

ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition)	DOCKET NO. A03-745
)	
of)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
HANOHANO LLC, a Hawaii Limited)	DECISION AND ORDER FOR A
Liability Company)	STATE LAND USE DISTRICT
)	BOUNDARY AMENDMENT
To Amend the State Land Use)	
Agricultural District to the State Land)	
Use Urban District for approximately)	
28.695 acres of land at Keahua, Kula,)	
Island and County of Maui, State of)	
Hawaii, bearing Tax Map Key Numbers)	
2-3-11:1 and 2-3-11:2 (Second Taxation)	
Division))	

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

On February 3, 2004, HANOHANO, LLC (the "Petitioner") filed its Petition For District Boundary Amendment (the "Petition") with the Land Use Commission of the State of Hawaii (the "Commission") pursuant to §205-4, HAW. REV. STAT., and the rules promulgated thereunder, to reclassify from the State Land Use Agricultural District to the State Land Use Urban District, approximately 28.695 acres of land at Keahua, Kula, Island and County of Maui, State of Hawaii, bearing tax map key numbers 2-3-11:1 and 2-3-11:2 (Second Taxation Division) (the "Property") for a

subdivision comprised of forty-nine (49) residential lots and related improvements (the "Project").

Having heard and examined the testimony, evidence and arguments of Petitioner, the Department of Planning of the County of Maui (the "Planning Department"), the Office of Planning of the State of Hawaii ("OP"), and their respective witnesses and counsel, and the public testimony of one (1) individual, the Commission hereby makes and enters the following findings of fact, conclusions of law, and decision and order.

FINDINGS OF FACT

DESCRIPTION OF PETITIONER

1. Petitioner is a Hawaii limited liability company, whose constituent members are Maui Quest LLC ("Maui Quest") and JSG Separate Investment LLC ("JSG").

2. Maui Quest is an affiliate of the Dowling Company, Inc. ("DCI"), a real estate development company whose president is Everett Dowling. J. Stephen Goodfellow is the principal of JSG.

PROCEDURAL MATTERS

3. On February 3, 2004, the Commission received the Petition with attached Exhibits A through G, Petitioner's filing fee of \$500.00 for the Petition, and Petitioner's draft environmental assessment (the "DEA") for the Project.

4. At its meeting on February 20, 2004, in Lahaina, Maui, Hawaii, the Commission determined, pursuant to Chapter 343, HAW. REV. STAT., that it agreed to be the appropriate accepting authority for the DEA, and that an anticipated finding of no significant impact is warranted for the Project.

5. On February 23, 2004, the Commission received the Office of Environment Quality Control of the State of Hawaii's publication form, the project summary, the sample solicitation letter, and the list of parties to be provided with copies of the DEA, all in conjunction with the review and approval of the DEA.

6. On June 23, 2004, the Commission received OP's statement of position in support of the Petition.

7. On June 24, 2004, the Commission accepted the Petitioner's Final Environmental Assessment (the "FEA").

8. On June 25, 2004, the Commission conducted a site visit of the Property.

9. On July 26, 2004, the Commission received Petitioner's exhibits.

10. On August 5, 2004, the Commission received the Planning Department's position statement, list of witnesses and list of exhibits.

11. On August 9, 2004, a prehearing was held at the Planning Department's conference room.

12. On August 9, 2004, the Commission received the OP's list of witnesses and list of exhibits.

13. On August 13, 2004, the Commission received Petitioner's affidavit of publication.

14. On August 23, 2004, the Commission received the Petitioner's supplemental exhibits.

15. On August 24, 2004, the Commission received the Planning Department's written testimony.

16. On August 24, 2004, the Commission received the OP's written testimony in support of the petition.

17. On September 2, 2004, in Kahului, Maui, Hawaii, the Commission conducted its hearing on the Petition pursuant to the notice published in The Honolulu Star Bulletin and The Maui News. Entering appearances were David H. Nakamura, Esq., and Don Fujimoto on behalf of the Petitioner; Ann Cua, County Department of Planning, and Jane E. Lovell, Deputy Corporation Counsel, on behalf of the Planning Department; and Abe Mitsuda and Mary Alice Evans of OP, and John W.K. Chang, Deputy Attorney General for the State of Hawaii, on behalf of OP.

18. At the September 2, 2004, hearing, Sheri Dodson, Executive Director for Habitat for Humanity, Maui, Inc. offered public testimony in support of the

Petition stating that Petitioner was offering to donate \$125,000 to Habitat for Humanity, Maui, Inc. to fulfill the affordable housing requirement of the County of Maui.

19. At the conclusion of the September 2, 2004, hearing on the Petition, the Commission left the record open for the submission of the following: (a) briefs from the parties regarding the standing of Petitioner to file the Petition; (b) any agreement with the Department of Transportation of the State of Hawaii on roadway improvements to be constructed by Petitioner; (c) the method used by the County of Maui to determine the Petitioner's affordable housing contribution; and (d) various matters concerning the protection and maintenance of the heiau located on the Property.

20. On September 14, 2004, the Commission received Petitioner's Memorandum on Standing of Hanohano LLC to File Petition For District Boundary Amendment, Affidavit of Don Fujimoto, and Certificate of Service. Petitioner and the Planning Department separately filed with the Commission on September 13, 14, and 15, 2004, correspondence regarding the Petitioner's roadway improvements, the protection and maintenance of the heiau located on the Property, and the County of Maui's methodology in determining Petitioner's affordable housing contribution.

21. On January 14, 2005, the Petitioner filed a Stipulated Findings of Fact, Conclusions of Law and Decision and Order for a State Land Use District Boundary Amendment with the Commission and served copies upon the parties.

22. On February 9, 2005, the Petitioner filed a second Stipulated Findings of Fact, Conclusions of Law and Decision and Order for a State Land Use District Boundary Amendment with the Commission and served copies upon the parties.

23. On March 1, 2005, Commissioner Lisa M. Judge filed a proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment with her fellow Commissioners and upon the parties.

DESCRIPTION OF THE PROPERTY

24. The Property is located at Keahua, Kula, Island and County of Maui, State of Hawaii, directly south of Pukalani and near Makawao. Pukalani and Makawao are the main settlement areas in upcountry Maui, are characterized by a mix of residential, business and public uses, and are centers of trading and employment.

25. The Property abuts Old Haleakala Highway, near its intersection, known as "Five Trees", with Haleakala Highway and Kula Highway. King Kekaulike High School is southeast of the Property, across Kula Highway. Across Old Haleakala Highway from the Property is an approximately forty (40) acre parcel proposed as the site of Maui Land and Pineapple Company's Upcountry Town Center. The Kulamalu project, which includes the Kulamalu Town Center and Kamehameha School, is directly south of the Property.

26. The Property consists of two (2) parcels of land. The first parcel has an area of approximately 14.401 acres and bears tax map key number 2-3-11:1 (Second Taxation Division) ("Parcel 1"). The second parcel, which bears tax map key number 2-3-11:2 (Second Taxation Division), consists of approximately 14.294 acres ("Parcel 2"). A location map of the Property is attached hereto as Exhibit "A" and made a part hereof, and metes and bounds descriptions of Parcel 1 and Parcel 2 are shown on Exhibit "B" attached hereto and made a part hereof.

27. Curtis Y. Harada and Pauline K. Harada (together the "Haradas") own Parcel 1. EKR, Inc. ("EKR") owns Parcel 2.

28. By that certain Agreement Of Purchase And Sale And Joint Escrow Instructions (the "Sales Contract"), the Haradas and EKR agreed to sell, and DCI agreed to purchase, the Property. By that certain Assignment Of Agreement, DCI assigned all of its interest in and to the Sales Contract to Petitioner.

29. By that certain letter agreement, dated September 7, 2004, the Haradas and EKR granted to Petitioner a leasehold interest in the Property for a term commencing on June 23, 2003, and ending on December 31, 2005.

30. The Haradas and EKR have authorized Petitioner to file the Petition, and obtain approval for the district boundary amendment for the Property.

31. The Property slopes from an elevation of 1,640 feet at its northwest corner to 1,735 feet at its southwest corner, with an average slope of about 5.5%. The slope of the Property is less than most of the topography on the island of Maui.

32. The soils at the Property belong to the Waiakoa-Keahua-Molokai association. The soils underlying the Property include Haliimaile silty clay loam (HgB), Keahua cobbly silty clay loam, and Keahua silty clay.

33. The University of Hawaii's Land Study Bureau classifies the Property as "C", or having a moderate productivity rating.

34. The Agricultural Lands of Importance in the State of Hawaii, established by the Hawaii Department of Agriculture, categorizes the Property as "Prime".

35. The Project is rated Zone C on the Flood Insurance Rate Maps adopted by the United States Emergency Management Agency. Zone C means an area of minimal flooding.

PROPOSAL FOR RECLASSIFICATION

36. Petitioner filed the Petition for the reclassification of the Property from the State Land Use Agricultural District to the State Land Use Urban District based on the Project consisting of, among other things, the following:

a) A subdivision of the Property into (i) forty-nine (49) residential lots (the "Residential Lots") with areas ranging from about 18,000 square feet to roughly

25,000 to 26,000 square feet; (ii) one (1) lot (the "Heiau/Retention Basin Lot") for the Heiau and a retention basin (the "Retention Basin"); and (iii) one (1) or possibly more roadway lots (the "Roadway Lots");

b) A single entrance from Old Haleakala Highway to the Project, with one (1) lane for ingress, and separate left and right turn lanes for egress (the "Project Entrance");

c) A sidewalk along the Property's boundary with Old Haleakala Highway to satisfy the request made by the Kula Community Association during its meetings with the Petitioner;

d) A twenty-four (24) foot wide emergency vehicle, pedestrian and utility right-of-way, north of the Project Entrance, and between Old Haleakala Highway and the Roadway Lots, and a second pedestrian and utility right-of-way, south of the Project Entrance, and between Old Haleakala Highway and the Roadway Lots;

e) A provision in the covenants, conditions and restrictions for the Project (the "CC&Rs"), which would be recorded with the Bureau of Conveyances of the State of Hawaii at the time of the approval by the County of Maui to the Project and appropriate deed restrictions prohibiting more than one (1) single-family dwelling on each Residential Lot; and

f) Establishment of a homeowners' association (the "Homeowners' Association"), consisting of the owners of all of the Residential Lots, which would own

and maintain, among other things, the Heiau/Retention Basin Lot (including the Heiau and the Retention Basin thereon).

37. Petitioner proposes to sell the vacant, unimproved Residential Lots at prices between approximately \$250,000 and \$350,000.

DEVELOPMENT TIMETABLE

38. The Project will be completed within eighteen (18) months after all necessary government permits are obtained.

PETITIONER'S FINANCIAL CAPABILITY

39. J. Stephen Goodfellow ("Goodfellow"), the principal of JSC, one of Petitioner's constituent members, is also the principal and majority owner of Goodfellow Brothers, Inc. ("GBI"), one of the largest construction companies in Hawaii. Goodfellow, through GBI, has developed several residential projects on Maui.

40. DCI, an affiliate of Maui Quest, the other constituent member of Petitioner, has developed a number of residential, commercial and public sector projects on the island of Maui.

41. A balance sheet of Petitioner shows that as of May 31, 2004, Petitioner had assets of \$543,364.73, liabilities of \$50,418.12, and a collective members' equity of \$492,946.61.

42. Capital contributions from Maui Quest and JSG as well as financing from a commercial lender will finance the Project.

43. Petitioner has the necessary economic ability to carry out its representations and commitments relating to the Project.

STATE AND COUNTY PLANS AND PROGRAMS

State Land Use District

44. The Property is classified “Agricultural” under the Commission’s land use classification system.

Makawao-Pukalani-Kula Community Plan

45. The Makawao-Pukalani-Kula Community Plan, adopted as Ordinance No. 2510 by the County of Maui, has designated the Property as “single family residential” since 1987.

46. The lands abutting the Property have the following designations under the Commission’s land use classification system and the Makawao-Pukalani-Kula Community Plan:

<u>State Land Use</u>	<u>Makawao-Pukalani-Kula Classification</u>	<u>Community Plan Designation</u>
Lands east of Property and Old Haleakala Highway	Agricultural	Agriculture and Public/Quasi Public
Lands west of Property	Agricultural	Single-family residential
Lands north of Property	Urban	Single-family residential

Lands south of
Property

Agricultural

Rural

County of Maui Zoning

47. The Petitioner believes that the Property is zoned “R-3 residential district” under the County of Maui’s comprehensive zoning ordinance. The County of Maui contends that the Property is zoned “interim” under the County of Maui interim zoning ordinance, and therefore requires a change in zoning from interim to residential. This issue, however, does not affect the proceedings by the Commission on the Petition.

County of Maui Special Management Area

48. The Property is outside of the “special management area” (as this term is defined in §205A-22, HAW. REV. STAT.)

NEED FOR THE PROPOSED DEVELOPMENT

49. Based upon the market study by John Child & Company, dated July 2003 (“Market Study”), there will be a demand in the primary market area of upcountry Maui of about 134 new housing units annually through year 2005, and about 181 new housing units annually through 2010. In addition, based on the Market Study, the housing demand in the secondary market area of Wailuku, Kahului and Kihei is about 310 new housing units annually through 2005 and 441 new housing units annually through 2010.

50. Based on the Market Study, there is strong market support for the Residential Lots, which will be marketed and sold over a two (2) year period primarily to existing homeowners in upcountry Maui, and secondarily to the homeowners in the Wailuku, Kahului, Kihei and Paia areas.

ECONOMIC IMPACTS

51. Petitioner engaged The Hallstrom Group, Inc. (“Hallstrom”) to quantify the effects of the Project on the Maui economy and on state and county governments.

52. Based on the study conducted by Hallstrom, dated November 12, 2003, the following will be the economic impacts and the public costs and benefits associated with the Project during the first ten (10) years of its building and use:

a) The construction of the Project (infrastructure and finished homes) and their on-going use will bring in about \$21.3 million in direct real property capital investment and create 233 “worker years” of employment on Maui, generating \$9.7 million in total wages;

b) The Project will generate an estimated \$3 million in profits to local contractors and suppliers;

c) The stabilized discretionary expenditures of the 206 forecasted residents and guests at the Project will be \$3.9 million per year;

- d) The total base economic impact on Maui is projected at \$41.2 million, with a stabilized base of \$4.6 million per year after year ten (10);
- e) The State of Hawaii will receive \$5.3 million in primary tax revenues, with an additional \$566,000 per year after year ten (10); and
- f) The County of Maui will receive \$1.7 million in real property taxes, and \$220,524 per year after year ten (10).

SOCIO-ECONOMIC IMPACTS

53. The County of Maui has adopted the “Maui County Administrative Affordable Housing Recommended Guidelines For Land Use Approvals” (the “County Affordable Housing Guidelines”).

54. The County Affordable Housing Guidelines states at section IV.B.:

“In lieu of providing affordable housing units, the applicant may choose to pay a monetary contribution. The monetary contribution shall be based upon the equivalent number of affordable units which would have otherwise been provided by the applicant (i.e. 10 percent of the total number of units proposed for the residential housing project). The per unit monetary contribution shall be calculated by multiplying the affordable sales price by 10 percent (i.e. .10).”

The Department of Housing and Human Concerns of the County of Maui (the “DHHC”) determined that the amount of the Petitioner’s monetary contribution is \$125,000.00, based on the above-quoted provisions of the County Affordable Housing Guidelines. The contribution of \$125,000.00 was calculated as follows:

a) Based on a median income of 100% established by the United States Department of Housing and Urban Development and using a 6% interest rate, the sales price of a single-family home is \$250,900.00;

b) The number of affordable units that Petitioner would otherwise be required to provide is five (5), arrived at by multiplying 10% times the 49 Residential Lots;

c) The per unit monetary contribution for the Project is \$25,000.00, arrived at by multiplying 10% times \$250,900.00; and

d) Five (5) units times \$25,000.00 equals \$125,000.00, or the amount of the Petitioner's monetary contribution.

55. Petitioner has agreed to contribute \$125,000.00 to Habitat for Humanity, Maui, Inc. prior to final subdivision approval of the Project. Such contribution will satisfy the requirements under the County Affordable Housing Guidelines as it applies to the impacts created by the Project.

IMPACTS UPON RESOURCES IN THE AREA

Agricultural Resources

56. The Property is vacant and undeveloped. The Property has not been in productive agricultural use for at least 10 years.

57. The Property is adjacent to urban development and vacant agriculturally zoned lands.

58. The Project will reclassify approximately 28.695 acres of land from the State Agricultural District to the Urban district. The location and size of the Property, coupled with its Single-Family Residential designation in the Makawao-Pukalani-Kula Community Plan outweighs the impacts on agriculture on Maui and the State of Hawaii, which is not expected to be significant in light of the fact that the Property's 28.695 acres represent only 0.0001 percent of lands in the State Agricultural district.

Flora and Fauna

59. The flora within the Property includes guinea grass, lantana agave, kiawe, koa haole, fallow pineapple and Christmas berry along the peripheral areas. Wildlife common to the area in and around the Property includes dogs, cats, mice, rats and Indian mongoose.

60. There are no known rare, threatened or endangered species of fauna, flora, significant wildlife, plant habitats or wetlands on the Property. The Project is not anticipated to have any adverse effect on these resources.

Archaeological/Historical/Cultural Resources

61. An archaeological inventory study of the Property was conducted by Archaeological Service Hawaii, LLC. Fieldwork for the study was conducted on July 21 and 22, 2003 by Jeffery Pantaleo, M.A., and Ian Bassford. The objective of the study was to enhance site predictability and interpretation.

62. A total of 26 backhoe trenches were excavated during the course of the inventory. There were no subsurface cultural layers encountered during the study.

63. The pedestrian portion of the study indicated that a heiau, designated as site 50-50-2704 (the "Heiau"), is located on the northwestern portion of the Property. The Heiau is oval in shape, measures 112 feet by 60 feet, and includes, as component features, four (4) depressions, three (3) platforms, a soil and rock depression at its north end, a rectangular depression bordered by a faced alignment to the south, and a possible entrance with deteriorated rock stairs. Except for the Heiau, no other significant archaeological or cultural sites or remains are known to exist on the Property.

64. Petitioner engaged CKM Cultural Resources, and its principal, Kahu Charles K. Maxwell ("Maxwell"), and Archaeological Services Hawaii, LLC (the "Archaeologist") to identify and inventory archaeological, cultural and historic sites on the Property, and to propose appropriate measures to mitigate the effect of the Project on the Heiau. Petitioner also consulted with the Historic Preservation Division of the Department of Land and Natural Resources of the State of Hawaii ("SHPD"), the Office of Hawaiian Affairs of the State of Hawaii ("OHA") and the Cultural Resources Commission of the County of Maui (the "CRC") about appropriate mitigation measures for the Heiau.

65. Based on the study performed by Maxwell, dated August 2003, and his oral testimony, the Heiau is not an actively used cultural site.

66. Based on the recommendations of Maxwell, the Archaeologist, SHPD, OHA, and the CRC, Petitioner agrees to the following, all of which will mitigate the impacts of the Project on the Heiau:

- a) To preserve and maintain the Heiau as is, in place;
- b) To create, on the Heiau/Retention Basin Lot, 60 foot wide and 100 foot wide buffer zones, with a rock wall not less than four (4) feet in height demarcating the perimeter of the 60 foot wide buffer zone;
- c) To request, but not be required to obtain, the consent of the owner of the parcel of land immediately adjacent to the Heiau/Retention Basin Lot to extend and delineate the 100 foot wide buffer zone on such adjoining lot;
- d) To prohibit public access, through the use of appropriate signage, in and to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot wide buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide and 100 foot wide buffer zones, prohibit the construction of any structures within the entire 100 foot wide buffer zone;
- e) To the selection, by a three (3) person committee composed of a representative appointed by the Homeowners' Association, a representative chosen by OHA and a representative chosen by the Kupuna Council of Maui, of an individual or

group to serve as the curator (the "Curator"), and who shall, among other things, (i) oversee the preservation and maintenance of the Heiau by the Homeowners' Association; and (ii) orchestrate the initial installation by the Petitioner and the maintenance by the Homeowners' Association of native plantings in the 60 foot wide buffer zone;

f) To initially landscape with grass and install the necessary irrigation lines at the area between the perimeters of the 60 foot wide and the 100 foot wide buffer zones, and, in consultation with the Curator, to initially install appropriate native plantings without any irrigation lines, within the 60 foot buffer zone; and control invasive plants in and around the Heiau with a systemic poison such as Roundup or Hawaiian Salt to eradicate the invasive plants without uprooting said plants to aid in preserving the Heiau in place.

g) To preserve the view planes from the Heiau by prohibiting by appropriate deed restrictions and by appropriate provisions in the CC&Rs of the Homeowner's Association, the construction of any structures, with the exception of the Retention Basin, the walls around the 60 foot wide buffer zone and the Retention Basin, and irrigation lines, on that portion of the Heiau/Retention Basin Lot north of the Heiau, and the construction any Residential Lot or on the Property of any structure or landscaping, with the exception of irrigation lines, that block the view plane from the Heiau to the summit of Haleakala;

h) To install on the Property, during all construction activities relating to the Project, orange fencing at the perimeter of the 100 foot wide buffer zone around the Heiau, which shall be monitored and documented by the Archaeologist and may be altered upon establishment of the 60 foot wide buffer zone on the Property; and

i) To install appropriate informational signage at the perimeters of the 100 foot wide buffer zone and the Heiau to aid in its preservation.

Recreational and Scenic Resources

67. Kulamalu, LLC, an affiliate of Petitioner, will dedicate to the County of Maui a 9.7 acre parcel of land within the Kulamalu project for use as a park and police facility.

68. Because the dedication of the 9.7 acre parcel of land exceeds the park assessment requirement for the Kulamalu project, the Department of Parks and Recreation of the County of Maui (the "Parks Department") agrees that such excess fully satisfies the park assessment requirement for the Project.

69. The Project is not expected to generate a demand for additional recreational facilities.

70. The Cultural Impact Assessment, dated August 2003, indicated the Heiau located on the Property requires protection of the culturally significant view plane towards the summit of Haleakala.

71. The Project will impose restrictions on structures and landscaping to prevent any component of the Project from obstructing the culturally significant views from the Heiau to Haleakala.

ENVIRONMENTAL QUALITY

Soil Testing

72. Based on a phase I environmental site assessment and an environmental soil sampling of the Property, conducted by Vuich Environmental Consultants, Inc., there is no evidence of any historic misuse or significant spills of hazardous or regulated substances on the Property and any pesticides at the Property are at or below acceptable levels under the EPA Region IX's Preliminary Remediation Goals. Three (3) empty fifty-five (55) gallon drums were found on the Property, but there are no surface soil staining or odors relating to these drums.

73. Petitioner agrees to remove the three (3) fifty-five (55) gallon drums currently on the Property, to test the drums for the presence of hazardous materials, and, if such testing indicates the presence of hazardous materials, to conduct soil sampling at and in close proximity to the drums to ascertain any potential impacts resulting therefrom, and to mitigate/ameliorate any impacts found to occur.

Air and Noise Quality

74. Ambient air and noise quality will be temporarily affected during

the construction of the Project as a result of emissions from construction related

equipment and dust from earth moving operations. These temporary effects will be

mitigated by proper maintenance of construction equipment, the installation of muffler

and other noise attenuating equipment, if necessary, and the implementation of dust

control measures, such as the installation of dust barriers and watering graded and

grubbed areas.

75. After the completion of the construction of the Project, emissions

generated from vehicular traffic at the Property are not expected to adversely impact

local and regional ambient air quality conditions.

76. Although post-construction vehicular traffic at the Property and the

regional roadways will generate long-term noise effects, such effects are not anticipated

to be significant or unfavorable.

ADEQUACY OF PUBLIC SERVICE AND FACILITIES

Schools

77. Basic services, such as schools, are readily available to the Property.

Makawao Elementary School, Pukalani Elementary School, Kula Elementary School,

Kalama Intermediate School, and King Kekaulike High School are all located within 5.5

miles or less from the Property.

78. Based on the Project's 49 residential lots, the Department of Education ("DOE") estimates the Project is proposed to generate 12 students in grades K to 5; 5 students in grades 6 to 8; and 5 students in grades 9 to 12.

79. The Project involves the development of 49 residential single-family lots and no ohana units, which is one less unit than the DOE threshold for requesting a fair-share contribution. Developing the Project without ohana units will keep number of residential units below DOE's threshold to request a fair-share contribution.

Solid Waste Disposal

80. Basic services such as solid waste disposal are readily available to the Project.

81. The proposed Project will not increase the need for solid waste disposal services beyond what is currently available.

Water Service

82. There is an existing 12 inch waterline owned by the Department of Water Supply of the County of Maui (the "DWS") on the easterly side of Kula Highway, installed by an affiliate of Petitioner in conjunction with the nearby Kulamalu project. The Petitioner's affiliate also participated with the State of Hawaii in the construction of a one (1) million gallon water storage tank located 6,000 feet east of the Property at an

elevation of 1,992 feet. DWS also has a four (4) inch water line that starts at the two (2) million gallon Pookela tank at an elevation of 1,810 feet and ends at the northeast corner of the Property.

83. Kulamalu, Inc., an affiliate of Petitioner, and the Board of Water Supply of the County of Maui (the "BWS") entered into an "Agreement Concerning The Construction Of Storage Tank, Transmission Line And Appurtenances, And Development Of Well" (the "Water Agreement"), dated March 21, 1996, in conjunction with Kulamalu, Inc.'s development of the Kulamalu project, located directly south of the Property, and composed of Kamehameha School, the Kulamalu Town Center and other improvements.

84. The Water Agreement provides, among other things, that:

a) Kulamalu, Inc. will install a well, a one (1) million gallon storage tank and a twelve (12) inch transmission line, all of which are to be incorporated into the BWS' public water system;

b) The BWS, through DWS, will allow Kulamalu, Inc. to allocate and reserve any excess source and storage water capacity from the Kulamalu project to other developments.

85. Petitioner commits to install the following (the "Project Water System"): (a) an eight (8) inch water transmission line from the existing twelve (12) inch waterline on Kula Highway, then along and within 200 feet of Kula Highway, and

320 feet of Old Haleakala Highway, looping within the Roadway Lots, and connecting back to the existing four (4) inch waterline on the northeast corner of the Property and Haleakala Highway; and (b) fire hydrants at intervals of 300 and 350 feet in accordance with the DWS's standards. The Project Water System will be designed to satisfy the fire flow demand of 1,000 gallons per minute for urban residential districts.

86. Based on provisions of the Water Agreement, DWS agrees to provide all of the potable water required for the Project, subject to a prohibition on "ohana dwellings" and other non-material matters.

Highway and Roadway Facilities

87. The County of Maui controls and maintains the segment of Old Haleakala Highway that abuts the Property.

88. Based upon the traffic impact analysis report and supplement prepared by Austin, Tsutsumi & Associates, Inc., dated December 1, 2003 and June 21, 2004, respectively, the Project is expected to generate 14 vehicles entering and 34 vehicles exiting the Project during the AM peak hours of traffic (7 a.m. to 8:30 a.m.) and 38 vehicles entering and 24 vehicles exiting during the PM peak hours (3:30 p.m. to 4:30 p.m.).

89. Based on the existing and projected traffic (for year 2005 when the Project is expected to be completed) at and around the Property, the Project will not have a significant impact on the roadways and intersections in the study area, namely

the intersections of: (i) Haleakala Highway and Old Haleakala Highway, (ii) Haleakala Highway and Makani Road, (iii) Haleakala Highway and Makawao Avenue, (iv) Haleakala Highway, Kula Highway and Old Haleakala Highway, (v) Haleakala Highway and the King Kekaulike High School Driveway, (vi) Old Haleakala Highway at Pukalani Street, (vii) Old Haleakala Highway at Loha Street, (viii) and Kula Highway and Aapueo Parkway.

90. The Petitioner agrees to construct the following, at its sole cost and expense, to mitigate the traffic impacts resulting from the Project:

a) Separate lanes for left-turns and right-turns on the northbound approach of the Project Entrance to Old Haleakala Highway;

b) A left-turn pocket on the westbound approach on Old Haleakala Highway to the Project Entrance; and

c) A taper at the intersection of Old Haleakala Highway and the Project Entrance to facilitate eastbound traffic turning right into the Project.

91. The Petitioner also agrees to do the following at its sole cost and expense:

a) Construct an extended shared through/left turn lane and an extended separated right turn lane approximately 200 feet long on the Old Haleakala Highway approach to the signalized intersection of Haleakala Highway, Kula Highway

and Old Haleakala Highway, which improvements shall include full curbs, gutters and sidewalk frontage improvements along the entire Project frontage up to Kula Highway;

b) Dedicate a sufficient right-of-way and setback, at no cost to the State of Hawaii, along portions of lots 19 and 20 of the Project fronting Old Haleakala Highway, and along a portion of the pedestrian and utility right-of-way between such lots, as shown on the Petitioner's Conceptual Development Plan (Petitioner's Exhibit 8) for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in Finding Of Fact 70(a) above; and

c) Construct an extended separate right turn lane, approximately 150 feet long, on the makai bound approach of Haleakala highway within the available right-of-way and within the constraints of the existing drainage ditch.

92. The Project Entrance, when coupled with the separate 24 foot wide pedestrian, utility and emergency vehicle right-of-ways for the Project, provides access acceptable to the Department of Public Works and Environmental Management of the County of Maui (the "DPW").

93. The Petitioner will also, at its sole cost and expense, install a sidewalk, curbs and gutters on the Property's frontage on Old Haleakala Highway. The streets within the Project will have a 44 foot wide right of way and a 28 foot wide curb to curb travel way, with standard curbs and gutters.

Wastewater

94. There is no wastewater collection, treatment and disposal system in upcountry Maui. Wastewater in the upcountry Maui area is disposed of by individual septic tanks and leach fields or seepage pits in accordance with the Chapter 11-62 of the rules of the Department of Health of the State of Hawaii (the "DOH").

95. Separate septic tanks with seepage pits or leach fields will be installed on each Residential Lot to collect, treat, and dispose of wastewater from each dwelling. These individual wastewater systems will be designed and installed in accordance with Chapter 11-62 of the rules of the DOH.

Drainage

96. There is no County of Maui or State of Hawaii drainage system at the Property or the area around it. A partially paved drainage swale, owned and maintained by the County of Maui, is located on the east side of Old Haleakala Highway. The runoff on the Property is currently 30.5 cubic feet per second (cfs) for a 50 year, one (1) hour recurrent interval storm. The runoff generally sheet flows across the Property in an easterly to westerly direction into the adjoining downstream lands.

97. Based upon a report dated July 2003 by Petitioner's civil engineer, Warren S. Unemori Engineering, Inc., the runoff from the Project, after its completion, is expected to be 52.43 cubic feet per second (cfs), an increase of 21.90 cfs from the runoff now existing at the Property.

98. Petitioner proposes to install a storm drainage system to collect the post development runoff on the Property, and convey it through a subsurface system to the Retention Basin (the "Project Drainage System"). The Project Drainage System is designed to handle runoffs from high and long intensity rainfalls, such as a fifty (50) year recurrent storm.

99. The Retention Basin will be enclosed by a rock wall. Though designed with a capacity of 1.3 acre feet, the Petitioner agrees to the addition of a freeboard, which doubles the capacity of the Retention Basin to 2.6 acre feet.

Public Utility Services

100. Overhead electrical and telephone lines are located on Old Haleakala Highway.

101. The existing overhead electrical and telephone transmission systems on Old Haleakala Highway have sufficient capacity to serve the Project.

102. The electrical, telephone and CATV distribution systems within the Project will be placed underground in accordance with requirements of the County of Maui's subdivision ordinance.

Police and Fire Protection

103. Basic services such as police and fire protection are readily available to the Project.

104. The proposed Project will not increase the need for police and fire services beyond what is currently available.

Health Care Services

105. Basic services such as health care services are readily available to the Project.

106. The proposed Project will not increase the need for health care services beyond what is currently available.

Commitment of State Funds and Resources

107. Petitioner will participate in the funding, design, and construction of its fair-share of local and regional traffic impacts.

108. The Project will not require a commitment of any state funds or resources.

CONFORMANCE TO URBAN DISTRICT STANDARDS; CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS AND; CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVE AND POLICIES

109. The Petition to reclassify the Property to the State Land Use Urban District is reasonable and does not violate §205-2, HAW. REV. STAT., because, among other reasons, the Property is designated “single-family residential” under the Makawao-Pukalani-Kula Community Plan.

110. The Project generally complies with the standards applicable to the

determination of the boundaries of the State Land Use Urban District under §15-15-18, Hawaii Administrative Rules ("HAR"), for, among other things, the following reasons: The Project will be a residential development with "city-like" concentrations of people, structures, streets, services and other land uses;

a) The Property is directly south of Pukalani and near Makawao, both centers of trade and employment;

b) Basic services such as schools, parks, wastewater systems, solid

waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection are either already available to the Property or will be provided by the

Petitioner;

c) With an average slope of 5.5% and because of its other

characteristics, the Property has a satisfactory topography and drainage, and is

reasonably free from the danger of any flood, tsunami, unstable soil conditions and

other adverse environmental effects; and

d) The lands north of and contiguous to the Property are within the

urban district, and the Property is designated "single-family residential" under the

Makawao-Pukalani-Kula Community Plan.

111. The Petition to reclassify the Property to the urban district and the Project are reasonable, and generally consistent with the policies and criteria established in §§205-16 and 205-17, HAW. REV. STAT., for, the following reasons:

a) They generally conform to the Hawaii State Plan and its applicable goals, objectives and policies, including, the provisions of §§226-5(a), 226-5(b)(1), 226-5(b)(3), 226-6(a)(1), 226-6(b)(5), 226-11(a)(2), 226-11(b)(3), 226-11(b)(8), 226-12(b)(1), 226-12(b)(4), 226-12(b)(5), 226-13(b)(2), 226-13(b)(6), 226-13(b)(7), 226-19(a)(2), 226-19(b)(1), 226-19(b)(3), 226-19(b)(5), 226-19(b)(7), 226-23(b)(4) and 226-25(b)(1), HAW. REV. STAT.

b) They generally relate to the applicable priority guidelines of the Hawaii State Plan, including, the provisions of §§226-103(1), 226-104(a)(1), 226-104(b)(2), 226-104(b)(12), 226-106(1) and 226-106(8), HAW. REV. STAT.

c) They generally relate to the adopted functional plans of the Hawaii State Plan for, the following reasons:

i. As to the state agricultural functional plan, the Property has not been in productive agricultural use for at least ten (10) years, is designated “single-family residential” under the Makawao-Pukalani-Kula Community Plan, is adjacent to lands within the urban district, and is directly south of Pukalani and near Makawao, both centers of trade and employment, and, as such, the Project will not have a significant impact on agriculture on Maui and in the State of Hawaii;

ii. As to the state historic preservation functional plan, the Heiau will be preserved and the effects of the Project on the Heiau will be mitigated. The proposed areas of the Residential Lots, ranging in size from about 18,000 square feet to roughly 25,000 to 26,000 square feet, will maintain the rural sense of place and open space character of upcountry Maui; and

iii. As to the State housing functional plan, the Petitioner's agreement to contribute \$125,000.00 to Habitat for Humanity, Maui, Inc. satisfies the requirements under the County Affordable Housing Guidelines, and will result in the development of affordable housing for Maui residents. Further, there is a demand in the upcountry Maui area for developable lots of the type proposed by the Petitioner.

(d) They will not have a significant adverse impact on the preservation or maintenance of important natural systems and habitats, the maintenance of valued cultural, historical or natural resources, the maintenance of other natural resources relevant to Hawaii's economy, the commitment of state funds and resources, the provision of employment opportunities and economic development, and the provision of housing opportunities for all income groups for, the following reasons:

i. There are no known rare, threatened, or endangered species of fauna, flora, significant wildlife, plant habitats or wetlands on the Property;

ii. The Project will preserve the Heiau and any effects from the Project on the Heiau will be mitigated;

iii. During the first ten (10) years of the Project's building and use, the State of Hawaii will receive \$5.3 million in primary tax revenues, with an additional \$506,000.00 per year after year ten (10); and

iv. Petitioner's agreement to pay \$125,000.00 to Habitat for Humanity, Maui, Inc. satisfies the requirements under the County Affordable Housing Guidelines, and will result in the development of affordable housing for Maui residents.

112. Although the Property is not within the "special management area" (as this term is defined in §205A-22, HAW. REV. STAT.), the Petition to reclassify the Property to the State Land Use Urban District and the Project are reasonable and generally consistent with §205A-2, HAW. REV. STAT., including, the provisions of §§205A-2(b)(1), 205A-2(b)(2), 205A-2(b)(3), 205A-2(b)(5), 205A-2(b)(6), 205A-2(c)(2) and 205A-2(c)(2), HAW. REV. STAT.

CONCLUSIONS OF LAW

1. The Petition for the amendment of the boundaries of the Property from the State Land Use Agricultural District to the State Land Use Urban District is reasonable, not violative of §205-2, HAW. REV. STAT., and consistent with the Hawaii State Plan and the policies and criteria established pursuant to §§205-16 and 205-17, HAW. REV. STAT.

2. The Petition for the amendment of the boundaries of the Property from the State Land Use Agricultural District to the State Land Use Urban District conforms to the standards used for establishing State Land Use Urban Districts under §15-15-18, HAR.

3. The provisions of Article XII, Section 7 of the Constitution of the State of Hawaii, pertaining to the customarily and traditionally exercised rights of ahupua'a tenants for subsistence, cultural and religious purposes, the identity and scope of valued cultural, historical or natural resources, the extent to which such resources will be affected or impaired by the Project, and the feasible action, if any, to be taken by the Commission to reasonably protect such rights, have been satisfied by the identification, description of its scope and preservation of the Heiau, which is not presently used as a cultural or religious site, the measures relating thereto agreed by the Petitioner to mitigate the affects to the Heiau, and the conditions imposed by the Commission as a part of its Decision And Order.

4. Article XI, Section 1, of the Constitution of the State of Hawaii requires the State 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 their conservation and in furtherance of the self-sufficiency of the State.

5. There are no threatened and endangered species of flora and fauna or species of concern in the Property.

6. The ambient air quality of the Property will be impacted in the short term by fugitive dust and emissions from engine exhausts during construction of the Project. Petitioner will implement all required mitigation measures for fugitive dust and exhaust emissions.

7. The Project's long-term impacts to air quality will be minimal, and mitigation measures are probably unnecessary and unwarranted.

8. Article XI, Section 3, of the Constitution of the State of Hawaii requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

9. The Project will not have a significant impact on agriculture on Maui or in the State of Hawaii as the reduction of these agricultural lands in comparison to the total acreage of agricultural lands in Maui and in the State of Hawaii is minimal, the Property has not been in productive agricultural use for at least 10 years, and the Property has been designated as "single-family residential" under the Makawao-Pukalani-Kula Community Plan since 1987.

10. Based upon the identity and experience of the individuals who are principals in the constituent corporations of the Petitioner and the Petitioner's financial

condition, the Petitioner has the necessary experience and economic ability to carry out the Petitioner's representations and commitments relating to the Project and the Property.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 28.695 acres of land in the State Land Use Agricultural District at Keahua, Kula, Island and County of Maui, State of Hawaii, identified as Tax Map Key Nos. 2-1-011:001 and 2-1-011-002, and approximately shown on Exhibit "A" attached hereto and incorporated by reference 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.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Property 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 HEREBY FURTHER ORDERED that the reclassification of the Property from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. **Affordable Housing.** Prior to approval of the "final plat" (as this term is defined in §18.04.190, Maui County Code) for the Project (the "Final Subdivision Approval"), Petitioner shall enter into an agreement with the DHHC, whereby, among

other things, Petitioner shall pay Habitat for Humanity Maui, Inc., on or before Final Subdivision Approval, the amount of ONE HUNDRED TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$125,000.00), in full satisfaction of the County of Maui's affordable housing requirements for the Project.

2. **Ohana Units.** Not more than forty-nine (49) "dwelling units" (as this term is defined in §19.04.040, Maui County Code) shall be constructed or maintained on the Property, and not more than one (1) dwelling unit shall be constructed or maintained on each Residential Lot. No "accessory dwellings" (as this term is defined in §19.04.040, Maui County Code) or ohana units shall be permitted in the Project.

3. **Park Dedication Requirements.** Prior to Final Subdivision Approval, Petitioner shall comply with the park dedication requirements under §18.16.320, Maui County Code, for the Project, as approved by the Parks Department. An executed agreement between the Petitioner and the Parks Department shall be delivered to the Commission, OP and the Planning Department.

4. **Archaeological.** To protect the native Hawaiian practitioner's exercise of customary and traditional practices in the subject area; to ensure appropriate public access to the Heiau located within the Property; to ensure the availability of natural and cultural resources for present and future generations; to promote the

practice of ohana and conservation values with respect to the physical and cultural landscape:

4a. Petitioner shall establish on the Heiau/Retention Basin Lot, permanent 60 foot wide and 100 foot wide buffer zones around the Heiau, with a rock wall of not less than four (4) feet high demarcating the perimeter of the 60 foot buffer zone. Within 6 months of the filing of this Decision and Order, Petitioner shall use reasonable efforts to request, but shall not be required to obtain, the consent and cooperation of the owner of the parcel of land immediately adjacent to the Heiau/Retention Basin Lot to extend the permanent 100 foot wide buffer zone on such adjoining lot. Within six months of Petitioner receiving notice that the adjacent property has changed ownership, Petitioner shall use reasonable efforts to request the consent and cooperation to extend the 100 foot wide buffer on that adjoining lot and shall continue to use such reasonable efforts with each successive owner of the adjacent parcel until such request is agreed to.

4b. Petitioner shall include in the CC&Rs provisions which prohibit public access, through the use of appropriate signage, to the 60 foot wide buffer zone, and, with the exception of the wall around the 60 foot buffer zone and irrigation lines in the area between the perimeters of the 60 foot wide buffer zones, shall further prohibit the construction of any structures within the entire 100 foot wide buffer zones.

Petitioner shall also install appropriate informational signage at the perimeters of the 100 foot wide buffer zone and the Heiau to aid in its preservation.

4c. Petitioner shall cause the formation of a three (3) person committee, composed of a representative of the Homeowners' Association pursuant to a provision in the CC&Rs, a representative from OHA, and a representative from the Kupuna Council of Maui (the "Curator Selection Committee"), to select the Curator, who shall (a) oversee the maintenance of the Heiau by the Homeowners' Association; and (b) direct and coordinate the initial installation by the Petitioner and the perpetual maintenance by the Homeowners' Association of the native plantings in the 60 foot wide buffer zone.

4d. The Petitioner shall establish the Curator Selection Committee and its governing laws including succession plans no later than six months from the issuance of this Decision and Order. Upon establishment of the Curator Selection Committee, the Petitioner and Curator Selection Committee shall provide a written report to the Commission, OP and the Planning Department, with details as to the Curator Selection Committee composition and structure, procedures and plan of action to be approved by the Commission.

4e. The Curator shall monitor the preservation and maintenance of the Heiau and the effectiveness of the Petitioner's actions to limit access to and/or preserve and maintain the Heiau. The Curator shall provide recommendations consistent with

this Decision and Order to the Commission with respect to the maintenance and/or preservation of the Heiau and any other traditional and customary native Hawaiian practices and cultural resources on the Property.

The Curator shall provide reports on an annual basis describing items and issues relating to the preservation and maintenance of the Heiau and other traditional and customary native Hawaiian practices and cultural resources on the Property and discussions with the adjoining landowner with respect to the buffer on the adjoining landowner's property.

4f. Petitioner shall initially landscape with grass and install the necessary irrigation lines in the area between the 60 foot wide buffer zone and the perimeter of the 100 foot wide buffer zone. Petitioner shall, in consultation with the Curator, initially install appropriate native plantings, without any irrigation lines, in the 60 foot wide buffer zone.

4g. Upon the establishment of the Homeowners' Association, said Homeowners' Association shall maintain in perpetuity the Heiau/Retention Basin Lot. The CC&R's will include a condition to the effect that the Homeowners' Association shall bear the cost including reasonable out of pocket costs, if any, of the Curator, such that the Curator may perform the duties prescribed in this Decision and Order.

4h. The view planes from the Heiau will be preserved by prohibiting (a) the construction of any "structure" (as this term is defined in §19.04.040, Maui

County Code), with the exception of the Retention Basin, the 4 foot high walls around the 60 foot wide buffer zone and the Retention Basin, and irrigation line on that portion of the Property north of the Heiau; and (b) the construction on the Property of any structure or landscaping that blocks the view plane from the Heiau to the summit of Haleakala (but structures that do not block such view plane may be constructed on the Property). This condition will also be included in the CC&R's and in appropriate deed restrictions.

4i. Petitioner shall comply with any and all conditions proposed by SHPD for the Heiau. Within one month of notification from SHPD, Petitioner shall inform the Commission that SHPD has approved Petitioner's commitments, if any, for the preservation and maintenance of the Heiau, and has determined that any historic preservation mitigation plan and archaeological data recovery sub-plan have been successfully implemented.

5. **Unidentified Archaeological Finds.** If any previously unidentified human burial, or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or loi walls (collectively the "Historic Sites") are found during construction on the Property or any Residential Lot, work shall immediately stop and SHPD shall be notified of such Historic Sites. The requirements of Chapter 6E, HAW. REV. STAT., and the rules promulgated thereunder, applicable to the Historic Sites shall be satisfied before construction resumes. SHPD

shall determine and approve the significance of the Historical Sites, and construction work shall re-commence at the Property only after both approval by an authorized archaeologist has been obtained and appropriate mitigative measures for the Historic Sites have been implemented.

6. **Traffic Impact Mitigation.** On or before the completion of all improvements required by the Director of the DPW as a condition to Final Subdivision Approval, Petitioner shall cause, at its sole cost and expense, the construction of the following:

6a. Separate lanes for left-turns and right turns on the northbound approach of the Project Entrance to Old Haleakala Highway;

6b. A left-turn pocket on the westbound approach on Old Haleakala Highway to the Project Entrance;

6c. A taper at the intersection of Old Haleakala Highway and the Project Entrance to facilitate eastbound traffic turning right into the Project;

6d. An extended shared through/left turn lane and an extended separated right turn lane approximately 200 feet long on the Old Haleakala Highway approach to the signalized intersection of Haleakala Highway, Kula Highway and Old Haleakala Highway, which improvements shall include full curbs, gutters and sidewalk frontage improvements along the entire Project frontage on Old Haleakala Highway up to Kula Highway; and

6e. An extended separate right turn lane, approximately 150 feet long, on the makai bound approach of Haleakala Highway within the available right-of-way and within the constraints of the existing drainage ditch.

Petitioner shall also dedicate a sufficient right-of-way and setback, at no cost to the State of Hawaii, along portions of lots 19 and 20 of the Project fronting Old Haleakala Highway, and along a portion of the pedestrian and utility right-of-way between such lots, as shown on the Petitioner's Conceptual Development Plan (Petitioner's Exhibit 8), for the purpose of accommodating the storage lanes, turn lanes and sidewalk improvements described in Condition 6(d) above.

7. **Hazard Mitigation.** Within six months of issuance of this Decision and Order, the Petitioner shall properly test for the presence of any hazardous materials, and thereafter properly dispose of, the three (3) fifty-five (55) gallon drums currently on the Property. If such testing evidences the presence of hazardous materials, Petitioner shall conduct additional soil sampling at and in close proximity to the location of the drums on the Property to ascertain any potential impacts resulting therefrom and shall mitigate/cure any potential impacts resulting therefrom.

8. **Responsibility of the Homeowner's Association to maintain the Property.** All landscaping in the Project but outside of the Residential Lots, and all easements, cul-de-sac turn arounds, and emergency vehicle, pedestrian and utility

rights of way established by Petitioner as a part of the Project shall be maintained in good repair as long as the Project exists.

9. **Water Service.** Prior to Final Subdivision Approval, Petitioner shall provide evidence, in the form of a fully executed agreement with DWS, whereby, among other things, the DWS shall allocate to and reserve for the Project any excess source and storage credits arising from the Kulamalu development. Petitioner shall provide adequate potable water transmission improvements for the Project as may be approved by the appropriate State agencies and the DWS.

10. **Wastewater.** Petitioner or the owner of each Residential Lot shall provide adequate individual wastewater systems for such Residential Lot as determined by the DOH and the DPW.

11. **Civil Defense.** Petitioner shall fund and construct adequate solar-powered civil defense measures for the Project, as determined by the Department of Defense and the Office of Civil Defense of the State of Hawaii and the Civil Defense Agency of the County of Maui.

12. **Drainage Improvements.** Petitioner shall design and construct, at its sole cost and expense, drainage improvements required on the Property as a result of the Project to the satisfaction of the appropriate State agencies and the DPW.

13. **Solid Waste.** Petitioner shall cooperate with the DOH and the County of Maui to conform the Project with the program goals and objectives of

Chapter 342G, HAW. REV. STAT., and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH.

14. **Best Management Practices.** Petitioner shall implement at the Property applicable best management practices to reduce or eliminate soil erosion and ground water pollution and effect dust control measures during and after the construction of the Project in accordance with the DOH's guidelines and shall assure best management practices are followed by individual lot owners through appropriate deed restrictions.

15. **Water Conservation Measures.** Petitioner shall implement water conservation measures and best management practices for the Project such as use of indigenous and drought tolerant plants and turf, and shall incorporate such measures into common area landscape planting.

16. **Energy Conservation Measures.** Petitioner shall implement into the Project energy conservation measures such as use of solar energy and solar heating.

17. **Air Quality Monitoring.** Petitioner shall participate in an air quality monitoring program during the construction of the Project as specified by the DOH.

18. **Notification of Potential Nuisances.** Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots of potential odor, noise and dust pollution resulting from adjacent agricultural uses.

19. **Hawaii Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Residential Lots that the Hawaii Right to Farm Act, Chapter 165, HAW. REV. STAT., limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

20. **Preservation of Access.** The access rights of native Hawaiians who customarily and traditionally have used the Property for access onsite or to other areas for subsistence, cultural, and religious practices shall be preserved

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

22. **Notice of Change to Ownership Interests.** Petitioner shall give notice to the 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. This Condition shall be satisfied by the giving of notice only, and shall not require approval by the Commission. This Condition shall not apply to the sale of any Residential Lot from and after Final Subdivision Approval.

23. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the Planning Department in connection with the status of the Project, administration for the maintenance of the Heiau and its preservation program, and Petitioner's progress in complying with the Conditions. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval and entry of this Decision And Order.

23a. Upon the sale of all of the Residential Lots and establishment of the Homeowner's Association, the Petitioner will transfer to the Homeowner's Association the responsibility of providing annual reports to the Commission.

24. **Release of Conditions.** Petitioner shall have the right to seek from the Commission full or partial release of any of the Conditions as to all or any portion of the Property upon assurance acceptable to the Commission of satisfaction of such Conditions.

25. **Notice of Imposition of Conditions.** Within seven (7) days of the delivery to Petitioner of these Findings Of Fact, Conclusions Of Law, And Decision And Order for the subject reclassification, Petitioner (a) shall record with the Bureau of Conveyances of the State of Hawaii a statement that the Property is subject to the Conditions; and (b) shall file a copy of such recorded statement with the Commission.

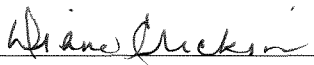
26. **Recordation of Conditions.** Petitioner shall record the Conditions with the Bureau of Conveyances of the State of Hawaii pursuant to Section 15-15-92, Hawaii Administrative Rules.

ADOPTION OF ORDER

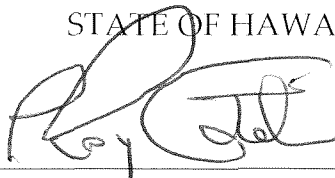
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 17th day of May, 2005. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

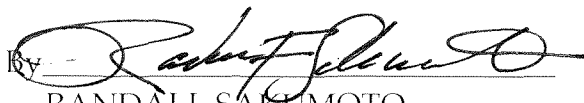
Done at Honolulu, Hawai'i, this 17th day of May, 2005, per motion on March 3, 2005.

APPROVED AS TO FORM


Deputy Attorney General


LAND USE COMMISSION
STATE OF HAWAII

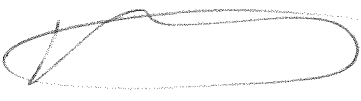
By 
P. ROY CATALANI
Chairperson and Commissioner

By 
RANDALL SAKUMOTO
Vice-Chairperson and Commissioner

By (absent)
STEVEN LEE MONTGOMERY
Vice Chairperson and Commissioner

By _____ (absent) _____
ISAAC FIESTA, JR.
Commissioner


By  _____
MICHAEL D. FORMBY
Commissioner

By  _____
KYONG SU IM
Commissioner

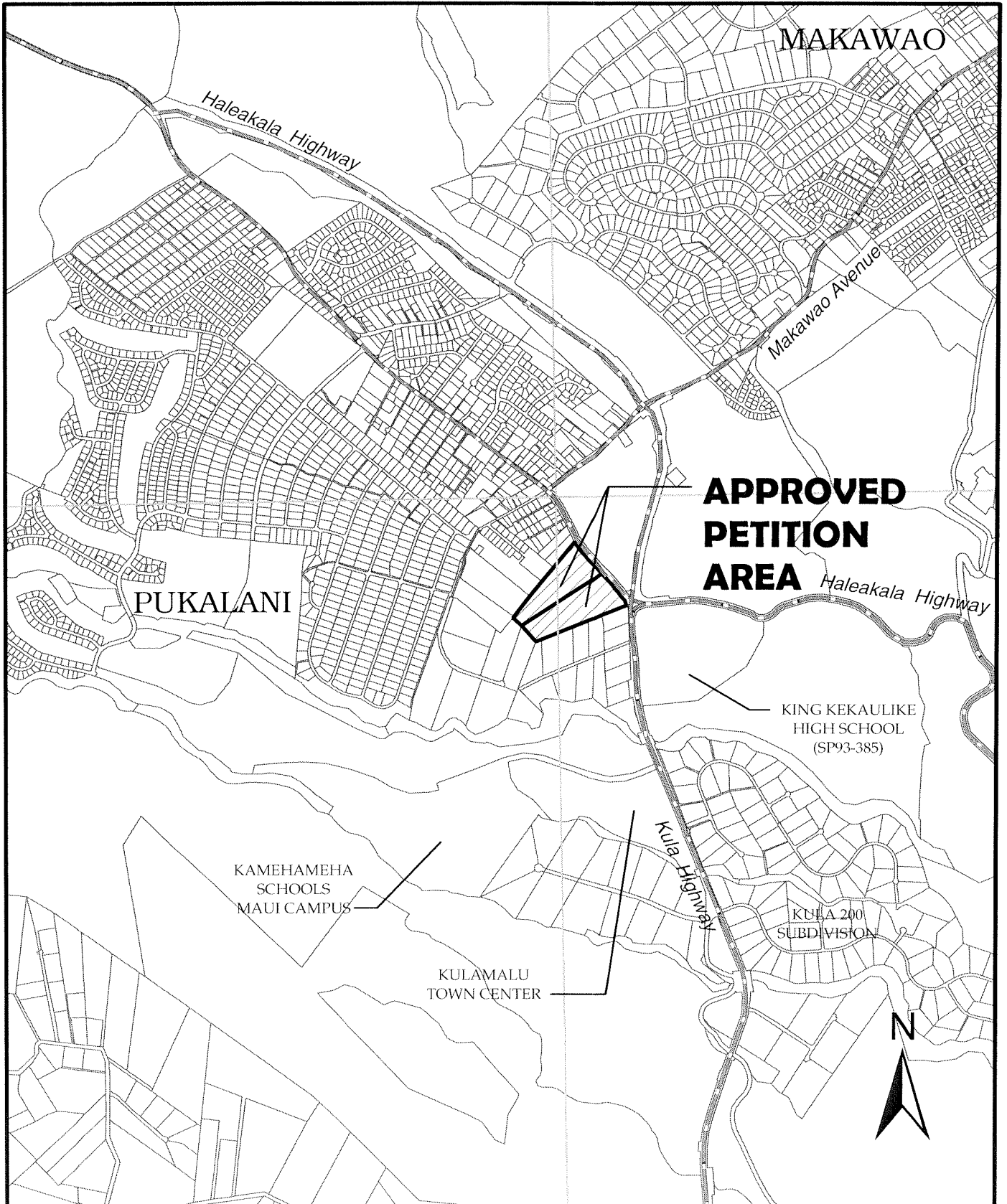
Filed and effective on
MAY 17 2005

By  _____
LISA M. JUDGE
Commissioner

Certified by:


ANTHONY J. H. CHING

By  _____
PETER YUKIMURA
Commissioner



**A03-745 HANO HANO, LLC,
a Hawaii limited liability company**

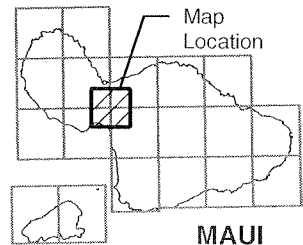
MAP NO. 1

TAX MAP KEY NO.: 2-3-11: 1 & 2

Keahua, Kula, Maui, Hawaii

Scale: 1" = 2,000 ft.

Exhibit "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the matter of the Petition) DOCKET NO. A03-745
))
of) CERTIFICATE OF SERVICE
))
HANOHANO LLC, a Hawaii Limited)
Liability Company)
))
To Amend the State Land Use)
Agricultural District to the State Land)
Use Urban District for approximately)
28.695 acres of land at Keahua, Kula,)
Island and County of Maui, State of)
Hawaii, bearing Tax Map Key Numbers)
2-3-11:1 and 2-3-11:2 (Second Taxation)
Division))

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings Of Fact, Conclusions Of Law,
And Decision And Order For A State Land Use District Boundary Amendment, was
served upon the following by either hand delivery or depositing the same in the U. S.

Postal Service by regular or certified mail as noted:

DEL. LAURA THIELEN, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359


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Deputy Attorney General
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CERT: DAVID H. NAKAMURA, Esq.
Crockett and Nakamura
38 South Market Street
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Dated: Honolulu, Hawaii, **MAY 17 2005**.



ANTHONY J. H. CHING
Executive Officer