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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition	)	DOCKET NO. A12-795
of:	)	
	)	
WEST MAUI LAND COMPANY, INC., a	)	PETITIONER'S AND COUNTY OF
Hawaii corporation, and KAHOMA	)	MAUI PLANNING DEPARTMENT'S
RESIDENTIAL LLC, a Hawaii	)	JOINT PROPOSED FINDINGS OF
limited liability company,	)	FACT, CONCLUSIONS OF LAW,
	)	DECISION AND ORDER; EXHIBIT
	)	"A"; CERTIFICATE OF SERVICE
To Amend the Land Use District	)	
Boundary of certain land	)	
situated at Lahaina, Island of	)	
Maui, State of Hawaii,	)	
consisting of 16.7 acres from	)	
the agricultural district to	)	
the urban district, Tax Map Key	)	
No. (2) 4-5-010:005.	)	
	)	
	)	

LAND USE COMMISSION  
STATE OF HAWAII  
2012 OCT 30 A 8:09

PETITIONER'S PROPOSED FINDINGS OF  
FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

Petitioner West Maui Land Company, Inc. ("Petitioner") and land owner, Kahoma Residential LLC ("Owner"), filed a Petition for Land Use District Boundary Amendment on April 4, 2012 ("Petition"), pursuant to Hawaii Revised Statute ("HRS") § 205-14 and Hawaii Administrative Rules ("HAR") § 15-15-50 to amend the land use district boundary to reclassify about 16.7 acres of land located at Lahaina, Maui, Hawaii from State Land Use Agricultural District to State Land Use Urban District for the planned Kahoma Residential Subdivision Affordable Housing Project ("Project").

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence and argument of counsel and the parties present during the hearings, along with the pleadings filed herein, makes the following Findings of Fact, Conclusions of Law, Decision and Order.

**I. PROCEDURAL MATTERS**

1. On April 4, 2012, Petitioner and Owner filed a Petition for Land Use District Boundary Amendment in Docket No. A12-795, Exhibits 1-15, Affidavit of Mailing and Certificate of Service. (Transcript "TR" 6/6/12 at p. 35).

2. On April 5, 2012, the Commission received notice from Petitioner that it was not seeking a HRS Chapter 201-H Petition for Land Use Boundary Amendment. (TR 6/6/12 at p. 35).

3. On April 11, 2012, the Commission received a large scale map of the property made the subject of this matter. (TR 6/6/12 at p. 35).

4. On April 16, 2012, the Commission received Petitioner's Affidavit of Service of Petition for Land Use District Boundary Amendment and Affidavit of Sending Notification of Petition Filing. (TR 6/6/12 at p. 35).

5. On April 17, 2012, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of April 16, 2012. (TR 6/6/12 at p. 35).

6. On April 23, 2012, Routh Bolomet filed a Notice of Intent to Intervene. (TR 6/6/12 at p. 36).

7. On April 24, 2012, Michele Lincoln file a Notice of Intent to Intervene. (TR 6/6/12 at p. 36).

8. On May 1, 2012, Michele Lincoln filed a new Notice of Intent to Intervene. (TR 6/6/12 at p. 36).

9. On May 4, 2012, Routh Bolomet filed an addendum to the April 23, 2012 Notice of Intent to Intervene. (TR 6/6/12 at p. 36).

10. A Notice of Hearing of the date, time and place of hearing on the Petition was published in *The Maui News* on May 14, 2012. (Affidavit Regarding Publication of Notice of Hearing filed June 27, 2012).

11. A Notice of Hearing of the date, time and place of the hearing was published in *The Honolulu Star-Advertiser* on May 14, 2012. (Affidavit Regarding Publication of Notice of Hearing filed June 27, 2012).

12. A Notice of Hearing of the date, time and place of the hearing on the Petition was published in *West Maui Today* on May 14, 2012. (Affidavit Regarding Publication of Notice of Hearing filed June 27, 2012).

13. A Notice of Hearing of the date, time and place of the hearing on the Petition was published in *The Garden Island* on May 14, 2012. (Affidavit Regarding Publication of Notice of Hearing filed June 27, 2012).

14. A Notice of Hearing of the date, time and place of the hearing on the Petition was published in the *Hawaii Tribune-Herald* on May 14, 2012. (Affidavit Regarding Publication of Notice of Hearing filed June 27, 2012).

15. On May 16, 2012, the State Office of Planning filed its Position Statement on the Petition. (TR 6/6/12 at p. 36).

16. On May 17, 2012, the Maui County Planning Department filed its Position Statement on the Petition. (TR 6/6/12 at p. 36).

17. On May 29, 2012, Routh Bolomet filed an Addendum to the April 23, 2012 Notice of Intent to Intervene and a Motion

to Waive the Filing Fee for the Intervention. (TR 6/6/12 at p. 36).

18. On May 30, 2012, the State Office of Planning filed statements that it did not oppose the interventions of Michele Lincoln and Routh Bolomet. (TR 6/6/12 at pp. 36-37).

19. On June 4, 2012, the Maui County Planning Department filed statements of no objection to the interventions of Michele Lincoln and Routh Bolomet, a List of Witnesses, a List of Witnesses, and County of Maui Exhibits 1 to 5 including testimony. (TR 6/6/12 at p. 37).

20. On June 4, 2012, Petitioner filed Oppositions to the interventions of Michele Lincoln and Routh Bolomet, a List of Witnesses, and a List of Exhibits which were Exhibits 1 to 15 attached to the Petition. (TR 6/6/12 at p. 37).

21. On June 6, 2012, the Commission Chair acted on Routh Bolomet's Motion to Waive Filing Fee for the Intervention and determined that the fee should be waived as Routh Bolomet was unemployed. (TR 6/6/12 at p. 49).

22. On June 6, 2012, the Commission, following motion and discussion, granted Routh Bolomet's Intervention. (TR 6/6/12 at p. 49).

23. On June 6, 2012, the Commission, following motion and discussion, granted Michele Lincoln's Intervention on the criteria of impact on natural systems or habitat, maintenance of

agricultural resources, provision of housing and commitment of state funds and resources. (TR 6/6/12 at pp. 66-67).

24. On June 6, 2012, a Pre-Hearing conference was conducted by Commission staff to establish deadlines for the submission of Position Statements by the Intervenors, the submission of Exhibit Lists, Witness Lists and Exhibits by all parties, the submission of Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by all parties, and the submission of written direct testimony for all expert witnesses. (Pre-Hearing Order (6/15/12 at p.1)).

25. On June 6, 2012, Petitioner filed and served on the parties Exhibit "15-A" which was a corrected copy of Exhibit "15". (TR 7/19/12 at p. 6).

26. On June 15, 2012, the Commission's Pre-Hearing Order was issued requiring Intervenors' to file Position Statements by June 19, 2012, requiring all parties to file Exhibit List, Witness Lists and copies of Exhibits by June 19, 2012, requiring all parties to file Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by June 29, 2012, and requiring all parties to file the written direct testimony of all expert witnesses by July 2, 2012. (Pre-Hearing Order (June 15, 2012)).

27. On June 19, 2012, Petitioner filed a Witness List, an Exhibit List and Petitioner's Exhibits "15-A" through "25". (TR 7/19/12 at p. 7).

28. On June 19, 2012, State Office of Planning filed a Witness List an Exhibit List and State Office of Planning Exhibits "3" to "5". (TR 7/19/12 at p. 7).

29. On June 19, 2012, Intervenor Michele Lincoln filed a Position Statement, a Witness List, an Exhibit List and Michele Lincoln Exhibits "1" to "7" and Lincoln Video Exhibits "1" and "2". (TR 7/19/12 at p. 6).

30. On June 19, 2012, Intervenor Routh Bolomet filed a Position Statement, a Witness List and an Exhibit List. (TR 7/19/12 at p. 7).

31. On June 25, 2012, Michele Lincoln filed an amended video exhibit consisting of Lincoln Video Exhibits "1" to "4." (TR 7/19/12 at p. 7).

32. On June 22, 2012, Intervenor Routh Bolomet filed a Witness List Substitution, an Exhibit List, and Routh Bolomet Exhibits "1" to "9" and "11" through "15". (TR 7/19/12 at p. 7).

33. On June 22, 2012, the Order Granting Routh Bolomet's Petition to Intervene and Motion to Waive Intervenor's \$50 Filing Fee was entered. (TR 7/19/12 at p. 7).

34. On June 22, 2012, the Order Granting Michele Lincoln's Petition to Intervene was entered. (TR 7/19/12 at p. 7).

35. On June 25, 2012, Intervenor Routh Bolomet filed a Motion for An Extension, a Rebuttal Witness List, a Rebuttal Exhibit List, and Routh Bolomet Exhibits "1" to "9" and Exhibits "11" to "15". (TR 7/19/12 at p. 7).

36. On June 29, 2012, Petitioner filed a Rebuttal Exhibit List, Petitioner Exhibits "26" through "35", and Written Direct Testimonies of Charles Biegel, P.E., Robert W. Hobdy, Anthony Riecke-Gonzales, Keith K. Niiya, P.E., Paul Singleton, Ph.D., Kimokeo Kapahulehua, David Perzinski, Michael F. Dega, Ph.D., Sherri Dodson, Leonard Nakoa, III, Josh Guth, Dylan Payne, Kirk T. Tanaka, P.E., Heidi T. Bigelow, and Rory Frampton. (TR 7/19/12 at p. 8).

37. On June 29, 2012, County of Maui Planning Department filed a List of Exhibits - Amendment #1, and Exhibits 6-8. (TR 7/19/12 at p. 9).

38. On June 29, 2012, Intervenor Michele Lincoln filed Intervenor's Rebuttal Statement, Rebuttal Exhibit, and Witness Testimonies and Profiles. (TR 7/19/12 at p. 8).

39. On June 29, 2012, the County of Maui Planning Department filed a List of Exhibits - Amendment #2 and Exhibits 9-13. (TR 7/19/12 at p. 9).



40. On June 29, 2012, Intervenor Routh Bolomet filed Amendments to Witness and Exhibit Lists, Rebuttal Witness List, Rebuttal Exhibit List and Exhibit 14. (TR 7/19/12 at p. 9).

41. On July 2, 2012, Intervenor Michele Lincoln filed Intervenor's Amended Exhibit List and Witness Testimony. (TR 7/19/12 at p. 9).

42. On July 2, 2012, Intervenor Routh Bolomet filed a Response to Mr. Geiger's June 28, 2012, letter and testimonies of Routh Bolomet, Ava Cardiz, Wilmont Kahiaalii and Robin Knox. (TR 7/19/12 at p. 9).

43. On July 2, 2012, State Office of Planning filed OP Exhibit 2. (TR 7/19/12 at p. 9).

44. On July 4, 2012, Intervenor Routh Bolomet filed an Amendment to Robin Knox's Testimony. (TR 7/19/12 at p. 10).

45. On July 10, 2012, Petitioner filed motions to exclude the testimony of Intervenor Routh Bolomet's witnesses on international law and title, to exclude Intervenor Routh Bolomet's exhibits, and to exclude expert opinion testimony of witnesses for whom written direct testimony was not provided. (TR 7/19/12 at p. 10).

46. On July 17, 2012, State Office of Planning filed Joinders to Petitioner's Motions to Exclude Witnesses on International Law and Title and to Exclude Intervenor Routh Bolomet's Exhibits 1 to 13 and 15 to 17, and a Statement of No

Position on Petitioner's Motion to Exclude Expert Testimony for Which No Written Direct Testimony Was Provided. (TR 7/19/12 at pp. 10-11).

47. On July 18, 2012, County of Maui Planning Department filed a Joinder in Petitioner's Motion. (TR 7/19/12 at p. 11).

48. On July 19, 2012, Intervenor Routh Bolomet filed a Motion to Present Evidence of Lineal Desandeny to Awardees. The motion was not served on the parties and no request to act on the motion was made. (TR 8/23/12 at p. 7).

49. On August 1, 2012, the Commission entered an Order Granting Intervenor's Motion for Extension allowing Intervenor Routh Bolomet to file written direct expert testimony by August 1, 2012. (TR 8/23/12 at p. 7).

50. On August 1, 2012, the Commission entered an Order Granting in Part Petitioner's Motion to Exclude Intervenor Routh Bolomet's Witnesses on International Law and Title and to Exclude Intervenor Routh Bolomet's Exhibits 1 to 13 and 15 to 17. (TR 8/23/12 at p. 7).

51. On August 1, 2012, Intervenor Routh Bolomet filed Amended Testimony of Michael Lee with exhibits only. (TR 8/23/12 at p. 7).

52. On August 10, 2012, Petitioner filed the Rebuttal Testimony of Rory Frampton and Exhibits 37-38. (TR 8/23/12 at p.

8) .

53. On August 31, 2012, Petitioner filed its Rebuttal Exhibit List and Exhibit 39. (TR 9/5/12 at p. 7).

54. On September 7, 2012, Intervenor Routh Bolomet filed a Motion to Disallow Michael Dega's Inadequate Archaeological Assessment. (TR 10/4/12 at p. 7).

55. On September 18, 2012, Petitioner filed a Memorandum in Opposition to Intervenor's Motion to Disallow Michael Dega's Incomplete Archaeological Report. (TR 10/4/12 at p. 7).

56. On September 24, 2012, the State Office of Planning filed a Memorandum in Opposition to Intervenor Bolomet's Motion to Disallow Michael Dega's Incomplete Archaeological Assessment. (TR 10/4/12 at p. 8).

57. On September 27, 2012, the County of Maui filed a Joinder in Petitioner's Memorandum in Opposition to Intervenor's Motion to Disallow Michael Dega's Incomplete Archaeological Report.

58. The Commission conducted a site inspection of the Property on August 2, 2012.

59. The Commission held evidentiary hearings in this docket on July 19 and 20, August 23, September 5 and 6, and October 4 and 5 2012. All hearings were conducted on the Island of Maui. (TR 7/19/12 at p. 1; TR 7/20/12 at p. 1; TR 8/23/12 at

p. 1; TR 9/5/12 at p. 1; TR 9/6/12 at p. 1; TR 10/4/12 at p. 1; and TR 10/5/12 at p. 1).

60. Petitioner's Exhibits 1-14, 15A, 34, and 36-41 were received into evidence. (TR 7/19/12 at p. 93; TR 8/23/12 at pp. 24-25; TR 9/6/12 at pp. 41 & 44; TR 10/56/12 at pp. 83 & 107).

61. County of Maui Exhibits 1-14 were received into evidence. (TR 7/19/12 at p. 94 and TR 9/7/12 at p. 29).

62. State Office of Planning Exhibits 1-5 were received into evidence. (TR 7/9/12 at p. 94).

63. Intervenor Michele Lincoln's Exhibits 1-8 (except for page 11 of Ex. 1 which was withdrawn), 10-13 and 15 were admitted into evidence. (TR 7/19/12 at pp. 99-101).

64. Intervenor Routh Bolomet's Exhibits 1-9, 11 and 13 were excluded by the granting in part of Petitioner's Motion to Exclude Exhibits 1 to 13 and 15 to 17. (TR 7/19/12 at p. 52).

65. Intervenor Routh Bolomet's Exhibit 17 was received into evidence. (TR 8/23/12 at p. 31).

66. The following Petitioner's witnesses' written direct testimony was received into evidence: Dylan Payne (TR 7/20/12 at p. 60); Sherri Dodson (TR 7/20/12 at p. 69); Kimokeo Kapalehua (TR 7/20/12 at p. 83); Joshua Guth (TR 7/20/12 at p. 89); Keith Niiya (TR 8/23/12 at p. 36); Michael Dega (TR 8/23/12 at p. 53); Charles Biegel (TR 8/23/12 at p. 105); Robert Hobdy

(TR 8/23/12 at p. 124); Leonard Nakoa, Jr. (TR 8/23/12 at p. 144); Anthony Riecke-Gonzales (TR 8/23/12 at p. 144); Paul Singleton (TR 8/23/12 at p. 147); Kirk Tanaka (TR 8/23/12 at p. 195); Heidi Bigelow (TR 9/6/12 at p. 47); and Rory Frampton (TR 10/5/12 at p. 83).

67. The following County of Maui's witnesses' written direct testimony was received into evidence: William Spence (TR 7/20/12 at p. 95); David Taylor (TR 9/6/12 at pp. 12-13); Jo-Ann Ridao (TR 9/6/12 at p. 147); and Rowena Andaya (TR 9/7/12 at p. 30).

68. State Office of Planning witness Rodney Funakoshi's written direct testimony was received into evidence. (TR 9/7/12 at p. 68).

69. The following Intervenor Michele Lincoln's witnesses' written direct testimony was received into evidence: Jan Imai (TR 9/7/12 at p. 114); Herman Naole (TR 9/7/12 at p. 114 and Ex. 12); Cynthia Catagal (TR 9/17/12 at p. 114 and Ex. 10); and Elle Cochran (TR 9/7/12 at p. 7).

70. Intervenor Routh Bolomet did not offer into evidence the written direct testimony of any witnesses.

71. Written correspondence from 32 persons was received; four persons gave public testimony, one of whom appeared three separate times. (TR 7/19/12 at p. 3; TR 8/23/12 at pp. 7-8 and 10; TR 9/6/12 at pp. 7 and 13; and TR 10/4/12 at

pp. 6-8 and 11).

## II. FINDINGS OF FACT

### A. Description of the Petition Area.

1. The Petition Area is located in Lahaina, Maui, Hawaii, and consists of about 16.7 acres. (Petitioner Exhibit "15-A"; TR 7/19/12 at p. 112).

2. The Petition Area is currently vacant. (Bigelow Written Direct Testimony ("WDT") at pp. 4-5).

3. The Petition Area is surrounded by areas of urban uses. (TR 7/19/12 at pp. 114-115 and 130; Petitioner Ex. 23)

4. Single-family residences exist on lands mauka and to the south of the Petition Area. Multi-family properties are located on the land makai of the Petition Area. On the north of the Petition Area is the Kahoma Stream Flood Control Channel. Just north of the Kahoma Stream Flood Control Channel lies the Lahaina Business Park which consists of light industrial and commercial properties. (TR 7/19/12 at pp. 118-119); Petitioner Ex. 23).

5. The Petition Area slopes away from Lui Street at the mauka end toward an old cane haul road in a westerly direction at an average slope of 4.5%. The Petition Area ranges in elevation from 32' above sea level at its makai portion to 145' above sea level at its mauka portion. (Tanaka WDT at p. 4; Petitioner Ex. 7).

6. The slope of the Petition Area is suitable for the planned use as a residential area. (Bigelow WDT at p. 7).

7. The Petition Area is situated within Zone X, an area of minimal flooding as designated on Flood Insurance Rate Maps dated September 25, 2009 for the island of Maui. (TR 7/20/12 at pp. 4-5; Tanaka WDT at pp. 4-5); Petitioner Ex. 7).

8. The Petition Area is listed as Other Important Agricultural Lands according to the Agricultural Lands of Importance to the State of Hawaii ("ALISH"). This is the lowest classification of lands for agricultural uses, reflecting the soils and management challenges facing any person who wishes to conduct farming operations on the Petition Area. (Singleton WDT at p. 14; Petitioner Ex. 7).

9. The productivity of the land underlying the Petition Area was classified as B72i by the University of Hawaii Land Study Bureau. The Bureau's classification system rates lands on the scale of "A" to "E" reflecting land productivity characteristics. Lands designated "A" are considered to be of the highest productivity with "E" rated lands ranked as the lowest in productivity. The B72i designation means that the land is moderately suited to machine tillability and productive if irrigated. In the absence of irrigation, the land would have a lower productivity classification. (Singleton WDT at pp. 14-15).

10. The soils underlying the Petition Area are of the

Pulehu-Ewa-Jancis general association. A general association of soils, while helpful in the management of large parcels, is not suitable for determining the management of a single property. (Singleton WDT at p. 5).

11. A soils series classification is more helpful in determining the management of a single property. The soils within the Petition Area are classified as WdB (very stony, silty clay), EaA (silty clay loam) and rRk (rock land). (Singleton WDT at pp. 5-6; Petitioner Ex. 7).

12. The Petition Area is dominated by the Wahikuli very stone silty clay soil series (WdB) which is generally shallow and stony. (Singleton WDT at p. 6).

13. The soils in the Petition Area have a higher degree of stoniness than the average description for the WdB soils series, with depth of soils ranging from 1.5 to 8 feet beneath the surface. (Singleton WDT at p. 6).

14. The Petition Area would not be a candidate for designation as important agricultural land because it is not a large contiguous tract of land, it is sandwiched in an urban area, it has a lot of rocks in the soil, and it is not a good place to engage in commercial farming. (TR 7/20/12 at pp. 133-134).

15. The Petition Area is very unlikely to be used for agriculture because of the limited crop selection allowed by the



soils, the proximity of the Petition Area to residential neighborhoods, the difficulty in obtaining uniform water infrastructure to the crops and the financial risk in engaging in agriculture on the Petition Area. (TR 8/23/12 at pp. 160-169 and 192-193).

**B. Description of the Proposed Kahoma Residential Subdivision.**

16. The Project proposed by Petitioner will consist of 68 single-family housing units with on-site and off-site infrastructure improvements. (TR 7/19/12 at pp. 112, 122, 124-128; Petitioner Exs. 7 and 23).

17. A 43,000 square foot grassed neighborhood park will be built in the center of the Project. (TR 7/19/12 at p. 124; TR 9/6/12 at p. 64; Petitioner Exs. 7 and 23).

18. Lots within the Project will range in size from 5,000 to 12,000 square feet. (Tanaka WDT at p. 4; TR 7/19/12 at p. 123; Petitioner Exs. 7 and 23).

19. Ten of the 68 lots will be developed under the direction of Habitat for Humanity. Homes developed for Habitat for Humanity will be sold to partner families at no profit and financed with affordable loans. Target families will be those earning less than 80% of the household median income of households in Maui County, Hawaii. (Bigelow WDT at p. 10; Dodson WDT at pp. 2, 5-6; Petitioner Exs. 7, 11 and 23).

20. The remaining 58 lots will be sold either as a lot

only or as a house/lot package. (Bigelow WDT at p. 12; TR 7/19/12 at p. 113).

21. All lots will be priced to be marketed to individuals and families whose gross annual family incomes are between 80% and 160% of the household median income for Maui County, Hawaii as established by the United States Department of Housing and Urban Development as determined for 2011 or the date of sale, whichever is lower. (Bigelow WDT at p. 12; TR 7/19/12 at p. 113; TR 9/6/12 at pp. 49-50; Petitioner Ex. 11).

22. Owners of lots which are 7,500 square feet or greater in area will have the option of constructing an ohana unit. (TR 7/19/12 at p. 112); Petitioner Ex. 23).

23. Two-car garages or car-ports will be required for each dwelling constructed on each lot developed by Petitioner. (TR 7/19/12 at pp. 126-127); Petitioner Ex. 23; TR 9/6/12 at p. 53).

24. In addition to the two-car garage or car-port, two parking spaces will be required on-site for each lot within the subdivision. (TR 7/19/12 at pp. 126-127; Petitioner Ex. 23).

25. For those lots on which an ohana is built, an additional on-site parking space will be required for a total of three on-site parking spaces for each lot with an ohana. (TR 7/19/12 at pp. 126-127).

26. The Project will be serviced internally by a road

located within a 58' right-of-way that will be dedicated to the County of Maui. (TR 7/19/12 at pp. 124-125; Petitioner Ex. 23).

27. The mauka portion of the Project will connect to Lui Street while the makai portion of the Project will connect to an existing cane haul road known as the "Proposed Kuhua Street Extension." The Proposed Kuhua Street Extension will connect to Keawe Street to the north. (TR 7/19/12 at p. 120; Tanaka WDT at p. 4; Niiya WDT at pp. 3-4).

28. Traffic calming structures will be constructed on the road within the Petition Area. (TR 7/19/12 at pp. 124-125; Niiya WDT at p. 4).

29. Construction of the infrastructure in the Petition Area must be started by December 2, 2014 and must be completed by December 2, 2022. (Bigelow WDT at p. 12; TR 7/20/12 at p. 53).

30. Petitioner and Owner's consultants have met with interested community groups to discuss the proposed Project. (TR 7/19/12 at pp. 123-124; TR 7/20/12 at pp. 19-21; Petitioner Exs. 7 and 23).

31. The Project was approved and certified as a HRS § 201H-38 affordable housing project by way of Resolution 11-126 of the Maui County Council adopted on December 2, 2011. (Bigelow WDT at pp. 11-12; Petitioner Ex. 11).

32. Petitioner had no objections to including the Modification to the Project stated in Exhibit 1 of Resolution 11-

126 as conditions to granting the change from State Land Classification Agricultural to Urban. (TR 9/6/12 at p. 55).

33. The County of Maui Planning Department is in favor of the Project and support the change from State Land Classification Agricultural to Urban. (TR 7/20/12 at p. 95).

34. The State Office of Planning recommends the Project proceed. (TR 9/7/12 at p. 74).

**C. Justification for Reclassification of Petition Area.**

35. While the Petition Area is classified as agricultural, the property is surrounded by urban levels of services and uses. (TR 7/19/12 at p. 130; TR 9/7/12 at p. 72; Petitioner Ex. 23).

36. Before the late 1980's, the Petition Area was part of a larger parcel used for sugar cane cultivation. (TR 7/19/12 at pp. 116-117; Bigelow WDT at pp. 4-5; Petitioner Exs. 7 and 23).

37. In the late 1980's, the Kahoma Stream Flood Control Channel was constructed along the northerly boundary of the Petition Area. (TR 7/19/12 at pp. 117-118; Bigelow WDT at pp. 4-5; Petitioner Exs. 7 and 23).

38. The construction of the Kahoma Stream Flood Control Channel severed the connection between the Petition Area and adjoining parcels. (TR 7/19/12 at p. 117; Bigelow WDT at pp. 4-5; Petitioner Exs. 7 and 23).

39. To the south of the Petition Area lies single-family residential subdivisions of Kelawea Mauka and Kuhua Tract. (TR 7/19/12 at p. 116; Petitioner Ex. 23).

40. To the west, or makai, of the Petition Area lies light industrial uses, multi-family housing, and commercial shopping centers. (TR 7/19/12 at p. 118; Petitioner Ex. 23).

41. To the north of the Petition Area lies the Lahaina Business Park, a light industrial/commercial area. (TR 7/19/12 at p. 118; Petitioner Ex. 23).

42. Since the construction of the Kahoma Stream Flood Control Channel, the properties adjacent to the Kahoma Stream Flood Control Channel on the north were reclassified from agricultural to urban and developed as a commercial and industrial area. (TR 7/19/12 at pp. 117-119; Petitioner Exs. 7 and 23).

43. Although the Petition Area is zoned and classified as agricultural, given the constraints placed on the property by the soils and the proximity to existing residential subdivisions, the Petition Area is an undesirable site for agriculture use. (Singleton WDT at p. 15; TR 8/23/12 at pp. 162 and 192-193).

44. The County of Maui adopted a County-wide policy plan in March, 2010 identifying as a land use goal the encouragement of infill of lands intended for urban use. (TR 7/19/12 at pp. 135-136; Petitioner's Ex. 23).

45. The Maui Planning Commission and the Maui County Planning Department recommended that the Project be included in the draft Maui Island Plan Map as an urban use. (TR 7/19/12 at pp. 134-136; Petitioner's Ex. 23).

46. The Project was reviewed by the State Office of Planning which found it to be in conformance with applicable land use standards, the Project is adjacent to existing residential uses and the Project is surrounded by Urban District Lands. (TR 9/7/12 at pp. 71-72).

47. Reclassification of the Petition Area from agricultural to urban appears justified and subject to review under the decision making criteria for boundary amendments. (FOF 33-44).

D. Consistency of Reclassification of the Petition Area With Policies and Criteria Established Pursuant to HRS 205-16, 205-17 and 205A-2.

48. The six criteria that must be reviewed in determining whether the reclassification is consistent with policies and criteria are: 1) conformance with the Hawaii State Plan and adopted functional plans; 2) conformance with urban district standards; 3) impact on areas of state concern; 4) conformance with county general plan; 5) the economic ability of the Petitioner to complete the proposed Project; and 6) whether the lands were in intensive agricultural use for two years before the date of the Petition or whether the lands have a high

capacity for intensive agricultural use. (HAR § 15-15-77(b)).

1) Conformance with the Hawaii State Plan and Adopted Functional Plans.

49. The first criteria under which the proposed reclassification is examined is the extent to which it conforms to the goals, objectives, and policies of the Hawaii state plan and adopted functional plans. (HAR § 15-15-77(b)(1); TR 7/19/12 at pp. 131-133).

50. The Hawaii State Plan serves as a guide for the future long-range development of the State. (HRS § 226-1).

51. The Hawaii State Plan is implemented through several functional plans which identify needs, problems and issues. (HRS Chapter 226).

52. The State Agricultural Functional Plan suggests that agricultural properties are important and should be protected unless agricultural uses are not present or feasible. (TR 7/19/12 at pp. 131 and 187-189).

53. The Petition Area has not been farmed commercially since 1990. (TR 7/19/12 at p. 190; Bigelow WDT at pp. 4-5).

54. The Petition Area is not presently used for agriculture. (TR 7/19/12 at p. 189; Bigelow WDT at pp. 4-5).

55. The soils of the Petition Area have very severe limitations for agricultural use. (Biegel WDT at p. 9).

56. The soils of the Petition Area are extremely

stony, providing severe management challenges to small holder farms. (Singleton WDT at p. 7).

57. The stoniness of the soils of the Petition Area limits the types of crops that can be grown. (Singleton WDT at p. 8).

58. Meeting the water needs for crops that could be grown on the Petition Area will be a severe limiting factor in farming the property. (Singleton WDT at p. 11).

59. The proximity of the Petition Area to neighboring residential subdivisions creates management challenges to address chemical drift, dust generation and odor generation from agricultural operations. (Singleton WDT at p. 11).

60. The soil conditions, water limitations and management challenges of the Petition Area make it unlikely that the property will be put into agricultural production now or in the future. (Singleton WDT at p. 14).

61. The State Agricultural Functional Plan has two fundamental objectives: (a) viability in sugar and pineapple industries; and (b) growth of market niche driven and Hawaii differentiated crops and products for export markets. (State Agricultural Functional Plan at p. II-3).

62. The State Office of Planning determined that the Project generally meets the State Agricultural Functional Plan. (TR 9/7/12 at pp. 71-72).



63. Reclassification of the Petition Area is consistent with the State Agricultural Functional Plan as neither of the fundamental objectives of that plan can be achieved on the Petition Area. (FOF 53-62).

64. The State Housing Functional Plan provides for meeting housing needs to a variety of income levels. (TR 7/19/12 at pp. 131-132).

65. The average median sales price for single family homes in Lahaina for the period from 2004 to 2011 was \$800,000. (Dodson WDT at p. 2).

66. The median income for a Maui household (family of four) is \$77,000. (Dodson WDT at p. 2).

67. Maui households earning the median income cannot buy a house in Lahaina priced at market rates. (Dodson WDT at pp. 2-3).

68. Lahaina has a lack of inventory of newly constructed homes and vacant lots for families earning between 80% and 160% of the median income. (Bigelow WDT at p. 14).

69. On June 27, 2012, there were three active listings for single family homes (3 to 4 bedroom, 1 to 2 bathrooms, living area between 1,000 and 1,500 square feet, on lots up to 11,000 square feet in area) in the West Maui Area. (Bigelow WDT at p. 14 and Petitioner Ex. 28).

70. On June 27, 2012, there were 11 vacant lots of

11,000 square feet or less listed for sale in the West Maui Area. (Bigelow WDT at p. 14 and Petitioner Ex. 28).

71. The number of persons living in each living unit in West Maui is double the average number of persons living in living units on the island of Maui. (Dodson WDT at p. 4).

72. There is a need for more housing at affordable prices in Maui. (TR 9/6/12 at pp. 147-148 and County Ex. 9).

73. The Project will add 68 single-family residential lots to the number of residential lots in Lahaina. (Bigelow WDT at p. 10).

74. The State Office of Planning determined that the Project generally meets the State Housing Functional Plan. (TR 9/7/12 at pp. 71-72).

75. Reclassification of the Petition Area will be consistent with the State Housing Functional Plan as it will meet housing needs at a variety of income levels. (FOF 65-74).

76. The State Recreational Functional Plan recognizes outdoor recreation as an important part of life for Hawaii's residents. (State Recreational Functional Plan Foreward; TR 7/19/12 at p. 132; Petitioner Ex. 23).

77. The Project will provide a 43,000 square foot neighborhood park in the middle of the Project. (TR 7/19/12 at p. 124; Petitioner Ex. 23).

78. Bicycle lanes, sidewalks and a walking path will

be built within the Project. (TR 7/19/12 at p. 132; Petitioner Ex. 23).

79. The State Office of Planning determined that the Project generally meets the State Housing Functional Plan. (TR 9/7/12 at pp. 71-72).

80. Reclassification of the Petition Area will be consistent with the State Recreational Functional Plan as it will provide outdoor recreation opportunities to West Maui residents. (FOF 77-79).

81. The State Transportation Functional Plan recognizes the role of transportation in light of population increases and community growth as a vital concern. (TR 7/19/12 at p. 132).

82. Connectivity between adjoining residential neighborhoods and commercial/industrial areas will be increased by the roadway within the Project. (TR 7/19/12 at pp. 119-120, 122-123; TR 8/23/12 at p. 35).

83. The State Office of Planning determined that the Project generally meets the State Transportation Functional Plan. (TR 9/7/12 at pp. 71-72).

84. Reclassification of the Petition Area will be consistent with the State Transportation Functional Plan as the Project will enhance transportation in the West Maui area. (FOF 82-83).

85. The State Historic Preservation Functional Plan places importance on the preservation of historic properties, records, artifacts and rural histories. (TR 7/19/12 at p. 132).

86. An Archaeological Assessment was conducted on the Petition Area. (Dega WDT at p. 7; Petitioner Ex. 7).

87. No archaeological features or archaeological deposits were found on the Petition Area either during a pedestrian survey or from any of the 15 trenches that were excavated for subsurface investigation. (Dega WDT at p. 7; Petitioner Ex. 7).

88. The State Historic Preservation Division concluded that no historic properties will be affected by the Project on two separate occasions, in 2006 and again in 2012. (Dega WDT at p. 9; Petitioner Ex. 26).

89. In July 2012, an archaeological feature and burials were claimed to exist on the Petition Area. (TR 7/19/12 at p. 30).

90. In September 2012, the claimed locations of the archaeological feature and for the burials were provided to Petitioner. (TR 10/5/12 at pp. 85-87 and 91).

91. The claimed archaeological feature was examined and determined by expert archaeologists to be a push pile of rock and boulders and not an archaeological feature. (TR 10/5/12 at pp. 91-93; Petitioner Ex. 41).

92. The locations of the claimed burials were excavated to bedrock. No evidence was found of burials, either presently existing or which may have existed in the past. (TR 10/5/12 at p. 92; Petitioner Ex. 41).

93. The State Historic Preservation Division again concluded that no historic properties will be affected by the Project. (TR 10/5/12 at p. 92; Petitioner Ex. 41).

94. The State Office of Planning Determined the Project was generally consistent with the State Historic Preservation Functional Plan. (TR 9/7/12 at pp. 71-72).

95. Reclassification of the Petition Area is consistent with the State Historic Preservation Functional Plan as there were no historic properties affected by the Project. (FOF 86-94).

96. The State Sustainability Plan establishes sustainability as a priority. (TR 7/19/12 at pp. 132-133).

97. The Project's location adjacent to existing urban areas shortens necessary trips to commercial areas, minimizing petroleum fueled car and truck use. (TR 7/19/12 at pp. 132-133).

98. Providing a neighborhood park within the Project encourages recreation and healthy lifestyles. (TR 7/19/12 at pp. 132 and 124).

99. The State Office of Planning determined the Project was generally consistent with the State Sustainability

Plan. (TR 9/7/12 at pp. 71-72).

100. Reclassification of the Petition Area is consistent with the State Sustainability Plan as the uses of petroleum fuel are minimized. (FOF 97-99).

101. Reclassification conforms with the Hawaii State Plan. (FOF 63, 75, 80, 84, 95 and 100).

2) The extent to which the reclassification conforms to applicable district standards.

102. Section 15-15-18, Haw.Admin.R., outlines the standards applied to classify lands as urban. (TR 7/19/12 at p. 131; Petitioner Ex. 23).

103. The first standard is whether the lands are characterized by city-like concentrations of people, structures, streets and urban levels of services. (TR 7/19/12 at p. 131).

104. The Petition Area is surrounded by urban uses consisting of single family residential subdivisions to the south, multi-family residential projects to the west, light industrial uses to the west and to the north, and commercial shopping centers to the west. (TR 7/19/12 at p. 131; Petitioner Ex. 23; TR 9/6/12 at p. 72).

105. The streets that adjoin the Petition Area are residential streets. (TR 7/19/12 at pp. 121-123; Petitioner Ex. 23).

106. Electrical, telephone, cable television, wastewater and water systems exist in the urban properties that

surround the Petition Area. (TR 7/19/12 at pp. 127-128; Petitioner Ex. 7).

107. The Petition Area is surrounded by lands characterized by city-like concentrations of people, structures, streets and urban levels of services. (FOF 104-106).

108. The second standard is the proximity of the Petition Area to centers of trading and employment. (TR 7/19/12 at p. 130).

109. Two shopping centers, Lahaina Gateway Center and the Cannery Mall, are located within ½ mile of the Petition Area. (TR 7/19/12 at p. 130; Petitioner Exs. 7 and 23).

110. Front Street in Lahaina, a major commercial area, is located within 1 mile of the Petition Area. (Petitioner Exs. 7 and 23).

111. The business area of Lahaina is located between Front Street and the Petition Area. (Petitioner Exs. 7 and 23).

112. The Petition Area is in proximity to centers of trading and employment. (FOF 109-111).

113. The third standard is availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities and police and fire protection. (TR 7/19/12 at pp. 130-132).

114. The West Maui region is served by four public

schools operated by the State of Hawaii Department of Education. (Petitioner Exs. 7 and 23).

115. Two smaller private schools serve the West Maui region. (Petitioner Ex. 7).

116. The Lahaina Recreation Center, which has baseball fields and play fields for soccer and football, is located about 1 mile from the Petition Area. (Petitioner Ex. 7).

117. The Lahaina Aquatic Center, the Lahaina Civic Center and the Wainee Park are also located in the vicinity of the Petition Area. (Petitioner Ex. 7).

118. The wastewater system operated by the County of Maui has existing lines in the vicinity of the Petition Area. (TR 7/19/12 at pp. 127-129; Tanaka WDT pp. 6-7; Petitioner Exs. 7 and 21).

119. Solid waste disposal provided by the County of Maui is available on a weekly basis. (Petitioner Ex. 7).

120. The soils of the Petition Area are highly permeable with slow runoff and slight erosion hazard. (Singleton WDT at p. 6).

121. The County of Maui operates the domestic water system in West Maui. Water lines providing service to the adjoining urban uses exist. (TR 7/19/12 at p. 131; TR 9/6/12 at p. 113).

122. A public transportation system operates from



Lahaina to Central Maui where transfer can be made to other buses serving the Kihei and Upcountry areas of Maui. Bus stops exist near Front Street. (Petitioner Ex. 7).

123. Electrical, telephone and cable television service to West Maui, including Lahaina, is provided by companies that have certificates issued by the Public Utilities Commission. (TR 7/19/12 at p. 131; Petitioner Ex. 7).

124. The Petition Area is within the Lahaina Police Substation service area which includes the entire Lahaina district. The Lahaina Police Substation is located about 1.5 miles from the Petition Area. (Petitioner Ex. 7).

125. The Petition Area is within the Lahaina Fire District which is serviced by the Lahaina Fire Station. The Lahaina Fire Station is located about 1.5 miles from the Petition Area. (Petitioner Ex. 7).

126. Basic services such as schools, parks, wastewater lines, solid waste disposal, potable water, police and fire protection, transportation and public utilities either cover the Petition Area or are adjacent to the Petition Area. (FOF 114-125).

127. The fourth standard is whether there are sufficient reserve areas for foreseeable urban growth.

128. The Petition Area is infill as it is surrounded by existing urban uses. (TR 7/19/12 at p. 131; TR 7/20/12 at p.

109).

129. There are other lands adjoining Lahaina which can be used, and have been designated, for urban growth in the future. (Petitioner Ex. 23).

130. The Petition Area does not decrease the areas available for foreseeable urban growth. (FOF 128-129).

131. The fifth standard is Petition Area is suitable for urban use by virtue of topography, drainage, and dangerous conditions arising from flood, tsunami, unstable soils or adverse environmental effects. (TR 7/19/12 at p. 131).

132. The Petition Area slopes from a high of about 145 feet above sea level to a low of about 32 feet above sea level. The average slope of 4.5% is considered suitable for residential use. (Tanaka WDT at p. 4; Petitioner Ex. 7).

133. The soils of the Petition Area are highly permeable with slow runoff and slight erosion hazard. (Singleton WDT p. 6).

134. There are minimal flows of water in the Kahoma Stream except during periods of moderate to heavy rain. (TR 7/19/12 at p. 172).

135. The Petition Area is not an area that is prone to flooding, being classified as Zone X, an area of minimal flooding, by the FEMA Flood Insurance Rate Maps revised in September, 2009. (TR 7/20/12 at p. 54; Petitioner Ex. 7).

136. The Petition Area is not within the tsunami inundation zone. (Petitioner Ex. 7).

137. The soils in the Petition Area are stable and good for building structures. (Biegel WDT at p. 8).

138. On September 23, 2011, the Final Environmental Assessment for the Project was published. (Petitioner Ex. 7).

139. The Final Environmental Assessment was reviewed by the accepting agency which rendered a Finding of No Significant Impact ("FONSI"). (Petitioner Ex. 7).

140. The Petition Area is suitable for urban use. (FOF 132-139).

141. The sixth standard is that land contiguous with existing urban areas will be given more consideration than non-contiguous land. (H. Admin. R. § 15-15-18).

142. The Petition Area is contiguous with and surrounded by lands that are existing urban uses. (TR 7/19/12 at p. 130-131; Petitioner Exs. 7 and 23).

143. The Petition Area, being surrounded by lands with existing urban use, receives greater consideration for urban use.

144. The seventh standard is whether the Petition Area is in an appropriate location for new urban concentrations and whether the area is shown as urban growth on state and county general plans. (H. Admin. R. § 15-15-18).

145. The Petition Area is contiguous with and

surrounded by lands that are existing urban uses. (TR 7/19/12 at pp. 130-131; Petitioner Exs. 7 and 23).

146. Maui County is undergoing a review and update of its land use plans. (TR 7/19/12 at pp. 134-136; Petitioner Ex. 23).

147. Maui County adopted a County-wide policy plan on March 24, 2010 that identifies goals, objectives, policies and implementing actions. (Petitioner Ex. 23; TR 7/19/12 at pp. 134-135).

148. The Project complies with the policy plan by providing affordable housing, by increasing the affordable housing inventory, by infill in existing communities on lands intended for urban use, and by directing new development in and around communities with existing infrastructure and service capacity. (TR 7/19/12 at pp. 134-138).

149. Inclusion of the Project on the Maui Island Plan Map covering the Lahaina area was recommended by the General Plan Advisory Committee, the Maui Planning Commission and the Maui County Planning Department. (TR 7/19/12 at pp. 135-136; Petitioner Ex. 23).

150. The Petition Area is an appropriate location for urban growth and has been so designated by the County of Maui. (FOF 145-149).

151. The eighth standard is whether the urbanization of

the Petition Area will contribute to spot zoning.

152. The Petition Area is contiguous with and surrounded by lands that are existing urban uses. (TR 7/19/12 at pp. 130-131; Petitioner Exs. 7 and 23).

153. Changing the State land use classification of the Petition Area will not amount to or contribute to spot zoning. (FOF 152).

154. Based on a review of the standards which lands classified as urban must meet, the Petition Area complies with those standards. (FOF 107, 112, 126, 130, 140, 143, 150, and 153).

3) The impact of the reclassification on areas of State concern.

155. The first area of State concern is the preservation or maintenance of important natural systems or habitats. (HAR § 15-15-77(b)(3)(A)).

156. The size of the Petition Area represents a very minor percentage of the lands designated as agricultural on the island of Maui. (Singleton WDT at p. 13; Petitioner Ex. 7).

157. The reclassification would result in a reduction of 0.00007% of the land within the agricultural district on Maui. (Singleton WDT at p. 13).

158. The soil conditions, water limitations and management challenges make it unlikely that the Petition Area will be put into agricultural production now or in the future.

(Singleton WDT at p. 14).

159. The Petition Area is located mauka of Honoapiilani Highway with West Maui mountains visible to the east and the island of Lanai visible to the west. (TR 7/19/12 at pp. 117-118).

160. The Petition Area is not located within an identified or protected scenic view corridor. (Petitioner Ex. 7).

161. The Project will be developed as an architecturally integrated area with low-rise residential structures. (Petitioner Ex. 7).

162. A biologic resources study of the Project was conducted by Robert W. Hobdy, Environmental Consultant, in August 2005. (Hobdy WDT at p. 3; Petitioner Ex. 7).

163. No endangered plant species were found on the Petition Area. (Hobdy WDT at p. 7).

164. A single, small tree tobacco, which might act as a host to the Blackburn's Sphinx Moth, was observed in 2005. (Hobdy WDT at p. 7).

165. No sign of the Blackburn's Sphinx Moth or its larvae were found. (Hobdy WDT at p. 7).

166. The vegetation of the property is dominated by non-native, abundant species. (Hobdy WDT at pp. 5-6).

167. From a botanical standpoint, nothing in the

Petition Area warranted protection either as a plant species or as plant habitat. (Hobdy WDT at p. 6; TR 8/23/12 at p. 127).

168. Only a single mammal was detected in two visits to the Petition Area which was a cat. (Hobdy WDT at p. 6).

169. Nine species of non-native birds were observed. (Hobdy WDT at p. 6).

170. No evidence was found of the native Hawaiian Hoary bat. (Hobdy WDT at pp. 4-6 and 8; TR 8/23/12 at p. 126; Petitioner Ex. 7).

171. While Hawaiian owls may have been seen in the Petition Area in the past, it would be difficult to establish habitat for the Hawaiian owl in the Petition Area. (TR 8/23/12 at pp. 132-133).

172. From a fauna standpoint, nothing in the Petition Area warranted protection, either as a mammal or bird, or as a habitat for birds. (Hobdy WDT at p. 8; TR 8/23/12 at p. 127).

173. Storm water runoff from the Petition Area will be detained in a detention basin to allow pollutants to settle out, keeping the pollutants from entering ocean waters. (TR 10/5/12 at p. 112).

174. The Draft Environmental Assessment for the Project was provided by Petitioner to the United States Fish and Wildlife Service and to the State of Hawaii Department of Land and Natural Resources. Neither agency made any comment on the possible

impact of the Project on coral or limu in Mala Bay. (Petitioner Ex. 7).

175. The State Office of Planning sent the Petition to the State of Hawaii Department of Land and Natural Resources for comment. The agency did not identify impacts to coral and limu as an issue of concern in the Petition Area or for the Project. (TR 9/7/12 at p. 112).

176. Reclassification of the Petition Area will not have an impact on the preservation or maintenance of important natural systems or habitats. (FOF 156-175).

177. The second area of State concern is the maintenance of valued cultural, historical or natural resources. (HAR § 15-15-77(b)(3)(B)).

178. An Archaeological Assessment Report was completed for the Project by Scientific Consultant Services, Inc. in November 2005. (Dega WDT at pp. 5-7; Petitioner Ex. 7).

179. The Archaeological Assessment Report was reviewed and approved by the SHPD on February 9, 2006. (Dega WDT at p. 9; Petitioner Ex. 7).

180. Fifteen trenches were excavated throughout the Petition Area to obtain a broad coverage of the property. (Dega WDT at pp. 5-7).

181. None of the trenches yielded evidence of any archaeological deposits or archaeological features. (Dega WDT at



p. 7).

182. Only a few archaeological inventory surveys will result in no findings of archaeological features or archaeological deposits. (Dega WDT at p. 7).

183. Based on stratigraphic sequencing and the archaeologist's experience, it is unlikely that land alterations from sugar cane operations wholly obliterated archaeological features on the Petition Area. (Dega WDT at p. 8).

184. It is unlikely that agricultural or habitation pursuits of any significance occurred in the Petition Area before the land was used for sugar cane production. (Dega WDT at p. 8).

185. The State Historic Preservation District reviewed the Project again in 2012 and stated that it believed no historic properties will be affected. (Dega WDT at p. 9; Petitioner Ex. 26).

186. The claimed archaeological feature was examined and determined by expert archaeologists to be a push pile of rock and boulders and not an archaeological feature. (TR 10/5/12 at pp. 91-93; Petitioner Ex. 41).

187. The locations of the claimed burials were excavated to bedrock. No evidence was found of burials, either presently existing or which may have existed in the past and been removed. (TR 10/5/12 at p. 92; Petitioner Ex. 41).

188. The State Historic Preservation Division again

concluded that no historic properties will be affected by the Project. (TR 10/5/12 at 92; Petitioner Ex. 41).

189. A Cultural Impact Assessment was done in November 2005. (Kapahulehua WDT at pp. 2-3; Petitioner Ex. 7).

190. Archival research from 18 separate sources and interviews of five persons knowledgeable of the Kahoma Stream area was conducted. (Kapahulehua WDT at p. 4).

191. In the pre-contact period, the Petition Area probably was not used for traditional practices. (Kapahulehua WDT at p. 4).

192. Fishing activities usually were conducted at lower elevations and farming activities usually were conducted at higher elevations. (Kapahulehua WDT at p. 4).

193. After the missionary period, the Petition Area probably was one of the lands farmed through the use of a ditch irrigation system. (Kapahulehua WDT at p. 5).

194. The Kahoma Stream Flood Control Project, completed in 1990, diverted the stream flow from the existing stream bed. (Kapahulehua WDT at p. 5).

195. The persons knowledgeable of the Kahoma Stream area indicated that the Petition Area was not used for cultural practices. (Kapahulehua WDT at p. 6).

196. No current use of the Petition Area for cultural practices or by traditional cultural practitioners exists.

(Kahahulehua WDT at p. 6; TR 7/20/12 at pp. 84 and 87).

197. A ceremony was performed on the Petition Area in June 2012 by Michael Lee. (TR 10/5/12 at p. 5).

198. Michael Lee went to the Petition Area for the first time in June 2012. (TR 10/5/12 at p. 5).

199. Michael Lee did not learn of any use of the Petition Area for a cultural practice from his parents or teachers. (TR 10/5/12 at pp. 27-28).

200. The performance of a ceremony on the Petition Area one or two times after the filing of the Petition is not evidence of an established use of the Petition Area for a cultural practice. (FOF 197-199).

201. No historical use of the Petition Area for cultural practices was revealed in the cultural assessment. (Kahahulehua WDT at p. 6).

202. The Kahoma Stream Flood Control Channel forms the northern boundary of the Petition Area. (TR 7/19/12 at p. 130; Petitioner Ex. 7).

203. There is minimal flow in the Kahoma Stream Flood Control Channel except during extreme storm events. (TR 7/19/12 at p. 172).

204. There are no wetlands within the vicinity of the Petition Area. (Petitioner Ex. 7).

205. The Project will not impact any ground water

resources. (TR 8/23/12 at p. 108).

206. A Preliminary Civil Engineering and Drainage and Soil Erosion Control Report was prepared by R.T. Tanaka Engineers, Inc. for the Project. (Tanaka WDT at p. 3; Petitioner Exs. 7 and 21).

207. In compliance with the County of Maui drainage standards, the Project will incorporate drainage features to retain a 50-year, one-hour storm run-off volume increase anticipated to be generated by the Project. (Tanaka WDT at pp. 4-8).

208. An retention basin (drainage basin) will be located on-site near the west end of the Project with an overflow outlet connecting to the Kahoma Stream flood control structure. (Tanaka WDT at p. 6).

209. In addition to the retention basic, the Project will include catch basins and/or grated drain inlets to collect runoff, non-perforated pipes to convey runoff to the drainage pond, drain manholes, and the rerouting of existing 30" and 36" drain lines between Lui Street and Kahoma Stream Flood Control Channel. (Tanaka WDT at p. 6; Petitioner Ex. 7).

210. The proposed drainage system will not increase off-site runoff nor cause an adverse impact to adjacent or down stream properties. (Tanaka WDT at p. 6).

211. The County of Maui will be adopting rules

governing the water quality of storm water runoff. (TR 9/5/12 at p. 53).

212. The drainage system of the Project was reviewed to determine whether the capacity was adequate to meet the rules for storm water quality proposed by the County of Maui. (TR 9/5/12 at p. 53).

213. The Project drainage system is adequate to meet the requirements under the proposed rules. (TR 9/5/12 at p. 53).

214. The Project drainage system will be reviewed for compliance with storm water runoff and water quality rules when construction permits are sought. (TR 8/23/12 at pp. 197-198).

215. The West Maui region is served by the County of Maui, Department of Water Supply, Domestic Water System. (TR 8/23/12 at pp. 238-239; Petitioner Ex. 7).

216. The sources of water for the Lahaina portion of the West Maui region are four deep wells referred to as Napili Wells 1, 2 and 3 and Honokohau Well A. Water from the wells is supplemented by surface water drawn from Honolua Ditch and Kanaha Valley and treated at water treatment plants. (Petitioner's Ex. 7).

217. Existing County waterlines serve the residential subdivisions adjacent to the Petition Area. (Petitioner Ex. 7).

218. The Preliminary Civil Engineering and Drainage and Soil Erosion Control Report prepared by R.T. Tanaka Engineers,

Inc. for the Project in October 2007 (and updated in June 2012) estimates the average daily demand for the Project at 59,400 gallons per day. (Tanaka WDT at p. 7; Petitioner Exs. 7 and 21).

219. The size of the distribution line for the Project will be governed by fire flow requirements. (Tanaka WDT at pp. 8-9).

220. Fire flow demand of 1,000 gallons per minute was used for the design for the main distribution line. (Tanaka WDT at p. 8).

221. An 8" waterline will be utilized to provide the required fire flow. (Tanaka WDT at p. 8).

222. The County of Maui Department of Water Supply is prepared to supply water for the Project. (TR 9/6/12 at p. 113).

223. The County of Maui Department of Water Supply has excess capacity of potable water available for additional projects. (TR 9/6/12 at p. 115).

224. The County of Maui Department of Water Supply will be able to add capacity to stay ahead of demand for the foreseeable future in the West Maui area. (TR 9/6/12 at p. 117).

225. The Lahaina Wastewater Reclamation Facility has sufficient capacity for the Project. (TR 7/20/12 at p. 97; TR 8/23/12 at pp. 198-199).

226. Reclassification of the Petition Area will not have a significant impact on the maintenance of valued cultural,

historical or natural resources. (FOF 178-225).

227. The third area of State concern is maintenance of other natural resources relevant to Hawaii's economy, including but not limited to, agricultural resources. (HAR § 15-15-77(b)(3)(C)).

228. The Petition Area has been fallow since 1990. (TR 7/19/12 at p. 120).

229. The Petition Area is not presently used for agriculture. (TR 7/20/12 at pp. 183-184).

230. The soils of the Petition Area have very severe limitations for agricultural use. (Singleton WDT at p. 9).

231. The soil conditions, water limitations and management challenges of the Petition Area make it unlikely that the property will be put into agriculture production now or in the future. (Singleton WDT at p. 14).

232. Reclassification of the Petition Area will not have a significant impact on the maintenance of other natural resources relevant to Hawaii's economy. (FOF 228-231).

233. The fourth area of State concern is commitment of state funds and resources. (HAR § 15-15-77(b)(3)(D)).

234. A Traffic Impact Analysis Report was developed for the Project in October 2007 by Wilson Okamoto Corporation. (Petitioner Ex. 7; TR 8/23/12 at pp. 38, 50-51).

235. A Supplemental Traffic Assessment was prepared by

Austin, Tsutsumi & Associates, Inc. in January 2011. (Niiya WDT at pp. 2-3; Petitioner Ex. 7).

236. The Supplemental Traffic Assessment analyzed the impact of development on traffic within the area surrounding the Petition Area. (Niiya WDT at pp. 2-3).

237. The Project will not generate enough traffic to require the preparation of a Traffic Impact Analysis Report. (Niiya WDT at pp. 4-5).

238. From a traffic standpoint, the Project will have no significant impact on the existing highways, streets and roads. (Niiya WDT at p. 6).

239. Petitioner will implement as part of the subdivision development the full recommendations of the Traffic Impact Analysis Report which include maintenance of sufficient driveway width to accommodate safe vehicle ingress and egress, maintenance of adequate turning radii at project driveways to avoid or minimize vehicle encroachments to oncoming traffic lanes, and maintenance of adequate site distances for motorists to safely enter and exit all project driveways. (Niiya WDT at p. 8; Petitioner Ex. 7).

240. The State Department of Transportation reviewed the Project and concluded the Project will not require expenditure of funds for State highway improvements. (SOP Ex. 1 at p. 8; TR 9/7/12 at p. 71).



241. Reclassification of the Petition Area will not have a significant impact on the commitment of state resources or funds. (FOF 234-240).

242. The fifth area of State concern is the impact of the reclassification on providing employment opportunities and economic development. (HAR § 15-15-77(b)(3)(E)).

243. The Project will provide construction and construction-related employment during the build out of the project. (Riecke-Gonzales WDT at p. 3).

244. The construction of single-family residences and ohana units in the Project will result in construction worker labor revenues of \$8,400,000. (Riecke-Gonzales WDT at p. 3).

245. The total economic benefit to Maui will exceed the amount of the construction labor as some materials used to build the structures will be purchased locally. (Riecke-Gonzales WDT at pp. 6-7).

246. Reclassification of the Petition Area will provide employment opportunities and economic development. (FOF 243-245).

247. The sixth area of State concern is the impact of the reclassification on providing housing opportunities to all income groups and particularly to low, low-moderate, and gap income groups. (HAR § 15-15-77(b)(3)(F)).

248. The Project was approved as an affordable housing

development under HRS § 201H-38 by the Maui County Council on December 2, 2011. (Bigelow WDT at p. 11; Petitioner Ex. 11).

249. Ten of the lots will be developed by Habitat for Humanity Maui, Inc. and marketed to persons whose income are 80% or less of the median income. (Dodson WDT at pp. 5-7).

250. Fifty-eight lots will be marketed by Petitioner at the lower of either the prices presented to the Maui County Council in November 2011 or when the Project is ready to market. (Bigelow WDT at p. 11).

251. The lots must be marketed by Petitioner at the pre-established prices for a period of ten years before the prices can be changed. (Bigelow WDT at p. 12).

252. Reclassification of the Petition Area will provide housing opportunities to low and gap income groups. (Ridao WDT at p. 4; County of Maui Ex. 11 at p. 4).

253. Reclassification of the Petition Area will provide housing opportunities to all income groups and particularly to low, low-moderate, and gap income groups. (FOF 248-252).

254. Based on the six areas of State concern which must be reviewed, the Petition Area meets reclassification requirements. (FOF 176, 226, 232, 241, 246 and 253).

**4) Conformance With County General Plan.**

255. The Petition Area is zoned Agricultural by the County of Maui. (Petitioner Ex. 7).

256. The Petition Area is designated Open Space by the West Maui Community Plan. (Petitioner Ex. 7, TR 9/7/12 at p. 72, Petitioner Ex. 23).

257. The Maui County Council reviewed the Project as an affordable housing project and discussed, among other things, the zoning and community plan designations of the Petition Area. (TR 7/20/12 at pp. 101, 105-108 and 116-118).

258. On December 2, 2011, the Maui County Council approved a HRS § 201H-38 application submitted by Petitioner allowing an exemption from the Maui County Code to enable project implementation without the filing and processing of a community plan amendment application. (Petitioner Ex. 11).

259. As the Project will provide affordable housing opportunities to the residents of Maui County, the Project offers significant benefits to the community and addresses the need for affordable housing on the island. (Petitioner Ex. 11).

260. The Maui County Council exempted the Project from obtaining a community plan amendment. (Petitioner Ex. 11).

261. The Maui County Council exempted the Project obtaining a change in zoning. (Petitioner Ex. 11).

262. The County of Maui is undergoing a review and update of its land use plans, the current result of which is that the Project is included as an urban use. (FOF 146-149).

263. Based on the exemptions granted by the Maui County

Council to the project and the review and update presently being conducted by the County of Maui, the lack of conformity with the West Maui Community Plan is not a basis to deny the reclassification of the Petition Area from agricultural to urban. (FOF 255-262).

5) The economic ability of the Petitioner to carry out the commitments.

264. Petitioner provided financial statements pursuant to HAR § 15-15-50(c)(8). (Bigelow WDT at p. 12; Petitioner Ex. 10).

265. Petitioner will obtain funding for improvements by bank or private financing. (Bigelow WDT at p. 13).

266. Petitioner has the financial capability to undertake the Project. (FOF 264-265).

6) Whether the Petition Area was in intensive agricultural use.

267. The Petition Area was not in intensive agricultural use for the two years before the filing of the Petition and does not have a high capacity for intensive agricultural use. (FOF 8-15 and 53-62).

E. Finding Concerning Request to Reclassify Petition Area From Agricultural to Urban.

268. Based on the criteria that the Commission must apply, Petitioner established by a clear preponderance of the credible evidence that the Petition Area should be reclassified from agricultural to urban. (FOF 47, 101, 154, 254, 263, 266 and

267).

269. Any finding of fact submitted by any party not already ruled upon by the Commission by adoption herein or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

270. Any conclusion of law improperly designated as a finding of fact, shall be deemed or construed as a conclusion of law.

## II. CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the Commission rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS § 205-17, the Commission finds upon the clear preponderance of the evidence, that the reclassification of the Petition Area, consisting of approximately 16.7 acres of land, situated in Lahaina, Maui, Hawaii, bearing Tax Map Key No. (2) 4-5-010:005 to the State Land Use Urban District, and subject to the conditions stated in the order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, is not violative of HRS § 205-2, and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17 and 205A-2.

2. Article XII, Section 7, of the Hawaii State Constitution requires the Commission to protect native Hawaiian

traditional and customary rights.

3. The State of Hawaii reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes, and possessed by ahupua'a tenants who are decedents of native Hawaiians who inhabited the Hawaiian islands prior to 1778, subject to the right of the State to regulate such rights.

4. The State of Hawaii and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible.

5. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians.

6. Article XI, Section 1, of the Hawaii State Constitution requires the State of Hawaii to conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with the conservation and in furtherance of the self-sufficiency of the State.

7. Article XI, Section 3, of the Hawaii State Constitution requires the State of Hawaii to protect agricultural lands, to promote diversified agriculture, to increase agricultural self-sufficiency, and to ensure the availability of

agriculturally suitable lands.

8. Article XII, Section 7, of the Hawaii State Constitution states that the State of Hawaii has the obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

9. Based upon the facts and circumstances of this case, and the conditions imposed in the order below, the reclassification of the Petition Area to State Land Use Urban District is consistent with the requirements of Article XI, Sections 1, 3 and 7, and Article XII, Section 7, of the Hawaii State Constitution.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of about 16.7 acres of land, situated in Lahaina, Maui, Hawaii, bearing Tax Map Key No. (2) 4-5-010:005 and shown approximately on Exhibit "A" attached hereto and incorporated herein by reference, shall be and hereby is reclassified to State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural and natural

resources of the area.

IT IS FURTHER ORDERED that reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

(1) Education Contribution Agreement. Petitioner shall pay the West Maui Education Impact fee to the State of Hawaii, Department of Education in accordance with the School Impact Fee Agreement for Kahoma Residential Project dated February 9, 2012;

(2) Water Conservation Measures. Petitioner shall implement water conservation measures and best management practices such as the use of indigenous and drought-tolerant plants and turf to the extent practicable and incorporate such measures in the Project's landscape planting;

(3) Transportation. Petitioner shall implement traffic improvements and mitigation measures, if any, as required by the State Department of Transportation and the County of Maui, Department of Public Works;

(4) Street Lights. Petitioner shall use fully-shielded low sodium street lights within the Project to avoid impacts to avifauna and other populations and to prevent light defusion upward into the night sky;

(5) Affordable Housing. Petitioner shall provide



affordable housing opportunities in accordance with the certification of the Project as a HRS § 201H-38 housing project;

(6) Established Access Rights Protected. Petitioner shall preserve any established access rights of native Hawaiians who have continuously and traditionally used the Petition Area to exercise subsistence, cultural and religious practices or for access to other areas for such purposes;

(7) Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic or archaeological resources, including human skeletal remains, are found and identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Maui Island Section, shall be contacted immediately as required by HRS Chapter 6E and its applicable regulations. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referred to herein are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction;

(8) Drainage. Petitioner shall fund, design and construct any drainage system improvements required to prevent

adverse impact resulting from the development of the Project.

Petitioner shall be required to prevent run-off from the Petition Area which adversely affects downstream properties. Petitioner shall submit drainage plans to the appropriate federal, state and county agencies for review and approval and construction compliance with federal, state and county laws, rules and regulations;

(9) Best Management Practices. Petitioner shall implement applicable best management practices for each proposed land use to minimize infiltration and run-off from construction and vehicle operations, to reduce or eliminate soil erosion and groundwater pollution, and to formulate dust control measures to be implemented during and after the development process in accordance with the State DOH guidelines and applicable County ordinances;

(10) Compliance With Exhibit 1 of Resolution 11-126. Petitioner shall comply with all provisions of the Modifications stated in Exhibit 1 of Resolution 11-126 and any agreement entered into by Petitioner and the County of Maui in accordance with that resolution;

(11) Compliance With Representations to the Commission. Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to develop the reclassified area in accordance with the

representations may result in reversion of the reclassified area to its former classification or a change to a more appropriate classification;

(12) Annual Reports. Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area 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 Commission;

(13) Release of Conditions. The Commission may fully or partially release conditions provided herein as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or its successor assigns;

(14) Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawaii pursuant to HAR § 15-15-92.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing order this \_\_\_\_\_ day of \_\_\_\_\_, 2012. This order may be executed in counterparts. This order shall take effect upon the date this order was certified by the Commission.

Done at \_\_\_\_\_, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_, 2012, promotion on \_\_\_\_\_, 2012.

APPROVED AS TO FORM:

\_\_\_\_\_  
DEPUTY ATTORNEY GENERAL  
State of Hawaii

\_\_\_\_\_  
LAND USE COMMISSION  
State of Hawaii

\_\_\_\_\_  
Chairperson and Commissioner

\_\_\_\_\_  
Vice-Chair and Commissioner

\_\_\_\_\_  
Commissioner

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Commissioner

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Commissioner

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Commissioner

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Commissioner

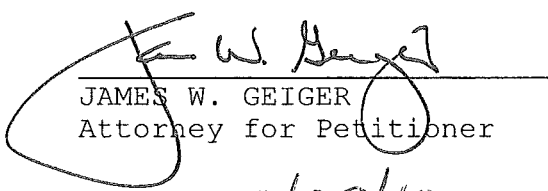
\_\_\_\_\_  
Commissioner

FILED AND EFFECTIVE ON \_\_\_\_\_, 2012.

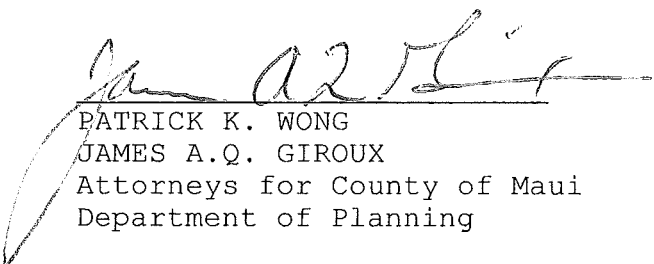
CERTIFIED BY: \_\_\_\_\_  
Executive Officer  
Land Use Commission

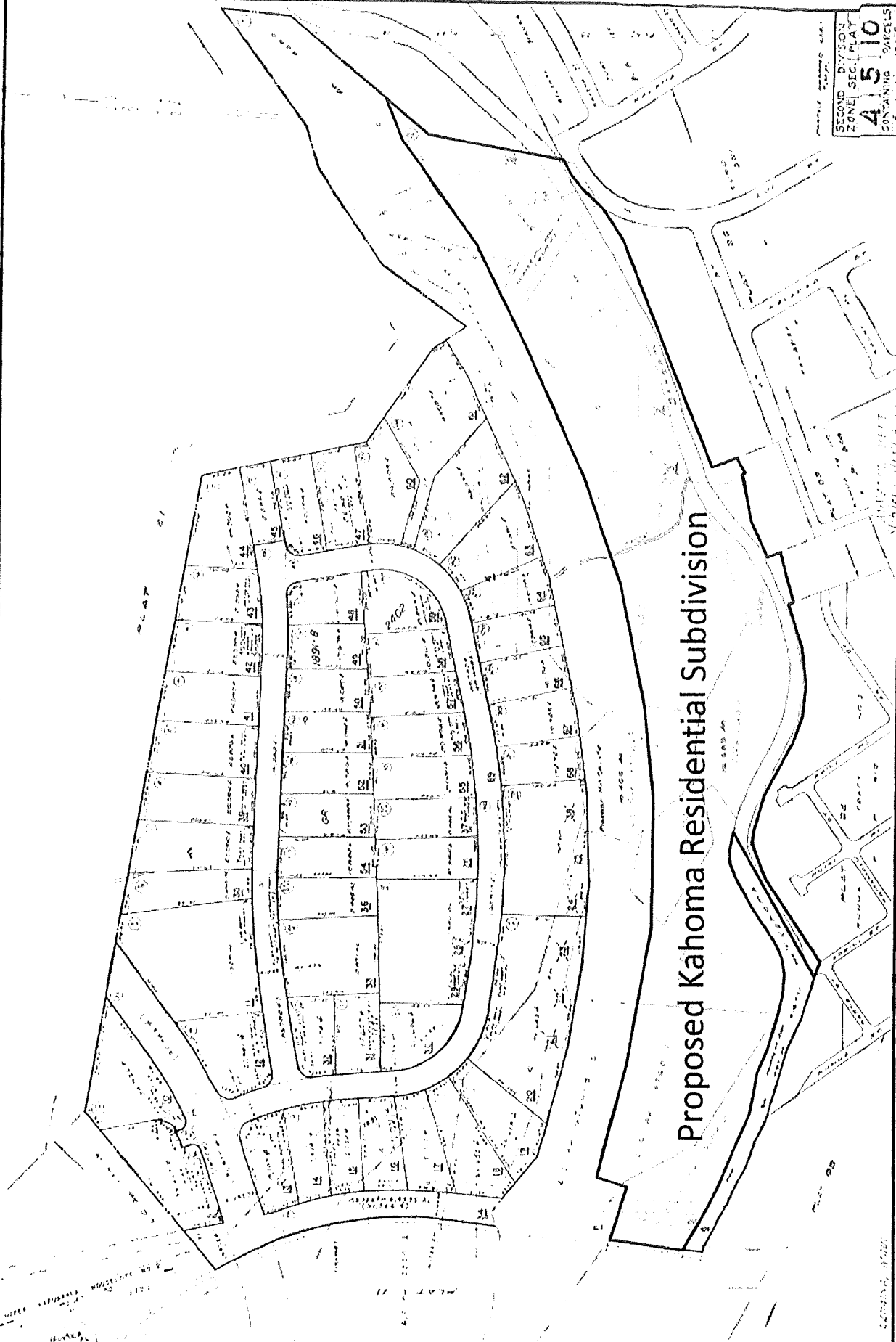
The foregoing is submitted jointly as the Proposed Findings of Fact, Conclusions of Law, Decision and Order by Petitioner and by the County of Maui Planning Department.

DATED: Kahului, Hawai'i, OCT 29 2012.

  
JAMES W. GEIGER  
Attorney for Petitioner

DATED: Wailuku, Hawai'i, 10/29/12.

  
PATRICK K. WONG  
JAMES A.Q. GIROUX  
Attorneys for County of Maui  
Department of Planning



SECOND DIVISION  
ZONE SEC. 4  
PLAT 5  
10  
CONTAINING 96 ACRES  
Scale: 1" = 100' 0"

Proposed Kahoma Residential Subdivision

Tax Map Key Map

"A"

Map No. 508  
Attest: April 1971

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served by depositing same in the United States mail, postage prepaid, to the following at their last known address:

Jessie K. Souki  
Director  
Office of Planning  
State of Hawaii  
235 Beretania Street, 6th Floor  
Honolulu, HI 96813

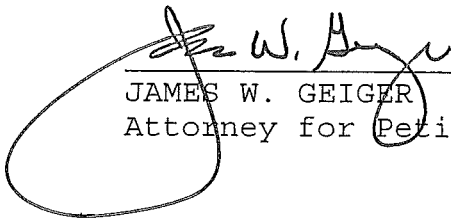
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Michele Lincoln  
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Routh Bolomet  
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Honolulu, HI 96837

DATED: Kahului, Hawai'i, OCT 29 2012.

  
\_\_\_\_\_  
JAMES W. GEIGER  
Attorney for Petitioner