

BEFORE THE LAND USE COMMISSION

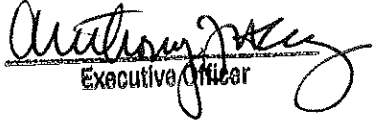
OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A05-755  
)  
HALE MUA PROPERTIES, LLC )  
) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW, AND  
To Amend the Land Use District ) DECISION AND ORDER FOR A  
Boundary Of Certain Lands Situated at ) STATE LAND USE DISTRICT  
Waiehu, Island of Maui, State of Hawai'i, ) BOUNDARY AMENDMENT  
)  
Consisting Of 240.087 Acres from the )  
Agriculture and Rural Districts to the )  
Urban District, Tax Map Key No. 3-3-002: )  
001 (por.). )

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.

FEB 12 2007

Date

by  Executive Officer

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

EXHIBIT "A"

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A05-755
	)	
HALE MUA PROPERTIES, LLC	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend the Land Use District	)	DECISION AND ORDER FOR A
Boundary Of Certain Lands Situated at	)	STATE LAND USE DISTRICT
Waiehu, Island of Maui, State of Hawai'i,	)	BOUNDARY AMENDMENT
Consisting Of 240.087 Acres from the	)	
Agriculture and Rural Districts to the	)	
Urban District, Tax Map Key No. 3-3-002:	)	
001 (por.).	)	
	)	

---

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

HALE MUA PROPERTIES, LLC, a Hawai'i limited liability company, ("Petitioner"), filed a Petition for District Boundary Amendment ("Petition") on January 5, 2005, pursuant to chapter 205, Hawai'i Revised Statutes ("HRS"), and chapter 15-15 of the Hawai'i Administrative Rules ("HAR"), to amend the land use district boundary of certain lands situated at Waiehu, Maui, Hawai'i, consisting of 240.087 acres from the State Land Use Agricultural and Rural Districts to the Urban District, Tax Map Key No. 3-3-002: 001 (por.) ("Petition Area") for the development of a 466-lot residential subdivision and related infrastructure, two (2) interior subdivision parks consisting of 0.46 acres and 1.14 acres, respectively, and a 5.32-acre athletic park to include a comfort station and parking lot (collectively, the "Project").

The State of Hawai'i Land Use Commission ("LUC"), having examined the testimony, evidence and arguments of counsel presented during the hearing; Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order; The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment; Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Exceptions to the Office of Planning's and Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order for a State Land Use District Boundary Amendment; and The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment; hereby makes the following findings of fact, conclusions of law, and decision and order:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. Petitioner is a Hawai'i limited liability company licensed to do business in the State of Hawai'i, with its business and mailing address at 385 Hukilike Street, Suite 210, Kahului, Maui, Hawai'i 96732. The manager of Hale Mua Properties, LLC is Sterling J. Kim.

2. On January 5, 2005, the LUC received the Petition, Petitioner's Exhibits 1-4, and 6-14, Draft Environmental Assessment ("DEA"), Petitioner's filing fee of \$500.00 for the Petition, and Certificate of Service.

3. On January 10, 2005, Petitioner filed its Notarized Affidavit of Mailing of the Notification of Petition Filing, Exhibits A and B, and Certificate of Service.

4. On January 14, 2005, the LUC held a meeting in Kahului, Maui, to determine whether the LUC should be the approving agency pursuant to chapter 343, HRS, and if so, to determine whether the information contained in the DEA warrants an anticipated finding of no significant impact.

5. On February 10, 2005, Petitioner filed Petitioner's Exhibit 5 and an Errata Sheet to the Petition ("Errata Sheet") to clarify the acreage of the Petition Area and the State Land Use Districts to be reclassified. The Errata Sheet noted that the Petition Area consists of 232.135 acres of land in the State Land Use Agricultural District and 5.918 acres of land in the State Land Use Rural District, rather than the 240.087 acres of land in State Land Use Agricultural and Rural Districts – as originally described in the Petition and DEA.

6. On February 14, 2005, the LUC issued its Order Determining (1) That The LUC Agrees To Be The Accepting Authority Pursuant To Chapter 343, HRS, and (2) Determining That The DEA Dated January 5, 2005, Warrants An Anticipated Finding Of No Significant Impact.

7. On June 16, 2005, the LUC held a meeting in Honolulu, Hawai'i, to consider acceptance of Petitioner's Final Environmental Assessment ("FEA").

8. On August 4, 2005, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order Determining A Finding Of No Significant Impact For A State Land Use District Boundary Amendment.

9. On August 23, 2005, the Council of the County of Maui adopted Resolution No. 05-123 approving the Project, including the Project's preliminary plans and specifications, as submitted to the Council of the County of Maui on July, 11, 2005, pursuant to section 201G-118, HRS (the "201G Approval"). The 201G Approval granted certain exemptions from the Maui County Code ("MCC"), including:

- A. Exemptions from Title 2, MCC, Administration and Personnel:  
An exemption from Chapter 2.80B, MCC, General Plan and Community Plans, shall be granted to permit the Project to proceed without obtaining a community plan amendment.
- E. Exemptions from Title 18, MCC, Subdivisions:  
Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, shall be granted to exempt the Project from obtaining a change in zoning and community plan amendment to enable subdivision approval.
- F. Exemptions from Title 19, MCC, Zoning:  
An exemption from Chapter 19.30A, MCC, Agricultural District, shall be granted to permit the development and use of the Petition Area for single-family residential purposes, including supporting infrastructure requirements.

10. By letter dated April 4, 2006, the Executive Officer of the LUC deemed the Petition a proper filing as of March 31, 2006.

11. On May 15, 2006, the State of Hawai'i Office of Planning ("OP") filed its Statement of Position in Support of the Petition.

12. On May 16, 2006, OP filed its Amended Statement of Position in Support of the Petition.

13. By letter dated June 16, 2006, the Executive Officer of the LUC rescinded the letter dated April 4, 2006 deeming the Petition a proper filing, as Petitioner's fee simple ownership of the Petition Area was unclear given the timely appeal and cross-appeal filed against the summary judgment Petitioner obtained in the quiet title action for the Petition Area in *Hale Mua Properties, LLC, v. Heirs or Assigns of Kula, et. al., Civil No. 05-1-0178(2)* (the "Quiet Title Action").

14. On July 14, 2006, Petitioner filed its Supplemental Certificate of Service, certifying that the Petition, Exhibits 1-14, and Errata Sheet were served upon the appellant and cross-appellant in the Quiet Title Action: James P. Brumbaugh, Esq. & Brain R. Jenkins, Esq., attorneys for Elden K. Liu, and Lance Castroverde, Esq., attorney for Heirs or Assigns of Kula (k), Heirs or Assigns of Kealoha (w), Heirs or Assigns of Kahookano (w), and Heirs or Assigns of Kapule (collectively, the "Appellants") on July 12, 2006.

15. By letter dated July 17, 2006, the Executive Officer of the LUC deemed the Petition a proper filing as of March 31, 2006.

16. On July 21, 2006, a Notice of Hearing on the Petition was published in the Maui News, Honolulu Star Bulletin, West Hawai'i Today, Hawai'i Tribune Herald, and The Garden Island, which noticed the commencement of the hearings on the Petition on August 24-25, 2006, in Makena, Maui.

17. On July 24, 2006, Petitioner filed its Affidavit of Mailing of Notice of Hearing, Exhibits A and B, and Certificate of Service.

18. On August 8, 2006, the Executive Officer of the LUC conducted a prehearing conference at the Land Use Commission office, room 406, 235 South Beretania Street, Honolulu, Hawai`i, with representatives of Petitioner, OP, and County of Maui Department of Planning ("County"). Representatives of Petitioner and County also attended the prehearing conference via telephone conference in Wailuku, Maui. OP filed its List of Exhibits, List of Witnesses, and Exhibit 2. The County filed its Position of the County of Maui Department of Planning, List of Witnesses, List of Exhibits, and Certificate of Service.

19. On August 11, 2006, Petitioner filed its Affidavit of Publication of Notice of Hearing and Certificate of Service.

20. On August 14, 2006, Petitioner filed its List of Exhibits, List of Witnesses, Exhibits 16-25, and 27-31, and Certificate of Service. OP filed its Exhibit 1.

21. On August 16, 2006, Petitioner filed its Exhibit 26 and attached Exhibits A-D, and Certificate of Service.

22. On August 16, 2006, the County filed its Exhibits 1 and 2, List of Witnesses, List of Exhibits, and Certificate of Service.

23. On August 17, 2006, Petitioner filed its Amended List of Witnesses, Supplemental List of Exhibits, Exhibits 32-36, and Certificate of Service. OP filed its Second Amended List of Exhibits, Exhibits 2A, 5 and 6, and Certificate of Service.

24. On August 24-25, 2006, the LUC opened the hearing on the Petition at its meeting in Makena, Maui. Entering appearances were Blaine J. Kobayashi, Esq., and Sterling J. Kim on behalf of Petitioner; Michael W. Foley, Director of Planning on behalf of the County Department of Planning, and Jane E. Lovell, Esq. and Jesse Souki, Esq., Deputies Corporation Counsel, for the County; Abe Mitsuda and Mary Alice Evans on behalf of OP, and Bryan C. Yee, Esq., Deputy Attorney General for OP.

25. On August 24, 2006, the following individuals provided public testimony: Nathan Kekahuna, Jo-Ann Ridao, Leimomi Schmitt, Mahealani Oliver, No`eau Kaholokula, Joyclyn Costa, John Oliver, Kimo Rivera, Cherlyn Tachera, Gary Wood, Charlene Kana, Pi`imauna Aiwohi, James Sagawinit, Mamie Fernandez, and Bernandini Maio.

26. On August 24, 2006, Petitioner filed its Exhibit 38. The LUC admitted into evidence Petitioner's Exhibits 1-36 and 38; County's Exhibits 1-3; OP's Exhibits 1-2, 2A, and 4-6.

27. At the LUC's hearing on August 25, 2006, Petitioner clarified that the correct tax map key parcel number for the Petition Area is parcel 31, rather than portion of parcel 1.

28. On August 25, 2006, Petitioner filed its Exhibit 37, which was admitted into evidence.



29. On September 7-8, 2006, the LUC resumed the hearing on the Petition in Makena, Maui. On September 7, 2006, the LUC admitted into evidence OP's Exhibit 3. DeGray Vanderbilt provided public testimony.

30. At the LUC's meeting on September 8, 2006, Petitioner clarified that the acreage of the Petition Area is more accurately described as 232.032 acres of land in the State Land Use Agricultural District and 6.149 acres in the State Land Use Rural District, totaling 238.181 acres. Petitioner noted that the 238.181-acre Petition Area now includes an adjacent 0.128-acre portion of land identified as Royal Patent 8051, Land Commission Award 2572: 3 to Naheana.

31. On September 8, 2006, the LUC informed the Petitioner that the LUC can not take judicial notice of a certified copy of the summary judgment in the Quiet Title Action as evidence of title in the Petition Area since the title is still in dispute due to the ongoing appeal. The LUC requested that the Petitioner submit written clarification as to which Land Commission Awards are the subject of the appeal and cross appeal.

32. On September 8, 2006, Petitioner filed its Exhibit 40, which was admitted into evidence.

33. On September 9, 2006, Petitioner filed its Exhibit 39.

34. On September 19, 2006, OP filed its Exhibit 1A, Third Amended List of Exhibits, Exhibits 7-14, and Certificate of Service.

35. By letter dated September 21, 2006, Petitioner provided written clarification to the LUC of the Land Commission Awards which were the subject of the appeal in the Quiet Title Action.

36. On September 21-22, 2006, the LUC continued the hearing on the Petition in Makena, Maui.

37. On September 21, 2006, Petitioner filed its Exhibits 41 and 42. The County filed its Revised Exhibit List, Exhibits 4 and 5, and Certificate of Service. The LUC admitted into evidence Petitioner's Exhibits 39, 41, and 42, County's Exhibits 4 and 5, OP's Exhibits 1A, and 7-14. Doug MacClure provided public testimony.

38. On September 22, 2006, Petitioner filed its Exhibit 43, which was admitted into evidence.

39. At the September 22, 2006 hearing, the LUC requested Petitioner provide the legal basis, with citations, for its disagreement with the principle that a judgment is not admissible in a different forum where offered to show rights declared in the judgment until it becomes final by affirmance upon appeal or by the lapse of time within which an appeal may be taken.

40. On October 2, 2006, OP filed its Exhibit 15.

41. On October 4, 2006, Petitioner filed its position that the Second Circuit Court's judgment in the Quiet Title Action was admissible as evidence in the LUC's proceedings.

42. On October 11, 2006, OP filed its Position on Admissibility of Judgments Pending Appeal.

43. On October 17, 2006, the County filed its Joinder in the State Office of Planning's Position on Admissibility of Judgments Pending Appeal.

44. On November 16, 2006, the LUC continued the hearing on the Petition in Makena, Maui. Kimokeo Kapahulehua provided public testimony. OP's Exhibit 15 was admitted into evidence. The LUC closed the evidentiary portion of the hearing and issued post-hearing instructions.

45. On December 18, 2006, Petitioner transmitted to the parties and LUC staff, via email, the Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order.

46. On December 18, 2006, OP filed The Office of Planning's (OP) Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service.

47. On December 19, 2006, the County filed Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order and Certificate of Service.

48. On December 27, 2006, Petitioner filed Petitioner's Exceptions to the Office of Planning's and Maui Planning Department's Exceptions to the Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service.

49. On December 28, 2006, OP filed The Office of Planning's (OP) Amended Exceptions to the Stipulated [sic] Proposed Decision and Order for a State Land Use District Boundary Amendment and Certificate of Service.

**DESCRIPTION OF THE PETITION AREA**

50. The Petition Area is located in Waiehu, Island of Maui, State of Hawai'i. The Petition Area consists of approximately 238.181 acres, and is identified by Tax Map Key No. 3-3-002: 031.

51. Kahekili Highway forms the eastern boundary of the Petition Area, while Waiehu Stream and Spreckels Ditch form the north/northwest boundary and south/southwest boundary of the Petition Area, respectively.

52. The single-family residential subdivisions of Waiehu Terrace and Waiehu Heights and the Pi'ihana Project District 3 (an undeveloped urban area proposed for residential use), are located to the east of the Petition Area along Kahekili Highway directly across from the Petition Area.

53. The Petition Area is adjacent to the town of Wailuku, which is the County of Maui's seat of government. In addition to the main federal, state, and county offices, the town of Wailuku includes numerous single-family residences, businesses, and recreational uses.

54. The town of Kahului is located approximately 3 miles from the Petition Area.

55. The Petition Area is currently vacant and is largely vegetated with macadamia nut trees which have not been cultivated since 1999.

56. The Petition Area experiences mild and uniform temperatures year-round, moderate humidity, and relatively consistent northeasterly trade winds. Average temperatures at the Petition Area range from lows in the 60's to highs in the 80's. Average rainfall at the Petition Area is 20 to 30 inches per year.

57. The Petition Area is relatively flat and gently slopes in a west to east direction. The Petition Area contains slopes ranging from 0 to 15 percent. Elevations at the Petition Area range from approximately 80 feet to 250 feet.

58. The Flood Insurance Rate Map of the Federal Emergency Management Agency for the County of Maui identified the majority of the Petition Area as lying within Zone C, an area of minimal flooding. A small portion of the Petition Area is located within Zone A, an area that is affected by 100-year flood events. This area, however, will be designated for open space and incorporated into an overall drainage detention plan to control runoff from the Project.

59. The Petition Area is not subject to coastal hazards such as tsunami inundation.

60. The United States Department of Agriculture Soil Conservation Service classifies the soil type underlying the Petition Area as being within the Pulehu-Ewa-Jaucas association of soils, which is characterized as deep, nearly level to moderate

sloping, and well drained that have a moderately fine to coarse texture. These types of soils are often used for sugarcane cultivation and homesites.

61. According to the State of Hawai`i Department of Agriculture's Agricultural Lands of Importance to the State of Hawai`i ("ALISH"), the Petition Area consists of "Prime" agriculture lands.

62. The University of Hawai`i Land Study Bureau classifies the land underlying the Petition Area as B82i and C83i, which is reflective of soils that are irrigated and well-drained with a non-stony, finely textured soil well-suited for cultivation.

#### **PETITIONER'S PROPERTY INTEREST IN THE PETITION AREA**

63. The Petitioner purchased Wailuku Agribusiness Co., Inc.'s property interest in the Petition Area by means of a quit claim deed. Petitioner's quit claim deed was recorded in the Bureau of Conveyances on May 21, 2004 as Document Number 2004-102439.

64. At the time the Petitioner purchased Wailuku Agribusiness Co., Inc.'s property interest in the Petition Area, Title Guaranty issued an opinion that approximately 40 acres of the Petition Area, consisting of twelve (12) Land Commission Awards, had broken title.

65. On May 9, 2005, Petitioner filed its Complaint to Quiet Title; Exhibits A through L; and Summons in the State of Hawai`i, Circuit Court of the Second Circuit, in Civil No. 05-1-0178(2).

66. On October 14, 2005, Petitioner filed its Motion For Summary Judgment in the State of Hawai'i, Circuit Court of the Second Circuit in Civil No. 05-1-0178(2).

67. On March 8, 2006, Judge Shackley F. Raffetto issued the Order on Motion for Summary Judgment (the "Summary Judgment"); Findings of Fact and Conclusions of Law; and Final Rule 54(B) Judgment and Decree, Exhibits A through L in Civil No. 05-1-0178(2).

68. On March 31, 2006, Judge Shackley F. Raffetto issued the Order on Motion for Partition; and Final Judgment and Decree on the Motion for Partition and on Other Issues, and Exhibit F in Civil No. 05-1-0178(2).

69. The Appellants timely filed an appeal to the Summary Judgment in the Quiet Title Action regarding five (5) of the Land Commission Awards within the Petition Area.

70. The Appellants did not file a supersedeas bond to stay the ruling in the Quiet Title Action.

71. Petitioner represented that the Summary Judgment determined that the Petitioner has the legal right to file the Petition with the LUC and seek development approvals for the Petition Area from the County of Maui.

72. The Appellants, through their counsel, were served, with a copy of the Petition on July 12, 2006. The Appellants did not file a petition to intervene in the proceeding for Petitioner's district boundary amendment.

73. The status of Petitioner's title in the Petition Area may affect Petitioner's ability to receive final subdivision approval from the County of Maui, as the Petitioner must demonstrate compliance with Title 18, MCC and its requirements.

74. Title 18, MCC requires in part, that as a condition for final subdivision approval, the Petitioner must provide a complete title report issued by a licensed title company showing all persons vested with record title in the proposed subdivided land.

75. In the County of Maui's Housing and Human Services Committee Report No. 05-110, the Deputy Corporation Counsel noted that the Petitioner must obtain clear title and title insurance.

### **PROPOSAL FOR RECLASSIFICATION**

76. The Project consists of approximately 466 improved lots, with approximately 238 lots (representing 51% of the Project's lots) to be sold as affordable single-family house-lot packages (the "238 affordable units"). The remaining lots, consisting of approximately 209 residential lots (approximately 10,000 square feet each in size) (the "209 market-priced residential lots") and 19 large lots (approximately 2 to 25 acres in size) (the "19 large lots"), will be sold at market price.

77. The lot size for the 238 affordable units will be approximately 5,000 square feet with a zero-lot line concept and will provide approximately 1,100 to 1,200 square feet of interior living area.



78. The Project's 19 large lots were designed by the Petitioner to preserve an open space perimeter around the 238 affordable units and 209 market-priced residential lots.

79. The 238 affordable units will be priced to be affordable to families earning between 70% and 100% of the County of Maui's median family income. Assuming a 6.5% interest rate, the range of the sales prices for the 238 affordable units will be from \$164,900 to \$245,600.

80. To the extent practicable, the 238 affordable units will be sold for less than the maximum amounts established by the County of Maui's Department of Housing and Human Concerns ("DHHC") Sales Price Guidelines matrix.

81. The Petitioner has initiated a pre-approval process to expedite the sale of the 238 affordable units.

82. The 238 affordable units will be sold based on the following income distribution:

<b>Affordable Homes Allocated By Income Category</b>		
<b>Percent of Median Annual Income</b>	<b>Number of Affordable Units Available for Sale</b>	<b>Percent of Project's Affordable Units</b>
70%	12	5%
80%	95	40%
90%	95	40%
100%	36	15%
<b>Total</b>	<b>238</b>	<b>100%</b>

83. The Petitioner will coordinate with and enter into an affordable housing agreement with the DHHC to determine all of the terms and conditions of its affordable housing requirements for the Project.

#### **DEVELOPMENT TIMETABLE**

84. The Project is intended to be developed in three (3) phases.

85. Phase 1 of the Project will include the development of seventy-seven (77) affordable units, ninety-eight (98) market-priced residential lots, seven (7) large lots, and two (2) parks - one (1) interior subdivision park and a 5.32-acre athletic park.

86. Phase 2 of the Project will include the development of the remaining one-hundred sixty-one (161) affordable units, one-hundred eleven (111) market-priced residential lots, twelve (12) large lots, and one (1) interior subdivision park.

87. Phase 3 of the Project is an extension of Imi Kala Street from its current terminus at Eha Street to Kahekili Highway (the "Imi Kala Street Extension"). The Imi Kala Street Extension will include the construction of a new bridge across Iao Stream.

88. Phases 1 and 2 of the Project are anticipated to take approximately eighteen (18) months to complete, with a six (6) month overlap for each phase. Phase 3 of the Project is anticipated to take approximately six (6) months to complete, and will be completed prior to the occupancy of any homes in the Project.

89. The Petitioner testified that under a worse case scenario, the first seventy-seven (77) affordable units will be completed in about five years.

90. The Imi Kala Street Extension is a regional transportation improvement which was included as a component of the Petitioner's development proposal approved by the County of Maui, as codified in County Council Resolution No. 05-123.

### **PETITIONER'S FINANCIAL CAPABILITY**

91. The total estimated cost of the Project is \$57,000,000.00. This estimated cost includes \$6,300,000.00 for the construction of the Imi Kala Street Extension.

92. The total estimated cost of the Project does not include the cost of constructing the Project's 238 affordable units. The Project's 238 affordable units will be financed by each of the individual affordable unit homeowner's mortgages.

93. From each affordable units' mortgage, Central Pacific Home Loans – Wells Fargo will disburse \$80,000.00 to the Petitioner to construct the affordable unit. During the construction period of the 238 affordable units, the Petitioner will cover the carrying cost of each of the affordable units' mortgages until such time that the affordable unit is completed and ready for occupancy.

94. Once the affordable unit is complete and ready for occupancy, the balance of the loan amount will be closed in a construction-to-perm loan and each new

homeowner will takeover the payments on the balance of their mortgage at the time the homeowner takes occupancy of the affordable unit.

95. Petitioner conservatively estimates the gross profit of the Project to be in excess of \$112,000,000.00. The net profit of the Project is expected to be approximately \$55,000,000.00.

96. Petitioner's financial balance sheet dated June 30, 2006, reflects total assets of \$22,242,469.00.

97. Petitioner intends to finance the Project through a development loan with Central Pacific Bank. Clifford K. Fujiwara, Central Pacific Bank's vice president of commercial real estate, expressed support for the Project based on review of the Project's budget, Project appraisal, Petitioner's cash flows and budgets, and strong market for the Project's 238 affordable units and 209 market-priced residential lots.

98. The financial viability of the Project will not be affected if the 19 large lots are not reclassified into the State Land Use Urban District and remain in the State Land Use Agricultural District.

99. Petitioner has previous residential home construction experience in Maui. In 2003, Petitioner constructed the 66-lot Honu Alahele subdivision in Kihei, Maui using a \$4 million loan from Central Pacific Bank.

100. Based on Petitioner's ownership of the Petition Area, current financial position, demand for the Project's 238 affordable units and market-priced lots,

financing from Central Pacific Bank, and expected net profit of approximately \$55,000,000.00, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

## **STATE AND COUNTY PLANS AND PROGRAMS**

### **State Land Use Districts**

101. The Petition Area consists of 232.032 acres in the State Land Use Agricultural District and 6.149 acres in the State Land Use Rural District.

102. The Project's 19 large lots represent approximately 120.888 acres of the Petition Area, with approximately 114.739 acres in the State Land Use Agricultural District and approximately 6.149 acres in the State Land Use Rural District.

103. The Project's 238 affordable units and 209 market-priced residential lots represent approximately 117.293 acres of the Petition Area, all of which are within the State Land Use Agricultural District.

### **County of Maui General Plan**

104. The Project conforms to Theme 5 of the 1990 update of the General Plan of the County of Maui ("General Plan"), which is to provide for needed residential housing.

105. Population growth and the correlating need and demand for housing is extremely high on the island of Maui. The proposed reclassification, which will allow residents to purchase an affordable house and lot, as well as allow other

residents to purchase a lot to design and build their own homes, will present an opportunity to address a portion of the critical community need for affordable housing.

106. The Project will support the local economy, as construction-related employment opportunities would be generated during the build-out of the Project.

107. The Project conforms with the following objectives of the General Plan relating to population, land use, economic activity, housing and urban design:

- To plan the growth of resident and visitor population through a directed and managed growth plan so as to avoid social, economic, and environmental disruptions.

- To preserve for present and future generations existing geographic, cultural, and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County of Maui.

- To use the land within the County of Maui for the social and economic benefit of all the County of Maui's residents.

- To utilize an equitable growth management program which will guide the economic well-being of the community.

- To provide a choice of attractive, sanitary and affordable homes for all residents of Maui County.

- To provide affordable housing to be fulfilled by a broad cross-section of housing types.

- To encourage developments which reflect the character and the culture of the County of Maui's people.

### Wailuku-Kahului Community Plan

108. The purpose of the nine (9) community plans established in the County of Maui is to outline a detailed agenda for carrying out the objectives of the General Plan.

109. The Wailuku-Kahului Community Plan ("Community Plan") identified the lack of affordable housing as one of the major problems. As the cost of residential housing has dramatically increased in the past 10 to 15 years, the Community Plan recognizes that providing affordable housing opportunities for residents, especially those earning below 80 to 140 percent of the County of Maui's median annual income, must be aggressively pursued.

110. The Project is consistent with the following goals, objectives, and policies of the Community Plan:

- Provide a sufficient supply and choice of attractive, sanitary, and affordable housing accommodations for the broad cross-section of residents, including the elderly.

- Provide sufficient land areas for new residential growth which relax constraints on the housing market and afford variety in type, price, and location of units. Opportunities for the provision of housing are presently constrained by a lack of

expansion areas. This condition should be relieved by a choice of housing in a variety of locations, both rural and urban in character.

- Seek alternative residential growth areas within the planning region, with high priority given to the Wailuku and Kahului areas. This action should recognize that crucial issues of maintaining important agricultural lands, achieving efficient patterns of growth, and providing adequate housing supply and choice of price and location must be addressed and resolved.

- Provide efficient housing designs in order to reduce residential home energy and water consumption.

- Develop and maintain an efficient and responsive system of public services which promotes a safe, healthy, and enjoyable lifestyle, accommodates the needs of young, elderly, disabled and disadvantaged persons, and offers opportunities for self-improvement and community well-being.

- Provide park and recreation areas as an integral part of project district specifications which will accommodate the needs of population growth.

- Ensure that adequate regional/community park facilities are provided to service new residential developments.

- Provide an attractive and functionally integrated urban environment that enhances neighborhood character, promotes quality design, defines a unified landscape planting and beautification theme along major roads and highways,



watercourses and at major public facilities and recognizes the historic importance and traditions of the region.

- Maintain shrubs and trees at street intersections for adequate sight distance.
- Incorporate drought tolerant plant species and xeriscaping in future landscape planting.

111. The Community Plan designates the majority of the Petition Area as Agricultural, with a small portion designated as Rural.

112. The 201G Approval exempts the Project from requiring a community plan amendment.

#### **County of Maui Zoning**

113. The Petition Area is designated Agricultural by County of Maui zoning.

114. The 201G Approval exempts the Project from requiring a zoning amendment.

#### **County of Maui Special Management Area**

115. The Petition Area does not lie within the County's Special Management Area.

#### **NEED FOR THE PROPOSED DEVELOPMENT**

116. According to the SMS Socio-Economic Forecast for Maui County, the island's housing supply in the year 2000 totaled 40,041 units, 32 percent of which,

(or 12,852 units), were located in the Wailuku-Kahului Community Plan region. This area accounts for the largest percentage of housing units on the island. Demand for housing in this region in the year 2000 was 13,528 units.

117. The demand for housing in the Wailuku-Kahului area is projected to grow to 16,826 units in the year 2010, while the expected number of household units is estimated at 15,985 units. By the year 2020, the housing demand is expected to reach 20,054 units compared to the projected household count of 19,051 units.

118. According to the Realtor's Association of Maui, during the period from January 1, 2006 to June 30, 2006, the median sales price of a Central Maui home was \$615,000.00. During that same time period, the island-wide median price for single-family homes was \$710,000.00.

119. The Project's provision of 238 affordable units will meet a community and island need.

120. The DHHC supports the Project due to the significant need for affordable housing in the County of Maui.

121. The Hawai'i Housing Finance and Development Corporation supports the Project due to the high percentage of affordable homes being provided and the income levels that the affordable units will be offered to.

### **ECONOMIC IMPACTS**

122. The Project will support the island's economy by providing construction and construction-related employment during the build-out of the Project.

In the long term, residential homeowners will require services related to home maintenance and improvement, which will further support local business operators.

### **SOCIO-ECONOMIC IMPACTS**

123. The population of the island of Maui has experienced strong growth over the past two (2) decades. The 2000 population was estimated at 117,644, which was an increase from the 1990 population of 91,361. The year 2005 population is estimated at 127,950, while the population for the year 2020 is projected to be 160,090.

124. In terms of the Wailuku-Kahului Community Plan region, the estimated 2000 population was 41,503, with a projected increase to 44,883 in the year 2005. By the year 2020, the projected population in the region is expected to be 55,424.

125. The average household size in the Wailuku-Kahului region in the year 2000 was 3.17 compared to an island-wide average of 2.90. According to SMS Socio-Economic Forecast for Maui County, these numbers are expected to decrease to an average of 3.03 and 2.80, respectively, by the year 2010, and to an average of 2.90 and 2.72, respectively, by the year 2020.

126. The Project is not considered a direct population generator from a long-term perspective because any increase in population should be within expected growth parameters defined by migration and birth/death rates. Instead, the Project is anticipated to accommodate a portion of the demand of existing residents for affordable housing.

127. Lokahi Pacific, incorporated in 1971, is an independent, private non-profit housing and community development organization chartered under the laws of the State of Hawai'i.

128. Lokahi Pacific will serve as the buy-back entity for the Project's affordable units. Each deed for an affordable unit will include a provision requiring the owner of the affordable unit to sell the home to Lokahi Pacific in the event the owner sells the affordable unit within 10 years of purchase. Until ten years after the purchase date of the affordable unit, the homeowner's equity will be 20%, with the remaining 80% of equity belonging to Lokahi Pacific. After a period of 10 years, the homeowner's equity interest will grow at 3% per year, up to 50% equity interest in the 20th year of homeownership. At the 20th year, the homeowner will have the option to purchase the balance of the affordable unit's equity from Lokahi Pacific for \$50,000.

## **IMPACTS UPON RESOURCES IN THE AREA**

### **Agricultural Resources**

129. Although the Petition Area was previously used for large-scale agricultural activities, and recently planted as a macadamia nut orchard, the Petition Area has not been cultivated since 1999.

130. The Petition Area is located in an area of existing and planned urban development. To the north of the Project is the Oceanview Estates residential subdivision. To the east of the Project are the Waiehu Heights and Waiehu Terraces

residential subdivisions and the Pi`ihana Project District 3. To the immediate south of the Project is the Wailuku Country Estates agricultural subdivision.

131. The location of the Petition Area, coupled with the demand for affordable housing in the County of Maui, outweighs the impact on agriculture in the County of Maui and the State of Hawai`i. The loss of productive agricultural land associated with the development of the Project is not expected to be significant as the reclassification of the Petition Area's 238.181 acres would represent a reduction of only 0.1 percent of the lands designated agricultural on the island of Maui.

#### **Flora and Fauna**

132. A biological survey of the Petition Area was conducted by Robert W. Hobdy. Field work for the study was carried out on July 21-24, 2005.

133. Vegetation throughout much of the Petition Area is characterized primarily by macadamia nut trees, koa haole, guinea grass and common weeds. There are no known significant habitats or rare, endangered or threatened species of flora or fauna on the Petition Area.

134. The Project is not anticipated to have significant adverse impacts upon wetland areas or on the biological resources of the Petition Area.

#### **Archaeological/Historical/Cultural Resources**

135. An archaeological inventory study of the Petition Area was conducted by Scientific Consultant Services, Inc. ("SCS"). Field work for the archaeological inventory study was carried out between December 8, 2003, and January

11, 2004. The goals of the archaeological inventory survey were to determine the existence of any historic properties on the Petition Area, assess the significance of any identified historic properties/sites, and to provide recommendations to the State Historic Preservation Division ("SHPD") concerning any mitigation on the Petition Area during the development of the Project.

136. The archaeological inventory survey of the Petition Area identified thirteen (13) sites. Of these sites, one was a previously recorded historic state site (Spreckels Ditch, State Site Number 50-50-07-1508), nine others were new sites from the historic period, one site was a terrace complex from the late prehistoric to late historic times, and two sites were isolated finds, likely from the early historic period. SCS also excavated six stratigraphic trenches on the Petition Area. No cultural material or remains were found in any of the trenches.

137. While the thirteen (13) sites are considered significant according to the broad criteria established for the State and National Register of Historic Places because of their ability to yield information about history or pre-history, SHPD agreed that the thirteen (13) sites have been adequately documented and no further work is required.

138. On May 18 and 20, 2004, SCS also conducted an archaeological inventory survey of the Imi Kala Street Extension area that was conducted in a similar manner as SCS' survey of the Petition Area.

139. The archaeological inventory survey of the Imi Kala Street Extension area identified a total of three (3) new sites, as well as the previously documented Spreckels Ditch (State Site Number 50-50-07-1508). Of these sites, one was the historic bridge constructed and used by Wailuku's sugar cane industry, another was the former *lo'i* fields used during pre-Contact into early post-Contact times, and the last was a small, concrete-lined irrigation ditch that was also constructed and used by the sugar cane industry, and later, the macadamia nut industry.

140. SCS excavated eleven (11) stratigraphic trenches on the Imi Kala Street Extension area. No cultural material or remains were found in any of the trenches.

141. While the three (3) sites in the Imi Kala Street Extension area are considered significant according to the broad criteria established for the State and National Register of Historic Places because of their ability to yield information about history or pre-history, except for Spreckels Ditch which will be preserved, SHPD agrees that no further work is required for the other sites in the Imi Kala Street Extension area.

142. A small portion of the Imi Kala Street Extension area (identified as Section One in the survey of the Imi Kala Street Extension area) may contain perimeters of individual *lo'i* patches and remnant field habitations. SHPD agreed with SCS' recommendation to monitor this portion of the Imi Kala Street Extension.

143. A cultural impact assessment for the Petition Area was prepared by CKM Cultural Resources, in accordance with guidelines of the State of Hawai'i Office of

Environmental Quality Control. Kahu Charles Kauluwehi Maxwell served as the principal researcher for the assessment.

144. The objective of the cultural impact assessment was to identify and describe any resources on the Petition Area having native Hawaiian cultural value, as well as to describe potential impacts from development of the Petition Area, including measures to mitigate impacts.

145. Kahu Charles Kauluwehi Maxwell determined that there is a strong possibility that *iwi* could be encountered when the Petition Area is cleared and graded.

146. Kahu Charles Kauluwehi Maxwell recommended full-time archaeological monitoring for the Petition Area in the areas where Kahekili Highway runs parallel to the Petition Area, 100 meters inward toward the *mauka*/Wailuku direction from Lower Waiehu Stream.

147. The cultural impact assessment was based on Kahu Charles Kauluwehi Maxwell's personal knowledge of the Petition Area and included interviews with several long-time residents of the area, documentary research, review of the archaeological inventory survey prepared by SCS, and site visits to the Petition Area from February through March of 2004.

148. While the interviewees in the cultural impact assessment related the culture and history of the area in general, there was no indication that the Petition Area had been used for native Hawaiian traditional and customary practices.



149. Based upon the archaeological inventory, interviews of long-time residents of the area, documentary research, the recommended archaeological monitoring for a portion of the Petition Area, and Kahu Charles Kauluwehi Maxwell's personal knowledge of the Petition Area, the Project will not have any adverse impacts to native Hawaiian traditional and customary rights which would require protection under Article XII, Section 7, of the Hawai'i State Constitution.

### **Groundwater Resources**

150. Waiehu Stream and Spreckels Ditch form the north/northwest and south/southwest boundaries of the Petition Area. Waiehu Stream is a perennial stream with substantial aquatic resources. The Project will not impact Waiehu Stream or Spreckels Ditch. There are no wetlands in the vicinity of the Petition Area.

151. The Imi Kala Street Extension includes a bridge over Iao Stream, which is a perennial stream with substantial aquatic resources, and is rated an Outstanding Stream by the State of Hawai'i. The Project will not impact Iao Stream since the bridge foundation work associated with the Imi Kala Street Extension will be conducted outside of the stream bed.

### **Recreational and Scenic Resources**

152. The Wailuku-Kahului region encompasses a full range of recreational opportunities, including shoreline and boating activities at the Kahului Harbor and adjoining beach parks, and individual and organized athletic activities offered at numerous County of Maui parks.

153. The County of Maui's Waihee Park is located to the south of the Petition Area, and includes a baseball field, paved play court, restroom facilities, and picnic tables with barbecue areas.

154. Additional park and recreational facilities in the Wailuku area include Iao Park, Wells Park, Wailuku Pool, Wailuku Gym, Wailuku Elementary School Park, the Wailuku Community Center, Papohaku Park, War Memorial Athletic Complex, Sakamoto Pool, and Keopuolani Park.

155. The Project will not significantly impact any of the foregoing existing recreational facilities.

156. As part of the Project, Petitioner will provide three (3) public parks. An approximately 5.32-acre athletic park will be developed along Kahekili Highway. Petitioner will prepare the site for development and provide an athletic field, comfort station, parking stalls, landscaping, and irrigation. Upon its completion, the 5.32-acre athletic park will be dedicated to the County of Maui.

157. Two interior subdivision parks, consisting of approximately 0.46 acre and 1.14 acres, will be developed at the northern and southern ends of the Project. These two interior subdivision park sites will be prepared for development, landscaped, and irrigated. The two interior subdivision parks will be open to the public but will be privately owned and maintained by the Project's homeowners' association.

158. The scenic resources for the Petition Area are defined by Mount Haleakala to the east and the West Maui Mountains to the west. The Pacific Ocean lies to the east of the Petition Area.

159. The Project's 19 large lots will preserve an open space perimeter around the 238 affordable units and the 209 market-priced residential lots. The Petitioner represented to the LUC that none of the 19 large lots will be further subdivided, as specified in Petitioner's Unilateral Agreement recorded in the Bureau of Conveyances on June 8, 2006 as Document Number 2006-106454.

160. The Petition Area is not part of a scenic corridor and the Project will not adversely affect views from inland vantage points. The Project is not anticipated to have an adverse visual impact upon the visual character of the surrounding area.

## ENVIRONMENTAL QUALITY

### Noise

161. Traffic noise from Kahekili Highway is the predominant source of noise in the vicinity of the Petition Area.

162. Ambient noise conditions may be temporarily affected by on-site construction activities on the Petition Area such as mass grading and roadway and utilities installation work. Noise mitigation measures, such as equipment mufflers, barriers, and other noise attenuating equipment will be utilized as required.

163. All construction activities will be limited to daylight working hours, and will be in compliance with appropriate governmental rules and regulations relating to permissible noise levels.

### Air Quality

164. The air quality in the Wailuku-Kahului region, as well as the Waihee region, is considered good. While air quality in the vicinity of the Petition Area may be temporarily and intermittently impacted from the emission of fugitive dust during construction-related activities, Best Management Practices will be used to ensure that construction-related impacts are minimized. Additionally, the region's constant exposure to winds allows quick dispersal of any concentrations of emissions.

## ADEQUACY OF PUBLIC SERVICE AND FACILITIES

### Schools

165. Schools in the Wailuku region include: Wailuku Elementary School and Waihee 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).

166. According to Department of Education ("DOE") calculations, the Project is anticipated to generate approximately 152 students at full build-out.

167. The schools in the Wailuku area are presently at- or over-capacity.

168. The DOE anticipates that Baldwin High School, Iao Intermediate School, Waihee Elementary School, and Wailuku Elementary School will exceed their facility capacity by several hundred students in the 2011-2012 school year.

169. The Petitioner may satisfy the DOE's fair-share contribution in one of the following ways: 1) a contribution of land; 2) a contribution of money; or 3) a contribution of both land and money. The DOE estimates that the Petitioner's contribution of land-only would be approximately 12 useable acres. If the Petitioner contributes money-only, the required amount would be approximately \$2.4 million. If the Petitioner contributes both land and money, the contribution would be approximately 3.7 useable acres and \$1.3 million.

170. The DOE stated that the Petition Area contains an area appropriate for the location of an elementary school, which would require approximately 12 acres of usable land.

171. The Petitioner continues to have ongoing discussions with the DOE regarding a potential fair-share contribution that may utilize one of the Project's 19 large lots as a school site. However, no agreement between the Petitioner and the DOE was reached by the conclusion of the evidentiary portion of the hearing.

172. The Petitioner requested that the Project's 238 affordable units be declared exempt from the DOE's calculation of the Project's fair share contribution.

173. The Petitioner testified that if the DOE fair share contribution was applied to the Project's 238 affordable units, the Petitioner may not be able to deliver as

many affordable units in the lower percentiles of affordable housing (expressed as a percent of the County of Maui's annual median income) as previously represented by the Petitioner to the Council of the County of Maui.

174. The DOE particularly stressed the importance of using the standard fair-share condition language to offset the Project's impact on local schools. The DOE's proposed the following language as a condition of approval:

"The Applicant shall contribute to the development, funding, and/or construction of school facilities, on a fair-share basis, as determined by, and to, the satisfaction of the Department of Education. Terms of the contribution shall be agreed upon in writing by the Applicant and the Department of Education prior to obtaining building permits for any area of the development."

175. The Petitioner did not incorporate a school site within the design of the Project that was submitted to the Maui County Council for the 201G Approval. The concept of developing a school site within the Petition Area was also not incorporated in the Petitioner's FEA or Petition.

176. Subdividing a 12-acre school site from one of the Project's 19 large lots would represent a substantial deviation from the Project's 201G Approval and breach a development standard set forth in Petitioner's Unilateral Agreement recorded in the Bureau of Conveyances on June 8, 2006 as Document Number 2006-106454.

177. Developing a school site within the Petition Area would represent a substantial deviation from the Project's 201G Approval.

178. Any substantial deviations of the 201G Approval will require the approval of the Maui County Council.

### Solid Waste Disposal

179. The Project will generate approximately 154,000 pounds of solid waste per week.

180. The Project's solid waste will be collected by the staff of the County of Maui's Solid Waste Division and hauled to the Central Maui Landfill for disposal.

181. The Central Maui Landfill has adequate capacity to accommodate the Project's solid waste.

### Wastewater

182. If the Project does not include accessory dwellings, the Project's estimated wastewater generation rate will be approximately 240,000 gallons per day ("gpd"). If the Project's 209 market-priced residential lots and the 19-large lots include accessory dwellings, the Project's estimated wastewater generation rate will be approximately 340,000 gpd.

183. The County of Maui's Wailuku-Kahului Wastewater Reclamation Facility ("WKWWRf") is located on Amala Place near Kanaha Beach in Kahului. The WKWWRf has a capacity of 7.9 MGD, which is sufficient capacity to accommodate the amount of wastewater estimated to be generated by the Project.

184. Within the Project, eight (8) inch sewer lines utilizing a gravity system will collect the Project' wastewater.

185. The alignment for collecting and transmitting the Project's wastewater to regional treatment facilities was not determined at the time of the LUC's hearing on the Petition. During the evidentiary portion of the hearing, the Petitioner described two potential strategies for transmitting the Project's wastewater to regional treatment facilities.

186. Under one strategy, the Project's wastewater lines will be connected to a pump station and then to a new force main that will be located within the Petition Area. The new force main will convey the Project's wastewater along Kahekili Highway to an existing sewer manhole and line located along Imi Kala Street for transmission to the WKWWRP.

187. The other strategy would involve coordinating the design of the Project's wastewater transmission system with that of the State of Hawai'i Department of Hawaiian Home Lands' ("DHHL") Waiehu Kou Phase IV subdivision. This strategy would also utilize a gravity collection system. However, the force main would be located in the right-of-way along Waiehu Beach Road, and convey the Project's wastewater to the Paukukalo Pump Station for transmission to the WKWWRP. Under this scenario, the Petitioner would participate with the DHHL in underwriting the required upgrade of the Paukukalo Pump Station.

188. If the Petitioner were to partner with DHHL in DHHL's planned wastewater improvements, such cost-sharing partnership must occur in advance of the estimated completion of the Waiehu Kou IV subdivision in October 2007.



189. The Petitioner designed the Project's wastewater system to be constructed up to the lot-line of each of the Project's 19 large lots. The individual homeowners of the 19 large lots may choose to connect to the Project's wastewater system or utilize an individual wastewater system. The Project's 19 large lot owners will bear the cost to connect their respective lots to the Project's wastewater system.

190. The Petition Area is located above the State of Hawai'i Department of Health ("DOH") Underground Injection Control ("UIC") line. The DOH restricts the injection of water or other fluids above the UIC line to protect underground aquifers. Title 11, Chapter 23, HAR sets forth the DOH's rules governing the location, construction, and operation of injection wells which are designed to ensure that injected fluids do not migrate and pollute underground sources of drinking water. Development of individual wastewater systems on the Petition Area are subject to the regulations of the DOH.

### Drainage

191. The runoff from the Petition Area in its undeveloped state for a 50 year - 1 hour storm is 238 cubic feet per second ("cfs"). The estimated post-development runoff from the Petition Area for a 50 year - 1 hour storm is 456 cfs, which is a 218 cfs increase from pre-development conditions.

192. The increase in runoff from the Project will be accommodated by a drainage system that will include a series of catch basins, drainage pipes, culverts, and

grassed swales that will convey stormwater into three (3) detention ponds located within the Petition Area.

193. The Project's drainage system will be designed in a manner such that the Project will not have an adverse effect on adjoining or downstream properties.

194. The Project is not designed to use the 5.32-acre athletic park as a drainage thoroughway or drainage or detention or retention basin. The Project will utilize a drain line under or around the park to transmit the drainage to an approximate 2-acre retention pond ("Retention Pond No. 3") located within the Petition Area on the northern portion of one of the 19 large lots situated along Kahekili Highway.

195. The Petitioner will design the Project's drainage system so that stormwater will be directed to Retention Pond No. 3 in a manner that preserves the ability for the DOE to possibly use one of the 19 large lots as a location for an elementary school, in the event that a school is constructed within the Petition Area.

196. The Petitioner has an agreement with Wailuku Country Estates to utilize the 21.25-acre lot adjacent to Wailuku County Estates along the Petition Area's southern boundary (one of the 19 large lots), to alleviate the existing drainage problems that occur within Wailuku County Estates.

### Water Service

197. The Petition Area is located in the Central Maui Service Area. The Central Maui Service Area draws water from several sources which include: the Iao Aquifer, the Waihee Aquifer, the Iao tunnel, and the Iao-Waikapu ditch.

198. The Iao Aquifer has a sustainable yield of 20 million gpd. In July 2003, the Commission on Water Resource Management ("CWRM") designated the Iao Aquifer as a groundwater management area. The CWRM estimates that an additional 2 million gpd can be withdrawn without damaging the Iao Aquifer.

199. The Project's drinking water demand was estimated based on a projected usage of 1,000 gpd per lot. If the Project does not include accessory dwellings, the Project's water consumption will be approximately 466,000 gpd.

200. The County of Maui Department of Water Supply ("DWS") informed the Petitioner that it may be required to provide a water source to supply the Project and that the availability of county water would be determined at the time of Petitioner's application for water service.

201. The Petitioner intends to construct the Project without developing drinking water source infrastructure or making a contribution to regional drinking water source development. Drinking water source for the Project is wholly dependant on the DWS to provide an allocation of drinking water.

202. The Petitioner's purchase agreement for the Petition Area specified that the Petitioner is prohibited from drilling any wells within the Petition Area.

203. The standard policy of the DWS is to not issue reservations for water meters. At the time the Petitioner applies to the DWS for water meters, the DWS will make a determination whether or not the Project will receive water service from the County of Maui.

204. Petitioner plans to proceed with the Project although DWS is not obligated to issue water meters for the Project. If water meters are issued for the Project, DWS cannot ensure that water will be available for the Project at the time the Project is built-out.

205. DWS is working on developing new sources of potable water to accommodate the County of Maui's projected population growth. DWS is working with the developer of Maui Lani to establish three (3) new drinking water wells to serve the Central Maui Service Area, and also continues to have ongoing discussions with Alexander & Baldwin, Inc. ("A&B") regarding the development of a surface water treatment plant. The three (3) Maui Lani wells are anticipated to provide 2.0 million gpd while the A&B water treatment plant is anticipated to provide an additional 6.0 million gpd. DWS also has plans to develop a well at the Iao tank site, and a well in the Waikapu area. The DWS is also finalizing an agreement with the developer of Kehalani Mauka to develop three (3) new drinking water wells. Given the new drinking water sources being developed, the DWS anticipates that approximately 10.9 million gpd could become available within the next several years in the Central Maui Service Area.

206. The total water storage requirement for the Project is approximately 500,000 gallons. Petitioner has committed to construct a 500,000 gallon drinking water storage tank to meet the water storage requirement for the Project.

207. DWS has indicated that in order to meet drinking water storage requirements for the Project, the construction of two storage tanks totaling, at a

minimum 500,000 gallons may be necessary due to differences in elevation occurring within the Petition Area.

208. If its design is approved by the DWS, one storage tank could service the Project if the tank is engineered to accommodate both pressure zones within the Project.

209. The DWS indicated that when possible, potable groundwater (as defined by the Safe Drinking Water Act as enacted or as adopted by the U. S. Environmental Protection Agency and the DOH Safe Drinking Water Branch) should not be used for irrigation of the Project's 19 large lots.

210. The Petitioner has a tentative agreement with Wailuku Sugar regarding use of surface water from Spreckels Ditch as a private irrigation water source for the Project's 19 large lots. The Petitioner is waiting to receive development approval of the Project before entering into a contract with Wailuku Sugar to provide water to irrigate the Project's 19 large lots.

211. The Petitioner will provide infrastructure for surface water to be used for irrigation on the 19 large lots; however, each of the 19 large lot owners will be required to provide their own storage for irrigation water.

### **Highway and Roadway Facilities**

212. Kahekili Highway forms the eastern boundary of the Petition Area.

213. Access to the Petition Area will be provided via two (2) access points on Kahekili Highway.

214. The portion of Kahekili Highway fronting the Petition Area is owned and maintained by the County of Maui.

215. Julian Ng of Julian Ng, Inc. prepared a Traffic Impact Analysis Report ("TIAR") for the Project dated November 2004; a Supplemental TIAR dated April 19, 2005; and a written response to the State Department of Transportation dated August 9, 2006, concerning traffic impacts relating to the Project. The purpose of the TIAR was to evaluate the potential impact of the Project's peak hour traffic volumes and compare these impacts to growth in traffic that is already expected to occur.

216. The TIAR was based on the assumption that the Project would include accessory dwellings on both the 209 market-priced residential lots and 19 large lots.

217. The TIAR utilized the suggestion of the Institute of Transportation Engineers of one hundred (100) or more added new peak direction trips to or from the Project as the threshold for conducting a traffic impact study (the "ITS Suggested Traffic Impact Study Threshold") to determine the impact of the Project on certain road intersections in the vicinity of the Petition Area. The Project's impact was determined to be less than one hundred (100) vehicles per hour in the peak direction north of the proposed north access road to the Project and south of Mill Street in Wailuku. As such, the TIAR did not consider the impact of the Project on Waiehu Beach Road and Kahekili Highway; North Market Street and Mill Street; North Market Street and Main Street; or Main Street and South High Street.

218. The following intersections were analyzed in the TIAR: both of the Project's access roads and Kahekili Highway; Kahekili Highway and Maka'ala Drive; Mill Street and Market Street; Central Avenue, Kaniela Street, Mission Street, Eha Street, and Imi Kala Street.

219. Based on the assumptions of the ITS Suggested Traffic Impact Study Threshold, the Project's impact to the intersections of Waiehu Beach Road and Kahekili Highway, Main Street and Market Street, Market Street and Vineyard Street, and South High Street and Main Street are not expected to be significant.

220. With the Petitioner's planned improvements to the Project's two (2) access points, Kahekili Highway will have adequate capacity to accommodate the Project's expected peak hourly volumes at acceptable levels.

221. The Imi Kala Street Extension is projected to increase roadway capacity by approximately 50 percent in and out of Wailuku, distribute traffic from the Project and other projects in Wailuku, divert traffic from Market Street, and increase traffic volumes at Imi Kala Street.

222. The increased volume of traffic resulting from the Imi Kala Street Extension may necessitate the installation of traffic signals on Imi Kala Street at major intersections such as Eha Street and Mill Street. The TIAR did not conclude that the Project's impact warranted the Petitioner's contribution to the future improvements of the affected intersections of Eha Street and Mill Street at Imi Kala Street.

223. The Imi Kala Street Extension from Kahekili Highway to Eha Street will be completed by the Petitioner. However, the Imi Kala Street Extension is only a partial implementation of a planned continuous north-south roadway between Kahekili Highway and Waiale Road. The remaining planned section of Imi Kala Street south of Mill Street to Waiale Road will not be constructed by the Petitioner and does not have a proposed completion date.

224. Without the construction of the remaining planned section of Imi Kala Street south of Mill Street to Waiale Road, turning movements at the Mill Street intersections with Central Avenue, Kaniela Street, and Mission Street are expected to be adversely affected by the Petitioner's construction of the Imi Kala Street Extension.

225. The TIAR is deficient for the following reasons: 1) the TIAR does not consider the impact of locating a school within the Petition Area; 2) the TIAR used assumptions concerning traffic projections relating to the Project that do not adequately consider all of the Project's potential impacts; and 3) the TIAR does not consider a regional view of traffic in the area of the Project and the Project's impacts upon state facilities or intersections.

### **Public Utility Services**

226. There are existing overhead telephone lines located on Kahekili Highway. Petitioner will coordinate with Maui Electric Company, Hawaiian Telcom, and Oceanic Time Warner Cable to provide electrical, telephone, and cable television



services for the Project, respectively. All utilities for the Project will be installed underground.

227. The Project is not expected to adversely impact local and regional public utility services.

### **Police and Fire Protection**

228. Police services for the Wailuku-Kahului area are provided by the County of Maui Police Department, which has its main headquarters at 55 Mahalani Street in Wailuku.

229. The County of Maui has approved additional staffing of the Police Department for the Wailuku-Kahului area.

230. Fire prevention, suppression, protection, rescue, and emergency services for the Wailuku-Kahului area, including Waiehu and Waihee, are provided by the County of Maui Department of Fire and Public Safety's Wailuku Station, located in Wailuku town on Kinipopo Street.

231. The Department of Fire and Public Safety does not intend to build a fire station within the Petition Area.

232. The Department of Fire and Public Safety requires minimum street widths which will be reviewed during the subdivision process. Petitioner has redesigned the subdivision to reduce the number of cul-de-sacs by increasing street connections within the Petition Area.

233. The Project is not anticipated to adversely affect the service capabilities of police, fire, and emergency medical operations, and will not result in the extension of the existing service area limits for emergency services.

#### Health Care Services

234. The Petition Area is within the service area of the 196-bed Maui Memorial Medical Center located in Wailuku. The Maui Memorial Medical Center, which is the only major medical facility on the island, provides acute, general, and emergency care services for the Wailuku-Kahului region.

235. The Project is not anticipated to adversely impact the capabilities of the Maui Memorial Medical Center.

#### CONFORMANCE TO STATE LAND USE URBAN DISTRICT STANDARDS

236. The Petition Area is located in an area of existing and planned urban development, where there are sufficient areas for foreseeable urban growth.

237. The Petition Area consists of satisfactory topography, drainage, and soil conditions, 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 residential uses.

238. The Petition Area is characterized by sloping topography with less than 20% grade.

239. The eastern side of the Petition Area is adjacent to State Land Use Urban District lands characterized by "city-like" concentrations of people, structures,

streets, urban level of service, and other related land uses. These State Land Use Urban District lands include the Waiehu Terraces and Waiehu Heights subdivisions and the Pi'ihana Project District 3, which are located directly across Kahekili Highway from the Petition Area.

240. The southern side of the Petition Area is adjacent to lands in the State Land Use Agricultural District, including the 184-lot low-density Wailuku Country Estates agricultural subdivision.

241. The western and northern sides of the Petition Area are adjacent to lands in the State Land Use Agricultural and State Land Use Rural Districts, including existing low-density single-family homes.

242. Reclassification of the area underlying the proposed 238 affordable units and the proposed 209 market-priced residential lots, consisting of approximately 117.293 acres of the Petition Area, from the State Land Use Agricultural District to the State Land Use Urban District will allow for the development of the Project consistent with the 201G Approval and will not contribute to scattered spot urban development given the Petition Area's location adjacent to existing urban development and close proximity to the towns of Wailuku and Waihee.

243. Retaining the Project's 19 large lots in the State Land Use Agricultural District is consistent with the 201G Approval because the 201G Approval does not specify a particular State Land Use designation for the Petition Area and certain residential uses are permitted in State Land Use Agricultural District in the

County of Maui as farm dwelling uses, provided that farm plans for each of the 19 large lots are filed with the County of Maui.

244. Retaining the Project's 19 large lots in the State Land Use Agricultural District will maintain an open space buffer which will help to maintain a visual separation between the towns of Wailuku and Waihee, consistent with the objectives of the Wailuku-Kahului Community Plan.

245. An open space buffer to maintain visual separation between the towns of Wailuku and Waihee could also be accomplished if the Project's 19 large lots were reclassified into the State Land Use Urban District, however such reclassification would require that conditions of approval be imposed on the 19 large lots by the LUC to preserve open space and require the LUC's subsequent monitoring of the Petition Area for compliance.

246. Preserving the intended open space low-density residential uses on the Project's 19 large lots as proposed by the Petitioner and as described in the 201G Approval is best accomplished by retaining the 19 large lots in the State Land Use Agricultural District, given the allowable uses in the State Land Use Agricultural District explicitly defined in chapter 205-4.5, HRS.

247. Reclassification of the 19 large lots to the State Land Use Urban District could encourage future subdivision of the lots, despite the restrictions placed on the 19 large lots by the Unilateral Agreement recorded in the Bureau of Conveyances on June 8, 2006 as Document Number 2006-106454.

**CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAI'I STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS**

**Hawai'i State Plan**

248. The Hawai'i State Plan, found in chapter 226, HRS, is a comprehensive guide for the future long-range development of the State. The Hawai'i State Plan's purposes are to identify the goals, objectives, policies, and priorities for the State, provide a basis for allocating limited resources, and improve coordination among federal, state, and county agencies.

249. The reclassification of the Petition Area is in conformance with the following goals of the Hawai'i State Plan:

- 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.
- 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.
- 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 the island of Maui; 2) generating increased state and county tax revenues; 3) contributing to the stability, diversity, and growth of local and regional

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

250. The Hawai'i State Plan also provides numerous objectives and policies for the State. In particular, the proposed reclassification and the Project are consistent with, and conform to, the following objectives and policies:

**Section 226-5, HRS, Objectives and Policies for Population**

section 226-5(a), HRS: It shall be the objective in planning for the State's population to guide population growth to be consistent with the achievement of physical, economic, and social objectives contained in this chapter.

section 226-5(b)(1), HRS: 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), HRS: 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 island of Maui. The Project will also provide a variety of housing options for families that will allow pursuit of economic and social aspirations.

**Section 226-6, HRS, Objective and Policies for the Economy - in General**

section 226-6(b)(b), HRS: 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, HRS, Objectives and Policies for the Physical Environment - Land-Based, Shoreline, and Marine Resources**

- |                               |   |
|-------------------------------|---|
| section 226-11(a)(2),<br>HRS: | Effective protection of Hawai'i's unique and fragile environmental resources.                             |
| section 226-11(b)(3),<br>HRS: | Take into account the physical attributes of areas when planning and designing activities and facilities. |
| section 226-11(b)(8),<br>HRS: | 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 relative to existing residential uses and physical features of the Petition Area.

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

- |                               |  |
|-------------------------------|--|
| section 226-12(b)(5),<br>HRS: | Encourage the design of developments and activities that complement the natural beauty of the islands. |
|-------------------------------|--|

The Project has been designed to reflect a subdivision that will be compatible with the existing single-family residential subdivisions in the area such as Waiehu Terraces and Waiehu Heights. Retaining the 19 large lots in the State Land Use Agricultural District will ensure that an open space buffer is preserved to complement the surrounding area.

**Section 226-13, HRS, 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 |
|-----------------------|---|

- HRS: and water resources.
- section 226-13(b)(6),  
HRS: Encourage design and construction practices that enhance the physical qualities of Hawai'i's communities.
- section 226-13(b)(7),  
HRS: Encourage urban developments in close proximity to existing services and facilities.

The Petition Area's eastern side is situated adjacent to urban lands of similar uses. The Project will address the problem of lack of affordable housing as stated in the Wailuku-Kahului Community Plan, and the Project is also compatible with the adjacent and nearby single-family residential uses.

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

- section 226-19(a)(2),  
HRS: The orderly development of residential areas sensitive to community needs and other land uses.
- section 226-19(b)(1),  
HRS: Effectively accommodate the housing needs of Hawai'i's people.
- section 226-19(b)(3),  
HRS: 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),  
HRS: 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),  
HRS: 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 affordable housing on the island of Maui. The Project will be an extension of the existing residential uses in the immediate area. The sale of 238 affordable units, which will be affordable to families earning between 70% and 100% of the County median annual income, will allow individuals and families to foster a variety of traditional lifestyles, and reflect the culture and values of the community.

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

section 226-23(b)(4), HRS: 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 three (3) parks which will provide open space and recreational value for residents of the Project as well as the general public.

251. Priority guidelines are other important elements of the Hawai'i State Plan. By prioritizing major areas of statewide concern, the quality of life for Hawai'i's present and future population is improved and enhanced. The Project is consistent with, and conforms to, the following priority guidelines of the Hawai'i State Plan:

**Section 226-103, HRS, Economic Priority Guidelines**

section 226-103(1), HRS: 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 affordable residential housing, and allowing for the investment and reinvestment in the local economy through construction and construction-related employment.

**Section 226-104, HRS, Population Growth and Land Resources Priority Guidelines**

section 226-104(a)(1),  
HRS: 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),  
HRS: 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),  
HRS: 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,

HRS: 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.

With the island of Maui's growing population and economy, there is great demand for housing, especially affordable housing. The Project addresses that demand by providing 238 affordable units, which will be affordable to families earning between 70% and 100% of the County's annual median income. The Petition Area is located in an area of existing and planned single-family residential development as evidenced by the Wailuku-Kahului Community Plan. The Community Plan reflects the community's desire to have growth directed to this general area.

The Petition Area is also in an appropriate location for urban use given the proximity of nearby residential subdivisions and public facilities and services.

The Project will also generate short-term employment opportunities as construction and construction-related jobs will be needed to develop the Petition Area.

The Project is not located in an environmentally sensitive area nor does it encompass lands that are essential to shoreline preservation or conservation. Proper mitigating measures, such as implementing Best Management Practices, will be undertaken to ensure minimal impacts to the environment.

Although the Petition Area's soil is rated "Prime", the Petition Area's fallow condition, coupled with its proximity to existing and planned residential

subdivisions indicates that these agricultural lands are not essential for diversified agriculture.

**Section 226-106, HRS, Affordable Housing Priority Guidelines**

section 226-106(1), HRS: 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), HRS: 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 allow the Petitioner to address a portion of the significant community demand for affordable housing.

252. The Project generally conforms to the Agricultural, Housing, Recreational, and Transportation Functional Plans.

**CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES**

253. The Project 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. The Project's grading and other site improvements will comply with the requirements of the Federal Flood Insurance Program, and all State and County laws. The Project's drainage will be adequately and appropriately planned and constructed. Wastewater

generated by the Project will be collected, treated, and disposed of in accordance with all applicable statutes, ordinances, and regulations.

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

### CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS and chapter 15-15, HAR, the LUC finds upon the clear preponderance of the evidence that the reclassification of a portion of the Petition Area, consisting of approximately 117.293 acres from the State Land Use Agricultural District to the State Land Use Urban District for the development of 238 affordable units and 209 market-priced residential lots, situated at Waiehu, Island of Maui, State of Hawai'i, identified as Tax Map Key No. 3-3-002: 031 (por.), upon the conditions set forth in this Decision and Order, is reasonable, conforms to the standards for establishing the State Land Use Urban District boundaries, is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS is not violative of chapter 205-2, HRS, and is consistent with the policies and criteria established pursuant to chapters 205-16, 205-17, and 205A-2, HRS.

2. The reclassification of the Project's 19 large lots, consisting of approximately 120.888 acres, from the State Land Use Agricultural District to the State Land Use Urban District is not reasonable.

3. Pursuant to section 205-2, HRS, the proposed open space low-density residential use for the Project's 19 large lots is inconsistent with the State Land Use Urban District. Such open space low-density residential uses are more appropriate in either the State Land Use Agricultural District pursuant to section 205-4.5 (4), HRS, or the State Land Use Rural District, pursuant to section 205-2 (2), HRS.

4. The reclassification of the Project's 19 large lots is not consistent with the Hawai'i State Plan, section 226-12, HRS. Urbanization of the Project's 19 large lots would allow urban, city-like uses in an area planned - for open space low-density residential uses. Such city-like uses are inconsistent with Petitioner's representation that the Project's 19-large lots are designed to preserve the open space character of the Petition Area.

5. Retaining the Project's 19 large lots in the State Land Use Agricultural District will not adversely affect the Petitioner's ability to develop the Project as represented to the Commission, including the ability of the Petitioner to provide 238 affordable units.

6. Article XII, Section 7, of the Hawai'i Constitution requires the LUC 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.

7. Based on the archaeological inventory survey of the Petition Area, and earlier surveys of neighboring areas, there is a potential for isolated, undocumented human burials in portions of the Petition Area. Should any resources be found during construction, Petitioner will comply with all state and county laws and rules regarding the preservation of archaeological and historic sites.

8. A cultural impact assessment was prepared for the Project. There appear to be no special affinities to the Petition Area for native Hawaiians or any other ethnic group.

9. Article XI, Section 1, of the Hawai'i 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 of Hawai'i.

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

11. 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 all required mitigation measures for fugitive dust and exhaust emissions.

12. The Project's long-term impacts to air quality will be minimal, and no mitigation measures are necessary.

13. Article XI, Section 3, of the Hawai`i 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.

14. The Project will not have a significant impact on agriculture in the County of Maui or in the State of Hawai`i as the loss of these agricultural lands in comparison to the total acreage of agricultural lands in the island or County of Maui and in the State of Hawai`i is minimal.

### **DECISION AND ORDER**

IT IS HEREBY ORDERED that the reclassification request for the Project's 19 large lots, representing 120.888 acres of the Petition Area, consisting of 114.739 acres in the State Land Use Agricultural District and 6.149 acres in the State Land Use Rural District, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, IS DENIED.

IT IS HEREBY FURTHER ORDERED that a portion of the Petition Area, consisting of approximately 117.293 acres in the State Land Use Agricultural District for the development of 238 affordable units and 209 market-priced residential lots (the "Reclassified Area"), situated at Waiehu, Island of Maui, State of Hawai`i, identified as Tax Map Key No. 3-3-002: 031 (por.), and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified from the



State Land Use Agricultural District 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 approximately 117.293 acres of the Petition Area for the development of 238 affordable units and 209 market-priced residential lots 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 Reclassified Area shall be subject to the following conditions:

1. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawai'i in accordance with the affordable housing policies and guidelines of the DHHC, Maui County Council Resolution No. 05-123, and Petitioner's representations in this docket. The Petitioner shall develop and offer for sale 238 house and lots to families earning between 70% and 100% of the County of Maui's median annual income. The location and distribution of the 238 affordable units, the buy-back program, and other provisions for affordable housing shall be consistent with Petitioner's representations in this docket, and shall be under such terms and conditions as may be mutually agreeable to Petitioner and the DHHC. Petitioner shall enter into an affordable housing agreement with the DHHC within six (6) months of the issuance

date of this Decision and Order and provide the LUC with a copy of the executed affordable housing agreement.

To the extent practicable, the 238 affordable units shall be sold for less than the maximum amounts established by the DHHC's Sales Price Guidelines matrix.

The Petitioner shall construct at least seventy-seven (77) affordable units within five (5) years of the issuance date of this Decision and Order.

2. **Ohana Units.** No ohana units or accessory dwellings (as this term is defined in section 19.04.040, MCC) shall be permitted within the Reclassified Area.

3. **Public School Facilities.** Petitioner shall contribute to the development, funding, and/or construction of school facilities on a fair-share basis, as determined by and to the satisfaction of the DOE; provided, however that the affordable units shall not be included in the fair-share contribution calculation. Terms of the contribution shall be agreed upon in writing by the Petitioner and the DOE prior to obtaining any building permits for the Reclassified Area.

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

5. **Transportation Improvements.** Petitioner shall submit a revised TIAR to address the Project's impacts to the intersection of Waiehu Beach Road and Kahekili Highway and the intersection of Market Street and Main Street. The revised TIAR shall utilize actual turn counts collected at the intersection of Waiehu Beach Road and Kahekili Highway.

The revised TIAR shall analyze the potential impact of locating an elementary school or a middle school within the Petition Area.

The revised TIAR shall include a conceptual design of the proposed mitigation measures for the intersection of Waiehu Beach Road and Kahekili Highway.

Petitioner shall implement traffic mitigation measures and roadway and intersection improvements, including signalization, as recommended or required by the revised TIAR.

Petitioner shall submit the revised TIAR to the DOT for its review and approval, within six (6) months of the issuance date of this Decision and Order.

6. **Civil Defense.** Petitioner shall provide its fair share of the cost of adequate civil defense measures serving the Reclassified Area as determined by the State of Hawai'i Department of Defense, Office of Civil Defense, and County of Maui Civil Defense Agency.

7. **Archaeological Monitoring.** Petitioner shall employ the services of the appropriate number of archeological monitors to ensure that all ground disturbances associated with the mass grading of the Reclassified Area and trenching

and excavation related to the installation of utilities do not impact any subsurface cultural remains within the Petition Area in a 100-meter wide strip along the Kahekili Highway.

The Petitioner shall consult with the State of Hawai'i Office of Hawaiian Affairs and coordinate with SHPD to determine where any additional full-time monitoring may be warranted.

8. **Unidentified Archaeological Finds.** If any burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls are discovered during the course of development of the Reclassified Area, 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 the satisfaction of the SHPD.

9. **Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program as specified by the DOH.

10. **Drainage.** Petitioner shall fund the design and construction of drainage system improvements to prevent runoff resulting from the development of the Reclassified Area from adversely affecting downstream properties (except as to the Petition Area), including, but not limited to state and county highway and roadway facilities, to the satisfaction of appropriate state and county agencies.

The Reclassified Area's grassed drainage swales and drainage basins shall be maintained by the Petitioner or homeowners association, to the satisfaction of the County of Maui.

11. **Notification of Potential Nuisances.** Petitioner shall disclose to all prospective buyers and/or lessees of the Reclassified Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands.

12. **Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers and/or lessees of the Reclassified 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.

13. **Solid Waste.** Petitioner shall cooperate with the DOH and the County of Maui to conform the Reclassified Area with the program goals and objectives of chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH.

14. **Water Resources Allocation.** Petitioner shall provide adequate potable and non-potable water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to accommodate the development of the Reclassified Area.

15. **Best Management Practices.** Petitioner shall implement Best Management Practices ("BMP") to protect surface and groundwater resources. The

BMP shall be designed to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the DOH guidelines and the County of Maui's grading ordinance.

16. **Water Conservation Measures.** Petitioner shall implement water conservation measures and BMP, such as use of indigenous and drought tolerant plants and turf, and incorporate such measures into common area landscape planting of the Reclassified Area.

17. **Energy Conservation Measures.** Petitioner shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the development of the Reclassified Area.

18. **Metes and Bounds Map and Description.** Within six (6) months of the issuance date of this Decision and Order, Petitioner shall provide the LUC with a metes and bounds map and description of the Reclassified Area prepared by a registered professional land surveyor.

19. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the LUC, the Office of Planning, and the County of Maui Department of Planning in connection with the status of the Reclassified Area and Petitioner's progress in complying with the conditions imposed herein. The annual reports shall be due on the anniversary date of the issuance of this Decision and Order.

The annual reports shall be submitted in a form prescribed by the Executive Officer of the LUC.

20. **Notice of Change to Ownership Interests.** Petitioner shall give notice to the LUC of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests of the Reclassified Area.

21. **Evidence Clear Title.** The Petitioner shall provide the LUC, the Office of Planning, and the County of Maui Department of Planning with a title report issued by a licensed title company which establishes clear title to the Reclassified Area, pursuant to Title 18, MCC, to the satisfaction of the County of Maui.

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

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

24. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the LUC's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Reclassified Area is subject

to conditions imposed herein by the LUC, and (b) shall file a copy of such recorded statement with the LUC.

25. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the LUC with the Bureau of Conveyances pursuant to section 15-15-92, HAR.



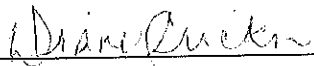
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 1st day of February, 2007. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Makena, Maui, Hawai'i, this 18th day of January, 2007, per motion on January 18, 2007.

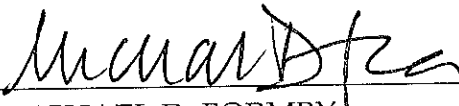
APPROVED AS TO FORM

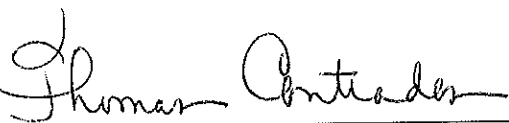
LAND USE COMMISSION  
STATE OF HAWAII

  
Deputy Attorney General

By \_\_\_\_\_  
LISA M. JUDGE  
Chairperson and Commissioner

By (Absent)  
STEVEN MONTGOMERY  
Vice-Chairperson and Commissioner

By   
MICHAEL D. FORMBY  
Vice-Chairperson and Commissioner

By   
THOMAS CONTRADES  
Commissioner

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this \_\_\_\_\_ day of \_\_\_\_\_, 2007. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at \_\_\_\_\_, Hawai'i, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, per motion on \_\_\_\_\_, 2007.

APPROVED AS TO FORM

\_\_\_\_\_  
Deputy Attorney General

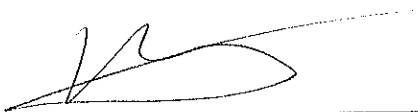
LAND USE COMMISSION  
STATE OF HAWAII

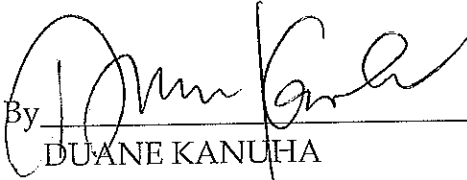
By Lisa Judge  
LISA JUDGE  
Chairperson and Commissioner

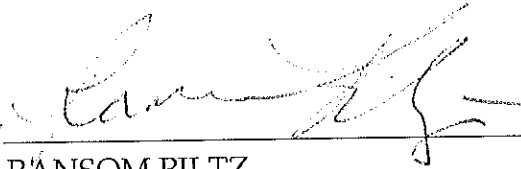
By \_\_\_\_\_  
MICHAEL FORMBY  
Vice-Chairperson and Commissioner


By \_\_\_\_\_  
STEVEN LEE MONTGOMERY  
Vice-Chairperson and Commissioner

By \_\_\_\_\_  
THOMAS CONTRADES  
Commissioner

By   
\_\_\_\_\_  
KYONG SU IM  
Commissioner

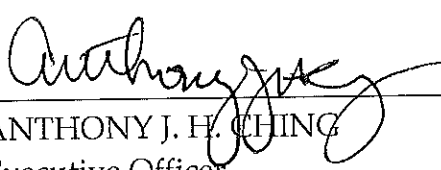
By   
\_\_\_\_\_  
DUANE KANUHA  
Commissioner

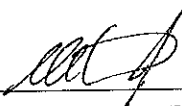
By   
\_\_\_\_\_  
RANSOM PILTZ  
Commissioner

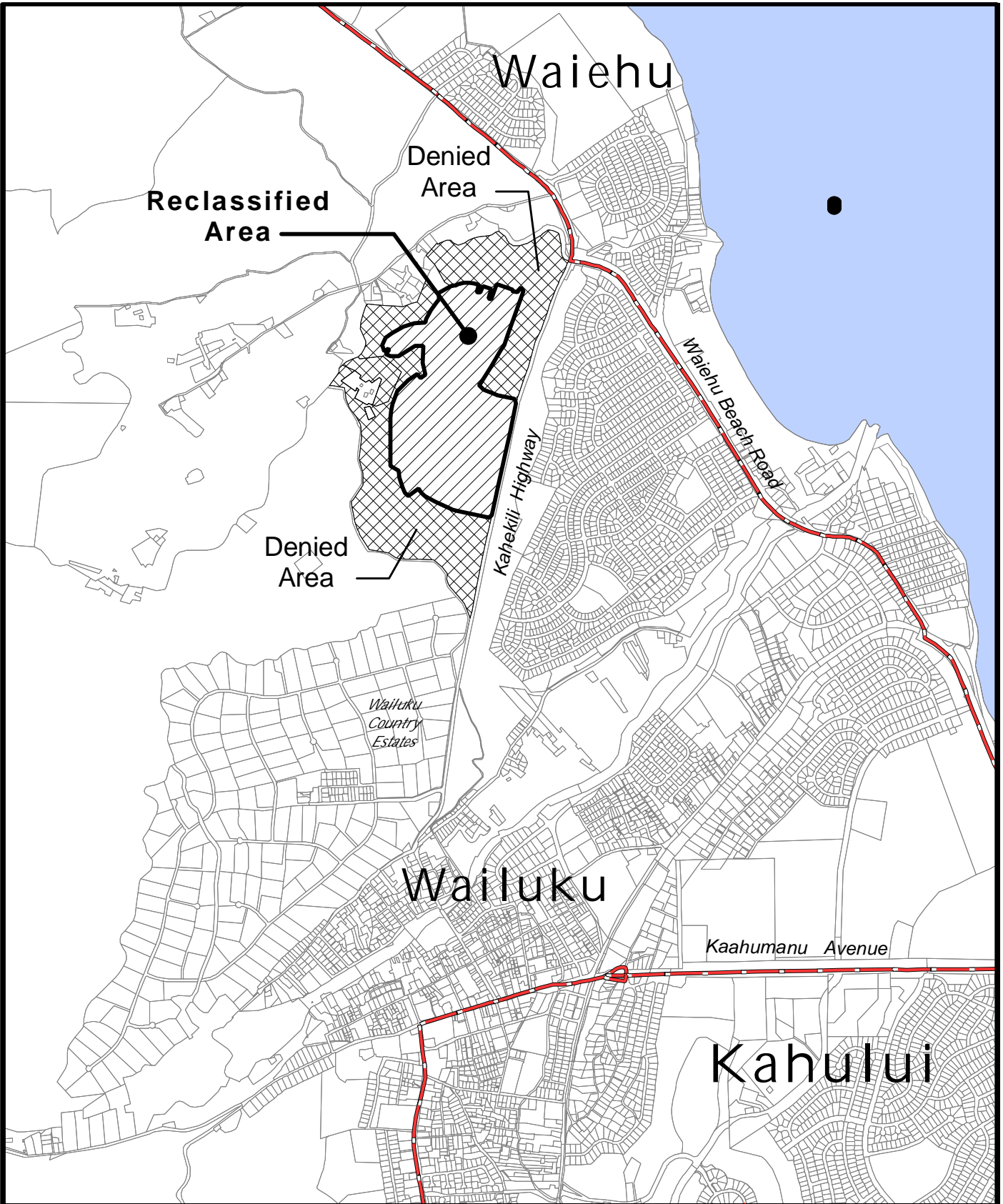
By   
\_\_\_\_\_  
REUBEN S.F. WONG  
Commissioner

Filed and effective on  
February 12, 2007

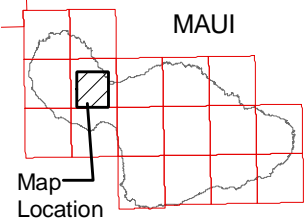
Certified by:

  
\_\_\_\_\_  
ANTHONY J. H. CHING  
Executive Officer

By   
\_\_\_\_\_  
NICHOLAS W. TEVES, JR.  
Commissioner



**A04-755 HALE MUA PROPERTIES, LLC**  
**MAP LOCATION**  
 Tax Map Key: 3-3-02: por. 01  
 Waiehu, 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 of ) DOCKET NO. A05-755  
HALE MUA PROPERTIES, LLC ) CERTIFICATE OF SERVICE  
To Amend the Land Use District )  
Boundary Of Certain Lands Situated at )  
Waiehu, Island of Maui, State of Hawai'i, )  
Consisting Of 240.087 Acres from the )  
Agriculture and Rural Districts to the )  
Urban District, Tax Map Key No. 3-3-002: )  
001 (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 or certified mail as noted:

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

REGULAR MAIL BRYAN YEE, Esq.  
Deputy Attorney General  
Hale Auhau, Third Floor  
425 Queen Street  
Honolulu, Hawaii 96813

REGULAR MAIL

JEFFREY HUNT, Director  
County of Maui, Planning Department  
250 South High Street  
Wailuku, Hawaii 96793

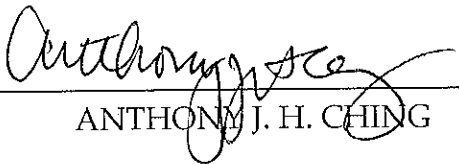
REGULAR MAIL

BRIAN MOTO, Esq.  
JANE LOVELL, Esq.  
Corporation Counsel  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

CERTIFIED MAIL

BLAINE J. KOBAYASHI, Esq.  
Carlsmith Ball LLP  
One Main Plaza, Suite 400  
2200 Main Street, P. O. Box 1086  
Wailuku, Hawaii 96793-1086

Dated: Honolulu, Hawaii, February 12, 2007.

  
\_\_\_\_\_  
ANTHONY J. H. CHING