie Tam Park, Mayor Hannibal Tavares Community Center, and Pukalani Golf Course), while Paia offers numerous land-based as well as coastal and water-related recreational facilities.

92. The mauka and makai views from the Property consist of the northern coastline of the island, the West Maui Mountains, and Haleakala Mountain. As a result of the existing slope of the Property, the residents will have these views from their homes.

93. The Property is at a slightly lower elevation than the existing residential neighborhoods. Thus, the existing Haliimaile town is not visible from the site except from the lower portions of the Property. The banks of the existing irrigation reservoir also block the views from that neighborhood to the Petition Area. This Project therefore will have no significant visual impact on the existing neighborhood.

94. The small residential subdivision south of the Project will be separated from this Project by Haliimaile Road and the 10-acre park site. Therefore, views from the existing subdivisions are not expected to be affected by the lower elevation homes within this Project.

95. Views of Maui Pineapple Company's maintenance yard on the Project's northeastern boundary will be mitigated by the

placement of the park, which will serve as a spatial separation between the maintenance yard and the new homes.

#### Coastal/Aquatic Resources

96. The Property is located approximately four miles from the nearest shoreline, and is not within the Special Management Area established by the County of Maui.

#### ENVIRONMENTAL QUALITY

##### Noise

97. Short-term noise impacts associated with the construction of the Project can be expected. These impacts can be mitigated by the establishment of appropriate start and curfew times. A permit from the State Department of Health will contain the necessary construction noise conditions to mitigate excessive noise impacts.

98. Noise impacts to the Project subdivision could be generated by agricultural operations in the area. To mitigate potential noise and dust impacts from the agricultural roadways, a 40-foot buffer strip is planned along the east and west boundaries of the Petition Area. The park space along Haliimaile Road will also mitigate noise impacts associated with Maui Pineapple Company maintenance yard operations and traffic on Haliimaile Road.

##### Air Quality

99. A 40-foot wide buffer strip is proposed along the agricultural roadways on the east and west sides of the Petition Area. These buffer strips are intended to mitigate potential noise and dust impacts from the agricultural operations.

## Water Quality

100. The groundwater table is about 1,000 feet below the surface of the Property. The Petitioner proposes to direct storm water into a drainage basin, which will then evaporate or be absorbed by the plants or by the soil before reaching the groundwater. The wastewater effluent will be treated to State Department of Health standards.

101. There are currently no drinking water wells in the area. According to the State Department of Health, there are plans for a future well west of the Project on the Pukalani-side of Haleakala Highway. The well will be approximately 1000 feet deep and the Project will be well outside the 1000-foot setback requirement.

## ADEQUACY OF PUBLIC SERVICES AND FACILITIES

### Highway and Roadway Facilities

102. A traffic impact analysis report was prepared by Julian Ng, Incorporated, in June 1997. The report concludes that due to the relatively small amount of traffic generated by this Project, only minor impacts on regional traffic conditions are expected.

103. The analysis of Haliimaile Road and Haleakala Highway intersection indicated that signalization of the intersection is not warranted. Improvement to the existing right-turn lane from Haliimaile Road onto Haleakala Highway has been requested by the County of Maui.

104. The intersection of Haliimaile Road and Baldwin Avenue is currently operating below capacity, and will continue to operate below capacity after development of the Project.

105. At the intersection of Haliimaile Road and the Project road, a separate left turn lane into the Project from Haliimaile Road is recommended.

Water Service

106. The County of Maui Department of Water Supply ("DWS") system serving the Haliimaile area is supplied by surface water pumped from the East Maui Irrigation Company's Wailoa Ditch and treated to drinking water quality at DWS' Kamole Water Treatment Plant. The water is treated to meet Federal Safe Drinking Water Act standards, then pumped to upper elevation potable water tanks where the water flows by gravity to service the area. This system does not have the capacity to serve the proposed Project.

107. The approximate water requirements (average demand) in gallons per day ("GPD") for the proposed Project are estimated as follows:

	<u>Average Demand</u>
Residential (196 Units @ 600 GPD/Unit)	117,600
Parks (10 Acres @ 2500 GPD/Acre)	25,000
Roadway Landscape Buffer (7 Acres @ 2500 GPD/Acre)	<u>17,500</u>
TOTAL	160,100



108. The Petitioner is in the process of evaluating the development of a potable quality well above the community of Kailua in East Maui. A small portion of its supply would be utilized in Kailua to replace water now supplied from a shallow development tunnel above the Wailoa Ditch. The balance of the well's water, if delivered into the Waiola Ditch, would be available for other projects in the service area of the Kamole Water Treatment Plant, including the Petitioner's proposed Project in Haliimaile.

109. Water lines within the Project will be installed underground in the roadway right-of-ways and possibly in the buffer strips.

110. The Petitioner is prepared to consider alternative potable water sources should the proposed well at Kailua prove to be inadequate to meet the needs of the proposed Project.

#### Wastewater Disposal

111. The Haliimaile area currently does not have a municipal sewerage system to service existing residents. To service the Project, Aqua Engineers, Inc. has prepared a Preliminary Engineering Report which proposes the use of a package-type wastewater treatment facility ("WWTF") situated on a one-acre site within the Petition Area to service the new community.

112. The report estimates that the total wastewater flows generated from the residential lots and park restroom facilities of the Project to be approximately 80,000 GPD.

113. A properly operated and maintained WWTF should generate minimal odors and noise. Potential adverse impacts will be further mitigated by the large buffer space between the plant

facilities and the nearest residential lot. The prevailing northeast tradewinds will direct potential odors into the sugarcane fields rather than into the subdivision.

114. The WWTF will provide secondary level of treatment and produce R-2 quality effluent that is proposed to be reused for irrigation of the roadway landscaping, buffer strips, the drainage retention basin and park through a drip irrigation system. Reuse of the effluent will reduce the demand on the potable water system.

115. As a backup during emergencies, absorption fields are planned within the one-acre site. The actual size of the fields will depend on percolation rates that will be determined from soil testing.

116. Both the construction of the WWTF and use of the effluent for irrigation will be in accordance with State Department of Health reuse guidelines.

117. The excess biosolids generated at the WWTF are planned to be taken to the County of Maui's co-composting facility. This facility combines sludge and green wastes in a process that removes the pathogens and other organisms and produces a marketable compost for landscaping and agricultural uses.

118. Much of the WWTF is planned to be constructed below grade to minimize visual impacts, with the exception of an office, laboratory and mechanical/electrical equipment building. Landscaping is also planned around the buildings to screen views from the nearby residences.

119. The Petitioner proposes to dedicate the WWTF to the homeowners' association and have it operated by a professional operator.

#### Drainage

120. The Property slopes at approximately five percent from the southeast corner to the northwest corner. Storm water runoff on the site sheet flows across the Property and continues as sheet flow northwest, beyond the boundary into sugarcane fields.

121. Preliminary runoff calculations indicate that 65 cfs of additional storm water runoff will be created by the development of the Project. A drainage retention basin is proposed makai of the residential area and situated along the north side of the Petition Area. The drainage basin will be designed for a 50-year storm and retain excess storm water runoff. The actual configuration of the drainage retention basin will be determined during the design stage of the Project. An underground drainage system will be constructed to route flows to the drainage retention basin.

122. Due to the topography of lands mauka of the Property, mauka storm water runoff into the Project is minimal. Mauka storm water runoff generally flows towards a natural drainageway to the east and Kailua Gulch to the west. Additionally, the Hamakua ditch located mauka of the Property will also intercept the mauka storm water from the pineapple fields. Thus, no mitigative measures to prevent mauka storm waters entering the Property are needed.

### Solid Waste Disposal

123. Based on an assumed population of 600 persons for this Project and the generation of five pounds of solid waste per capita per day, approximately 3,000 pounds or 1.4 tons of solid waste per day will be generated from the Project.

124. The solid waste will be collected by the County of Maui Department of Public Works and Waste Management and disposed of at the Central Maui Sanitary Landfill located in Puunene. This landfill is owned and operated by the County of Maui, and has adequate capacity for the collection of this waste.

125. To reduce impacts on the Central Maui Sanitary Landfill, recycling will be encouraged, possibly through the homeowners' association.

### Schools

126. Children from the proposed Project will be able to attend Makawao Elementary School (2-1/2 miles), Kalama Intermediate (4 miles), and King Kekaulike High School (4 miles).

127. The proposed Project is anticipated to generate 21 elementary school students. Makawao Elementary School has the capacity to accommodate these students.

128. The proposed Project is anticipated to generate 18 intermediate school students; however, the Kalama Intermediate School is currently operating over capacity with approximately 1,300 students.

129. King Kekaulike High School is being constructed in phases as the need for new classrooms is generated. This school currently operates five classroom buildings and four specialty

classroom buildings. Approximately 20 high school students are anticipated to be generated by the development.

130. The Department of Education ("DOE") has requested that the Commission include a fair-share condition for school facilities as part of its approval.

#### Police and Fire Protection

131. Police service for the Upcountry area, that includes Haliimaile, consists of four patrol officers each on three shifts out of the Wailuku police station. Response time to the site in case of emergency is estimated at between five to ten minutes. New residents would be encouraged to establish a Neighborhood Crime Watch for additional security.

132. The Makawao Fire Station, located two and one half miles from the Property, provides fire protection for the Haliimaile area. Backup service would be provided by the Paia (9 miles) or Kahului (9 miles) stations.

#### Electricity, Telephone and Cable Services

133. Maui Electric Company, Limited ("MECO") has sufficient capacity to provide electric power to the proposed Project. An underground distribution system located within the roadway rights of way is planned according to MECO standards and will be operated and maintained by MECO.

134. GTE Hawaiian Telephone Company will provide service to the proposed Project. Telephone lines will be installed underground and operated and maintained by GTE.

135. TCI of Hawaii, Inc. will provide Cable TV service. The cable lines will also be installed underground and operated by TCI of Hawaii, Inc.

CONFORMANCE TO APPLICABLE DISTRICT STANDARDS

136. Pursuant to Section 205-17(2), HRS, and Section 15-15-77(2), HAR, reclassification of the Property conforms with applicable district standards set forth in Section 15-15-18, HAR, as amended, for determining the boundaries for the Urban district:

a. The Property is contiguous to existing urban areas which contain "city-like" concentrations of people, structures, streets, and urban levels of service. These urban lands are developed with residential homes, Maui Pineapple Company's maintenance yards, a neighborhood commercial area, and a County park. Lands south and east of the Property are classified as Urban under the Land Use Commission's classification system, and are designated Light Industrial, Business/Commercial, Park and Single-Family under the Community Plan, and are zoned Interim under the County Zoning Ordinances.

b. The Project is in close proximity to various centers of trading and employment, including Pukalani (3 1/2 miles), Makawao (2 1/2 miles), Paia (4 miles), and Kahului (9 miles).

c. Adequate support services such as sewers, water, sanitation, schools, parks, and police and fire protection, are either immediately available to the proposed Project or can be so provided at reasonable costs.

d. The Property is located in an area with sufficient reserve for foreseeable urban growth.

e. The Property consists of satisfactory topography, drainage and soil conditions. The Property is not subject to flooding or tsunami inundation, unstable soil conditions, or other adverse environmental effects.

f. The Property is contiguous with or in close proximity to existing urban areas, and is designated on the Community Plan for single-family use. The proposed Project also conforms to the County of Maui's General Plan.

g. The Property is in an appropriate area for new urban concentration, as it represents an expansion of an existing residential community (Haliimaile town), and is designated for single-family residential growth on the Community Plan.

h. The Property is adjacent to or in close proximity to existing urban development.

i. The 63 acres sought to be reclassified by this Petition represents a significant portion of the Haliimaile Urban district, however, the proposed reclassification conforms to the Urban District standards in paragraphs (1) TO (5).

j. Urbanization of the Property will not contribute to scattered, spot urban development. The Property is adjacent to an existing residential community and will not contribute toward scattered spot urban development. The Petitioner will develop all additional infrastructure required to service the proposed Project. Public infrastructure and support service will

not be unreasonably burdened by or require any unreasonable investment as a result of the proposed Project.

k. The Property has a gently sloping terrain, with slopes averaging five percent. The Property does not consist of lands having a slope of twenty percent or more.

CONFORMANCE WITH GOALS, OBJECTIVES AND POLICIES OF Hawai'i STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

137. Pursuant to Section 205-17(1), HRS, and Section 15-15-77(1), HAR, reclassification of the Property conforms to the Hawai'i State Plan, Chapter 226, HRS, as amended, with respect to the following objectives and policies:

- a. § 226-5(b)(2): "Encourage an increase in economic activities and employment opportunities on the Neighbor Islands consistent with community needs and desires."

Development of this Project will create housing and recreational opportunities, stimulate the economy during the construction period and, subsequently, enhance County revenue from a significant increase in real property taxes. The Project also will be developed in a manner that will minimize adverse effects on the physical and social environments.

Based on site development costs of \$15 million and approximately \$20.8 million for housing construction, it is estimated that a total of 429 direct and indirect full time jobs will be created over the four to six years construction time period.

- b. § 226-11(b)(3): "Take into account the physical attributes of areas when



planning and designing activities and facilities."

The Petition Area contains satisfactory topography, drainage and is reasonably free from the danger of floods, tsunami, unstable soil conditions, and other adverse environmental effects.

- c. (1) § 226-11(b)(8): "Pursue compatible relationships among activities, facilities, and natural resources."
- (2) § 226-12(b)(5): "Encouraging the design of developments and activities that compliment the natural beauty of the islands."
- (3) § 226-13(b)(6): "Encourage design and construction practices that enhance the physical qualities of Hawaii's communities."

The Petitioner considered the Property as an appropriate place for residential development. The objective was to create a community that would compliment the existing Haliimaile town in terms of size and location. The Project has been approved in the Community Plan.

- d. (1) § 226-13(b)(7): "Encourage urban developments in close proximity to existing services and facilities."
- (2) § 226-15(b)(1): "Encourage the adequate development of sewerage facilities that complement planned growth."
- (3) § 226-15(b)(2): "Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic."

The proposed Project will be serviced through existing public infrastructure or by systems or services provided or

arranged for by the Petitioner, including a wastewater treatment facility, potable water source and transmission system, roads and drainage systems. The R-2 quality effluent produced by the WWTF is proposed to be reused for irrigation of the roadway landscaping, buffer strips, the drainage retention basin and park through a drip irrigation system. Reuse of the effluent will reduce the demand on the potable water system. The excess biosolids generated at the WWTF are planned to be taken to the County of Maui's co-composting facility for conversion into a marketable compost for landscaping and agricultural uses. Recycling will be encouraged, possibly through the homeowners' association to reduce impacts on the Central Maui Sanitary Landfill.

- f. (1) § 226-19(b)(1): "Effectively accommodate the housing needs of Hawaii's people."
- (2) § 226-19(b)(2): "Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households."
- (3) § 226-19(b)(3): "Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing."

The Petitioner intends to market the residential lots within the Property to Maui residents. The proposed Project will assist in providing a balanced housing supply for all economic and social groups on the Island of Maui.

- g. (1) § 226-19(b)(5): "Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other

concerns of existing communities and surrounding areas."

- (2) § 226-19(b)(7): "Foster a variety of lifestyles traditional to Hawaii through the design and maintenance of neighborhoods that reflect the culture and values of the community."

The proposed Project is intended to be a logical expansion of the existing Haliimaile town. The number of single-family lots, lot sizes and the proposed site plan for the Project are all intended to complement those presently found in the Haliimaile community. The Petitioner is willing to work with the County of Maui to address specific concerns relating to the Project.

- i. § 226-23(b)(6): "Assume the availability of sufficient resources to provide for future cultural, artistic, and recreational needs."

The proposed Project includes the dedication of 10 acres for park uses. The amount of land dedicated represents four times the amount of land required under the County of Maui's park dedication ordinance.

138. Pursuant to Section 205-17(1), HRS, and Section 15-15-77(1), HAR, reclassification of the Property conforms to the following functional plans:

- a. State Transportation Functional Plan

A Traffic Impact Assessment Report was prepared to determine what improvements would be needed to provide an efficient and safe movement of traffic near the Project site and on major

regional roadways. The study concluded that a separate left turn lane into the Project site is needed on Haliimaile Road.

b. State Historic Preservation Functional Plan

An Archaeological Reconnaissance Survey and historical research was performed to determine whether archaeological or cultural resources of significance were present. The survey found no archaeological sites of significance, and no impacts on archaeological or cultural resources are anticipated. If subsurface archaeological resources are uncovered during construction, the State Historic Preservation Division will be contacted and work will cease until appropriate preservation measures are implemented.

c. State Housing Functional Plan

The Project directly supports the Housing Functional Plan because it will provide reasonably-priced housing opportunities in an excellent location for the resident population.

d. State Conservation Lands Functional Plan

No conservation lands will be affected by this development.

e. State Agriculture Functional Plan

Development of this Project will remove 63 acres from sugarcane production. Removal of this land from agriculture will not have any significant impact on HC&S, which cultivates approximately 37,000 acres on Maui. This Project also is consistent with the Single-Family and Park uses identified in the Community Plan Map. The Petitioner will pursue either an amendment to the Community Plan or a modification to the configuration of the

Project in order to conform to the configuration of the Project on the Community Plan Map.

f. State Employment Functional Plan

The goals and objectives of the Employment Functional Plan will be satisfied through the creation of employment during the construction, marketing and sales phases of the Project. The expenditure of approximately \$15 million for the development of the subdivision and \$20.8 million for home construction, will provide a significant infusion of capital into the Maui's economy.

g. State Tourism Functional Plan

The Project is not expected to have any impact on the goals and objectives of the Tourism Functional Plan, as it will not detract from any tourist attractions or adversely impact any scenic qualities of the area.

h. State Recreation Functional Plan

Ten (10) acres of park space will be provided as part of this project. This space will supplement the nearby 5.2-acre Haliimaile Park and will contribute significantly to the recreational resources of the region. The public will have easy access to the park space because of its location adjacent to Haliimaile Road.

i. State Health Functional Plan

The Project will be developed in accordance with the regulations of the State Department of Health to ensure protection of the environment and public health and safety.

139. Pursuant to Section 205-17(3), HRS, and Section 15-15-77(3), HAR, reclassification of the Property conforms to the following areas of State concern:

- (a) Preservation or maintenance of important natural systems or habitats;
- (b) Maintenance of valued cultural, historical, or natural resources; and
- (c) Maintenance of other natural resources relevant to Hawai'i's economy, including, but not limited to, agricultural resources.

The development of the Property will have no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.

- (d) Commitment of State funds and resources.

The Petitioner will be providing or arranging for the necessary onsite and additional offsite improvements for the proposed Project. Only minimal impacts upon State funds and resources are anticipated.

- (e) Provisions for employment opportunities and economic development.

The proposed Project is estimated to create a total of 429 direct and indirect full time jobs over the four to six years construction time period, based upon site development costs of \$15 million and approximately \$20.8 million for housing construction.

- (f) Provisions of housing opportunities for all income groups, particularly low, low-moderate, and gap group

Based on 1997 dollars, house and lot sales price are projected to range from \$180,000 to \$270,000. Based on median household income (\$53,600) established by the U.S. Department of

Housing and Urban Development for Maui in 1997, it is anticipated that approximately a third of the homes would be priced to be affordable to persons in the 100% to 120% of median income category, a third would be priced for persons in the 120% to 140% of median income category, and the final third would be priced above the 140% of median income category.

140. Pursuant to Section 205-17(4), HRS, and Section 15-15-77(5), HAR, the Petitioner has made the following representations and commitments:

a. The Petitioner is willing and does intend to provide a potable water source for the Project.

b. The Petitioner is willing and does intend to develop a package-type WWTF to handle all of the effluent produced by the Project.

c. The Petitioner will work with the County of Maui's Department of Public Works and Department of Transportation to improve the right turn lane from Haliimaile Road onto Haleakala Highway.

d. If required by the County of Maui, the Petitioner will pursue either an amendment to the Community Plan or a modification to the configuration of the Project in order to conform the Project to the Community Plan.

e. The Petitioner will work with the County of Maui's Planning Department regarding the possible modification of the subdivision layout to a more grid-like pattern of streets.

141. Pursuant to Section 15-15-77(5), HAR, the Petitioner has the necessary economic ability to carry out the representations and commitments relating to the proposed Project.

142. Pursuant to Section 15-15-77(6), HAR, the removal of 63 acres from the Agricultural district (A) will not substantially impair actual or potential agricultural production in the vicinity of the Property, the County of Maui nor the State; and (B) is reasonably necessary for urban growth.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

143. The Property is located within the Coastal Zone Management Area, but is not within the Special Management Area as both are defined in Chapter 205A, HRS. The Petition Area is approximately 4.5 miles from the nearest shoreline and will not have any impact either on the Coastal Zone Management Area or Special Management Area. The development of the Project is consistent with various objectives and policies of the Coastal Zone Management Program, as set forth in Chapter 205A, HRS.

144. Due to the Property's inland location, the development of the Project will have no impact upon any coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, beaches or marine resources, in accordance with the objectives and policies described in Sections 205A-2(b)(1), (2), (3), (4), (9) and (10), HRS, and Sections 205A-2(c)(1), (2), (3), (4), (9) and (10), HRS.

145. The Property will not be subject to any coastal hazards, as described in Section 205A-2(b)(6) and 205A-2(c)(6), HRS. None of the storm waters or wastewater generated by the



Project will reach or affect the ocean waters or shoreline, consistent with the policies described in Section 205A-2(c)(1)(B)(vi), HRS. In accordance with Section 205A-2(c)(2)(A), HRS, an archaeological review and analysis of the Property has been performed, disclosing the absence of any archaeological resource of significance.

146. The development of the proposed Project is not expected to require any extraordinary grading or cutting of the land, or have any material impact on existing public views to and along the shoreline, and thus conforms to the policies expressed in Section 205A-2(c)(3)(B), HRS.

147. Finally, the proposed Project implements the policy set forth in Section 205A-2(c)(3)(D), HRS, to "Encourage those developments which are not coastal dependent to locate in inland areas."

#### INCREMENTAL DISTRICTING

148. The Project is intended to be completed within 10 years from the Commission's action.

#### RULING ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by the Petitioner or the other parties to this proceeding not already ruled upon by the Land Use Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusions of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any findings of fact herein improperly designated as a

conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSION OF LAW

Pursuant to Chapter 205, Hawai'i Revised Statutes, and Chapter 15-15, Hawai'i Administrative Rules, the Land Use Commission finds upon the clear preponderance of the evidence that the proposed boundary amendment does conform to the standards established for the Urban District by the State Land Use District Regulations, is reasonable, and is not violative of Section 205-2, Hawai'i Revised Statutes, as amended; and is consistent with the Hawai'i State Plan, as set forth in Chapter 226, Hawai'i Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 62.994 acres of land in the State Land Use Agricultural District situate at Haliimaile, Makawao, Island of Maui, County of Maui, State of Hawai'i, identified as Tax Map Key No. 2-5-03: portion of 10, and approximately shown on Exhibit "A", attached hereto and incorporated herein, shall be and is hereby reclassified to the State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

IT IS FURTHER ORDERED that the reclassification of the Property from the Agricultural District to the Urban District shall be subject to the following conditions:

1. Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents in the State of Hawaii to the satisfaction of the County of Maui.

The County of Maui shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Maui.

2. Petitioner shall contribute its fair share to the development, funding, and/or construction of public school facilities as determined by and to the satisfaction of the State Department of Education (DOE). Petitioner and the DOE shall submit a written agreement on this matter prior to the Petitioner obtaining approval for County zoning.

3. Petitioner shall fund and construct adequate wastewater transmission and disposal facilities for the proposed development, as determined by the County of Maui Department of Public Works ("DPW") and the State Department of Health ("DOH").

4. Petitioner shall participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation, and the County of Maui DPW.

5. Petitioner, developer and/or landowners of the affected properties shall fund and construct adequate civil defense measures as determined by the County and State Civil Defense agencies.

6. Should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell

concentrations, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner, developers and/or landowners of the affected properties shall stop work in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources ("SHPD") shall be notified immediately. Subsequent work shall proceed upon an archaeological clearance from the SHPD when it finds that mitigative measures have been implemented to their satisfaction.

7. Petitioner shall participate in an air quality monitoring program as specified by the DOH. Petitioner shall notify all prospective buyers of property of the potential odor, noise and dust pollution resulting from surrounding Agricultural District land. Petitioner shall notify all prospective buyers of property that the Hawaii Right-to-Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

8. Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of the DOH, Natural Resources Conservation Service of the U.S. Department of Agriculture, and County agencies.

9. Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed Project. Water Transmission facilities and improvements shall be coordinated with and approved by appropriate State and County agencies. Petitioner shall coordinate with the Department of Water Supply and

provide the necessary information to facilitate the inclusion of the Project in the Water Use and Development Plan.

10. Petitioner shall retain the buffer strips as depicted in the Petitioner's preliminary site plan to mitigate adverse impacts from the agricultural activities in the surrounding area.

11. Petitioner shall conduct seasonal surveys during late winter/early spring (when water is present in the reservoir) to determine if the reservoir is being used as nesting habitat by stilts or other endangered species/subspecies of waterbirds (e.g., Hawaiian Coot, or Hawaiian Gallinule. Surveys should be conducted for at least two years. The surveyors should look for evidence of increased use of the area, as well as predation by dogs and cats. Should findings detect increased disturbance or predation to endangered waterbirds, the Petitioner shall provide mitigation measures as required by the U.S. Fish and Wildlife Service.

12. Petitioner shall develop the Property in substantial compliance with the representations made to the Land Use Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

13. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

14. Petitioner shall timely provide without any prior notice, annual reports to the Land Use Commission, the Office of

Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Land Use Commission.

15. The Land Use Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.


16. Within seven (7) days of the issuance of the Land Use Commission's Decision and Order for the subject reclassification, the Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Land Use Commission.

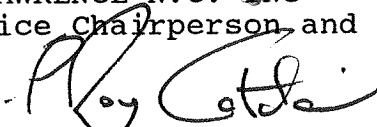
17. Petitioner shall record the conditions imposed herein by the Land Use Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR.

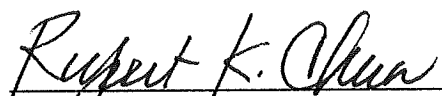
Done at Honolulu, Hawai'i, this 22nd day of October 1998,  
per motion on October 8, 1998.

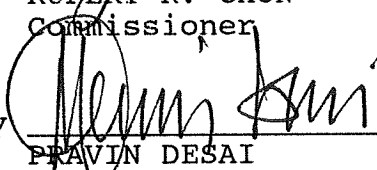
LAND USE COMMISSION  
STATE OF HAWAI'I


By                      (excused)  
MERLE A. K. KELAI  
Chairperson and Commissioner

By   
LAWRENCE N.C. ING  
Vice Chairperson and Commissioner

By   
P. ROY CATALANI  
Commissioner

By   
RUPERT K. CHUN  
Commissioner

By   
PRAVIN DESAI  
Commissioner

By   
ISAAC FIESTA, JR.  
Commissioner


By   
M. CASEY JARMAN  
Commissioner

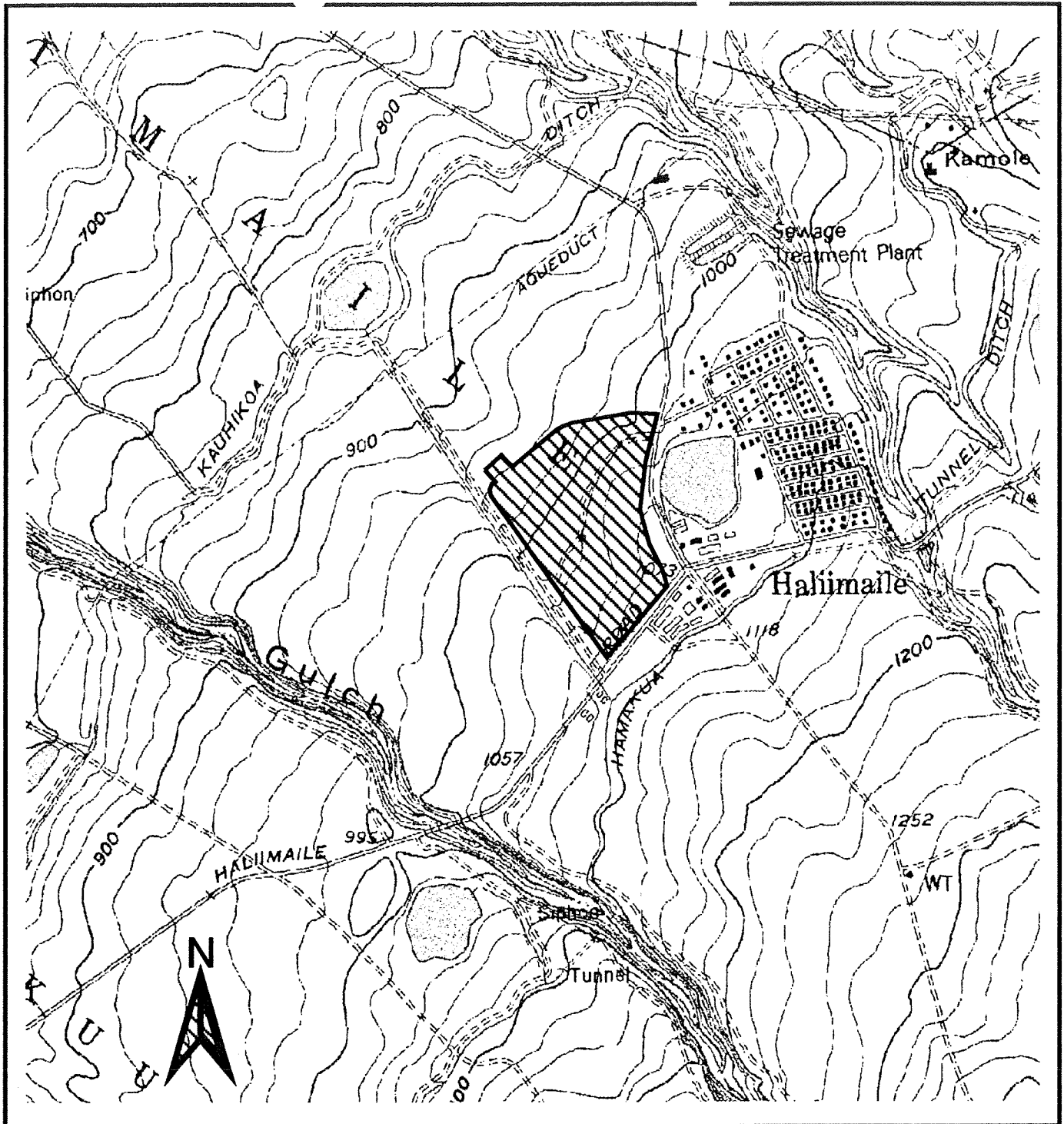
Filed and effective on  
October 22, 1998

Certified by:

  
Executive Officer

By                      (absent)  
HERBERT S.K. KAOPUA, SR.  
Commissioner

By   
PETER YUKIMURA  
Commissioner



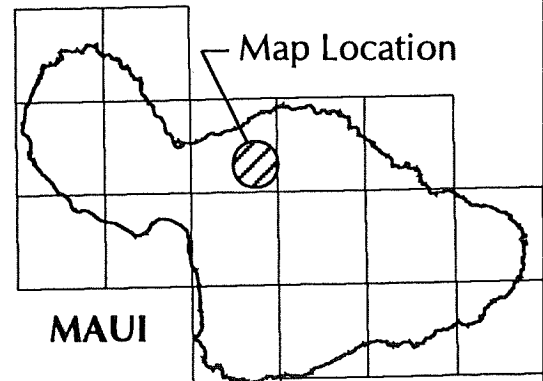
**A98-723 / A&B PROPERTIES, INC.**

**LOCATION MAP**

TAX MAP KEY: 2-5-03: por. 10  
HALI'IMAILE, MAKAWAO, MAUI

 APPROVED AREA

**EXHIBIT "A"**





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

In the Matter of the Petition of ) DOCKET NO. A98-723  
A&B PROPERTIES, INC., ) CERTIFICATE OF SERVICE  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban )  
Land Use District For Approximately )  
62.994 Acres At Haliimaile, )  
Makawao, Island of Maui, County of )  
Maui, Tax Map Key No. 2-5-03: )  
portion of 10. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Amended Cover Sheet and Page 1 of the Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. BRADLEY J. MOSSMAN, Director  
Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

CERT. LISA M. NUYEN, Director of Planning  
Planning Department, County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

CERT. JEFFREY SCHMIDT, ESQ.  
Corporation Counsel  
Office of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

CERT. BENJAMIN MATSUBARA, ESQ., Attorney for Petitioner  
Matsubara Lee & Kotake  
888 Mililani Street, Ste. 800  
Honolulu, Hawaii 96813

CERT. Stanley M. Kuriyama, Executive Vice President  
A & B Properties, Inc.  
P.O. Box 3440  
Honolulu, Hawaii 96801-3440

DATED: Honolulu, Hawaii, this 26th day of October 1998.



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ESTHER UEDA  
Executive Officer