

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition of) DOCKET NO. A88-634
)
ALEXANDER & BALDWIN, INC.) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, AND DECISION AND
To Amend The Agricultural Land Use) ORDER
District Boundary Into The Urban)
District For Approximately 339.3 Acres)
At Kahului, Island And County Of Maui,)
State Of Hawai'i, TMK: 3-8-01: Portion)
Of 16, And Portion Of 2; 3-8-06: Portion)
Of 64, Portion Of 4)

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

On May 7, 2004, Alexander & Baldwin, Inc. ("Petitioner"), a Hawai'i corporation, filed an Application To Approve Phase II For Incremental Redistricting From Agricultural To Urban Classification ("Incremental Application"), pursuant to section 15-15-78, Hawai'i Administrative Rules ("HAR"). Petitioner seeks to (i) redistrict approximately 33.530 acres of land, identified as Tax Map Keys: 3-8-06: portion of 4 and 3-8-01: portion of 2 ("Property"), within the second increment ("Phase II Incremental Area") of the above-entitled docket from the State Land Use Agricultural District to the State Land Use Urban District for light industrial uses; and (ii) withdraw the remaining approximately 19.134 acres of land, identified as Tax Map Key: 3-8-06: portion 4, from the Phase II Incremental Area at Kahului, Island and County of Maui, State of Hawai'i. The Land Use Commission ("Commission" or "LUC"), having heard

and examined the testimony, evidence, and arguments presented by the parties during the hearing on the Incremental Application and Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On May 7, 2004, Petitioner filed the Incremental Application and submitted to the Commission its Environmental Impact Statement ("EIS") Preparation Notice pursuant to and in compliance with chapter 343, Hawai'i Revised Statutes ("HRS"), and chapter 11-200, HAR.

2. On June 4, 2004, and by a written Order issued on August 12, 2004, the Commission agreed to be the accepting authority pursuant to chapter 343, HRS, and determined that the proposed action may have significant impacts on the environment to warrant the preparation of an EIS.

3. On November 18, 2004, and by a written Order issued on December 14, 2004, the Commission accepted the Final EIS.

4. On December 22, 2004, the Executive Officer of the Commission conducted a prehearing conference on the Incremental Application in Honolulu, Hawai'i. A Prehearing Order was subsequently issued on December 28, 2004.

5. On January 13, 2005, the Commission conducted a hearing on the Incremental Application in Kahului, Maui, pursuant to public notices published in the

Honolulu Star-Bulletin and Maui News on December 13, 2004. At the hearing, the Commission heard public testimony from DeGray Vanderbilt. The Commission continued the hearing to March 3, 2005.

6. On March 3, 2005, the Commission resumed the hearing on the Incremental Application in Makena, Maui. The Commission heard public testimony from Richard Michaels. The Commission subsequently closed the hearing, subject to the Commission's ruling regarding the County of Maui's ("County") offer of proof regarding the testimony of Maui Fire Department ("MFD") Captain Val Martin.

7. On May 3, 2005, the County filed an Affidavit Of Captain Valeriano Martin ("Affidavit").

8. On May 5, 2005, the Commission met in Makena, Maui, to consider the Incremental Application. At the meeting, the Commission heard public testimony from Lance Holter. Following the receipt of public testimony, the Commission acknowledged the filing of the Affidavit and accepted it as part of the County's exhibits in the proceeding. A motion was then made and seconded to grant the Incremental Application. There being a vote tally of 6 ayes, 0 nays, and 3 absent, the motion carried.

DESCRIPTION OF THE PROPERTY

9. The Property consists of approximately 33.530 acres of land, identified as Tax Map Keys: 3-8-06: portion of 4 and 3-8-01: portion of 2, at Kahului, Island and County of Maui, State of Hawai'i. The Property represents a portion of the

Phase II Incremental Area that consists of approximately 52.664 acres of land.¹ The remaining approximately 19.134 acres of land within the Phase II Incremental Area are proposed to be withdrawn from the Phase II Incremental Area and remain within the Agricultural District, as this acreage is currently utilized for drainage purposes.

10. The Property is currently planted in sugarcane.

11. Petitioner is the fee simple owner of the Property.

12. Petitioner's proposed Maui Business Park Phase II development consists of approximately 179 acres of land that includes (i) the Property; (ii) approximately 138.158 acres of land urbanized in LUC Docket No. A03-739; and (iii) approximately 7.3 acres of land that are already designated within the Urban District (collectively "Maui Business Park Phase II" or "Project"). Phase II is a continuation of the existing Maui Business Park development and will provide light industrial space in Maui's central commercial and business district.

INCREMENTAL DISTRICTING

13. On May 17, 1990, the Commission issued its Findings Of Fact, Conclusions Of Law, And Decision And Order ("Decision and Order") reclassifying approximately 128.701 acres of land from the Agricultural District to the Urban District on an incremental basis. At the time, the first increment consisted of approximately

¹The Phase II Incremental Area originally consisted of approximately 52.695 acres. As a result of Boundary Interpretation No. 03-45 dated March 15, 2004, this acreage was reduced by approximately 0.031 acres.

76.006 acres of land, identified as Phase IA and Phase IB.² The second increment, or the Phase II Incremental Area, consisted of approximately 52.695 acres of land. In granting the incremental reclassification, the Commission considered the projected population growth for the area, other lands reclassified in the area, the availability and impacts on resources, and the desirability of directing growth and development to the area over a long-term basis.

14. Pursuant to section 15-15-78, HAR, upon receipt of an application for redistricting of the second and subsequent increments of premises for which previous approval for incremental development has been granted by this Commission, substantial completion of any offsite and onsite improvements of the development, in accordance with the approved incremental plan, of the preceding increment redistricted will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

Improvements Completed Within Phase I

15. Phase IA improvements have been substantially completed and include the following:

- a. In February 1995, the County of Maui approved the subdivision and the offsite sewer system construction plans for Phase IA.

² Since the reclassification of the first increment, the Commission amended the Decision and Order to include approximately 1.255 acres of land within the Urban District as a part of Phase IA of the Maui Business Park (Order Granting Petitioner's Motion For Order To Amend Findings Of Fact, Conclusions Of Law, And Decision And Order Dated May 17, 1990, issued on November 30, 2004).

- b. Construction of Phase IA improvements commenced in April 1995 and was completed in 1996, and included the construction of all internal roadways, drainage improvements, water and wastewater systems, and electrical infrastructure.
- c. Land sales of Phase IA began in 1996, and as of January 13, 2005, 100 percent of Phase IA has been sold and conveyed to third party buyers.

16. Phase IB improvements have been substantially completed and

include the following:

- a. In December 1994, the County of Maui approved the first subdivision construction plan for Phase IB.
- b. In 1999, Petitioner amended the Phase IB subdivision plan and submitted this amended plan to the County of Maui.
- c. The County of Maui approved the amended subdivision plan in August 1999 and the final construction plans in March 2000.
- d. Construction of Phase IB commenced in June 2000, and the completed improvements include all internal roadways, drainage improvements, water and wastewater systems, and electrical infrastructure.
- e. As of January 13, 2005, 100 percent of Phase IB has been sold and conveyed to third party buyers.

17. Petitioner has funded, designed, and constructed the necessary roadway improvements to accommodate additional traffic generated by Phases IA and IB. Offsite roadway improvements that have been substantially completed include widening Dairy Road to five lanes, constructing a connector road (Pakaula Street) from Phase IB to Dairy Road, and installing a traffic signal at the intersection of Dairy Road and Pakaula Street. Construction of required improvements started in April 1996, was substantially completed in January 1997, and was accepted by the DOT in April 1997. Additional improvements required for Phase IB were completed in November 2000 and accepted by the DOT in May 2001.

18. Offsite drainage improvements that have been substantially completed in conjunction with Phase IA include a concrete drainage culvert, designed to accommodate the 100-year storm and alleviate a previous flooding problem at the Hana Highway-Dairy Road intersection, located under Hana Highway connecting Phase IA to an existing drainage channel.

19. To accommodate drainage from Phase IB, Petitioner created a large drainage basin, consisting of two retention basins, on approximately 33 acres adjacent to Phase IB. This drainage basin area includes the approximately 19.134 acres of land that are proposed to be withdrawn from the Phase II Incremental Area and remain within the Agricultural District.

20. Petitioner funded and constructed the infrastructure necessary to expand existing onsite and offsite wastewater transmission, collection, treatment, and disposal facilities to accommodate the wastewater generated by Phases IA and IB. Offsite wastewater system improvements that have been substantially completed include a new sewer line connecting to Phase IA under Alamaha Street and a pump station upgrade to handle increased capacity. Construction of these improvements was completed in November 1995.

21. Based on the aforesaid findings and the findings in the Commission's Decision and Order filed on May 17, 1990, the redistricting of the Property generally conforms with the following goals, objectives, policies, and priorities of the Hawai'i State Plan, chapter 226, HRS:

- | | |
|---------------------|--|
| Section 226-4(1) | A strong, viable economy, characterized by stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawai'i's present and future generations. |
| Section 226-5(b)(2) | Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires. |
| Section 226-5(b)(3) | Promote increased opportunities for Hawai'i's people to pursue their socio-economic aspirations throughout the islands. |
| Section 226-6(a)(1) | Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawai'i's people. |

Section 226-6(a)(2)	A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.
Section 226-104(b)(1)	Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

The redistricting of the Property will provide for the logical expansion of the Maui Business Park at a location in proximity to existing infrastructure and contiguous to existing industrial development. It will also address the increasing demand for light industrial space on Maui and provide direct and indirect short and long-term employment opportunities for Maui residents.

22. The redistricting of the Property generally conforms to the State Functional Plan on Employment.

23. The redistricting of the Property generally conforms to the objectives and policies of the Coastal Zone Management program, chapter 205A, HRS.

The Property is not coastal dependent and is located inland from the coast.

Nevertheless, the development of the Property will comply with all laws and regulations regarding runoff and non-point source pollution, ensuring that stormwater runoff and siltation will not adversely affect the marine environment and nearshore and

offshore water quality. Moreover, the Property does not contain significant archaeological, cultural, or historical resources nor does it contain any threatened or endangered species of flora and fauna or species of concern. The Property will have landscaping to mitigate potential visual impacts of any buildings along all roadways.

Conditions of Approval

24. The Commission imposed the following conditions on the reclassification of Phase I:

- “1. Petitioner shall fund, design, and construct the necessary roadway improvements as required by the State Department of Transportation and the County Department of Public Works to accommodate additional traffic generated by the proposed development.
2. Petitioner shall establish appropriate systems to contain spills and prevent materials associated with light industrial uses such as petroleum products, chemicals or other pollutants, from leaching or draining into the storm drainage system to the satisfaction of the applicable governmental agencies.
3. Storage and/or disposal of hazardous wastes shall be approved by the applicable Federal, State and/or County of Maui agencies prior to their establishment on the Property.
4. Petitioner shall inform all prospective occupants of possible odor, noise, and dust pollution resulting from surrounding Agricultural District Lands, and that the Hawaii Right-To-Farm Act, Chapter 165, Hawaii Revised Statutes, limits the circumstances under which pre-existing farming activities may be deemed a nuisance.
5. Petitioner shall implement, in cooperation with the State Department of Transportation, procedures to address notification and liability issues which arise from the

potential adverse impacts from noise and other incidences of aircraft operations upon the present and future lessees or occupants of the Property resulting from the adjacent Kahului Airport operations. The procedures will provide an indemnification by Petitioner and any lessees or grantees of Petitioner or occupants of the Property in favor of the State of Hawaii, indemnifying the State of Hawaii against claims, liability and losses that arise from adverse noise and other incidences on the Property resulting from aircraft operations into and out of the Kahului Airport. The above procedures to address the notification and liability issues shall not operate to authorize or excuse the operation of the Kahului Airport in violation of any applicable Federal, State or County of Maui requirements governing aircraft safety and noise abatement measures, nor shall it authorize or excuse any negligence or willful misconduct in the operation of the Kahului Airport.

6. Petitioner shall pay their fair share as determined from the approved Department of Land and Natural Resources study to the State of Hawaii for the installation of such improvements or install such off-site drainage improvements to accommodate the downstream runoff generated from the proposed project and to alleviate the current flooding problem at the Hana Highway-Dairy Road intersection. The downstream major collector drainage system shall be designed to accommodate the 100-year storm.
7. Petitioner shall fund and develop, as required by the County of Maui and the State Department of Health, measures necessary to expand existing on-site and off-site wastewater transmission, collection, treatment, and disposal facilities to accommodate the wastewater generated by the project.
8. Petitioner shall revise the archaeological report to include the results and interpretation of the laboratory analysis of the volcanic glass. Two copies of the revised report shall be submitted to the Historic Sites Section of the Department of Land and Natural Resources for their review. Should any archaeological resources such as artifacts, shell, bone or

charcoal be encountered during the project's development, the Petitioner shall immediately stop work and contact the State Historic Sites Section. A professional archaeologist shall be hired to monitor construction work.

9. In the event that Petitioner should sell its interest in the project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.
10. In the event that the County of Maui does not have an adopted employee housing policy for commercial and industrial developments at the time the change in zoning application for Phase I by the Petitioner is made, the Petitioner shall submit a housing study addressing the following as part of the zoning application:
 - a. the impact the project will have on the current labor force;
 - b. the potential requirement and type of housing which will be created by the project; and
 - c. the proposed mitigation measures to alleviate the impact on both the labor market and the housing shortage.

This report shall be submitted to the Department of Planning and the Office of State Planning for review. The Petitioner will be subject to an employee housing requirement as approved by the County Council.

11. Where satisfaction of any condition of approval herein, or any portion thereof, is dependent upon a Federal, State and/or County of Maui agency, department, board or commission making a determination of a fair share or pro rata assessment of the Petitioner's obligation for the funding, construction of, or participation in on-site or off-site improvements or programs, such determination shall be provided to the Petitioner by the applicable agency,

department, board or commission within a reasonable time period after the effective date of this Decision and Order.

12. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.
13. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered by the approved Petition, prior to development of the Property.
14. Petitioner shall submit an annual report to the Land Use Commission, the County of Maui Planning Department and the Office of State Planning in connection with the status of the project and Petitioner's progress in complying with the conditions imposed.
15. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by the Petitioner."

25. Petitioner has addressed Condition No. 1. Construction of required improvements started in April 1996, was substantially completed in January 1997, and was accepted by the DOT in April 1997. Additional improvements required for Phase IB were completed in November 2000 and accepted by the DOT in May 2001.

26. The roadway improvements implemented the recommendations of a traffic mitigation plan commissioned by Petitioner and submitted to the DOT and the DPW for approval in March 1994. Based on recommendations made in the traffic mitigation plan and comments by the DOT and the DPW, engineering plans for various

traffic improvements were completed and submitted to the DOT and the DPW for review in August 1994. Revisions to these plans were made as required by the DOT and the DPW, final approval of these plans was received from the DOT and the DPW in April 1996, and construction of the improvements started that same month.

27. Petitioner has addressed Condition No. 2. Petitioner submitted its engineering and drainage plans for Phase IA and Phase IB of the Maui Business Park, which were reviewed by the County Department of Public Works and Environmental Management (“DPWEM”). The DPWEM determined that the plans complied with all applicable design standards, specifications, laws and regulations, including any and all applicable laws and regulations relating to drainage requirements for light industrial developments and the possible existence of light industrial industries.

28. For Phase IA, the drainage system outlets into two Con/Span culverts and an earth channel sedimentation basin. All of the runoff from Phase IA is routed to the culvert across Hana Highway and into the sedimentation basin and settles before overflowing and outletting through the concrete channel. Because the concrete channel going from the sedimentation basin to the ocean is flat, a very large storm would be required prior to any water being discharged into the ocean. The quality of the water is normally clean. The channel contains vegetation that acts as a filter, and a sand berm will typically prevent the water from flowing into the ocean.

29. For Phase IB, the drainage system outlets into two retention basins that retain 100 percent of the runoff. The retention basins have approximately three feet of freeboard, so overtopping is not anticipated.

30. A National Pollution Discharge Elimination System (“NPDES”) permit was obtained for the Phase IA onsite and offsite subdivision improvements. Phase IB was not required to obtain a NPDES permit due to the total containment of the Phase IB stormwaters within the Maui Business Park’s retention basins. The NPDES permit was issued by the State Department of Health (“DOH”), Clean Water Branch, which is responsible for overseeing all of the water pollution control activities into state surface waters statewide.

31. During the 1994 to 1999 time period for the planning and construction of the Maui Business Park, all of the then recognized measures and practices to mitigate pollutants via stormwater runoff that existed during that time period were planned, designed, and constructed into the Maui Business Park’s onsite and offsite improvements. Furthermore, the County ensured that the improvements of Maui Business Park Phase I that were dedicated to the County met all appropriate specifications and requirements prior to accepting the dedication.

32. Petitioner’s ongoing maintenance program for the offsite drainage system includes (i) visual inspection of the ditches, channels, and basins on at least a monthly basis to ensure that there is no accumulation of vegetation or debris; (ii) cutting vegetation along all sides of the open earthen settling basin on at least a monthly basis

and removing any debris; (iii) removing accumulated silt and vegetation in culverts, ditches, and channels on a periodic basis; and (iv) monitoring to report any contamination.

33. Petitioner relies on the County to determine if a prospective buyer's proposed use at Maui Business Park Phase I is permitted in the Light Industrial zoning district. Once the buyer's proposed use is confirmed, Petitioner screens the proposed use to determine if the buyer's business presented a credible risk of a spill or contamination. For the buyers of Maui Business Park Phase I, this risk was not determined to exist.

34. A Declaration of Covenants and Restrictions for the subdivision was established on November 27, 1995, and recorded with the Bureau of Conveyances of the State of Hawai'i, as Document No. 95-154047 (a copy of which was submitted to the LUC with Petitioner's 1996 Annual Report). This Declaration, among other things, requires the lessee or buyer to abide by all applicable Federal, State, and County regulations with regard to the handling, storage, and/or disposal of hazardous materials.

35. The DPWEM reviewed and approved the building plans for development on the individual lots in Phases IA and IB. Individual lot owners submitted their permit applications to the DPWEM, and as part of the standard review process, the DPWEM forwarded the applications to all relevant governmental agencies for review and approval, including but not limited to the DOH and the MFD. The DOH

and the MFD, in reviewing permit applications, ensure that applicable rules, regulations, and requirements to mitigate potential environmental risks are addressed.

36. A Certificate of Occupancy (“COO”) is issued by the County once all reviewing agencies are satisfied that the improvements that are proposed in a building permit have been constructed to their satisfaction in compliance with their rules and regulations. In order to obtain a COO an application is filed, and the applicant hand carries the application to the various State and County agencies, including the DOH and the MFD. The COO is necessary before any commercial building can be occupied or utilized by the owner.

37. All improved structures in Maui Business Park Phase I have COOs that are on record on the County’s website. The information on the County’s website relating to COOs is inputted by County employees and that information is considered to be true and accurate.

38. The MFD is the primary County agency responsible for hazardous materials inspections. The MFD reviews all commercial COO applications. The MFD makes a physical inspection of the premises in the course of reviewing COO applications. Among other items that are reviewed is the applicant compliance with the Uniform Fire Code, which is a part of the HRS. All commercial structures undergo periodic inspections, which continue after occupancy, and these periodic inspections include enforcement of the hazardous materials requirements of the Uniform Fire Code.

39. Petitioner has addressed Condition No. 3. The requirement for owners of the lots to abide by all applicable Federal, State, and County regulations with regard to the handling, storage, and/or disposal of hazardous materials has been included in Section 8 of the Declaration of Covenants and Restrictions that was recorded at the Bureau of Conveyances on November 29, 1995, as Document Number 95-154047.

40. Petitioner has addressed Condition No. 4. This information is provided in Section 6 of the Declaration of Covenants and Restrictions. Specifically, this section states:

“Each Owner acknowledges that the Property is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of sugar cane and other agricultural products (such growing, harvesting and processing activities being herein collectively called the “Agricultural Activities”), which activities may from time to time bring about upon the Property smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the “Agricultural By-Products”).”

Each Owner acknowledges that the Hawai`i Right to Farm Act (chapter 165, HRS) and Hawai`i law limit the types of farm activities that may be deemed a nuisance.

41. Petitioner has addressed Condition No. 5. This has been addressed in Section 7 of the Declaration of Covenants and Restrictions. Specifically, this section states:

“The Property is located in the vicinity of Kahului Airport, a commercial airport, and each owner is aware that there is a likelihood of noise from planes passing overhead or nearby and other potential adverse impacts from other incidence of aircraft operation. Each Owner hereby assumes the risk of any potential adverse impacts from such noise or other incidents of aircraft operations upon the owner’s lot or uses thereon. Each Owner shall indemnify and hold harmless Declarant and the State of Hawaii from and against all claims, liability and losses that arise out of noise and other incidences of aircraft operations, unless such claim, liability or loss arises out of the negligence or willful misconduct either by the State of Hawaii or in the operation of the Kahului Airport or any violation of any applicable federal, state or county requirement governing aircraft safety and noise abatement measures, in which case, the indemnification of the State of Hawaii will be inapplicable.”

42. Petitioner has addressed Condition No. 6. Petitioner has constructed a concrete drainage culvert, designed to accommodate the 100-year storm

and alleviate the previous flooding problem at the Hana Highway-Dairy Road intersection, located under Hana Highway connecting Phase IA to an existing drainage channel.

43. The Kahului Flood Control Project final study, which recommends drainage improvements for the Kahului area, was completed in March 2000. Discussions with the State Department of Land and Natural Resources, Division of Water and Land Development (“DOWALD”), indicate that no timeframe has been established for implementation of the study recommendations. Petitioner continues to coordinate with the County of Maui and DOWALD to address drainage issues in the Kahului area.

44. Petitioner has addressed Condition No. 7. Offsite sewer system improvements provided by Petitioner include a new sewer line connecting to Phase IA under Alamaha Street and a pump station upgrade to handle increased capacity. Construction of these improvements was completed in November 1995.

45. These improvements were based on recommendations of an Offsite Wastewater Master Plan (“OWMP”) prepared for Petitioner in March 1994. This report was submitted to the County with a recommendation regarding the precise means by which connection to the Kahului Wastewater Reclamation Facility (“KWRF”) would be made. The County approved the OWMP in June 1994. Based on this approval and comments by the DPW, engineering plans for offsite sewer service improvements were

completed and submitted to the DPW in July 1994, with construction plan approval received from the County in February of 1995.

46. The County has expanded the capacity of the KWRF to approximately 7.9 million gallons per day and has adopted an ordinance establishing a fee schedule for hookup to the KWRF. Maui Business Park is subject to this fee schedule.

47. Petitioner has addressed Condition No. 8. In 1989, Petitioner submitted reports to the State Historic Sites Section (now called the State Historic Preservation Division (“SHPD”)) entitled “Archaeological Inventory Survey of an Additional Area (130 acres) in the Kahului Industrial Park Petition Area - Kahului, Maui, Hawaii” (Xamanek Researches 1989) and “A Discussion of Volcanic Glass-Like Materials Recorded from an Archaeology Inventory Survey of Parcels of Land at Kahului, Maui, Hawaii” (Xamanek Researches 1989).

48. No archaeological resources were encountered during the construction of Phases IA or IB. Should any archaeological resources be encountered during any additional construction, Petitioner will immediately stop work and contact the SHPD.

49. Petitioner has addressed Condition No. 9. At this time, Petitioner does not intend to sell its interest in Maui Business Park Phase II but will comply with this condition if, in the future, a decision is made to sell.

50. Petitioner has addressed Condition No. 10. Petitioner has completed the required housing study with the results submitted to the County of Maui Department of Planning (“Department of Planning”), the Office of State Planning (“OSP”), and the Commission in November 1991. In January 1992, Petitioner sent to the Commission, OSP, and the Department of Planning additional information regarding the housing study. Petitioner also conveyed a 12.2-acre parcel in Pa`ia to the County of Maui for affordable housing. At the present time, there is no development on the 12.2-acre parcel because of the inadequate road infrastructure leading to the parcel. The County has made arrangements for a non-profit group to build houses on the 12.2 acres.

For Maui Business Park Phase II, Petitioner commissioned a Housing Demand Analysis. Based on the analysis, the donation of 13 acres in or near Central Maui, with Upcountry and North Kihei being secondary sites, would be an equitable means of satisfying the affordable housing demand that will be generated. The Housing Demand Analysis was accepted by the County to the satisfaction of Director Alice L. Lee, County Department of Housing and Human Concerns (“DHHC”), on November 10, 2004.

51. Petitioner has addressed Condition No. 11. To Petitioner’s knowledge, all such fair share requirements have been determined. Petitioner has satisfied or is in the process of satisfying the requirements.

52. Petitioner has addressed Condition No. 12. Petitioner has developed an industrial subdivision as represented to the Commission. After the

reclassification of Phases IA and IB, the County rezoned the site to the County M-1 Light Industrial District. All uses developed in Phases IA and IB are permitted uses within the County M-1 Light Industrial District.

53. Petitioner has addressed Condition No. 13. Petitioner did not alter the ownership of the site prior to development.

54. Petitioner has addressed Condition No. 14. Petitioner has complied with this condition by submitting timely annual reports to the Commission, the Department of Planning, and the Office of Planning (“OP”), the successor to the OSP, since the Commission’s approval in 1990.

55. Petitioner has addressed Condition No. 15. Petitioner has not filed any motions requesting to be released from these conditions.

56. In addition to the 15 conditions of approval, the Commission required Petitioner to obtain Community Plan Industrial designation from the County of Maui for Phase II. In May 2002, the Maui County Council approved the *Wailuku-Kahului Community Plan (2002)* as part of the community plan update process. The plan designates “Light Industrial” areas for approximately 179 acres constituting Maui Business Park Phase II.

RULING ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, and the Commission's rules under chapter 15-15, HAR, including section 15-15-78 thereof, this Commission finds upon the preponderance of the evidence that the redistricting of the Property, consisting of approximately 33.530 acres of land in the State Land Use Agricultural District at Kahului, Island and County of Maui, State of Hawai'i, and identified as Tax Map Keys: 3-8-06: portion of 4 and 3-8-01: portion of 2, to the State Land Use Urban District for the development of Maui Business Park Phase II, and subject to the conditions in the Order below, conforms to the standards established in the Commission's rules, including section 15-15-78 relating to incremental districting, is reasonable, not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A, HRS.

2. Petitioner has undertaken substantial development of the preceding increment, identified as Phases IA and IB, and has substantially completed the offsite improvements relating to Phases IA and IB in accordance with Petitioner's development plan and in accordance with the incremental plan under the Decision and Order.

3. Petitioner is in compliance with the conditions imposed by the Commission in the reclassification of Phases IA and IB as stated in the Decision and Order.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 33.530 acres of land in the State Land Use Agricultural District at Kahului, Island and County of Maui, State of Hawai`i, identified as Tax Map Keys: 3-8-06: portion of 4 and 3-8-01: portion of 2, and approximately shown on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby redistricted to the State Land Use Urban District and the State land use boundaries shall be amended accordingly.

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

1a. **Housing Study.** Within one hundred eighty days (180) of March 25, 2004, the date of the Decision and Order in Docket No. A03-739, Petitioner shall complete and submit to and for the approval of the Commission, with copies to the Department of Planning, the DHHC, and the OP, a housing study that addresses the following:

- i. The impact the Project will have on the current labor force;
- ii. The type of employee/affordable housing demands that will be created by the Project;

- iii. Any employee/affordable housing policy adopted and in place by the County for commercial and industrial developments;
- iv. The proposed mitigation measures to alleviate the impact on both the labor market and the employee/affordable housing situation, including, but not limited to, the acreage, siting, timing, type of housing and eligibility for the employee/affordable housing project, and the identity of potential developers and recipient of land to be contributed and conveyed by Petitioner for affordable/employee housing (collectively, the “Proposed Mitigation Measures”); and
- v. Recommendations and timeframe for implementing any applicable county housing policy (in place at the time of this study) or requirements and/or Petitioner’s proposed mitigation measures, including the minimum contribution of land described in Condition 1b immediately herein below (collectively, the “Proposed Timeline”).

The redistricting of the Property, as described in this Decision and Order and the Decision and Order in Docket No. A03-739, shall be subject to the further condition of Petitioner’s compliance with the Proposed Mitigation Measures and Proposed Timeline, as modified and/or approved by the Commission (the “Approved Mitigation Measures and Timeline”).

1b. **Minimum Contribution of Land by the Petitioner.** In compliance and consistent with the Approved Mitigation Measures and Timeline, Petitioner shall contribute, no later than one (1) year after any Maui County zoning approval authorizing the use of the Property for light industrial and/or commercial use, to the County of Maui or a non-profit housing entity or other appropriate entity, a minimum of ten (10) acres of land useable for residential development within the Central Maui region reasonably acceptable to the County of Maui towards development of employee/affordable housing or satisfy such more stringent employee/affordable housing requirements for the Project as may be imposed by the Maui County Council.

Satisfaction of the employee/affordable housing requirements for the Project stated herein shall also satisfy condition number 1 in the Commission's Decision and Order in Docket No. A03-739. The Approved Mitigation Measures and Timeline shall be an obligation of the recipient of the land conveyed for affordable housing purposes, as memorialized in the conveyance document from Petitioner to such recipient.

2. **Water Facilities.** Petitioner shall participate in the funding and construction of adequate water source, storage and transmission facilities and improvements or remit applicable fees for water source, storage, and transmission facilities and improvements to accommodate projected water usage generated by the Project. Water facilities and improvements, including adequate storage facilities, should surface water sources be developed, or the payment of applicable fees, shall be

coordinated and approved by the County of Maui, Department of Water Supply and, if applicable, the Commission on Water Resources Management of the Department of Land and Natural Resources (“DLNR”). Adequate water source shall be made available prior to the issuance of any occupancy permits for buildings developed on the Property.

3. **Aircraft Operations.** Petitioner shall implement procedures to address notification and liability issues which arise from the potential adverse impacts from noise, right of flight, emissions, vibrations and other incidences of aircraft operations upon the present and future owners and future lessees or occupants of the Property resulting from the adjacent Kahului Airport operations. The following covenant shall encumber the Property and be included in any transfer of any interest in the Property.

“The Property is located in the vicinity of Kahului Airport, a commercial airport, and each Owner is aware that there is a likelihood of noise from aircraft passing overhead or nearby and other potential adverse impacts from other incidence of aircraft operation. Each Owner hereby assumes the risk of any potential adverse impacts from such noise, right of flight, emissions, vibrations or other incidents of aircraft operations upon the Owner’s lot or uses thereon. Each Owner shall be responsible for appropriate mitigation measures to address the abovementioned potential adverse impacts. Each Owner shall indemnify and hold harmless

Declarant and the State of Hawai`i from and against all claims, liability and losses that arise out of noise, right of flight, emissions, vibrations and other incidences of aircraft operations, unless such claim, liability or loss arises out of the State of Hawai`i's willful misconduct in the operation of Kahului Airport or violating any applicable federal, state, or county requirement governing aircraft safety and noise abatement measures, in which case, the indemnification of the State of Hawai`i will be inapplicable."

4. **FAA Form 7460-1, Notice of Proposed Construction or Alteration.**

Petitioner shall impose a covenant encumbering the Property and be included in any transfer of any interest in the Property requiring the submittal of Federal Aviation Administration ("FAA") Form 7460-1, Notice of Proposed Construction or Alteration, to the FAA's Hawai`i District Office when or if required under applicable FAA Regulations, with a copy to the DOT's Airports Division.

5. **Runway Protection Zone.** Petitioner acknowledges that a portion of the Project overlaps the runway protection zone ("RPZ") for a proposed extension of the Kahului Airport runway of up to 9,600 feet in length, as further described in the record of Docket No. A03-739. Petitioner agrees to restrict uses in the RPZ to light industrial, parking, roadway and other infrastructure uses that do not entail the congregation of people, provided all such uses are approved by the FAA. This restriction on uses within the RPZ shall automatically terminate if the DOT does not

attain all governmental approvals for the extension of the Kahului Airport runway within a period of five (5) years from March 25, 2004, the date of the Commission's Decision and Order in Docket No. A03-739. Notwithstanding the foregoing, and for good cause shown, the Commission may grant an extension of time for the DOT if the DOT during such five-year period has been using its best efforts, in good faith, to attain all governmental approvals for the extension of the Kahului Airport runway. The size of the RPZ shall be adjusted if the runway length sought by the DOT is less than 9,600 feet. Should the DOT desire to acquire an easement or the fee simple interest in the RPZ, the fair market value of the land shall be based on its current Agricultural District classification and present zoning designation by the County of Maui provided that: a) the acquisition occurs within a period of five (5) years from March 25, 2004, the date of the Commission's Decision and Order in Docket No. A03-739; and b) the DOT during such five-year period has been using its best efforts, in good faith, to attain all governmental approvals for the extension of the Kahului Airport runway.

6. **Traffic Impact Analysis Report.** Prior to obtaining County zoning, Petitioner shall revise or supplement its traffic impact analysis report ("TIAR") prepared for the Project and dated May 2003 to the satisfaction of the DOT. The TIAR shall identify the impact of Petitioner's Project on the transportation system and recommend any required mitigation measures. Conditions and assumptions reflected in the TIAR shall be developed in consultation with the DOT, including but not limited to, various proportions of retail and light industrial uses to be developed at the Project,

plans for the proposed airport access road, permitted accesses, trip generation rates, and traffic projections. Petitioner shall obtain the DOT's prior written approval of the final TIAR and Petitioner may not proceed with the development of Petitioner's Project unless and until the DOT approves the TIAR. As development occurs within the Project, the TIAR shall be revised or supplemented as may be requested and required by the DOT. Petitioner shall be responsible for constructing, implementing and/or contributing its fair share of the cost of those improvements or mitigation measures as recommended or required by the TIAR and as dictated by the actual proportion of light industrial and retail uses developed at the Project. The TIAR shall also address the impact to County of Maui roadways and shall be submitted to the County of Maui, Department of Planning for the County's review and consideration in the zoning approval process.

7. **Regional Transportation Improvements.** Petitioner shall contribute Petitioner's fair share of the cost of regional transportation improvements in the area, as such fair share shall be determined by the DOT based on appropriate transportation planning methodologies to establish a rational nexus.

8. **Best Management Practices.** Petitioner shall coordinate with the County of Maui, the DLNR, and the DOH to establish Best Management Practices to contain spills, and prevent materials associated with light industrial uses such as petroleum products, chemicals, and other pollutants from leaching or draining into the ground or the storm drain system.

9. **Hazardous Materials.** Storage and/or disposal of hazardous materials shall be approved by the DOH prior to their establishment on the Property.

10. **Wastewater Facilities.** Petitioner shall provide a sewer impact study to the DPWEM evaluating the wastewater system requirements for the Project. Petitioner shall fund and develop, as required by the County of Maui and the DOH, wastewater transmission and treatment facilities to accommodate the additional wastewater generated by the Project.

11. **Drainage.** Petitioner shall fund, design and construct any drainage system improvements required to mitigate the additional runoff resulting from the project without creating adverse effects on adjacent and downstream properties. The master drainage plan for Maui Business Park shall be constructed to mitigate the additional runoff resulting from this development.

12. **Aircraft Operation Hazards.** Petitioner shall fund and implement a program to control any bird nesting or occupation and any insect, pest or wildlife infestation, in any drainage retention basins serving the Property to minimize the hazards to aircraft operation, as deemed necessary by the DOT.

13. **Provisions of the Hawai`i Right to Farm Act.** Petitioner shall inform all prospective occupants of possible odor, noise, and dust pollution resulting from adjacent Agricultural Districts lands, and that the Hawai`i Right-to-Farm Act, chapter 165, HRS, limits the circumstances under which preexisting farming activities may be deemed a nuisance.

14. **Solid Waste.** Petitioner shall develop a Solid Waste Management Plan in conformance with the Integrated Solid Waste Management Act, chapter 342G, HRS. The Plan shall be approved by the County of Maui and shall address the need to divert the maximum amount of waste material caused by the development away from the County's landfills.

15. **Visual Analysis.** That as part of its zoning application submittal, Petitioner shall submit a visual analysis study for the location of the Ho`okele Street Extension emphasizing the maintenance of a "view corridor" toward Haleakala.

16. **Visual Impacts.** That as part of its zoning application, Petitioner shall submit design guidelines with renderings on how a landscaped aesthetic visual corridor along all adjacent highways and how a landscaped berm utilizing trees and shrubbery shall be constructed along the entire proposed collector road (Ho`okele Street Extension) to soften the visual impact of the buildings along the road. (Wailuku-Kahului Community Plan Update).

17. **Dual Water System.** Petitioner shall evaluate the feasibility of developing a dual water system for the Project, utilizing non-potable water for landscape irrigation purposes.

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

19. **Project Composition.** For a period of eight (8) years from the date of the County's approval of zoning for the Project a total of at least fifty percent (50%) of the Project acreage shall be (a) used and developed by Petitioner for non-retail, light industrial use and/or (b) sold or leased to and developed and used by third-party buyers for non-retail, light industrial use. For this same eight-year period, simultaneous with Petitioner's development or offer for sale or lease of the Project for retail use, Petitioner shall develop or offer for sale or lease an equal amount of acreage within the Project for non-retail, light industrial use. The phrase "light industrial," as used in this paragraph, includes warehousing and distribution types of activity as well as compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials. It is the intent of this paragraph that at the end of the above-described eight-year period, to the extent that the Project is developed or in the process of being developed by Petitioner or any third party, no less than fifty percent (50%) of such development or development in process shall be for non-retail, light industrial purposes.

20. **Archaeological.** Should any burial, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found, Petitioner or landowners of the affected properties shall stop work in the immediate vicinity and the SHPD shall be notified immediately.

Subsequent work shall proceed after the SHPD authorization has been received and applicable mitigation measures have been implemented.

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

22. **Notice of Change to Ownership Interests.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Property, prior to development of the Property.

23. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, the OP, and the Department of Planning in connection with the status of the Project and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

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

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

conditions imposed herein by the Commission in the reclassification of the Property, and (b) shall file a copy of such recorded statement with the Commission.

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

IT IS FURTHER ORDERED that the remaining portion of the Phase II Incremental Area, consisting of approximately 19.134 acres of land, identified as Tax Map Key: 3-8-06: portion 4, and approximately shown on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby withdrawn from the Phase II Incremental Area and shall remain within the State Land Use Agricultural District.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 13th day of June, 2005. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 13th day of June, 2005, per motion on May 5, 2005.

APPROVED AS TO FORM


Diane Jackson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By P. Roy Catalani
P. ROY CATALANI
Chairperson and Commissioner

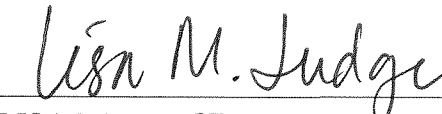
By Randall Sakumoto
RANDALL SAKUMOTO
Vice-Chairperson and Commissioner

By (absent)
STEVEN LEE MONTGOMERY
Vice Chairperson and Commissioner

By 
ISAAC FIESTA, JR.
Commissioner

By 
MICHAEL D. FORMBY
Commissioner


By _____ (absent)
KYONG SU IM
Commissioner

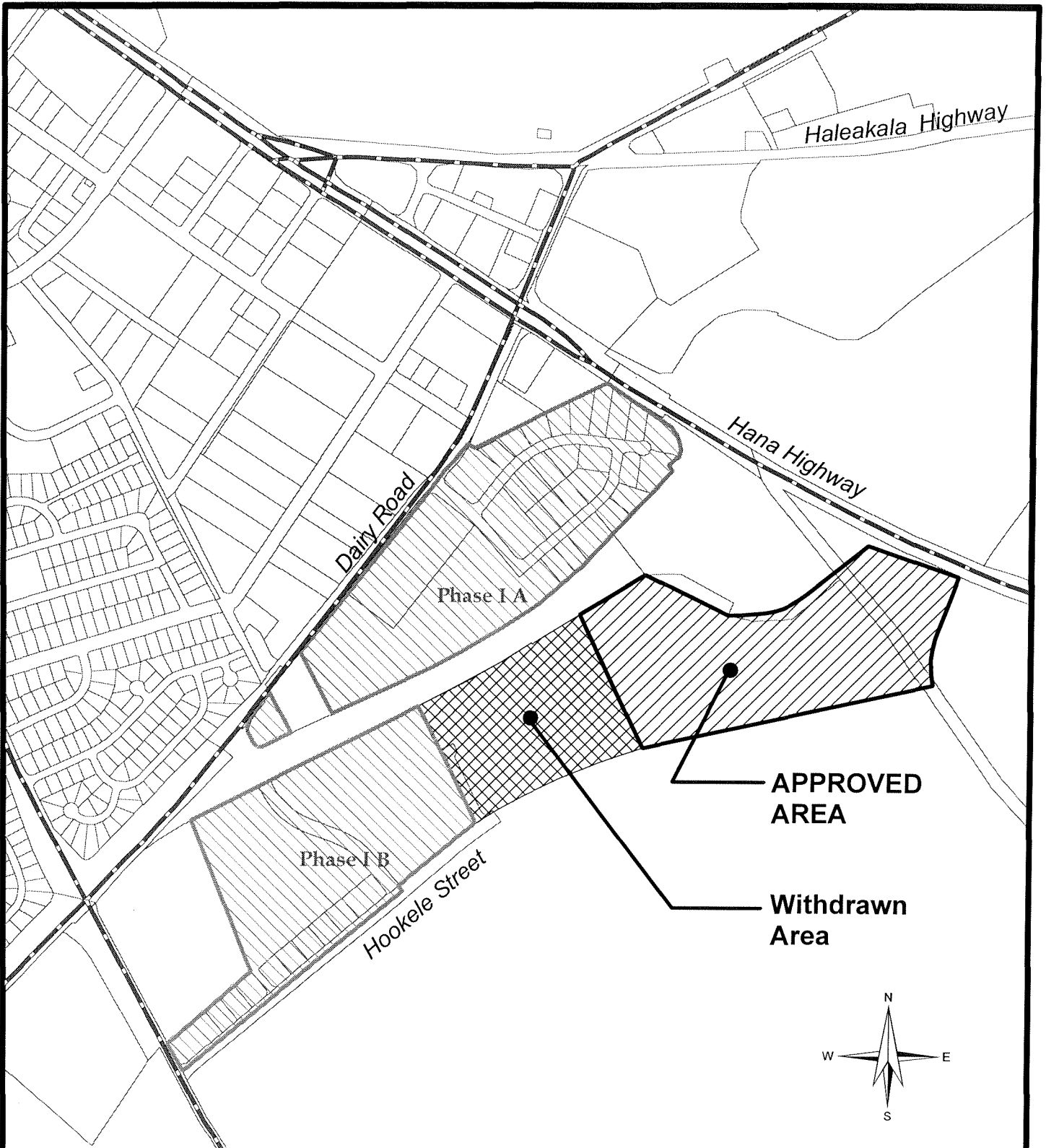
By 
LISA M. JUDGE
Commissioner

By 
RANSOM A.K. PILTZ
Commissioner

Filed and effective on
JUN 13 2005

By _____ (absent)
PETER YUKIMURA
Commissioner

Certified by:

ANTHONY J. H. CHING



A88-634 ALEXANDER & BALDWIN, INC.

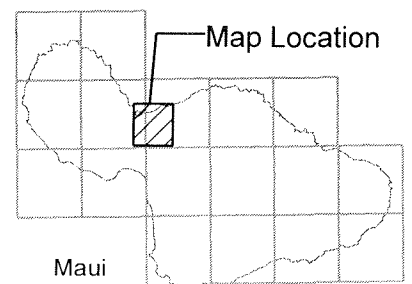
MAP LOCATION

Approved Area - Tax Map Keys: 3-8-01: por. 2 and
3-8-06: por. 4

Withdrawn Area - Tax Map Key: 3--8-06: por. 4
Kahului, Island and County of Maui, State of Hawai'i

Scale: 1" = 800 ft.

EXHIBIT "A"



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition of) DOCKET NO. A88-634
)
ALEXANDER & BALDWIN, INC.) CERTIFICATE OF SERVICE
)
To Amend The Agricultural Land Use)
District Boundary Into The Urban)
District For Approximately 339.3 Acres)
At Kahului, Island And County Of Maui,)
State Of Hawai`i, TMK: 3-8-01: Portion)
Of 16, And Portion Of 2; 3-8-06: Portion)
Of 64, Portion Of 4)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings Of Fact, Conclusions Of Law, And Decision
And Order was served upon the following by either hand delivery or depositing the
same in the U. S. Postal Service by regular or certified mail as noted:

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Dated: Honolulu, Hawai'i, JUN 13 2005.



ANTHONY J. HUCHING
Executive Officer