

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A04-754
MAUI LANI 100, LLC)
To Amend The Agricultural Land Use) FINDINGS OF FACT, CONCLUSIONS
District Boundary Into The Urban Land) OF LAW, AND DECISION AND ORDER
Use District For Approximately 59.6 Acres) FOR A STATE LAND USE DISTRICT
of Land at Wailuku, Maui, Hawai'i, Tax) BOUNDARY AMENDMENT
Map Key No. 3-8-007:131 (portion).)
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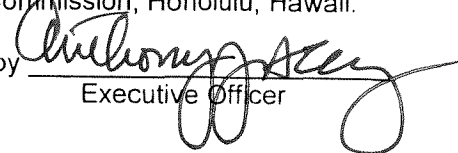
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

SEP 15 2005

Date

by



Executive Officer

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

MAUI LANI 100, LLC, a Hawai`i limited liability company ("Petitioner"), filed a Petition For District Boundary Amendment From Agricultural to Urban ("Petition") on October 13, 2004, pursuant to chapter 205, Hawai`i Revised Statutes ("HRS"), and chapter 15-15, Hawai`i Administrative Rules ("HAR"), to amend the State Land Use District boundary to reclassify approximately 59.6 acres of land at Wailuku, Maui, Hawai`i, identified by Tax Map Key No. (2) 3-8-007:131 (por.) ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District for a residential development that would include affordable and moderate market-priced single-family and multi-family homes ("Project"). The Petition Area and the Project are

part of a proposed Village Mixed Use Development which includes a mix of residential and commercial uses encompassing a total of approximately 130 acres (the 130 acre area is referred to herein as "the Plan Area," and "the VMX development").

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearing hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On October 13, 2004, Petitioner filed the Petition. The Petition included a Draft Environmental Assessment ("DEA") pursuant to section 343-5(a)(1), HRS, and section 11-200-6(b)(1)(A), HAR. Petitioner also filed its Affidavit Of Service Of Petition For District Boundary Amendment and Certificate Of Service upon the State of Hawai'i Office of Planning ("OP"), the Maui Planning Department ("County"), the Maui Planning Commission, and the Maui County Department of the Corporation Counsel.

2. On October 14, 2004, Petitioner filed its Notarized Affidavit Of Mailing and Certificate Of Service.

3. On October 21, 2004, the Commission agreed to be the accepting authority pursuant to chapter 343, HRS, and determined that the DEA dated October

13, 2004, warranted an anticipated finding of no significant impact. The Commission's Order determining same was filed on April 12, 2005.

4. On November 24, 2004, Petitioner filed its Notarized Affidavit of Mailing for its Amended Notification of Petition Filing and Certificate of Service.

5. On January 24, 2005, Petitioner filed its Final Environmental Assessment ("FEA").

6. On February 10, 2005, the Commission issued a finding of no significant impact subject to Petitioner's submittal of an amended FEA.

7. On February 22, 2005, the Petitioner filed its amended FEA, and the Executive Officer of the Commission thereby deemed the Petition properly filed as of that date. The Commission's Order accepting Petitioner's amended FEA was filed on April 12, 2005.

8. On April 8, 2005, the County filed its Position of the Maui Planning Department, List of Witnesses and List of Exhibits. The County's support of the Petition was subject to mitigation of anticipated impacts relating to the Project.

9. On April 11, 2005, Petitioner filed its List of Witnesses, List of Exhibits and Certificate of Service.

10. On April 13, 2005, OP filed its Statement of Position of the Office of Planning, OP's Exhibit 2, List of Exhibits and List of Witnesses. OP's support of the

Petition was subject to conditions being imposed by the Commission to address OP's concerns.

11. On April 13, 2005, the Executive Officer of the Commission conducted a prehearing conference in Conference Room 405 of the Commission, located at 235 South Beretania Street, Honolulu, Hawai`i, with representatives of Petitioner, OP, and County. Representatives of Petitioner and County attended the prehearing conference via telephone conference. The Commission subsequently issued its Prehearing Order on April 27, 2005.

12. On April 21, 2005, Petitioner filed its Final List of Witnesses, Final List of Exhibits and Certificate of Service.

13. On April 21, 2005, the County filed its Testimony of the Maui Planning Department.

14. On April 27, 2005, OP filed its Testimony of Office of Planning in Support of the Petition (Exhibit 1A), Exhibit 3 and Amended List of Exhibits.

15. On April 29, 2005, Petitioner filed its Exhibits 40 and 41 and Certificate of Service.

16. On May 5 and 6, 2005, the Commission conducted a hearing on the Petition in Makena, Maui, Hawai`i, pursuant to a public notice in the Honolulu Star Bulletin and the Maui News on April 4, 2005. Entering appearances were Blaine J. Kobayashi, Esq., and Leiane Paci for Petitioner; Michael W. Foley, Director of Planning,

and Jane E. Lovell, Deputy Corporation Counsel, for the County; and Abe Mitsuda and John W.K. Chang, Deputy Attorney General for OP. No individuals provided public testimony.

17. On May 6, 2005, Petitioner filed its Exhibit 42.

18. At the conclusion of the meeting on May 6, 2005, the Commission continued the evidentiary portion of the hearing to the next Commission meeting to receive further evidence on issues relating to the County of Maui's closed Waikapu landfill.

19. On May 25, 2005, OP filed its Second Amended List of Exhibits.

20. On June 1, 2005, Petitioner filed its Supplemental List of Exhibits, and Certificate of Service.

21. On June 2 and 3, 2005, the Commission resumed consideration of the Petition at its meeting in Makena, Maui, Hawai'i, and Kahului, Maui, Hawai'i, respectively. Entering appearances on June 2, 2005, were Blaine J. Kobayashi, Esq., and Leiane Paci for Petitioner; Michael W. Foley, Director of Planning, Kivette Caigoy, Staff Planner, and Jane E. Lovell, Deputy Corporation Counsel, for the County; and Laura Thielen, Abe Mitsuda and John W.K. Chang, Deputy Attorney General, for OP. No individuals provided public testimony.

22. At the conclusion of the meeting on June 3, 2005, the Commission closed the evidentiary portion of the hearing. The Commission, however, left the

record open to receive a report (the "DOH report") from OP's witness Steven Chang of the State of Hawai'i Department of Health ("DOH") regarding the County of Maui's closed Waikapu landfill. The Commission also authorized any party to petition the Commission to re-open the evidentiary portion of the hearing for the limited purpose of rebutting or commenting on the DOH report.

23. On June 3, 2005, the Commission and the parties conducted a site visit (the "site visit") to the Petition Area and the County of Maui's closed Waikapu landfill.

24. On July 6, 2005, the DOH filed the DOH report addressed to the Executive Officer of the LUC detailing DOH's position and recommendations regarding the County of Maui's closed Waikapu landfill.

25. On July 28, 2005, the Commission met in Kahului, Maui for action on the Petition. At this meeting, the Commission admitted OP Exhibits 4 and 5 and County Exhibit 2 into evidence. At the conclusion of the meeting, the Commission deferred action on this matter until its next appropriate meeting.

DESCRIPTION OF THE PETITION AREA

26. The Petition Area is located in Wailuku, Maui, Hawai'i. The Petition Area consists of approximately 59.6 acres, and is identified by Tax Map Key No. (2) 3-8-007:131 (por.).

27. The Petition Area is bounded to the north by the Wailuku-Kahului Project District 1 (Maui Lani), chapter 19.78, Maui County Code (hereafter "Maui Lani Project District"), a master planned community which covers an area of approximately 1,012 acres.

28. The Petition Area is vacant and has been used in the past for sand mining operations. Ameron Hawai'i discontinued active grading of the Petition Area approximately 2 years ago based on the presence of clay deposits which reduced the quality of the sand.

29. Fee simple ownership of the Petition Area is vested in the Petitioner, a Hawai'i limited liability company authorized to do business within the State of Hawai'i with its principal place of business and mailing address at P.O. Box 1500, Wailuku, Hawai'i 96793. As owner of the Petition Area, Petitioner has standing to file the Petition.

30. The University of Hawai'i Land Study Bureau's Detailed Land Classification classifies the Petition Area as "E". This classification system rates lands on a scale of "A" to "E," reflecting land productivity characteristics. Lands designated "A" are considered to be of highest productivity, with "E" rated lands ranked the lowest.

31. As identified by the U.S. Department of Agriculture, the soil type underlying the majority of the Petition Area is of the Puuone Series' Puuone Sand

classification (PZUE). PZUE soils are typified by a sandy surface layer underlain by cemented sand. This PZUE type of soil is characterized by rapid permeability above the cemented layer and slow runoff.

32. The Petition Area is listed as "Other Agricultural Land" according to the Agricultural Lands of Importance to the State of Hawai'i.

33. The Petition Area is relatively flat, with slopes of approximately 2 to 5 percent.

34. The Petition Area is within Zone C of the Federal Flood Insurance Rate Map, which is an area of minimal flooding according to the Federal Emergency Management Agency.

PROPOSAL FOR RECLASSIFICATION

35. The Petition Area is proposed to be reclassified to the Urban District and developed into a residential development that would include affordable and moderate market-priced single and multi-family homes. The Petition Area and the Project will constitute part of the proposed VMX development, which will consist of approximately 500 residential units interspersed throughout the Plan Area.

Approximately 365 of the VMX development's 500 units will be located within the Petition Area. The proposed VMX development will include a mix of commercial and residential uses in a modern neighborhood setting that will maximize the use of land

resources and infrastructure systems, while at the same time, minimizing off-site impacts.

36. Within the proposed VMX development, 2 subdistricts will be included: a VMX (R) subdistrict that will consist of affordable and moderate market-priced multi-family and single-family residential uses, and a VMX (C/R) subdistrict that will consist of a combination of commercial/multi-family residential uses.

37. Within the 27-acre VMX (R) subdistrict, 10 acres will be set aside for single-family residences. With a projected range of approximately 5 to 7 units per acre, an estimated 50 to 70 units will be encompassed within the 10 acre area. The remaining 17 acres of the VMX (R) subdistrict will be set aside for multi-family units. With a projected range of approximately 10 to 15 units per acre, an estimated 170 to 255 units will be included within the 17-acre area.

38. The Project will also include an additional 10.3 acres that would be zoned for single-family residences. Based on a projected range of 5 to 7 units per acre, an estimated 52 to 72 units will be included in this 10.3 acre area.

39. The average single-family lot size will be 5,000 square feet, with homes ranging in size from 1,200 to 1,800 square feet. Multi-family homes will average 850 to 1,200 square feet in size.

40. The VMX (R) subdistrict as described above is located entirely within the Petition Area.

41. The 59.6-acre Petition Area is proposed to be used as follows:

- VMX (R): 27 acres
- Single family district: 10.3 acres
- Regional park: 19 acres
- Open space/roadways: 3.3 acres

42. In order to address the demand for affordable housing, 51% of the units in the Project will be priced to be affordable to families earning between 80% to 140% of the County of Maui's annual median income. Based on a 6.75% interest rate, sales prices for the affordable single-family homes will range from \$182,600 (for families earning up to 80% of the County of Maui's median annual income) to \$340,300 (for families earning between 121% to 140% of the County of Maui's median annual income), and sales prices for the affordable multi-family homes will range from \$178,600 (for families earning up to 80% of the County of Maui's median annual income) to \$336,300 (for families earning between 121% to 140% of the County of Maui's median annual income).

43. A regional park covering approximately 19 acres will be included as part of the Project. The regional park will be located next to existing residential-zoned areas, park areas, and the new Maui Lani Elementary School. Combined with the existing 8-acre park within the Maui Lani Project District, the total regional park acreage will be approximately 27 acres.

44. Smart growth principles will be incorporated into the proposed VMX development, including the Petition Area, which will include pedestrian linkages among the subdistricts as well as adjacent residential, commercial, park, and school uses occurring within the existing Maui Lani Project District.

45. Subdivision improvements are anticipated to commence in late 2006, and will take approximately 5 years to complete. The estimated cost for the improvements is \$61,000,000.

46. Sales of the single and multi-family residential units are anticipated to occur over the 5 year period, with sales of single-family homes averaging 60 per year and sales of multi-family units averaging 51 per year. With 51% of the units being offered in the affordable price range, it is possible that absorption of these units may occur at a much higher rate.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

47. Petitioner's financial balance sheet as of March 31, 2005, reflects total assets of \$15,184,878.

48. Petitioner intends to finance development of the Project through loans from local lending institutions.

49. The Petitioner has many financial sources to draw upon to complete the Project, such as a combination of existing assets, cash held on deposit at

other financial institutions, and the financial resources available from the Mills Group, which is the parent company of Petitioner.

50. Based on Petitioner's ownership of the Petition Area, the appraised value of which is approximately \$13,000,000.00, current financial position, letters from local lending institutions, and demand for residential and commercial inventory, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

STATE AND COUNTY PLANS AND PROGRAMS

51. The Petition Area is currently designated in the State Land Use Agricultural District.

52. The Wailuku-Kahului Community Plan designates the Petition Area as "Agricultural". Accordingly, a separate Community Plan Amendment application was filed with the County for consideration by the Maui Planning Commission and final action by the Maui County Council. The request was made to amend the Wailuku-Kahului Community Plan's designation of the Petition Area to "Project District".

53. The Petition Area is currently zoned "Agricultural" by Maui County zoning. Accordingly, a separate Change in Zoning application was filed with the County for consideration by the Maui Planning Commission and final action by the Maui County Council. The request was made to change the zoning of the Petition Area

to "Wailuku-Kahului Project District 1 (Maui Lani)" that would allow for the subdivision of the Petition Area into the development proposed by Petitioner.

54. The Petition Area is not within the County of Maui's Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

55. The Hallstrom Group prepared a market study and analysis, dated June 2004, for the Project. According to the market study, there is a strong demand for the Project. The Central Maui housing sector is currently significantly undersupplied, especially in the area of affordable housing. Market conditions reflect that all new residential products in the Central Maui area have been immediately absorbed with application and waiting lists many times greater than the number of units available. There is also a demand for additional light industrial/commercial and mixed use land in Central Maui.

56. The County of Maui's Department of Housing and Human Concerns ("DHHC") fully supports the Project as it will fill an important need in the community. DHHC is also satisfied with the Petitioner's proposed mix of income levels (ranging from 80% to 140% of median annual income) for the affordable units.

57. DHHC is in the process of working with Petitioner on its affordable housing agreement for the Project.

58. The County supports the Project. The Project is in an area of existing urban services and infrastructure, such as waterlines, sewer treatment, schools, parks, fire stations, and police stations. The Project will also add a sizeable amount of affordable housing and very significant roadway connections.

SOCIO-ECONOMIC IMPACTS

59. The Project will benefit the social and economic welfare of the community by providing additional housing inventory, especially in the area of affordable housing. The proposed VMX development will also provide light industrial/commercial and mixed use land inventory in Central Maui. No significant population changes are anticipated as a result of the Project.

60. On a short-term basis, the Project will have a direct beneficial impact on the local economy during construction by generating construction and construction-related employment during the build-out of the Project.

61. Over the long term, the Project will have a direct and beneficial impact as residential homeowners will require various services related to home maintenance and improvement that will further support the local economy.

IMPACTS UPON RESOURCES IN THE AREA

Agricultural Resources

62. Although the Petition Area was previously used for sand mining operations, it is presently vacant and undeveloped. Active sand mining operations by

Ameron Hawai`i ceased on the Petition Area approximately 2 years ago. Given the Petition Area's location in proximity to existing residential uses and the adjacent Maui Lani Project District, the soil's low agricultural productivity, and the demand for affordable housing and finished light industrial/commercial floor space, agricultural use of the Petition Area is not deemed appropriate.

Flora and Fauna

63. Robert W. Hobdy, Environmental Consultant, prepared a biological resources survey report of the Petition Area dated June 2004.

64. Vegetation throughout much of the Petition Area is primarily characterized by buffelgrass, guinea grass, and kiawe. There are no officially listed threatened or endangered plants, or their habitats, found on the Petition Area.

65. There are no rare, endangered, or threatened mammal, bird, or insect species, or their habitats, on the Petition Area.

66. The Project is not expected to have a significant negative impact on the biological resources of the Petition Area.

Archaeological/Historical/Cultural Resources

67. Archaeological Services Hawai`i, LLC, in association with Aki Sinoto Consulting, prepared an archaeological sampling survey report of a 56.3-acre area located on the western portion of the proposed VMX development area dated August 2001. The survey included subsurface testing. No cultural components,

midden, or artifacts were encountered in any of the twenty backhoe trenches. The surface survey also did not reveal any significant cultural manifestations.

68. The survey noted that based on past experience, the potential for the presence of subsurface remains within the Petition Area, especially human burials, is still considered to be high. Accordingly, archaeological monitoring was recommended for all construction-related, ground disturbing activities.

69. The State Historic Preservation Division ("SHPD") reviewed and accepted the survey, including the recommendation concerning archaeological monitoring, on November 1, 2004.

70. Archaeological Services Hawai'i, LLC, prepared an archaeological monitoring plan dated March 2004 for the Petition Area. Full-time monitoring will occur for all construction-related, ground disturbing activities. Petitioner will comply with all State of Hawai'i and County of Maui laws and rules regarding the preservation of archaeological and historic sites should any be found during construction.

71. SHPD reviewed and accepted the Petitioner's archaeological monitoring plan on July 30, 2004.

72. SHPD has determined that no historical properties will be affected by the Project provided the specific conditions of the approved monitoring plans are followed.

73. Munekiyo & Hiraga, Inc., prepared a cultural impact assessment for the Petition Area. The assessment included archival and documentary research, site visits to the Petition Area, as well as consultation with individuals with knowledge of the Petition Area, its cultural resources, and practices and beliefs relating to or associated with the Petition Area.

74. One of the individuals interviewed was native Hawaiian cultural advisor Christopher Pa`aluhi Hasegawa Chang. Mr. Chang did not believe that the area in the vicinity of the Petition Area was settled by native Hawaiians. Further, Mr. Chang and other individuals interviewed were unaware of any cultural practices on the Petition Area.

75. The assessment also considered results from previous archaeological studies conducted for the adjacent Maui Lani Project District. All of the previous archaeological studies indicated a general absence of evidence of traditional Hawaiian cultural activities and surface structural remains on the Petition Area.

76. Based on the documentary research and interviews, and observation of the Petition Area, the Project will not have any adverse effects on native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawai`i State Constitution.

Recreational and Scenic Resources

77. There are numerous recreational facilities, park, and open spaces in proximity to the Petition Area and the Wailuku-Kahului area in general. Shoreline and boating activities are provided at the Kahului Harbor and adjoining beach parks. The War Memorial Complex includes a gymnasium, swimming pool, tennis courts, youth baseball fields, football and soccer fields, and the War Memorial Stadium and baseball stadium.

78. Additional park and recreational facilities include the Kahului Community Center, Kanaha Beach Park, and Keopuolani Park (an approximately 140-acre regional park complete with soccer fields, baseball fields, playground equipment, pedestrian and bike ways, and an outdoor amphitheatre). The Dunes at Maui Lani Golf Course also provides another recreational opportunity.

79. Petitioner will provide a 19-acre regional park in the Petition Area that will include improvements such as grassing and irrigation.

80. Based on the availability of nearby recreational resources, and Petitioner's provision of the 19-acre regional park in the Petition Area (which combined with the existing 8-acre park within the Maui Lani Project District for a total of approximately 27 acres), the Project will not significantly impact any of the foregoing existing facilities, and will instead provide greater opportunities for recreational activities.

81. The scenic resources of the Petition Area are defined by Mount Haleakala to the east, and the West Maui Mountains to the west. The Project is not anticipated to have an adverse impact upon the visual character of the surrounding area since the Petition Area is not part of a scenic corridor and will not impact views from inland vantage points.

ENVIRONMENTAL QUALITY

Noise

82. The predominant source of noise in the vicinity of the Petition Area comes from traffic on surrounding roadways. Noise from earth-moving construction equipment and sand-mining equipment are also sources of noise in the vicinity of the southern boundary of the Maui Lani Project District.

83. Ambient noise conditions may be temporarily impacted by on-site construction activities during the initial construction phase of the Project, which will only be conducted during the daytime. Noise mitigation measures, such as equipment mufflers, barriers, and other noise-attenuating equipment, will be utilized as required. In cases where construction noise exceeds, or is expected to exceed the DOH's maximum permissible noise levels, Petitioner will obtain all required permits from DOH.

84. Any temporary impacts on noise conditions from on-site construction activities or traffic noise due to the Project are not considered significant, and are not expected to adversely impact the Petition Area or surrounding areas.

Air Quality

85. Air quality in the Wailuku-Kahului region is considered to be good. Emissions from point sources, including Maui Electric Company's power plant and Hawaiian Commercial and Sugar Company's sugar mill, do not generate problematic concentrations of pollutants as evidenced by the DOH's air quality monitoring station on Maui. While air quality is temporarily and intermittently impacted by a variety of sources, such as dust from nearby agricultural operations in the general area and vehicular exhaust from traffic on the region's roadways, the prevailing winds in the area quickly disperse any particulates generated by these sources.

86. Air quality within the immediate vicinity of the Project may be temporarily impacted from the emission of fugitive dust during construction-related activities. These impacts will be minimized through the proper use of appropriate Best Management Practices ("BMPs"), including routine maintenance of construction equipment and vehicles. Dust mitigation measures include: i) dust barriers, ii) water trucks watering unpaved work roads and graded areas on an as-needed basis, iii) sprinkler system to control dust, iv) proper maintenance and cleaning of construction equipment and vehicles, and v) daily monitoring of dust at the Project during

construction. Petitioner will implement mitigation measures for fugitive dust control required by all applicable government agencies and departments.

87. On a long-term basis, the Project is not anticipated to significantly impact air quality.

Water Quality

88. Operations within the Project will comply with all Federal, State, and County of Maui regulations regarding the handling, use, and storage of any potential pollutants to prevent leaching into the ground and flowing into any storm drainage systems.

89. Maui Lani Partners and the County of Maui Department of Water Supply ("DWS") have executed a Right of Entry Agreement dated April 22, 2005 ("Right of Entry Agreement") that would allow DWS to utilize 3 new wells, which will be located in proximity to 2 existing wells used for irrigation at the Maui Lani golf course which have been in continuous use since 1999. The best indication of the expected performance of the 3 new wells is the quality of water that has been pumped from the 2 existing wells. The water has been tested on a number of occasions and their quality has always met the DOH Drinking Water standards. No organic contaminants, including EDB and DBCP, have ever been detected. Chloride levels for the 2 existing wells have averaged less than 45 milligrams per liter ("MG/L"), indicative of very fresh water. In comparison, the informal drinking water "palatability" criterion in Hawai'i is

in the range of 160 to 180 MG/L, and the secondary drinking water standard for chlorides is 250 MG/L.

90. In the event contaminants are found, the Right of Entry Agreement requires Maui Lani Partners to remedy said contamination for the term of the agreement at no cost to the County of Maui.

Site Assessment

91. A Phase I Environmental Site Assessment ("Phase I Assessment") of the Petition Area was prepared by the Clayton Group Services, Inc.

92. The Phase I Assessment was carried out in accordance with the standards of the American Society of Testing Materials, and included a historical review of the Petition Area, including reviews of historical aerial photographs and historic maps, a site inspection of the Petition Area, contacts with appropriate State of Hawai`i and County of Maui agencies, review of prior environmental work performed on or near the Petition Area, and review of applicable State of Hawai`i environmental databases.

93. The Phase I Assessment included a review of information pertaining to the County of Maui's closed Waikapu landfill (the "Landfill") which stopped receiving waste in 1989, and was closed in 1991.

94. A groundwater sampling performed in 1993 by Harding Lawson from one of the monitoring wells on the Landfill revealed that there were no metals

detected above the Environmental Protection Agency's ("EPA") drinking water standards. Further, none of the volatile, organic compounds that are detectable by EPA method 8240 were detected in the groundwater sample. Eight of 15 metals were detected in the sample from the well. The concentrations of the detected metals, however, are less than the EPA and State of Hawai'i maximum contaminant level for each respective metal.

95. The Phase I Assessment recommended that a 55-gallon drum on the Petition Area be removed, and that the soil surrounding the 55-gallon drum be excavated and disposed of. Petitioner has followed and completed this recommendation.

96. The Phase I Assessment indicated that the Petition Area can be developed without danger of contamination from the Landfill if a swale system designed to keep any runoff or leachate that may originate from the Landfill is established and that the area adjacent to the Landfill is monitored for the presence of runoff or leachate when it is graded.

Proximity of Project to Landfill

97. The County of Maui submitted a closure plan to the DOH in December 1989. With respect to the Landfill's closure, the County of Maui satisfied applicable solid waste requirements in place at the time as specified in Chapter 11-58, HAR.

98. DOH has no plans to request or require that the County of Maui update its closure plan for the Landfill. Based upon the lack of direct statutory authority vested with DOH to regulate the Landfill, the absence of a reported release of pollutants or incident or identification of an imminent threat to public health and safety, DOH has no plans to conduct further action.

99. Based upon observations made during the site visit to the Landfill on June 3, 2005, and in the interest of promoting public health and safety, DOH in its DOH report filed July 6, 2005, recommends that the following be provided: (1) a 30-foot wide maintenance easement on the Petition Area for monitoring and maintenance of the Landfill along its northern boundary; (2) to mitigate the potential introduction of air into the Landfill from nearby sand mining operations by evaluating the potential risks and by the Petitioner proposing appropriate and feasible mitigative actions for review and comment by DOH and the County of Maui; (3) an initial report prepared by the Petitioner describing the implementation of the mitigation program and submitting subsequent reports to the LUC, DOH and the County of Maui in any instances where the integrity of the Landfill has been compromised and the Petitioner's response; (4) and the establishment of a buffer between the Landfill and Petition Area.

100. Based on observations made during the site visit to the Landfill on June 3, 2005, the Landfill was constructed to the edge of the property line on its

northern boundary as it abuts the Petition Area and as such, the DOH's recommended 30-foot wide easement can not be accommodated on the Landfill site.

101. At the Commission's meeting of July 28, 2005, the Petitioner represented that the Petitioner along with Mr. Steven Chang of DOH and Mr. Mike Souza of the County of Maui Department of Public Works and Environmental Management ("DPWEM") met on July 26, 2005, to discuss the DOH report and at that meeting, the DOH clarified that its primary concern in the establishment of a buffer from the County of Maui's closed Waikapu landfill was to restrict residential dwellings in the buffer area.

102. Petitioner agreed to establish a 300-foot residential buffer along the Petition Area as it abuts the Landfill to restrict the development of residences within said buffer to address DOH's concerns identified in its DOH report.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highways and Roadway Facilities

103. Parsons Brinkerhoff Quade & Douglas, Inc., prepared a traffic impact analysis report ("TIAR") for the Project dated July 2004. The objectives of the TIAR were to assess the traffic impacts on key intersections surrounding the proposed VMX development, including the Petition Area, and to identify a program of roadway improvements which will mitigate traffic impacts generated by the proposed VMX development, including the Petition Area. The TIAR also utilized the following traffic

studies to incorporate traffic pattern changes resulting from roadway network improvements to Maui Lani Parkway and the Kuikahi Drive Extension and projected traffic growth due to new development into future background traffic volumes: *Maui Long-Range Land Transportation Plan*, February 1997, *Maui Lani Development Roadway Master Plan*, November 2002, and *Wailuku-Kahului Sub-Area Study, Final Report*, January 1991.

104. The following intersections are in the study area and were analyzed in the TIAR: Honoapiilani Highway and Kuikahi Drive Intersection, Honoapiilani Highway and Kehalani Makai Parkway Intersection, Waiale Road and Olomea Street Intersection, Waiale Road and Waiinu Street Intersection, Maui Lani Parkway and Kaahumanu Avenue Intersection, Maui Lani Parkway and Mahalani Street, Maui Lani Parkway and Kuihelani Highway Intersection, and Papa Avenue and Kamehameha Avenue Intersection.

105. Access to the Project will be provided as follows: to the west, direct access will be to Waiale Road with Kuikahi Drive providing access to Honoapiilani Highway; to the east, access will be provided by future Maui Lani Parkway to Kuihelani Highway; and to the north, access will be provided by a combination of existing and future Kamehameha Avenue and existing and future Maui Lani Parkway. No access is planned directly south of the Project.

106. The year 2015 was used as the design year for the Project because it represents the expected buildout period for the proposed VMX development. Background traffic projections were prepared for 2015 conditions without the Project to establish a base condition for assessing the impacts of the Project. Included with the TIAR was a Level of Service ("LOS") analysis. LOS is a qualitative measure used to describe the conditions of traffic flow ranging from free-flow conditions, LOS A, to congested conditions, LOS F. The *2000 Highway Capacity Manual* methods for calculating volume-to-capacity ratios, delays, and corresponding levels of service were utilized in the TIAR.

107. The results of the TIAR reveal that all of the study intersections will operate at LOS D or better with the Project. The TIAR also noted that the future Kuikahi Drive Extension (between Waiale Road and future Maui Lani Parkway) and future Maui Lani Parkway segment (between Kuikahi Drive Extension and Kamehameha Avenue), which will be completed sooner as a result of the Project, will provide much needed alternative routes to Kahului and other areas via Kamehameha Avenue or Kuihelani Highway. These alternative routes will provide better mobility and reduce sub-regional traffic on existing roadways, such as Waiale Road.

108. The TIAR also recommended the following specific improvements: extend Kuikahi Drive between Waiale Road and future Maui Lani Parkway as a two-lane roadway, construct Maui Lani Parkway between Kuikahi Drive and Kamehameha

Avenue as a two-lane roadway, extend Kamehameha Avenue between Maui Lani Parkway and the southern boundary of Maui Lani Project District as a two-lane roadway, monitor and signalize the Kuikahi Drive/Waiale Road intersection when warranted, monitor and participate in the signalization of the Waiale Road/Olomea Street intersection when warranted, monitor and participate in the signalization of the Waiale Road/Waiinu Street intersection when warranted, monitor and participate in the signalization of the Kuihelani Highway/Maui Lani Parkway intersection when warranted, monitor and participate in the signalization of the Maui Lani/Kamehameha Avenue intersection when warranted, and monitor and signalize project accesses on Maui Lani Parkway and on Kuikahi Drive Extension when warranted.

109. Given Petitioner's proposed transportation improvements as represented to the Commission, the Project is not expected to adversely impact highway and roadway facilities.

Water Service

110. The Petition Area is located in the Central Maui Service Area which is served by water from the Iao and Waihee Aquifers, the Iao tunnel, and the Iao-Wailuku Ditch. As of December 1, 2004, the DWS stopped issuing advance water meter reservations until new water sources are brought on-line. Although DWS continues to issue meters for those ready to receive service at the current time, it may be necessary to stop issuing new meters altogether.

111. There are several new sources of water expected to come on-line in the near future. In Commission Docket No. A04-746, DWS Water Resource Planner Eva Blumenstein testified that expansion of the existing Iao treatment plant will add at least 800,000 gallons per day ("gpd") from surface water sources to the Central Maui System. Ms. Blumenstein further testified that another source of water will be the Kupa'a Well, which should be on-line sometime in 2005. Pumping from that source should average about 750,000 gpd. Further, the Hamakuapoko Wells in East Maui should come on-line by March of 2005, which are expected to provide approximately 640,000 gpd. Another surface water treatment plant is being planned for Central Maui. Preliminary studies should be completed in 2005, and the expected yield from that surface water treatment plant would be 2 million gallons per day.

112. The anticipated water consumption for the proposed VMX development, including the Project, is projected to range from 360,000 to 495,000 gpd based on DWS's standard domestic consumption rates, of which the Petition Area's share will be between 212,000 (unit based - low range) and 294,000 gpd (unit based - high range). The acreage-based projected water demand for the Petition Area is between 173,000 and 183,000 gpd. In order to mitigate the proposed VMX development including the Petition Area's water demand, Petitioner and its affiliate, Maui Lani Partners, have received permits to construct 3 new wells within the Kahului Aquifer to

supplement DWS's source supply and to provide potable supply for the proposed VMX development, including the Petition Area.

113. Tom Nance Water Resource Engineering prepared a response dated February 3, 2005, to comments made by DWS regarding Maui Lani Partners' proposed construction of the 3 new wells which will draw water from the Kahului Aquifer. Although the estimated combined pumping capacity of the 3 new wells is 2.16 million gallons per day ("MGD"), their long-term average is expected to be about 1.0 MGD. The Kahului Aquifer is a 9.54 square mile area that extends across the island's isthmus. Groundwater in this aquifer occurs under the compressed alluvium which functions as a caprock over the Haleakala basalts. Over most of the isthmus, the top of the groundwater lens is approximately four feet above sea level.

114. The Commission on Water Resource Management ("CWRM") has set the sustainable yield of the Kahului Aquifer at 1.0 MGD based on its estimate that approximately 20 percent of the rainfall directly on the 9.54 square mile area becomes recharge to the underlying groundwater and that 44 percent of this recharge can be safely pumped by wells. Past and present pumpage from the Kahului Aquifer has substantially exceeded the 1.0 MGD that was set by CWRM. The present pumpage of almost 30 MGD is primarily attributed to the Hawaiian Commercial & Sugar Co. ("HC&S") well batteries.

115. CWRM's 1.0 MGD sustainable yield for the Kahului Aquifer was based only upon precipitation from rainfall. In addition to rainfall, however, the Kahului Aquifer is recharged by several other sources of substantially greater magnitude: underflow from Haleakala, which passes through the Pa`ia Aquifer into the Kahului Aquifer with no known hydrologic impediment; underflow from the West Maui Mountains, which moves into the Kahului Aquifer through the weathered surface and alluvium of the mountains; irrigation return flow from HC&S sugarcane fields and other agricultural activities; and leakage of Waihe`e and Spreckles Ditch flows from the Wai`ale Reservoir. The estimated amount of irrigation recharged to the Kahului Aquifer is in excess of 200 MGD.

116. It is anticipated that once HC&S ceases operations, irrigation return flow from its sugarcane fields will stop; however, it will also free up an additional approximately 26 MGD of use from the Kahului Aquifer. The pending closure of Maui Land & Pineapple Co., Inc.'s cannery operations in Kahului will further reduce demand upon the Kahului Aquifer by approximately 2 MGD.

117. At this time, CWRM has no plans to designate the Kahului Aquifer as a water management area. Under current irrigation practices and reservoir conditions, the Kahului Aquifer has enough water to sustain the proposed VMX development, including the Project.

118. Given the County's planned improvements to its water system and the Petitioner's proposed potable water development of 3 new wells as represented to the Commission, the Project is not expected to adversely impact the County of Maui's potable water supply.

Wastewater Disposal

119. The County of Maui's existing wastewater system services the Wailuku and Kahului areas. The Wailuku-Kahului Wastewater Reclamation Facility ("WKWWRf") is located on Amala Place near Kanaha Beach in Kahului. The facility has a capacity of 7.9 MGD, and has the necessary capacity to meet the demands of the proposed VMX development, including the Project. The estimated wastewater output from the proposed VMX development, including the Project, is projected to range from 180,000 to 250,000 gpd, of which the Petition Area's share will be between 80,000 to 115,000 gpd. In addition, the proposed VMX development will contribute to the Facility Expansion of the Wailuku/Kahului Wastewater Treatment System to mitigate the proposed VMX development, including the Petition Area's impact to the facility.

120. Given Petitioner's proposed contribution to the WKWWRf as represented to the Commission, the Project is not expected to adversely impact the County of Maui's wastewater disposal service.

Drainage

121. The estimated post-development runoff from the Petition Area is 275 cubic feet per second ("cfs"). This represents an increase of 95 cfs over the existing pre-development runoff of 180 cfs.

122. Storm runoff from the Petition Area will be collected in an underground storm drainage system that will conveyed and discharged into storm water retention basins located within the Maui Lani golf course. If necessary, additional retention basin capacity will be constructed within the Maui Lani golf course to accommodate the added runoff from the proposed VMX development, including the Petition Area.

123. Given Petitioner's proposed drainage system improvements as represented to the Commission, the Project is not expected to adversely impact regional drainage.

Solid Waste Disposal

124. The proposed VMX development, including the Petition Area, is expected to generate approximately 73 tons of solid waste per week, of which the Project will make up approximately 10.0 tons per week. The Project's solid waste will be collected by the County of Maui's Solid Waste Division or private refuse collection companies, and hauled to the Central Maui Landfill for disposal, which has adequate capacity to accommodate the Project. The Central Maui Landfill currently receives

approximately 2,940 tons of solid waste per week. The County of Maui has 6 planned phases for expansion and full capacity is projected to accommodate waste disposal until the year 2065. Petitioner will develop a solid waste management plan for the proposed VMX development, including the Petition Area.

125. Given the County of Maui's current capacity to receive solid waste, the Project is not expected to adversely impact regional solid waste disposal systems.

Schools

126. Schools in the Wailuku region include Wailuku Elementary School (Grades K to 5), Iao Intermediate School (Grades 6 to 8), and Baldwin High School (Grades 9 to 12). Schools in the Kahului area include Lihikai and Kahului Schools (Grades K to 5), Maui Waena Intermediate School (Grades 6 to 8), and Maui High School (Grades 9 to 12). The new Maui Lani Elementary School is located on a 13.49 acre site adjacent to the Petition Area and is scheduled to open in July 2006.

127. According to the State Department of Education ("DOE"), the Project will have an impact on the enrollment of schools in the area. Petitioner will coordinate with the DOE to determine Petitioner's fair-share contribution to the development, funding, and/or construction of school facilities and improvements. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to County re-zoning of the Petition Area.

128. Given Petitioner's commitment to provide a fair share contribution to the DOE as represented to the Commission, the Project is not expected to adversely impact schools in the Wailuku-Kahului area.

Police and Fire Protection

129. Police services for the Wailuku-Kahului area is provided by the County of Maui's Department of Police, with its main headquarters located at 55 Mahalani Street in Wailuku.

130. Fire protection for the Wailuku-Kahului area, which encompasses fire prevention, suppression, rescue, and emergency services, is provided by the County of Maui's Department of Fire and Public Safety, with stations located in Wailuku on Kinipopo Street, and in Kahului on Dairy Road.

131. The Project will not result in any extension of the existing service area limits for police or fire emergency services, and will not adversely impact service capabilities.

Medical Services

132. Maui Memorial Medical Center, located between Wailuku and Kahului, is the only major medical facility on the island of Maui. Acute, general, and emergency care services are provided by the 196-bed facility. The Project is not anticipated to adversely impact the capabilities of the facility as the Project will not extend the existing service area limits for emergency services.

Electric and Telephone Service

133. Maui Electric Company, Ltd., Verizon Hawai'i, and Time Warner Oceanic Cable will provide electrical, telephone, and cable television services, respectively, to the proposed VMX development, including the Petition Area.

134. Existing electrical, telephone, and cable television distribution systems are located nearby along Honoapiilani Highway, Waiale Drive, Maui Lani Parkway, and Kamehameha Avenue. These distribution systems may be extended underground into the proposed VMX development, including the Petition Area. All systems will be placed underground and designed to current industry standards.

135. The implementation of the development of the Project's electrical, telephone, and cable television systems will be phased over a 7 to 10 year period.

136. Given Petitioner's commitment to extend electric and telephone service into the VMX development, including the Petition Area as represented to the Commission, the Project is not expected to adversely impact regional electric and telephone service.

COMMITMENT OF STATE FUNDS AND RESOURCES

137. The Project is not expected to adversely impact public services. The mitigative measures for the Project proposed by the Petitioner serve to counterbalance and remediate any impacts to public services and facilities. The Project will have a direct beneficial effect on the local and State economy through increased employment

opportunities and fiscal benefits, including additional income, general excise, and tax revenues from the Petition Area.

CONFORMANCE TO URBAN DISTRICT STANDARDS

138. The Petition Area is adjacent to lands characterized by "city-like" concentrations of people, structures, streets, urban levels of service, and other related land uses. The Petition Area is situated adjacent to existing urban uses within the Maui Lani Project District, and is proximately located to centers of trading and employment.

139. The Petition Area is located adjacent to the towns of Wailuku and Kahului, which are centers of commerce and government. Wailuku and Kahului contain a variety of residential, commercial, and recreational uses.

140. The Project will not result in an increased demand on parks, as Petitioner will be providing a 19 acre regional park as part of the Project which, when combined with the existing 8 acre park within the Maui Lani Project District, will provide a total of approximately 27 acres of park area. There are also numerous other parks and recreational activities and facilities available in Wailuku and Kahului.

141. While the Project will result in an impact on the enrollment in schools in the area, Petitioner will contribute its fair-share to the development, funding, and/or construction of school facilities and improvements.

142. The Project will be adequately serviced by wastewater systems, solid waste collection and disposal, drainage, water, roads, public utilities, and police and fire protection.

143. The Project will be integrated with the Maui Lani Project District. Development of the Petition Area will not significantly affect reserve areas for foreseeable urban growth.

144. The Petition Area has satisfactory topography, drainage and soil conditions for the proposed use, and is free from the danger of flood, tsunami and unstable soil conditions, and is not affected by any other adverse environmental conditions that would render it unsuitable or inappropriate for the Project.

145. The reclassification of the Petition Area is consistent with the objectives and policies of the General Plan of the County of Maui 1990 Update and the Wailuku-Kahului Community Plan for residential use. Approximately 70.4 acres of the 130 acre proposed VMX development are presently designated as "Project District" by the Wailuku-Kahului Community Plan.

146. Given the Petition Area's location immediately adjacent to existing urban uses within the Maui Lani Project District to the north of the Petition Area, the Petition Area is in an appropriate area for new urban concentration.

147. Development of the Petition Area will not contribute toward scattered spot urban development. The Petition Area is in proximity to existing urban

uses in the Maui Lani Project District. The Project will not necessitate unreasonable public investment in infrastructural facilities or public services.

148. The Petition Area does not consist of lands having a slope of 20 percent or more.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS

149. The reclassification of the Petition Area and the Project are in conformance with the following goals, objectives, policies, and priority guidelines of the Hawai`i State Plan, Chapter 226, HRS:

Section 226-4 State Goals

Section 226-4(1): "A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai`i's present and future generations."

Section 226-4(2): "A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people."

Section 226-4(3): "Physical, social, and economic well-being, for individuals and families in Hawai`i, that nourishes a sense of community responsibility, of caring, and of participation in community life."

The Project will contribute toward attainment of these three goals by: 1) providing direct and indirect short and long-term employment opportunities for the present and future residents of Maui; 2) generating increased State and County of Maui tax revenues; 3) contributing to the stability, diversity, and growth of local and regional

economies; and 4) minimizing the impact of the physical environment of the Petition Area.

Section 226-5 Objectives and Policies for Population

Section 226-5(a): "Guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter."

Section 226-5(b)(1): "Manage population growth statewide in a manner that provides increased opportunities for Hawai'i's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county."

Section 226-5(b)(3): "Promote increased opportunities for Hawai'i's people to pursue their socio-economic aspirations throughout the islands."

The Project will provide economic and employment opportunities for the population of Maui. The Project will also provide needed housing for families in the Central Maui region, which will allow pursuit of economic and social aspirations.

Section 226-6 Objectives and Policies for the Economy - In General

Section 226-6(b)(b): "Strive to achieve a level of construction activity responsive to, and consistent with, State growth objectives."

The Project will provide increased employment opportunities in construction and construction-related employment during the Project's build-out.

Section 226-11 Objectives and Policies for the Physical Environment - Land-Based, Shoreline, and Marine Resources

Section 226-11(a)(2): "Effective protection of Hawai'i's unique and fragile environmental resources."

Section 226-11(b)(3): "Take into account the physical attributes of areas when planning and designing activities and facilities."

Section 226-11(b)(8): "Pursue compatible relationships among activities, facilities, and natural resources."

The Project is not expected to have adverse impacts on environmental resources. The Project takes into account the Petition Area's location adjacent to existing residential and commercial uses in the Maui Lani Project District and physical features of the Petition Area.

Section 226-12 Objective and Policies for the Physical Environment - Scenic, Natural Beauty, and Historic Resources

Section 226-12(b)(5): "Encourage the design of developments and activities that complement the natural beauty of the islands."

The Project has been designed to reflect smart growth principles, integrating residential and commercial uses along with open space and pedestrian linkages.

Section 226-13 Objectives and Policies for the Physical Environment - Land, Air, and Water Quality

Section 226-13(b)(2): "Promote the proper management of Hawai'i's land and water resources."

Section 226-13(b)(6): "Encourage design and construction practices that enhance the physical qualities of Hawai'i's communities. "

Section 226-13(b)(7): "Encourage urban developments in close proximity to existing services and facilities."

The Project is situated adjacent to urban lands of similar uses, and is a logical extension of the Maui Lani Project District. The Project is not expected to have adverse impacts upon water quality.

Section 226-19 Objectives and Policies for Socio-Cultural Advancement - Housing

Section 226-19(a)(2): "The orderly development of residential areas sensitive to community needs and other land uses."

Section 226-19(b)(1): "Effectively accommodate the housing needs of Hawai'i's people."

Section 226-19(b)(3): "Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing."

Section 226-19(b)(5): "Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas."

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

The Project will address a portion of the significant demand for housing on Maui, especially in the area of affordable housing. The Project, as part of the proposed VMX development, will foster a variety of traditional lifestyles.

Section 226-23 Objective and Policies for Socio-Cultural Advancement - Leisure

Section 226-23(b)(4): "Promote the recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved."

The Project will include a 19 acre regional park that will provide open space and recreational value.

Section 226-103 Economic Priority Guidelines

§ 226-103(a)(1): "Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.

- (A) Encourage investments which:
 - (i) Reflect long term commitments to the State;
 - (ii) Rely on economic linkages within the local economy;
 - (iii) Diversify the economy;
 - (iv) Reinvest in the local economy;
 - (v) Are sensitive to community needs and priorities; and
 - (vi) Demonstrate a commitment to management opportunities to Hawai'i residents."

The Project will assist in meeting these guidelines by responding to the community's need for residential housing, and allowing for the investment and reinvestment in the local economy through construction and construction-related employment. The Project will also encourage urban growth in proximity to an existing urban area.

Section 226-104 Population Growth and Land Resources Priority Guidelines

Section 226-104(a)(1): "Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai'i's people."

Section 226-104(b)(1): "Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas

where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles."

Section 226-104(b)(2): "Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district."

Section 226-104(b)(12): "Utilize Hawai`i's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline conservation lands, and other limited resources for future generations."

Section 226-106 Affordable Housing Priority Guidelines

Section 226-106(1): "Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households."

Section 226-106(8): "Give higher priority to the provision of quality housing that is affordable for Hawai`i's residents and less priority to development of housing intended primarily for individuals outside of Hawai`i."

The Project will address a portion of the need for housing in the Central Maui region. The Project will generate short-term employment opportunities as construction and construction-related jobs will be generated during the build-out of the Petition Area. Further, the reclassification from "Agricultural" to "Urban" will make available marginal agricultural lands for residential and park uses while retaining lands with higher productivity potential for agricultural purposes.

150. The reclassification of the Petition Area generally conforms to the Agricultural, Housing, Recreational, and Transportation Functional Plans.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND

POLICIES

151. The proposed reclassification of the Petition Area generally conforms to the objectives and policies of the Coastal Zone Management Program, chapter 205A, HRS. The Project is not coastal dependent and is located inland from the coast. As such, the Project will not adversely impact any coastal ecosystems, beaches or marine resources. No views or vistas from or to the shoreline will be impaired. The Petition Area is within areas of minimal flooding. All grading and other site improvements will comply with the requirements of the Federal Flood Insurance Program, and all State and County of Maui laws. Drainage will be adequately planned and constructed, and wastewater generated by the Project will be collected, treated, and disposed of in accordance with all applicable statutes, ordinances, and regulations.

RULING ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission's Rules under chapter 15-15, HAR, and upon consideration of the Commission's decision-making criteria under section 205-17, HRS, the Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 59.6 acres of land at Wailuku, Maui, Hawai'i, identified as Tax Map Key No. (2) 3-8-007:131 (por.), from the State Land Use Agricultural District to the State Land Use Urban District, for the development of the Project, and subject to the conditions in the Order below, conforms to the standards for establishing the Urban District boundaries, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

2. Article XII, Section 7, of the Hawai'i Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

3. Based on the archaeological sampling survey of the 56.3 acre property adjacent to the Petition Area and past experience in the area, the potential for the presence of subsurface remains, especially human burials, is considered to be high.

Archaeological monitoring of all construction-related, ground disturbing activities shall occur on the Petition Area. Should any resources be found during construction, Petitioner will comply with all State and County of Maui laws and rules regarding the preservation of archaeological and historic sites.

4. Based on the cultural impact assessment prepared for the Project, the Project will not have any adverse effects to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawai`i State Constitution.

5. Article XI, Section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i'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.

6. There are no threatened and endangered species of flora and fauna or species of concern in or on the Petition Area.

7. The ambient air quality of the Petition Area will be impacted in the short term by fugitive dust and emissions from engine exhausts during construction of the Project. Petitioner will implement mitigation measures for fugitive dust and exhaust emissions as required by all applicable government agencies and departments. The Project's long-term impacts to air quality will be minimal.

8. The Project's water demands will have no significant impact on the integrity of the Kahului Aquifer or any of its existing uses.

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

10. The Petition Area consists of marginal agricultural land which is not currently used for agriculture. The Project will not have a significant adverse impact on agriculture in Maui or in the State as the reduction of these agricultural lands in comparison to the total acreage of agricultural lands in Maui and in the State is minimal.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 59.6 acres of land in the State Land Use Agricultural District at Wailuku, Maui, Hawai`i, identified as Tax Map Key No. (2) 3-8-007:131 (por.), 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 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 HEREBY FURTHER ORDERED that the 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. **Affordable Housing.** The Petitioner shall develop the Project to meet the County of Maui's affordable housing guidelines; provided, however, that at least 51% of the Project's residential units shall be priced to be affordable to families earning between 80% to 140% of the County of Maui's annual median income. The location and distribution of the affordable housing and other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and DHHC. Petitioner shall provide the Commission with an executed copy of the affordable housing agreement entered into with DHHC.

2. **Public School Facilities.** Petitioner shall work with the DOE relative to any fair share contributions to mitigate the impacts of the Project on public school facilities. Terms of the fair share contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining County re-zoning of the Petition Area.

3. **Traffic Impact Mitigation.** Petitioner shall extend Kuikahi Drive between Waiale Road and future Maui Lani Parkway as a two-lane roadway, construct Maui Lani Parkway between Kuikahi Drive and Kamehameha Avenue as a two-lane

roadway, and extend Kamehameha Avenue between Maui Lani Parkway and the southern boundary of Maui Lani Project District as a two-lane roadway. Petitioner shall monitor the Kuikahi Drive/Waiale Road intersection, and the Project's accesses on Maui Lani Parkway and Kuikahi Drive Extension; Petitioner shall signalize said areas when warranted. Petitioner shall also monitor the Waiale Road/Olomea Street intersection, the Waiale Road/Waiinu Street intersection, the Kuihelani Highway/Maui Lani Parkway intersection, and the Maui Lani/Kamehameha Avenue intersection, and shall pay its pro-rata share of the signalization of said intersections when warranted. Petitioner shall coordinate with adjoining developers to implement intersection improvements at Honoapiilani Highway and Kuikahi Drive, and Kaahumanu Avenue and Maui Lani Parkway at no cost to DOT. Petitioner shall install necessary intersection improvements, including signalization when warranted, initially for the two-lane, and ultimately for the four-lane, Maui Lani Parkway/Kuihelani Highway intersection.

The Petitioner shall implement the regional roadway improvements and phasing plan as identified in the Maui Lani Master Roadway Agreement, dated June 3, 2003, executed with the DPWEM.

Petitioner shall provide DOT with an updated Maui Lani Development Regional Master Plan that will reflect the proposed redistricting of the Petition Area from State Land Use Agricultural to State Land Use Urban and will

identify the roadway improvements that will be required at intersections for access from Maui Lani to State highway facilities.

4. **Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Petition Area that the Hawai'i Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance.

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

6. **Drainage Improvements.** Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the Petition Area to the satisfaction of appropriate State and County of Maui agencies.

7. **Water Service.** Petitioner and its affiliate, Maui Lani Partners, shall construct 3 new wells which will draw water from the Kahului Aquifer to supplement DWS's source supply and will provide potable water supply for the Project in accordance with the terms and conditions of the Right-of-Entry Agreement between Maui Lani Partners and the County of Maui dated April 22, 2005, (Petitioner's Exhibit "40"). In the event contaminants are found, Maui Lani Partners shall remedy said contamination in accordance with, and for the term of, the Right-of-Entry Agreement. If any or all of the 3 wells cannot be developed to provide the potable water supply for

the Project, Petitioner shall fund adequate water source, storage and transmission facilities and improvements to accommodate projected water use generated by the Project to the satisfaction of the DWS.

8. **Best Management Practices.** Petitioner shall implement Best Management Practices ("BMPs") to reduce or eliminate soil erosion and groundwater pollution, and implement dust control measures during the development process in accordance with the DOH's guidelines.

9. **Wastewater Facilities.** Petitioner shall fund and develop on-site wastewater transmission facilities to transport wastewater from the Project to appropriate County of Maui wastewater transmission and treatment facilities to the satisfaction of the DPWEM and the DOH. Petitioner shall pay a pro-rata share of off-site sewer improvements as determined by the County of Maui.

10. **Solid Waste.** Petitioner shall comply with solid waste disposal as required by the DPWEM.

11. **Precautions Relating to Proximity of Closed Waikapu Landfill.** With regard to that part of the Petition Area which is adjacent to the County of Maui's closed Waikapu landfill ("Landfill"), Petitioner shall:

a) Establish a residential buffer of 300 feet from the boundary of the Landfill to reduce the risk that any potential release (whether combustible gas, odor or other nuisances) may affect the Project. Within this buffer area, activities will be

restricted to parking, roadway, other infrastructural uses, and open space. Commercial development activity (restricted to VMX uses as allowed by the County) may be allowed in the buffer area. To mitigate the potential of combustible gas migration on to the Petition Area, the Petitioner at its sole cost and expense, will install gas monitoring wells along the property line of the Petition Area adjacent to the Landfill with periodic inspections conducted by the Petitioner, its successors and assigns (including the Project's homeowner associations) and the findings reported to the appropriate County of Maui agency and the DOH. The frequency of inspections shall be determined by agreement of the appropriate County of Maui agency, the DOH and the Petitioner, its successors and assigns (including the Project's homeowner associations);

b) Grant a 30-foot wide easement within the Petition Area (where it abuts the Landfill) to the County of Maui to ensure that the County of Maui may appropriately monitor the northern boundary of the Landfill for settlement, runoff, maintenance, and other purposes related to health and safety. Such access should permit the movement of emergency or other vehicles by the County of Maui as the need may arise and may also serve to accept and appropriately contain any runoff from the Landfill;

c) Evaluate the potential risk of air being introduced into the Landfill from sand mining operations, propose appropriate and feasible mitigative actions for review and comment by the DOH and the appropriate County of Maui

agency, implement a mitigation program approved by the DOH and the appropriate County of Maui agency, and provide an update in Petitioner's annual report to the Commission;

d) Submit an initial report describing the implementation of Petitioner's mitigation program. Thereafter, Petitioner shall immediately report to the Commission, the DOH, and the County of Maui any instances where the integrity of the boundary between the Petition Area and the Landfill has been compromised and its response. The report detailing mitigation measures relating to the Landfill shall be updated and described in Petitioner's annual report to the Commission; and

e) Record a deed restriction on the Petition Area which: (1) provides notice to all purchasers of residential or commercial property that the adjacent property is a closed landfill, and (2) prohibits any construction or activity within the Petition Area that would compromise the integrity of the landfill cap or permit air or water to access the Landfill.

12. **Energy Conservation Measures.** Petitioner, where feasible, shall implement energy conservation measures, such as use of solar energy and solar heating and incorporate such measures into the Project.

13. **Civil Defense.** Petitioner shall provide its fair share of the cost of adequate civil defense measures serving the Petition Area as determined by the State of

Hawai`i Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

14. **Unidentified Archaeological Finds.** If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls which have not been identified in the Project's Archaeological Monitoring Plans (Petitioner's Exhibit 16) are discovered during the course of construction of the Project, then 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..

15. **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 Petition Area, prior to development of the Petition Area.

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

17. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of Planning, and the County in connection with the status of the Project and Petitioner's progress in complying with the

conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission and should be submitted within 1 year of the date of the Decision & Order and annually thereafter.

18. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.

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

20. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR. A copy of the recorded conditions shall be submitted to the Commission.


ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 15th day of September, 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 15th day of September, 2005, per motion on September 8,, 2005.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII



Deputy Attorney General

By 


RANDALL SAKUMOTO
Chairperson and Commissioner

By (Absent)

STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner


By (Abstain)

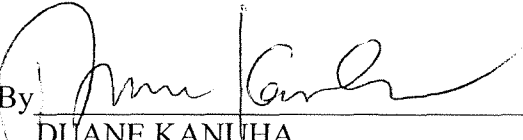
LISA M. JUDGE
Vice-Chairperson and Commissioner

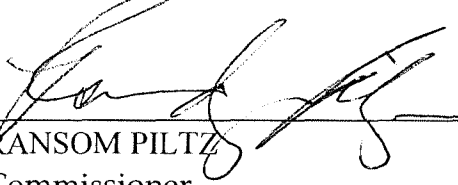
By 

THOMAS CONTRADES
Commissioner

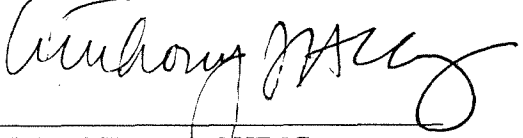
By 
MICHAEL D. FORMBY
Commissioner

By 
KYONG-SU IM
Commissioner

By 
DUANE KANUHA
Commissioner

By 
RANSOM PILTZ
Commissioner

Filed and effective on
SEP 15 2005

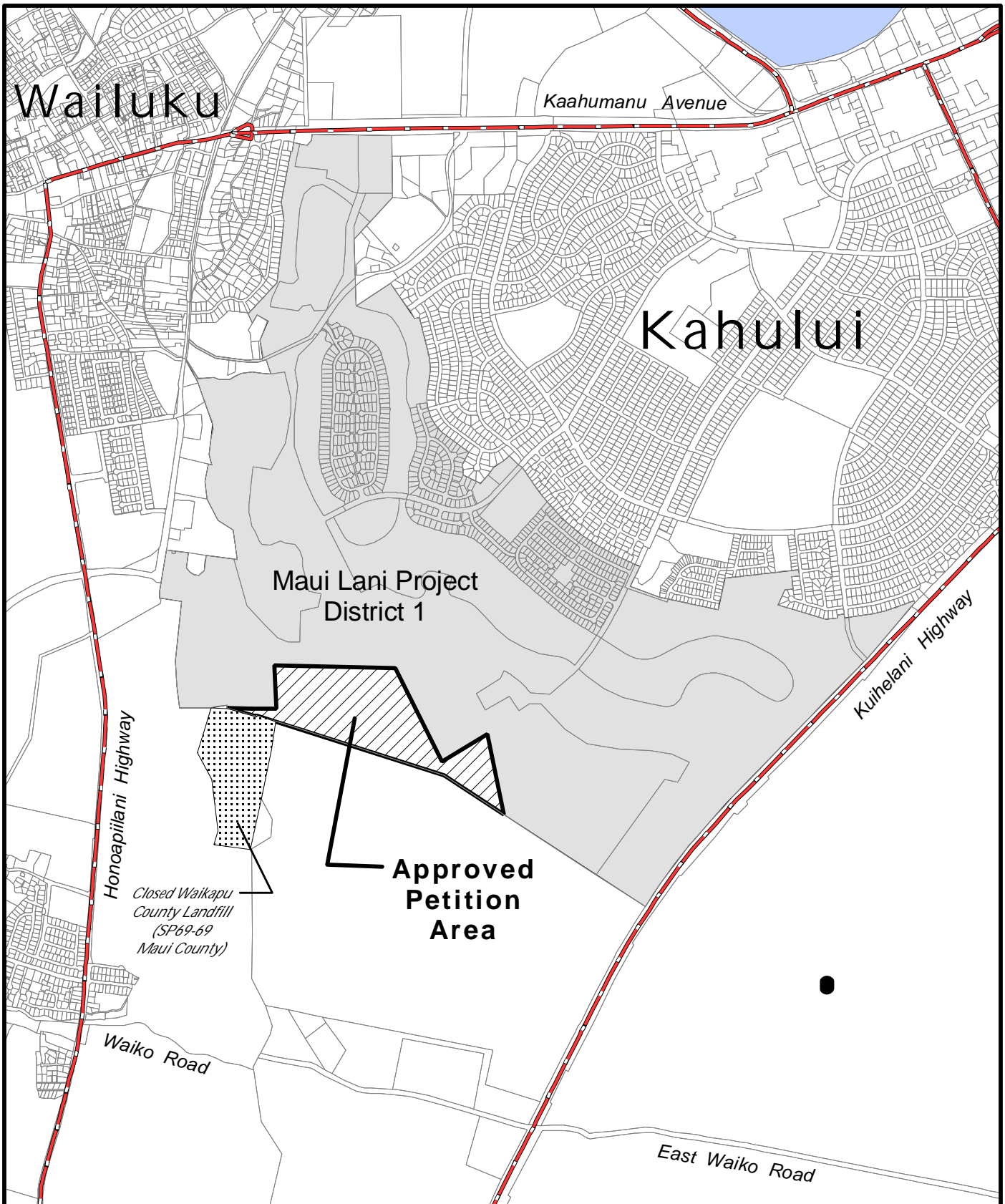
Certified by:

ANTHONY J. H. CHING

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

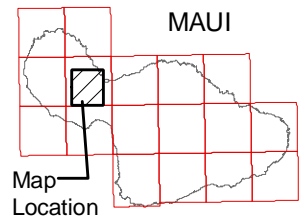
In The Matter Of The Petition Of) DOCKET NO. A04-754
MAUI LANI 100, LLC)
To Amend The Agricultural Land Use) FINDINGS OF FACT, CONCLUSIONS
District Boundary Into The Urban Land) OF LAW, AND DECISION AND ORDER
Use District For Approximately 59.6 Acres) FOR A STATE LAND USE DISTRICT
of Land at Wailuku, Maui, Hawai'i, Tax) BOUNDARY AMENDMENT
Map Key No. 3-8-007:131 (portion).)
_____)

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

EXHIBIT "A"



A04-754 MAUI LANI 100, LLC
 MAP LOCATION
 Tax Map Key: 3-8-07: por. 131
 Wailuku, 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. A04-754
)
 of) CERTIFICATE OF SERVICE
)
 MAUI LANI 100, LLC)
)
 To Amend the Land Use District Boundary)
 of Approximately 59.6 acres of land in the)
 Agricultural District to the Urban District at)
 Wailuku, Maui, Hawai'i, Tax Map Key No.:)
 (2) 3-8-001: 131 (por.))

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 mail as noted:

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

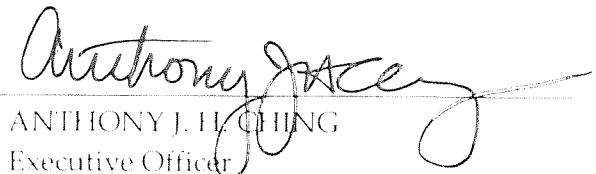
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Carlsmith Ball LLP
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Hawaii 96793-1086

Dated: Honolulu, Hawaii, SEP 15 2005.


ANTHONY J. H. CHING
Executive Officer