

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A07-772
)
A&B PROPERTIES, INC.) FINDINGS OF FACT, CONCLUSIONS OF
) LAW, AND DECISION AND ORDER
To Amend The Agricultural Land Use)
District Boundary Into The Urban Land)
Use District For Approximately 94.352)
Acres Of Land Situated In Waiakoa,)
Island And County Of Maui, State Of)
Hawai'i, Tax Map Key: 3-8-04: Portion)
Of 2, Portion Of 22, And Portion Of 30)
_____)

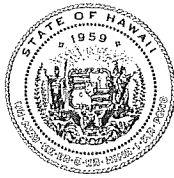
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

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.

2/20/09

BY

Executive Officer



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

A&B PROPERTIES, INC. ("Petitioner"), filed a Petition For Land Use District Boundary Amendment on March 2, 2007 (the Petition as so amended is referred to as "Petition"), pursuant to Hawai`i Revised Statutes ("HRS") section 205-4, and Hawai`i Administrative Rules ("HAR") chapter 15-15, to amend the land use district boundary to reclassify approximately 94.352 acres of land, situated in Waiakoa, Island and County of Maui, State of Hawai`i, Tax Map Key: 3-8-04: portion of 2, portion of 22, and portion of 30 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District to allow for the development of the Kihei Residential

Project (“Project”), a mix of single-family and multi-family residential units, a small commercial site, parks, and open space.

The Land Use Commission (“Commission”), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, together with the pleadings filed by the respective parties thereafter, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 2, 2007, Petitioner filed the Petition, Exhibits “1” through “7” of the Petition, and an Environmental Impact Statement Preparation Notice.

2. On March 16, 2007, the Commission agreed to be the accepting authority under HRS chapter 343 and determined that the action may have a significant impact upon the environment to warrant the preparation of an Environmental Impact Statement (“EIS”). The Commission issued its written Order and served it upon Petitioner, the State Office of Planning (“OP”), and the County of Maui Department of Planning (“DP”) on March 29, 2007.

3. On May 15, 2008, and by Findings Of Fact, Conclusions Of Law, And Decision And Order Accepting A Final Environmental Impact Statement dated June 10, 2008, the Commission accepted Petitioner’s Final EIS pursuant to HRS chapter 343 and HAR chapter 11-200.

4. On June 3, 2008, Petitioner filed the First Amendment To Petition For Land Use District Boundary Amendment, Verification, and Exhibits "8" and "9."

5. On June 6, 2008, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of June 3, 2008.

6. On July 14, 2008, Petitioner filed the Affidavit of Mailing Notice Of Hearing and the Affidavit Of Service Of Notice Of Hearing.

7. On July 15, 2008, Petitioner filed the Affidavit Of Filing Notice Of Hearing With Lieutenant Governor's Office.

8. On July 25, 2008, Petitioner filed Affidavit Of Publication Of Notice Of Hearing.¹

9. On August 6, 2008, the Executive Officer of the Commission conducted a prehearing conference at the Commission's Conference Room 405 in Honolulu, Hawai`i. At the prehearing, the parties filed with the Commission and served to the other parties the following: OP's List Of Witnesses, List Of Exhibits, Exhibits "1" through "8"; DP's Position Statement, List Of Witnesses, List Of Exhibits, and Exhibits "1" through "4"; and Petitioner's List Of Witnesses, List Of Exhibits, and Exhibits "9a," "9b," "10a," "10b," "10c," "10d," "11a," "11b," and "12."

10. On August 18, 2008, Petitioner filed First Amended List Of Exhibits and Exhibits "13" through "16."

¹ The Notice Of Hearing was published in 1) the *Honolulu Star-Bulletin* on July 14, 2008; 2) the *Hawaii Tribune-Herald* on July 17, 2008; 3) *West Hawaii Today* on July 17, 2008; 4) *The Maui News* on July 15, 2008; and 5) *The Garden Island* on July 13, 2008.

11. On August 19, 2008, OP filed First Amended List Of Witnesses, First Amended List Of Exhibits, and Exhibits "1a" and "9" through "12."

12. The Commission held evidentiary hearings in this docket on August 21, 2008; August 22, 2008; September 12, 2008²; and October 16, 2008, in Mākena, Maui, Hawai`i.

13. On October 16, 2008, the Commission closed the evidentiary portion of the proceedings.

DESCRIPTION OF THE PETITION AREA

14. The Petition Area consists of approximately 94.352 acres of land, situated in Waiakoa, Island and County of Maui, State of Hawai`i, Tax Map Key: 3-8-04: portion of 2, portion of 22, and portion of 30.

15. The Petition Area is owned in fee simple by Alexander & Baldwin, Inc., which provided its written authorization to Petitioner to file the Petition.

16. The Petition Area is located at the northern gateway to the Kīhei-Mākena region, and is bordered by Waiakoa Gulch and agricultural lands to the north and residential uses to the south. Pi`ilani Highway borders the Petition Area on the west. Hale Pi`ilani, a single-family subdivision, is located to the immediate south, while Kīhei Villages, a multi-family residential project, lies to the southwest.

² At the Commission's September 12, 2008, hearing, the DP filed Exhibit "5."

17. The lands to the south and southwest of the Petition Area are generally within the State Urban Land Use District and lands to the north of the Petition Area are within the State Agricultural Land Use District.

18. The Petition Area was formerly cultivated in sugarcane, but those operations ceased in the mid-1980s. The makai portion of the Petition Area, covering approximately 38 acres, is currently utilized by Monsanto Company under a lease agreement to cultivate seed corn. Approximately 12 acres in the central portion of the Petition Area was previously farmed by an independent farmer. The mauka portion of the Petition Area has been fallow since the cultivation of sugarcane ended in the mid-1980s.

19. The Petition Area is gently sloping in a westerly direction with an average slope of approximately 3 percent.

20. The Petition Area is located within one of the drier areas of southwest Maui. Annual temperatures in the region, including the Petition Area, average in the mid to high 70s. June through August are historically the warmer months of the year, while the cooler months are January through March. During the summer months, average daily temperatures in the region typically range from the low 70s to the high 80s. Northeast tradewinds prevail approximately 80 to 85 percent of the time. Tradewinds originating from the northeast average 10 to 15 miles per hour during afternoons, with slightly lighter winds during mornings and nights. Between October and April, the southerly winds of Kona storms may be experienced.

21. The majority of the Petition Area is designated as Zone C, areas of minimal flooding, by the Federal Emergency Management Agency ("FEMA"). Other FEMA flood designations within the Petition Area are Zone B (areas of 100-year flooding with flood depths of less than one foot) within the lower reaches of the Petition Area; and Zone A2 (areas of 100-year flooding with base flood elevations shown which have been determined by detailed methods).

PROPOSAL FOR RECLASSIFICATION

22. Petitioner proposes a total of approximately 600 market and affordable residential units in addition to a small 1.4-acre neighborhood commercial site at the western (makai) end. Approximately 200 multi-family attached units are proposed at the western portion of the Petition Area. The central portion of the Petition Area is planned for approximately 100 single-family detached units on subdivided lots of approximately 6,000 square feet. The eastern (mauka) portion of the Petition Area is planned for approximately 300 single-family detached residential units that would not be subdivided, but clustered and offered under condominium ownership.

23. The Project will also include park and open space areas which will provide for a network of trails and bike paths that will connect to existing parks and open space areas.

24. The primary planned vehicular access points at the makai end of the Project include a planned right-turn in and right-turn out off of Pi'ilani Highway, as

well as access off of Kaiwahine Street. Within the mauka portion of the Petition Area,

several access points to adjacent properties are planned. The makai entrance to the Project from Kaiwahine Street will be situated as far mauka as feasible from Pi`ilani Highway to reduce the potential for vehicle queuing on Pi`ilani Highway.

25. An approximately 1.4-acre site is proposed for commercial use. Located at the southwest corner of the Petition Area, along Pi`ilani Highway, the proposed commercial area will allow for neighborhood business uses, which will provide services for the convenience of the surrounding neighborhoods.

26. The Project's estimated construction cost of onsite/offsite infrastructure and site work is approximately \$59,000,000 (2007 dollars). Building construction cost is estimated at approximately \$92,000,000 (2007 dollars).

27. It is estimated that the Project's entitlement process will take approximately two years to complete, followed by approximately two years for the design and the approval of construction plans. Construction of the proposed backbone infrastructure, including the primary roadways and access point, residential internal roadways, and water supply, sewage, and electrical infrastructure will be completed within ten years from the date of the decision and order in this docket. Site construction is estimated to be initiated in 2011, with buildout of the Project estimated over a five-year period until approximately 2016.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

28. Petitioner is a wholly-owned subsidiary of Alexander & Baldwin, Inc. The financial statements of Alexander & Baldwin, Inc., as of December 31, 2007, Docket No. A07-772 A&B Properties, Inc. Findings Of Fact, Conclusions Of Law, And Decision And Order

reflect total assets of \$2,479,000,000, total liabilities of \$1,349,000,000, total shareholder's equity of \$1,130,000,000, and net income of \$142,000,000. Development of the Project is intended to be financed through internally generated funds.

STATE AND COUNTY PLANS AND PROGRAMS

29. The Petition Area is designated within the State Land Use Agricultural District. The Petition has been filed to amend the Petition Area to the State Land Use Urban District.

30. The Petition Area is located within the County's Urban Growth Boundary as identified on the Draft Maui Island Plan prepared by the DP. The Draft Maui Island Plan is part of the County's ongoing General Plan update process.

31. The Petition Area is designated as Agriculture by the Kīhei-Mākena Community Plan. A community plan amendment to establish the proposed Multi-Family, Single-Family, and Commercial community planning designations will be required for the Petition Area.

32. The Petition Area is zoned Agricultural by the County. A change in zoning to establish the proposed Residential, Apartment, and Community Business District zoning designations will be required for the Petition Area.

33. The Petition Area is located outside of the County's Special Management Area.

NEED FOR THE PROJECT

34. Maui County is experiencing a housing crisis.

35. The Project will provide affordable housing in accordance with applicable provisions of the Maui Residential Workforce Housing Policy ("MRWHP"), Maui County Code Chapter 2.96.

36. ACM Consultants, Inc., under the direction of Glenn K. Kunihiha, prepared a report titled *Market Study & Economic Impact Analysis of the Proposed Kihei Residential Project, Kihei, Island of Maui, Hawaii*, dated January 3, 2007.

37. The Kihei residential market is expected to appreciate in the long term while undergoing sequences of highs and lows of a typical real estate cycle. The Project will introduce housing products to the market at the low end as far as pricing is concerned, and demand for these units should exist in all phases of the real estate cycle.

ECONOMIC IMPACTS

38. The per capita expenditure for the State as a result of the Project is estimated at approximately \$4,700 per person. The per capita expenditure for the County is estimated at approximately \$1,800 per person. The total estimated cost of providing State and County services for the new residents is between \$585,000 and \$1,170,000.

39. On a short-term basis, the Project will support construction and construction-related employment. Construction-related wages resulting from the Project is estimated at approximately \$60.4 million (2007 dollars), and State general excise taxes in the amount of approximately \$6.3 million are estimated over the development and construction period.

40. The annual real property tax base for the Project is estimated at approximately \$341,000. It is anticipated that real property taxes generated by residents of the Project will support any increase in regional public service demands over time.

SOCIAL IMPACTS

41. The Project will provide resident housing opportunities in both the near and long term. A range of housing types will serve to meet the varied housing needs of the region. The Project will provide a significant community benefit by offering residents new opportunities to secure affordable and market-priced housing.

42. The Project will be in compliance with the MRWHP. As required under the MRWHP, a minimum of 40 percent of the Project's units, or approximately 240 units, must be priced for households earning between 80 percent and 160 percent of the median household income. The MRWHP specifies the proportionate allocation of the affordable units among the various income groups, which include 30 percent (72 units) priced for below-moderate income households (earning between 80 percent and 100 percent of median income), 30 percent (72 units) priced for moderate income households (earning between 100 percent and 120 percent of median income), 20 percent (48 units) priced for above-moderate income households (earning between 120 percent and 140 percent of median income), and 20 percent (48 units) priced for gap income households (earning between 140 percent and 160 percent of median income).

43. It has been represented that the affordable units will consist of a mix of both multi-family and single-family units, and that the affordable units will be developed concurrently with the market units.

44. The Project will result in a slight increase in the population of the region. Based on the 2006 County average of three persons per household, approximately 1,800 persons are anticipated to occupy the 600 proposed units at full buildout of the Project. Based on the size and nature of the commercial site, the amount of resulting employees is anticipated to be minimal.

45. The proportion of residents at the Project anticipated to be new in-migrants to Maui is expected to be modest, given the pent-up demand for housing on Maui and that the MRWHP requires residency within the County as a qualification criterion. Accordingly, it is estimated that there will be an in-migrant population of between 5 percent and 10 percent. Based on this estimate, between approximately 90 persons (30 households at an average of three persons per household) and 180 persons (60 households at an average of three persons per household) would be new residents to Maui County.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

46. The Petition Area soil conditions are as follows:

Agricultural Lands of Importance to the State of Hawai'i ("ALISH").

Approximately 45 acres of the western (makai) end of the Petition Area has been

designated as "Prime" agricultural lands while the remainder of the Petition Area, or approximately 49 acres, is "Unclassified."

Land Study Bureau ("LSB"). The western (makai) portion of the Petition Area is designated as "B72i," which generally involves the same area as the "Prime" agricultural lands under the ALISH classification system. Machine tillability is moderate in this soil type, which is also considered to be stony, moderately fine textured, and well drained. The eastern (mauka) portion of the Petition Area is designated "E77," which constitutes an area similar to the "Unclassified" lands according to the ALISH classification system. These lands have the lowest productivity rating by the LSB. Machine tillability is very poor, thus grazing is the typical use for this type of soil. The soil is moderately fine and well drained with complex nonstony, stony, and rocky lands.

Soil Series and Classification. The soil types underlying the Petition Area include Pūlehu Silt Loam (PpA), `Alae Sandy Loam (AaB), Waiakoa Very Stony Silty Clay Loam (WgB), and Waiakoa Extremely Stony Silty Clay Loam (W1D2). Pūlehu Silt Loam has historically been used for sugarcane. `Alae Sandy Loam and Waiakoa Very Stony Silty Clay Loam are used for sugarcane and pasture. All soil types except the Waiakoa Extremely Stony Silty Clay Loam generally exhibit slow runoff and low erosion hazard. Waiakoa Extremely Stony Silty Clay Loam commonly exhibits medium runoff and severe erosion hazard. The western (makai) portion of the Petition Area

consists of Pūlehu Silt Loam, `Alae Sandy Loam, and Waiakoa Very Stony Silty Clay

Loam. The eastern (mauka) portion of the Petition Area consists of Waiakoa Very Stony Silty Clay Loam and Waiakoa Extremely Stony Silty Clay Loam.

47. Although approximately half of the Petition Area is designated as “Prime” agricultural lands, Waiakoa Gulch effectively isolates these lands from other “Prime” lands farther north. The geometry of the Petition Area, with its relatively narrow north/south configuration defined by Waiakoa Gulch to the north and the Hale Pi`ilani Subdivision to the south, poses logistical and compatibility challenges to long-term productive agricultural use. With the Project, Waiakoa Gulch would become the natural buffer between agricultural lands to the north and the Project and existing residential development to the south.

48. In anticipation of the Project and the potential removal of 38 acres from seed corn cultivation, 485 acres of replacement lands have been leased to Monsanto Company for a period of ten years to assure that relocated agricultural activities continue in the future. These lands are situated in the near vicinity and proximate to Monsanto Company’s headquarters near the intersection of Pi`ilani Highway and North Kihei Road.

49. Reclassification and development of the Petition Area will not have an adverse impact on agricultural resources in the region or in the State.

50. Residual pesticides on the Petition Area as a result of the historical agricultural use could pose potential risks to human health and the environment. As

("DOH, HEER"), recommended that soils be tested for residual pesticide contamination and that the presence of potential hazards be evaluated.

Fauna

51. Robert Hobdy, Environmental Consultant, conducted botanical and faunal surveys of the Petition Area in August 2005.

52. Avifauna and mammals common to the Petition Area and surrounding areas are typical of species found near other developed areas in Kīhei. Feral mammals found within the Petition Area included dogs, cats, and mongoose. There was evidence of axis deer on the upper part of the Petition Area; however, no deer were actually seen. Non-native birds were observed and very active in this area due to the sizable insect population, the abundance of plant seeds, and the dry conditions. There were no known threatened or endangered mammal, bird, or insect species identified throughout the course of the survey. However, due to the threatened and endangered seabirds whose flight corridor includes the Petition Area, Petitioner will implement Best Management Practices ("BMPs") as recommended by the U. S. Fish and Wildlife Service ("USFWS").

53. Reclassification and development of the Petition Area with implementation of BMPs will not have an adverse impact on native fauna on the Petition Area.

Flora

54. At the time of the surveys, the lower half of the Petition Area was recently plowed and consisted of bare soil except along the field margins and roads. The middle portion of the Petition Area had a diverse array of vegetable crops and the upper portion of the Petition Area was predominantly populated with buffelgrass, along with scattered kiawe trees and koa haole shrubs.

55. Buffelgrass was the only species listed as abundant in the Petition Area and best defined the character of the upper portion of the Petition Area. Three native plants, `ilima, `uhaloa, and koali awahia, were found within the upper (mauka) 40 or so acres of the Petition Area, but all are common indigenous plants that are widespread on Maui. The vegetation throughout the Petition Area was dominated by non-native species. No endangered or threatened plant species were identified in the Petition Area.

56. Reclassification and development of the Petition Area will not have an adverse impact on botanical resources on the Petition Area.

Archaeological and Historical Resources

57. Cultural Surveys Hawai'i, Inc., under the direction of Hallett H. Hammatt, completed an archaeological inventory survey ("AIS") report for the Petition Area and adjacent portions of Waiakoa Gulch in February 2006.

58. During the field inspections, two historic sites related to the former use of the Petition Area for sugarcane cultivation were identified. These two sites were then further examined according to the accepted State and Federal significance

evaluations. No burial features or human remains were identified during pedestrian surveys or subsurface testing at the Petition Area.

59. The first historic site noted, identified as SIHP 50-50-09-5744 and located on the northern boundary of the Petition Area, contained remnants of a possible former railway crossing that had been modified for agricultural water control. The structure consisted of two features, an irrigation flume and a concrete bridge structure. Based on the construction method and materials, in addition to documentary research, the structure is estimated to have been built between 1900-1920 by either Kīhei Plantation or Hawaiian Commercial & Sugar Company.

60. The second historic site noted, identified as SIHP 50-50-09-5745 and located in the easternmost portion of the Petition Area, contained a crude, hand-dug well. The probable water source for this well ran through an underground shaft that is oriented in a northwest to southeast direction. The final depth of the well is unknown due to fallen debris and rocks. Given the rather crude construction of the well, it is possible that this well was associated with either early water prospecting or what remains of one of the original wells dug for Kīhei Plantation.

61. Both of the historic sites identified during the archaeological inventory survey are considered significant due to their potential to yield information important for understanding the history of the region. Information for these sites has been recorded as part of the inventory survey investigation through location

documentation, written descriptions, photographs, plan view maps to scale, and

oblique view renderings. Based on these findings, the report recommendation is, and the Commission finds, that no historic properties will be affected by the reclassification and development of the Petition Area. The AIS report was submitted to the State Department of Land and Natural Resources, State Historic Preservation Division (“DLNR, SHPD”), for review. The DLNR, SHPD, concurred with the report’s findings and recommendations and accepted the report in a letter dated June 7, 2006.

Cultural Resources

62. Cultural Surveys Hawai`i, Inc., under the direction of Hallett H. Hammatt, completed a cultural impact assessment for the Petition Area and adjacent portions of Waiakoa Gulch in June 2006.

63. The report was based on a variety of sources, including agency consultation, archival research, and consultation with lineal descendants of long-time area residents. Some of the agencies consulted include the Office of Hawaiian Affairs, the Maui/Lāna`i Island Burial Council, the DP’s Cultural Resource Planner, and the Hui Malama I Na Kupuna O Hawai`i Nei.

64. The Petition Area is situated along the southern edge of Waiakoa Gulch, in what was considered the transitional area between the mauka (inland) and makai (coastal) settlement areas. Based on the settlement pattern in adjacent ahupua`a and the knowledge shared by those interviewed and consulted during the course of the cultural assessment, it appears that the Petition Area may have sustained a small,

seasonal population during traditional Hawaiian times.

65. The waters of Waiakoa Gulch, although only seasonably available, may have supported limited freshwater aquatic resources, as well as limited agriculture during the rainy season. As a whole, however, the primary resources would have come from the abundant marine resources of the coastal region, in addition to agricultural crops from the mauka region of the ahupua`a. Decades of continuous historic and modern agriculture and ranch activities have heavily modified stream flow and consequently left no evidence of traditional cultural practices within the Petition Area.

66. As part of the cultural assessment, two interviews were conducted to gain an understanding of likely cultural practices which occurred in the vicinity. The interviewees were not aware of cultural practices in the present day, outside of the use of coastal fishing grounds, nor of the existence of heiau (temples) or ahu (shrines) in the area. While canoe club-related activities in the last few decades have occurred to the west of the Petition Area along the shoreline, no significant cultural practices were identified in the direction of the Petition Area from the shoreline area. Concern was raised over the periodic flooding of Waiakoa Gulch and potential runoff impacting coastal and nearshore fishing grounds. To address this concern of runoff impacts to coastal areas, Petitioner will implement erosion and soil control measures.

67. Based on the information gathered during the cultural assessment, residential expansion into the lands comprising the Petition Area will have minimal impact upon Native Hawaiian cultural resources within the immediate vicinity.

Groundwater Resources

68. The Petition Area is situated over the Pā`ia Aquifer (State Aquifer No. 60302), which has an estimated sustainable yield of 8 million gallons per day (“mgd”). The Pā`ia Aquifer extends from Pā`ia to north Kīhei, within Central Maui, just east of the Kahului Aquifer. The Petition Area is located in the southern portion of the aquifer, in an area of underlying brackish water (chlorides in excess of 250 parts per million). Wells in this portion of the aquifer are generally used for irrigation purposes. Based on available well information from the DLNR, Commission on Water Resource Management, there are approximately 30 registered wells (excluding wells not in use or for observation) within the Pā`ia Aquifer. The majority of the wells are used for irrigation purposes, including those in the vicinity of the Petition Area. The underlying brackish water extends well beyond the Petition Area (mauka/east). Fresh drinking water begins to occur in the basalt lava flows at approximately elevation 1,200 feet above mean sea level (“amsl”), far beyond the Petition Area’s maximum elevation of approximately 230 feet amsl. The only listed domestic wells in the Pā`ia Aquifer are on the northern end of the aquifer, in the vicinity of Spreckelsville and Māliko Gulch. Due to the Project’s relative proximity to the ocean, it is not situated upgradient of any known drinking water wells. Based on these factors, the Project is not anticipated to have significant adverse impact upon drinking water resources.

69. The Project will connect to the County wastewater system and

household refuse will be collected by County personnel on a regular basis as part of the

residential refuse collection service. Impacts to groundwater resources attributable to hazardous materials usage are not anticipated since uses typically associated with such materials (e.g., industrial use) are not planned at the Project.

70. The reclassification and development of the Petition Area is not anticipated to have a significant adverse impact upon groundwater resources.

Recreational Resources

71. Petitioner has been in coordination with the County Department of Parks and Recreation to ensure satisfactory compliance with parks and playgrounds assessment requirements. It is estimated that the park assessment would amount to just under seven acres for a 600-unit residential subdivision in South Maui.

72. The Project will include landscaped open space areas and pocket parks linked by a path and trail system. The path and trail system will promote connectivity within the Project, as well as with adjacent neighborhoods. The adjacent Waiakoa Gulch will provide a natural Project buffer and opportunities for passive recreation. These features will serve to improve the visual landscape, promote connectivity within the Project, as well as to offsite locations, and create recreational opportunities for Project residents.

Scenic Resources

73. The Petition Area is located mauka of Pi'ilani Highway at the northern portion of the Kīhei urban area. The slopes of Haleakalā are visible from the

Petition Area, with the West Maui Mountains visible to the northwest. The Petition

Area is not located within a scenic view corridor, nor is it a part of a valuable open space resource area.

74. The Project will be developed as an architecturally integrated master-planned area with low-rise residential structures. Landscaping will be installed as part of the development improvements to ensure visual buffering and softening of the built landscape. Adverse impacts to scenic or open space resources resulting from the Project are not anticipated. While the Petition Area abuts the existing Hale Pi'ilani Subdivision, the Petition Area is situated at a lower grade than the existing subdivision (averaging approximately ten feet lower in grade). This, in combination with a landscape buffer within the Petition Area, will provide a vertical as well as horizontal separation to mitigate visual impacts of the Project. The Project will also incorporate park and open space areas that will provide view corridors. The Petition Area is not visible from offsite shoreline locations in Kīhei.

ENVIRONMENTAL QUALITY

Noise

75. Development of the Project will entail typical construction activities including excavation, grading, and the use of construction equipment. Existing residences to the south may be impacted by construction noise due to their close proximity to the Petition Area. Noise from such construction activities would be short term and must comply with the DOH noise regulations. Should noise during the

construction phase of the Project exceed the maximum allowable levels, a noise permit

may be required. After the completion of construction, noise generated by stationary mechanical equipment (e.g., compressors and HVAC equipment) that are typically associated with commercial facilities must meet applicable noise standards.

76. The planning and design of the Project will take into account means to attenuate noise from such facilities through proper placement and design. Given the limited commercial use planned at the Project, the potential for such adverse impacts is anticipated to be minimal.

77. A landscaped buffer planned within the Petition Area between the existing residences in the Hale Pi'ilani Subdivision and the proposed new collector road should mitigate potential noise associated with the road and Project.

Air Quality

78. The major potential short-term air quality impact of the Project will occur from the emission of fugitive dust during construction. In addition to regular watering and sprinkling, the following measures will be implemented by Petitioner's contractor during construction activities to minimize the proliferation of fugitive dust: 1) using wind screens and/or limiting the area that is disturbed at any given time to contain fugitive dust emissions; 2) covering trucks hauling soil material to mitigate dust; 3) routine road cleaning and tire washing to reduce fugitive dust emissions from trucks/vehicles tracking dirt onto nearby paved roadways; and 4) installing landscaping early in the construction schedule to control dust.

79. During the construction phase, emissions from engine exhaust will occur from onsite construction equipment and other construction-related vehicles. Increased vehicular emissions due to traffic disruptions by construction equipment or vehicles entering/exiting the Petition Area can be mitigated by moving equipment during off-peak hours. Construction-related emissions would be limited to the construction period of the Project. After the Project is completed, carbon monoxide concentrations at the Petition Area are anticipated to remain within acceptable air quality standards.

Water Quality

80. The Project will connect to the County wastewater system and household refuse will be collected on a regular basis. In addition, no industrial uses are planned so hazardous wastes typically associated with such uses are not anticipated. Petitioner will implement BMPs during construction to minimize impacts on coastal ecosystems. The drainage system serving the Project, including the use of drainage basins, will be designed in accordance with applicable regulatory standards to mitigate potential adverse impacts to coastal waters.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

81. Austin Tsutsumi & Associates, under the direction of Keith Niiya, completed a traffic impact analysis report ("TIAR") for the Project in May 2007.

82. The TIAR examined traffic operations for three scenarios: 1) existing traffic conditions - how the study intersections were operating at the time of the traffic counts; 2) Base Year traffic conditions - how the study intersections would be expected to operate in the future with other known future developments near the Project but without the Project (mitigative measures to improve base year traffic operating conditions were identified); and 3) Future Year traffic conditions - how the study intersections would operate when traffic generated by the Project is added to the Base Year volumes (improvements to reduce or eliminate adverse impacts resulting from traffic generated by the Project are recommended).

83. The study intersections were identified as follows: 1) North Kīhei Road/South Kīhei Road/Pi`ilani Highway; 2) South Kīhei Road/Uwapo Road; 3) Pi`ilani Highway/Mokulele Highway; 4) Pi`ilani Highway/Uwapo Road/Kaiwahine Street; and 5) South Kīhei Road/Mokulele Highway. At the time the TIAR was prepared, three of the five study intersections were found to be near or at capacity. However, the recently completed Mokulele Highway widening project has since addressed these capacity issues. As part of the Mokulele Highway widening project, the following improvements were made: 1) Mokulele Highway was widened to four lanes; 2) the intersection of Mokulele Highway and Pi`ilani Highway was realigned to eliminate the need for any turns for through traffic traveling between Kahului and Kīhei/Wailea; 3) the North Kīhei Road/South Kīhei Road/Pi`ilani Highway intersection was improved with a traffic signal and additional turning lanes; and 4) the South Kīhei Road/Mokulele

Highway intersection was eliminated. Also, traffic signals along Pi`ilani Highway were coordinated to facilitate the flow of through traffic in the peak direction to reduce the “stop and go” effect that drivers experience on uncoordinated systems.

84. As a result of the assumed defacto growth rate of 2 percent and the assumed future developments, traffic along Pi`ilani Highway is projected to double by Base Year 2016. This is expected to result in over capacity conditions on Pi`ilani Highway, even without the Project. To address these conditions, the following mitigative measures are recommended: 1) provide an additional eastbound through lane at the North Kihei Road/South Kihei Road/Pi`ilani Highway intersection; 2) implement transportation demand management (“TDM”) measures on a regional or County-wide basis. TDM measures could include incentive programs for carpooling by employers and increasing bus ridership through improvements in the frequency and capacity of bus routes; and 3) construct the Kihei-Upcountry Bypass that will divert approximately 25 to 30 percent of the traffic off of Pi`ilani Highway fronting the Petition Area and pursue development of a north-south roadway parallel to Pi`ilani Highway.

85. Analysis of conditions for Year 2016 with the Project indicates that traffic will operate similarly to Base Year 2016 with the mitigative measures. In addition to the provision of the new right-turn in/right-turn out connection to Pi`ilani Highway, the following improvements are recommended at the Pi`ilani Highway/Uwapo Road/Kaiwahine Street intersection: 1) provide two southbound left turn lanes on Pi`ilani Highway; 2) provide an exclusive left-turn and through lane eastbound

Uwapo Street approach; and 3) provide two exclusive left-turn lanes, a through lane, and an exclusive westbound right-turn lane westbound Kaiwahine Street approach. In concert with these geometric modifications, the traffic signal system at this intersection should be modified to provide an 8-phase signal timing configuration.

86. Petitioner will update the TIAR to the satisfaction of the State Department of Transportation ("DOT").

87. Petitioner will work with the DOT to implement appropriate traffic improvements and mitigation measures.

88. Petitioner will provide accommodations to support public bus transportation services (bus stop) and a network of bicycle paths in the Project subject to County approval.

Water Service

89. R. M. Towill Corporation prepared a preliminary engineering report that addressed the water service requirements of the Project in May 2007.

90. The average daily water demand of the Project is estimated at 0.53 mgd, while the maximum daily demand is projected at 0.79 mgd. The peak hour demand is estimated at 1.58 mgd.

91. Based on preliminary consultation with the County Department of Water Supply ("DWS"), DWS requires Petitioner to develop a long-term drinking water source and storage facilities to serve the Project. These facilities would be connected to the existing DWS system and dedicated to the County of Maui.

Petitioner is exploring several potential source opportunities, including surface water treatment and new well sources in Central Maui. A primary focus has been the development of a surface water treatment plant utilizing water from the West Maui ditch system. Engineering design of the plant is well underway, as well as the preparation of other needed regulatory documents. Over the past three years, in excess of \$850,000 has been spent on the engineering design and preparation of regulatory documents needed for the plant to proceed. The plant is now about 80 percent designed and other environmental and engineering documents are also nearing completion. Petitioner is also pursuing other potential sources, including a new drinking water well in the Kahului Aquifer. Potential well sites have been identified and a test well was drilled. The results of the well's pump test indicate a sustainable capacity of approximately 0.648 mgd.

The timing of completion of the source development projects will, in large part, determine the particular water source for the Project. Petitioner acknowledges that both source alternatives will require further discussion, review, and approval by applicable governmental agencies and expects to continue discussions as the planning and design for the Project proceeds. Nonetheless, Petitioner is committed to develop source, storage, and transmission facilities to serve this Project.

92. To meet the water storage needs of the Project, an 800,000-gallon tank at a ground elevation of 345 feet is planned. Petitioner is in discussions with neighboring landowners concerning the location of such a tank, as well as potential

joint development opportunities. The Makai Heights Reservoir has an estimated remaining capacity of 339,000 gallons which could be used to service a portion of the Project. However, further consultation will be undertaken with the DWS during the design phase to determine whether any of this storage capacity would be available for the Project.

93. In order to interconnect with the DWS system, a pressure reducing valve would be required. Petitioner will continue to work closely with the DWS to ensure that the development of the water system is in accordance with County standards.

94. In order to increase the efficiency of water usage, Petitioner will provide rain sensors on all automated irrigation controllers in common landscaped areas and a regular maintenance program to check and reset the automated irrigation controls. Plumbing fixtures will be installed in accordance with Maui County Code Section 16.20A.680, which requires the utilization of low-flow fixtures and devices in an effort to conserve water. BMPs; the use of endemic, indigenous, and drought-tolerant plants and turf; and the utilization of R-1 recycled water where feasible will be incorporated into the Project.

Solid Waste Disposal

95. The single-family residential units located in the Project will be served by the County's solid waste disposal facilities. An estimate of the amount of

solid waste attributable to the Project at full buildout is 5.67 tons per day, which is based on a factor of approximately 6.3 lbs/person/day for 1,800 persons.

96. The commercial area, as well as the multi-family areas, will be served by private waste collection companies.

97. The Project is not anticipated to affect the service capabilities of residential or commercial waste collection operations. It is projected that the Central Maui Landfill would have adequate capacity to accommodate commercial and residential waste through 2020, with a surplus of approximately one million cubic yards of landfill space.

Wastewater Disposal

98. R. M. Towill prepared a preliminary engineering report that addressed the wastewater disposal requirements of the Project in May 2007.

99. The Kihei region is currently serviced by a wastewater collection, treatment, and disposal system owned and operated by the County Department of Environmental Management, Wastewater Reclamation Division ("DEM, WWRD"). The system consists of a number of pump stations and forced mains which convey wastewater through the County's transmission lines. The Kihei Wastewater Reclamation Facility ("KWRF") processes the wastewater for the South Maui area.

100. The KWRF is located mauka (east) of Pi'ilani Highway and south of the Elleair Maui Golf Club. The KWRF provides treatment for the South Maui region to produce recycled water at the R-1 level by the DOH standards. R-1 recycled water is

the highest quality of recycled water. The cumulative allocated capacity of the KWRF is approximately 6.6 mgd and the current dry weather flow into the plant is approximately 4.7 mgd. The KWRF is currently operating at approximately 71 percent of its capacity.

101. Wastewater from the existing Hale Pi`ilani Subdivision adjacent to the Project is transported via a 12-inch polyvinyl chloride gravity sewerline across Pi`ilani Highway and along Uwapo Road to Pump Station No. 2, located on South Kihei Road. The 12-inch line currently only carries flows generated by the Hale Pi`ilani Subdivision. Based on estimated flows from the subdivision, there is approximately 1.86 mgd of remaining available capacity in the existing 12-inch line.

102. Pump Station Nos. 2 to 5 convey flows from North Kihei to Pump Station No. 6, which is adjacent to the Kihei Fire Station and Kalama Park on South Kihei Road. Of these pump stations, only Pump Station No. 2 at 51.3 percent operates at above 50 percent of capacity. The combined flows from these pump stations are transported to the KWRF.

103. The Project is estimated to generate a baseflow of 0.191 mgd, an average dry weather flow of 0.203 mgd, a maximum dry weather flow of 0.818 mgd, and a peak wet weather flow of 0.935 mgd.

104. The estimated 1.86 mgd of available capacity in the existing 12-inch gravity sewer line is sufficient to accommodate the peak wet weather flow of 0.935 mgd from the Project without a need for an upgrade. However, since Pump Station No. 2 is

at just over 50 percent of capacity, the DEM, WWRD, will initiate a capacity analysis for expansion of that pump station. Petitioner anticipates further discussions with the DEM, WWRD, in determining its appropriate participation in such improvements.

Drainage

105. R. M. Towill prepared a preliminary drainage and erosion control report that addressed the drainage requirements of the Project in May 2007.

106. The estimated peak rate and volume runoff from the existing undeveloped Petition Area are approximately 93 cubic feet per second (“cfs”) and 62 acre-feet, respectively. In comparison, the estimated peak rate and volume of runoff from the developed Petition Area are approximately 189 cfs and 67 acre-feet, respectively, resulting in a net increase in runoff volume of 5 acre-feet.

107. The proposed drainage improvements are intended to reduce the post-development peak runoff through the creation of several detention basins. These detention basins will accommodate the increased, post-development runoff volume, thereby limiting the peak rate of runoff.

108. During construction, recommended BMPs will be implemented for erosion and sedimentation control as listed in the Final EIS.

Schools

109. Based on the proposed 600 residential units, the Project is estimated to generate approximately 134 elementary school students, 71 middle school students, and 58 high school students when the Project has reached maturity and enrollment

stabilizes. Kīhei Elementary School has sufficient capacity to accommodate the Project's estimated enrollment. Enrollment at both Kamali`i Elementary and Lokelani Intermediate Schools are also below capacity. However, Maui High School is over its facility capacity, and the State Department of Education ("DOE") is undertaking site selection and planning studies for a new high school in Kīhei to satisfy future capacity needs.

Police and Fire Protection

110. The Maui Police Department's Kīhei Patrol, which covers the Kīhei-Mākena region, operates from a substation located at the Kīhei Town Center, about 3.5 miles south of the Petition Area.

111. Fire prevention, protection, and suppression services are provided by the County's Department of Fire and Public Safety. The Kīhei Fire Station, which services the Kīhei-Mākena region, is situated on South Kīhei Road near Kalama Park, approximately three miles south of the Petition Area. The Wailea Fire Station is located about four miles to the south of the Petition Area. The Wailea Station services the area from Kama`ole Beach Park II to Mākena and provides back-up support for the Kīhei Station when required.

112. The Project will create a need for additional police and fire protection services. At this time, neither the Police Department nor the Department of Fire and Public Safety have voiced a need for substation sites within the Petition Area.

Petitioner will continue to coordinate with these agencies as the Project progresses in the event their facility requirements should change.

Civil Defense

113. The State Civil Defense is in the process of installing a solar-powered omni-directional sound properties siren with a minimum 121-decibel sound level rating in Hale Pi'ilani Park adjacent to the Petition Area. This siren will cover the entire subdivision.

Emergency/Medical Services

114. The only major medical facility on the island is Maui Memorial Medical Center, which is located in Wailuku about eight miles from the Petition Area. The 231-bed facility provides general, acute, and emergency care services. Clinics and offices are situated throughout the Kīhei and Wailea areas; however, these offer medical services on a lesser scale. Such clinics include Kīhei Clinic and Wailea Medical Services, Kīhei Pediatric Clinic, Kīhei Physicians, the Kīhei-Wailea Medical Center, Maui Medical Group, and Kaiser Permanente. The Project is not anticipated to affect the service capabilities of emergency medical or general care operations.

Electrical and Telephone Service

115. Electrical power, telephone, and cable television services to the region are provided by Maui Electric Company ("MECO"), Hawaiian Telcom, and Oceanic Time Warner Cable of Hawai'i ("Oceanic"), respectively. Electrical facilities and cable lines are located along Pi'ilani Highway.

116. MECO will require an electrical line extension, access, and easements in order to provide service to the Project.

117. Coordination with MECO, Hawaiian Telcom, and Oceanic will continue to ensure that systems planning and design can be programmed in concert with the Project's development schedule.

Energy Conservation

118. Energy conservation measures will be incorporated to the extent feasible and practicable as part of the Project design phase of development and further coordination with MECO will occur at that time.

119. Petitioner will implement the following demand side management measures to conserve natural resources and to promote energy efficiency: 1) site buildings to take advantage of natural features and maximize their beneficial effects by providing for solar access, daylighting, and natural cooling; 2) design south, east, and west shading devices to minimize solar heat gain; 3) consolidate utility and infrastructure in common corridors to minimize site degradation and cost, improve efficiency, and reduce impermeable surfaces; and 4) provide tenant sub-metering to encourage utility use accountability.

120. Leadership in Energy and Environmental Design ("LEED") is a national third-party certification system that recognizes leadership in green building. It is developed by consensus process by volunteer members of the U. S. Green Building Council ("USGBC") who contribute their expertise to its technical development.

121. The USGBC is a private non-profit organization that does the approval and certification of LEED projects.

122. LEED is a voluntary rating system of the USGBC. All LEED programs are continuously changing and the LEED for Homes program is always being evaluated and evolving. LEED certification standards existing today may not be the applicable standards in the future.

123. For residential developments, LEED costs to the builder, among other costs, are generally passed directly onto the homeowner. Although LEED certification may increase initial costs, the savings in reduced monthly electricity expenses, reduced energy consumption and oil dependence, reduced release of greenhouse gases, and reduced drinking water use over the life of the building may offset these costs.

124. There are other programs in addition to LEED that are designed to produce buildings with greater energy efficiency and water conservation and to reduce the amount of material that is sent to the landfill. These programs include Energy Star for Homes, Hawai'i Built Green, and Green Communities.

COMMITMENT OF STATE FUNDS AND RESOURCES

125. All requisite infrastructure systems for the Project will be provided. Petitioner will fund site work and construction of onsite and offsite infrastructure, including applicable roadways, drinking water source, drainage basins, and utilities.

The development of the Project will not necessitate an unreasonable investment in public infrastructure or support systems.

CONFORMANCE WITH URBAN DISTRICT STANDARDS

126. The proposed reclassification of the Petition Area is in general conformance to HAR section 15-15-18, standards for determining "U" Urban District boundaries as follows:

Criterion No. 1. The Petition Area is adjacent to the existing Hale Pi'ilani Subdivision and other residential subdivisions to the south and southwest, which are located on lands classified as "Urban." Infrastructure systems implemented in conjunction with the Project will serve all areas within the limits of the Petition Area. The Project will include city-like concentrations of people in a community which will include single-family homes and apartments. An internal road network, a commercial area, and park/open space will serve the needs of the community.

Criterion No. 2A. The Petition Area is proximately located to existing commercial and employment centers in Kihei. Numerous employment opportunities exist in the retail, resort, and service industries in the Kihei/Wailea area, while Wailuku and Kahului serve as the central business districts of the island. Additionally, Federal, State, and County government offices and courts are located in Wailuku.

Criterion No. 2B. Domestic water supply, wastewater service, and solid waste collection for the Project will be coordinated with the DWS and the County

close proximity to major roadways, such as Pi`ilani Highway, Mokulele Highway, and North Kīhei Road. Three DOE schools are located in the Kīhei area in addition to a charter high school. Health care facilities as well as police and fire protection services are available in Kīhei.

Criterion No. 2C. A significant increase in housing supply will be needed to accommodate the region's anticipated growth. The Project will provide resident housing opportunities in both the short and long term, which in turn is anticipated to result in a more balanced housing market. The Project involves the development of a master-planned community involving a range of different housing types, including both single-family and multi-family product varieties. Completion of the Project is expected to partially address the shortage of housing currently being experienced in Maui County.

Criterion No. 3. The Petition Area has an average slope of approximately 3 percent and is suitable for the planned uses. The majority of the Petition Area is situated within Zone C, areas of minimal flooding. The Petition Area is not situated within any tsunami inundation zone. Drainage improvements will be designed in consultation with applicable governmental agencies to mitigate potential runoff and adverse environmental impacts. No foreseeable adverse environmental effects are anticipated in conjunction with the Project.

Criterion No. 4. The Petition Area is contiguous with Urban District lands to the south. Additionally, the Kīhei-Mākena Community Plan designates adjacent

lands for multi-family, business/commercial, light industrial and public/quasi-public land uses.

Criterion No. 5. The Petition Area is designated Agriculture by the Kīhei-Mākena Community Plan. The Petition Area is in the vicinity of the residential land uses of the Hale Pi`ilani Subdivision. The Kīhei-Mākena Community Plan also designates lands adjacent to the Petition Area for business and commercial uses and for future residential development within Project District 2. The Petition Area is located within an area suitable for new urban growth as evidenced by the existing urban uses and land reserved for future residential development in the vicinity of the Petition Area.

Criterion No. 6, 7, and 8. The Petition Area is located adjacent to areas of existing urban development. Existing designated urban lands lie to the south and include the Hale Pi`ilani Subdivision and various condominiums and single-family residences to the south and west. The development of the Project will not necessitate an unreasonable investment in public infrastructure or support systems. All requisite infrastructure systems for the Project will be provided. The Petition Area has an average slope of approximately 3 percent and is suitable for the planned uses. Governmental regulations will be followed to ensure the protection of public health, safety, and welfare.

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

127. HRS chapter 226, also known as the Hawai`i State Plan, is a long-range comprehensive plan which serves as a guide for the future long-term development of the State by identifying goals, objectives, policies, and priorities, as well as implementation mechanisms. State objectives and policies relevant to the proposed Project are as follows:

Section 226-05, Objectives and policies for population. To achieve this objective, it shall be the State policy to: a) Promote increased opportunities for Hawai`i's people to pursue their socio-economic aspirations throughout the islands; and b) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

Section 226-13, Objectives and policies for physical environment-land, air, and water quality. To achieve this objective, it shall be the State policy to: a) Promote effective measures to achieve desired quality in Hawai`i's surface, ground, and coastal waters; b) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters; c) Encourage design and construction practices that enhance the physical qualities of Hawai`i's communities; and d) Encourage urban developments in close proximity to existing service and facilities.

Section 226-14, Objectives and policies for facility systems-in general. To achieve the general facility systems objective, it shall be the policy of the State to: a) Accommodate the needs of Hawai'i's people through coordination of facility systems and capital improvements in consonance with State and County plans; b) Encourage flexibility in the design and development of facility systems to promote prudent use of resources and accommodate changing public demands and priorities; and c) Ensure that required facility systems can be supported within resource capacities and at reasonable cost to the user.

Section 226-15, Objectives and policies for facility systems-solid and liquid wastes. To achieve the solid and liquid waste objectives, it shall be the policy of the State to: a) Encourage the adequate development of sewage facilities that complement planned growth; and b) Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic.

Section 226-16, Objectives and policies for facility systems-water. To achieve the facilities systems water objectives, it shall be the policy of the State to: a) Coordinate development of land use activities with existing and potential water supply; b) Support research and development alternative methods to meet future water requirements well in advance of anticipated needs; c) Reclaim and encourage the productive use of runoff water and wastewater discharges; d) Assist in improving the quality, efficiency, service, and storage capabilities of water systems for domestic and agricultural use; and e) Promote water conservation programs and practices in

government, private industry, and the general public to help ensure adequate water to meet long-term needs.

Section 226-17, Objectives and policies for facility systems-transportation.

To achieve the facilities systems transportation objective, it shall be the policy of the State to: a) Encourage a reasonable distribution of financial responsibilities for transportation among participating government and private parties; and b) Encourage transportation systems that serve to accommodate present and future development needs of communities.

Section 226-19, Objectives and policies for socio-cultural advancement –

housing. To achieve the housing objectives, it shall be the policy of the State to: a) Effectively accommodate the housing needs of Hawai`i's people; b) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households; and c) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

Section 226-104, Population growth and land resources priority

guidelines. Priority guidelines to effect desired statewide growth and distribution: a) 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; and b) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future

growth throughout the State. Priority guidelines for regional growth distribution and land resource utilization: a) 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; b) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district; and c) Utilize Hawai`i's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.

Section 226-106, Affordable housing. Priority guidelines for the provision of affordable housing: a) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households; and b) 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 is located in close proximity to existing public services and infrastructure. The Project will provide a range of housing types which will serve to meet the varied housing needs of the region at an attractive and central location in

North Kihei that poses logistical and compatibility challenges to long-term productive

agricultural use. Existing agricultural uses on the Petition Area will be relocated to a larger parcel of land in the region, ensuring that agricultural activities continue in the future. Additional housing choices will provide healthy competition and allow for a more balanced housing market. Petitioner is exploring potential water source opportunities and offsite storage facilities with neighboring landowners, as well as the availability of non-drinking water sources to reduce the demand on the drinking water supply. Petitioner will participate in transportation network improvements to alleviate the increased demands on area roadways. To this end, the Project is in conformance with the above-noted objectives and policies of the Hawai'i State Plan.

128. The State Functional Plans define actions for implementation of the Hawai'i State Plan through the identification of needs, problems and issues, and recommendations on policies and priority actions which address the identified areas of concern. The proposed reclassification request is consistent with the following State Functional Plans:

State Agricultural Functional Plan: The Project involves the reclassification of approximately 94.352 acres of land from the State Land Use Agricultural District to the State Land Use Urban District. While the Petition Area was formerly used for sugarcane cultivation, approximately half of it is now fallow and the remaining balance is used for seed corn cultivation. The proximity of the Petition Area to existing and planned urban land uses provides a reasonable nexus and an

appropriate foundation for the proposed reclassification request, particularly in the context of meeting affordable housing needs of the community.

State Housing Functional Plan: The growing public demand for affordable housing indicates a current shortage of single-family and multi-family housing units on Maui. The proposed 600 residential units within the Project will help address a critical community need.

State Recreational Functional Plan: Outdoor recreation is recognized by the Hawai'i State Plan as an important part of life for Hawai'i's residents. As the population rises and residential land uses increase, creating areas dedicated to outdoor recreation becomes increasingly vital. The State Functional Plan for Recreation urges the improvement and expansion of recreational facilities in urban areas and local communities. The Project will address recreational needs through the provision of park/open space lands and walking trails.

State Transportation Functional Plan: The Hawai'i State Plan addresses the vital role of transportation, particularly in light of population increases and community growth. The State Functional Plan for transportation calls for a statewide transportation system consistent with planned growth objectives throughout the State. The Project's roadway system will be developed in consultation with the DOT and the DPW to insure consistency with the objectives of the State Transportation Functional Plan. Internal subdivision roads will be constructed to applicable County of Maui design standards.

State Historic Preservation Functional Plan: The State Historic

Preservation Functional Plan deals with the preservation of historic properties, the collection and preservation of historic records, artifacts and oral histories, and the provision of public information and education on the ethnic and cultural heritages and history of Hawai`i. Cultural Surveys Hawai`i, Inc., completed the AIS report for the Petition Area and adjacent portions of Waiakoa Gulch in compliance with applicable historic preservation requirements. The AIS report has been reviewed and approved by the DLNR, SHPD. The Project is, therefore, consistent with the objectives outlined under the State Historic Preservation Functional Plan.

CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT PROGRAM

129. The Project is generally in conformance with the objectives and policies of the Coastal Zone Management Program under HRS chapter 205A pertaining to the provision of recreational resources, the preservation of natural and historic resources, the preservation of scenic and open space resources, the protection of coastal ecosystems, the provision of improvements important to the State's economy, the reduction of hazards to life and property, the improvement of the development process, the stimulation of public participation, the protection of public beaches, and the protection of marine resources.

CONFORMANCE WITH THE COUNTY GENERAL PLAN

130. The Maui County General Plan advances five major themes that focus on the overall goals of the plan. The Project responds to the following General Plan themes:

Theme Number 2: Prepare a Directed and Managed Growth Plan:

Amendments to the General Plan will preserve a desired quality of life where areas of urban settlement must be managed and directed within a framework that consistently and concurrently balances growth demands against human service needs and physical infrastructure supply.

Theme Number 5: Provide for Needed Resident Housing: Amendments to the General Plan will address the development of resident housing as a major social need in our community.

The proposed action is in keeping with the following General Plan objectives and policies:

Population:

Objective: 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.

Policy: Balance population growth by achieving concurrency between the resident employee work force, the job inventory created by new industries,

affordable resident/employee housing, constraints on the environment and its natural

resources, public and private infrastructure, and essential social services such as schools, hospitals, etc.

Land Use:

Objectives: 1) 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; and 2) To use the land within the County for the social and economic benefit of all the County's residents.

Policies: 1) Provide and maintain a range of land use districts sufficient to meet the social, physical, environmental, and economic needs of the community; 2) Encourage land use methods that will provide a continuous balanced inventory of housing types in all price ranges; and 3) Encourage programs to stabilize affordable land and housing prices.

Housing:

Objective: To provide a choice of attractive, sanitary and affordable homes for all our residents.

Policies: 1) Encourage the construction of housing in a variety of price ranges and geographic locations; and 2) Ensure that each community plan region contains its fair share of affordable housing.

Urban Design:

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

Policy: Encourage community design which establishes a cohesive identity.

Recreation and Open Space:

Objective: To provide high-quality recreational facilities to meet the present and future needs of our residents of all ages and physical ability.

Policy: Develop facilities that will meet the different recreational needs of the various communities.

The Project consists of approximately 600 residential units in an area that is an urban growth location, between an existing residential area and a natural feature (Waiakoa Gulch). Necessary infrastructure systems and services are within close proximity, or can be reasonably provided to serve the Project. Recreational needs of the Project are anticipated to be addressed through the provision of parks, open space, and walking trails. The Project is in conformance with the above-noted objectives and policies of the Maui County General Plan.

The County of Maui is currently in the process of updating the General Plan and Community Plans as mandated by Chapter 2.80B, General Plan and Community Plans. Part of the General Plan Update Process includes the development of a Maui Island Plan. The intent of the Maui Island Plan is to provide direction as to where growth should take place in the County of Maui. The Petition Area is currently

located within the County's Urban Growth Boundary (Kīhei Makai) as identified on the Draft Maui Island Plan prepared by the DP.

The Maui General Plan Update Process was initiated in 2006 with the appointment of members to the General Plan Advisory Committee ("GPAC"). GPAC has 180 days to complete its review of the draft plan, subject to extensions. After GPAC completes its review, the results are sent to the Planning Director and then to the Planning Commission with the Director's report. The Planning Commission then has 180 days to complete its review, subject to extensions. Once the Planning Commission completes its review, the draft plan is sent to the County Council and the Council has one year to review the draft plan. The entire process is estimated to take until the end of 2010.

The Petition Area's inclusion in the Urban Growth Boundaries of the Draft Maui Island Plan is based on the area's suitable topography, being outside of the Tsunami Inundation Zone, low agricultural suitability, proximity to job centers, and roadways connections.

CONFORMANCE TO THE KĪHEI-MĀKENA COMMUNITY PLAN

131. The Petition Area is designated as Agriculture by the Kīhei-Mākena Community Plan. A community plan amendment will be required to change the Petition Area's designation to Multi-Family, Single-Family, and Commercial to allow for the Project. The Project is consistent with the goals and objectives of the Kīhei-

Mākena Community Plan as follows:

Land Use:

Goal: A well-planned community with land use and development patterns designed to achieve the efficient and timely provision of infrastructural and community needs while preserving and enhancing the unique character of Mā`alaea, Kīhei, Wailea and Mākena as well as the region's natural environment, marine resources and traditional shoreline uses.

Objectives and Policies: 1) Identify priority growth areas to focus public and private efforts on the provision of infrastructure and amenities to serve existing residents and to accommodate new growth; 2) Encourage the establishment of single-family and multi-family land use designations which provide affordable housing opportunities for areas which are in close proximity to infrastructure systems and other urban services; and 3) Limit commercial services to neighborhood business uses or other low-key business activities with a residential scale on those properties which abut single-family residential uses.

Housing and Urban Design:

Goal: A variety of attractive, sanitary, safe and affordable homes for Kīhei's residents, especially for families earning less than the median income for families within the County. Also, a built environment which provides complementary and aesthetically pleasing physical and visual linkages with the natural environment.

Objectives and Policies: 1) Provide an adequate variety of housing choices and range of prices for the needs of Kīhei's residents, especially for families earning less

than the median income for families within the County, through the project district approach and other related programs. Choices can be increased through public/private sector cooperation and coordinated development of necessary support facilities and services; and 2) Require a mix of affordable and market-priced housing in all major residential projects, unless the project is to be developed exclusively as an affordable housing project.

Physical and Social Infrastructure:

Goal: Provision of facility systems, public services, and capital improvement projects in an efficient, reliable, cost effective, and environmentally sensitive manner which accommodates the needs of the Kīhei-Mākena community, and fully support present and planned land uses, especially in the case of project district implementation. Allow no development for which infrastructure may not be available concurrent with the development's impacts.

Objectives and Policies: 1) Undertake transportation system improvements concurrently with planned growth of the Kīhei-Mākena region. Require adequate inter-regional highway capacity, including the widening of Pi`ilani and Mokulele Highways to four (4) lanes, prior to the construction of major projects south of Kilohana Road or mauka of Pi`ilani Highway; 2) Provide for appropriate water source and transmission improvements concurrent with planned growth of the Kīhei-Mākena region; 3) Provide efficient, safe, and environmentally sound systems for the reuse, recycling, and disposal of liquid and solid wastes; 4) Minimize the increase of discharge

of stormwater runoff to coastal waters by preserving flood storage capacity in low-lying areas, and encouraging infiltration of runoff; 5) Encourage the provision of public utilities which will meet community needs in a timely manner; and 6) Provide high-quality recreational facilities to meet the present and future needs of residents of all ages and physical ability.

The Project consists of approximately 600 residential units in an area that is an urban growth location, between an existing residential area and a natural feature (Waiakoa Gulch). Necessary infrastructure systems and services are within close proximity, or can be reasonably provided to serve the Project. Recreational needs of the Project are anticipated to be addressed through the provision of parks, open space, and walking trails. The Project is in conformance with the aforementioned goals, objectives, and policies of the Kihei-Mākena Community Plan.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or 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 HRS chapter 205 and the Commission rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 94.352 acres of land in the State Land Use Agricultural District situated in Waiakoa, Island and County of Maui, State of Hawai`i, Tax Map Key: 3-8-04: portion of 2, portion of 22, and portion of 30 to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai`i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai`i 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. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai`i v. Hawai`i*

County Planning Commission, 79 Hawai`i 425, 903 P.2d 1246, *certiorari denied*, 517 U. S. 1163, 116 S.Ct. 1559, 134 L.Ed.2d 660 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of Native Hawaiians. *Ka Pa`akai O Ka `Aina v. Land Use Commission*, 94 Hawai`i 31, 7 P.3d 1068 (2000).

4. There is no evidence to suggest that any Native Hawaiian traditional and customary rights are currently being exercised within the Petition Area.

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

6. There are no floral or faunal species that are threatened, endangered, or of concern under State or Federal law in the Petition Area. However, there are threatened and endangered seabirds whose flight corridor includes the Petition Area.

7. Air quality of the Petition Area will be impacted in the short term by fugitive dust and exhaust emissions from stationary and mobile equipment during construction of the Project.

8. The long-term impacts to air quality that will result from the development of the Petition Area are minimal and no mitigation measures are necessary.

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

10. The Petition Area is not classified as Important Agricultural Land under Part III of HRS chapter 205.

11. Reclassification of the Petition Area will not have an adverse impact on agricultural resources in the region or in the State.

12. Article XI, section 7, of the Hawai`i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai`i's water resources for the benefit of its people.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 94.352 acres of land in the State Land Use Agricultural District situated in Waiakoa, Island and County of Maui, State of Hawai`i, Tax Map Key: 3-8-04: portion of 2, portion of 22, and portion of 30, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified

to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

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

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

1. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents of the State of Hawai'i in accordance with the applicable affordable housing requirements of the County of Maui. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County of Maui.

2. **Notification of Potential Nuisances.** Petitioner shall disclose to all prospective buyers of the Petition Area that potential odor, noise, and dust pollution may result from agricultural uses on adjacent lands or noise from general aviation overflights in the vicinity.

3. **Provisions of the Hawai'i Right to Farm Act.** Petitioner shall notify all prospective buyers of the Petition Area that the Hawai'i Right to Farm Act,

be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.

4. **Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the DOH and the County of Maui to conform to the program goals and objectives of HRS chapter 342G, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the DOH. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities, including recycling bins in public places, such as schools and parks, if any, within the proposed development.

5. **Water Resources Allocation.** Petitioner shall provide a long-term drinking water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area to the satisfaction of the DWS and other applicable State and County agencies.

6. **Water Conservation Measures.** Petitioner shall implement water conservation measures and BMPs, such as use of endemic, indigenous and drought-tolerant plants and turf, and incorporate such measures into the landscape planting. Petitioner shall also coordinate with Maui County in the utilization of R-1 recycled water and other non-drinking water sources, where feasible.

7. **Wastewater.** Petitioner shall develop a wastewater collection and transmission system and other sewer improvements in the Petition Area, as required by

the DOH and the DEM. Petitioner shall also pay a fair-share contribution to fund improvements to wastewater treatment facilities to serve the Petition Area as determined by the County of Maui.

8. **Soil Analysis.** Petitioner, in consultation with the DOH, HEER, shall undertake a soil analysis study of the Petition Area to determine the impact to the Project from fertilizer and pesticide residue that may be present on the Petition Area and undertake reasonable measures to abate and/or remove hazardous materials identified.

9. **Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area if required by and as determined by the State of Hawai`i, Department of Defense, Office of Civil Defense, and the County Of Maui, Civil Defense Agency.

10. **Air Quality.** Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions. In addition, Petitioner shall participate in an air quality monitoring program if required by the DOH.

11. **Drainage.** Petitioner shall fund the design and construction of drainage system improvements based on applicable standards, to prevent runoff resulting from the development of the Petition Area from adversely affecting State and County highway and roadway facilities to the satisfaction of applicable State and County agencies.

12. **Highways.** Petitioner shall implement traffic improvements and mitigation measures as recommended or required by the TIAR and as approved by the DOT. Petitioner shall not proceed with the development of the Project until the DOT reviews and agrees with the proposed traffic improvements and mitigation measures, including any modifications to the existing bikeway along Pi'ilani Highway. Petitioner shall contribute its fair share of the cost of State highway planned improvements and/or traffic mitigation measures that will alleviate the impacts generated by the proposed development and uses, as agreed to by Petitioner and the DOT, in accordance with the findings of the TIAR and any required updates. Within the Petition Area, bike paths and accommodations to support public bus transportation services (bus stop) shall be provided as determined by the applicable governmental agencies.

13. **TDM Plan.** Petitioner shall submit a TDM plan to the County of Maui together with any future land use applications, including but not limited to any application for a Community Plan Amendment and/or Change in Zoning.

14. **Public School Facilities.** Petitioner shall contribute to the development, funding and/or construction of school facilities, on a fair-share basis on the market units only, as determined by, and to the satisfaction of, the DOE. Terms of any contribution shall be agreed upon in writing by Petitioner and the education agency.

15. **Previously Unidentified Burials and Archaeological/Historic**

Sites. In the event that historic resources, including human skeletal remains, lava tubes,
Docket No. A07-772 A&B Properties, Inc. Page 59
Findings Of Fact, Conclusions Of Law, And Decision And Order

and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the DLNR, SHPD, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, Petitioner shall comply with all applicable statutes and rules of the DLNR, SHPD. In addition, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigative measures have been implemented to its satisfaction.

16. **Established Access Rights Protected.** Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

17. **Recreational Facilities.** Petitioner shall comply with the Park Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.

18. **BMPs.** Petitioner shall implement BMPs applicable to each proposed land use in order to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and groundwater pollution, and

formulate dust control measures to be implemented during and after the development process in accordance with the DOH guidelines.

19. **Seabirds.** Petitioner shall implement BMPs as recommended by the USFWS during construction of the Project to mitigate potential impacts to threatened and endangered seabirds whose flight corridor includes the Petition Area.

20. **Energy Conservation Measures.** Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai`i, the USGBC, the Hawai`i Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of the Project and the structures within the Petition Area. Petitioner shall also provide information to home purchasers regarding energy conservation measures that may be undertaken by the individual homeowner.

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

22. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access

point, residential internal roadways, and water supply, sewage and electrical infrastructure within ten years from the date of the decision and order.

23. **Order to Show Cause.** If Petitioner fails to complete proposed backbone infrastructure within ten years from the date of the decision and order, the Commission may issue and serve upon Petitioner an Order to Show Cause and the Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification or be changed to a more appropriate classification.

24. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.

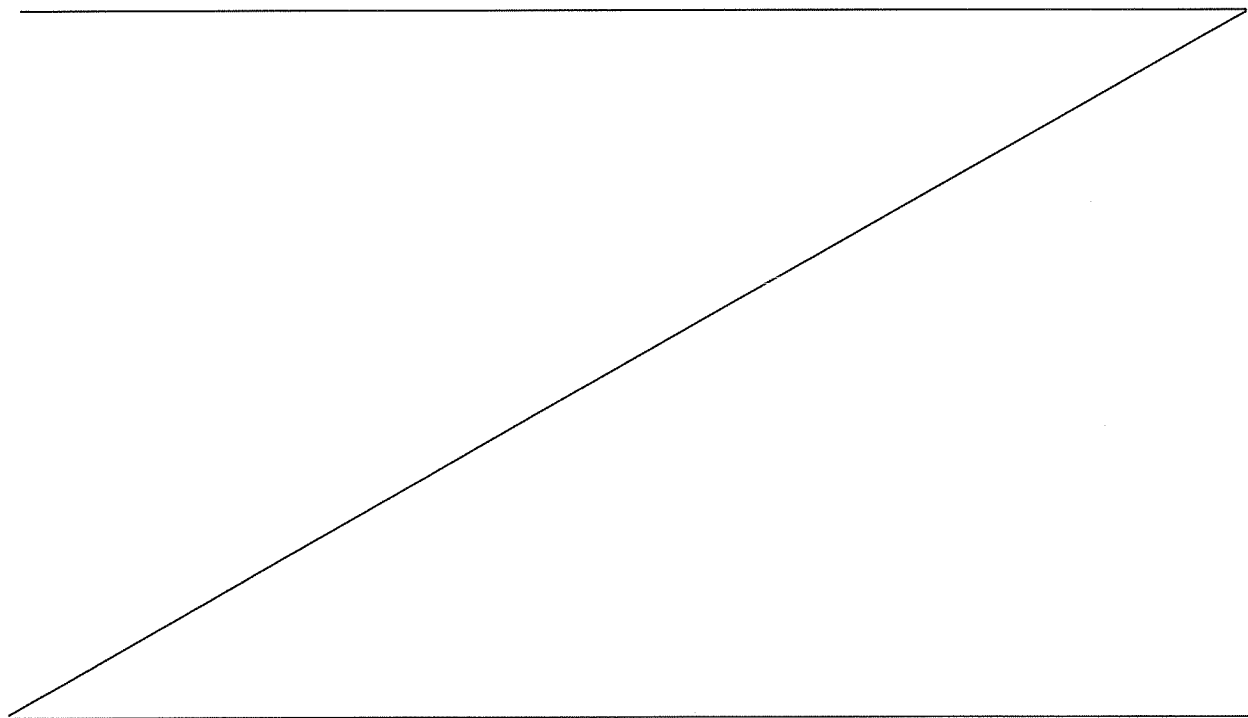
25. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

26. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon

timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

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

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

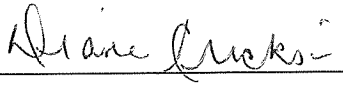


ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 6th day of February, 2009. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

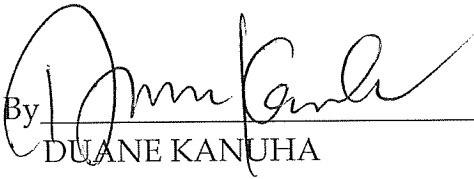
Done at Honolulu, Hawai'i, this 6th day of February, 2009, per motion on January 22, 2009.

APPROVED AS TO FORM



Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI'I

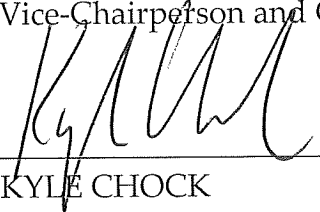
By 

DUANE KANUHA
Chairperson and Commissioner

By _____
VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner

By 

RANSOM PILTZ
Vice-Chairperson and Commissioner

By 

KYLE CHOCK
Commissioner

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 6th day of February _____, 2009. This ORDER may be executed in counterparts. 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 6th day of February _____, 2009, per motion on January 22, 2009.

APPROVED AS TO FORM

Deane Crooks
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII

By Duane Kanuha
DUANE KANUHA
Chairperson and Commissioner

By Vladimir Paul Devens
VLADIMIR PAUL DEVENS
Vice-Chairperson and Commissioner

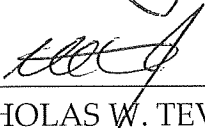
By Ransom Piltz
RANSOM PILTZ
Vice-Chairperson and Commissioner

By Kyle Chock
KYLE CHOCK
Commissioner

By _____
THOMAS CONTRADES
Commissioner

By _____
LISA JUDGE
Commissioner


By _____
NORMAND LEZY
Commissioner

By _____

NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:
FEB 20 2009

By _____
VOTED "NO"
REUBEN S.F. WONG
Commissioner

Certified by:



ORLANDO DAVIDSON
Executive Officer

By _____
THOMAS CONTRADES
Commissioner

By Lisa Judge
LISA JUDGE
Commissioner

By _____
NORMAND LEZY
Commissioner

By Nicholas W. Teves, Jr.
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

Certified by:

ORLANDO DAVIDSON
Executive Officer

By VOTED "NO"
REUBEN S.F. WONG
Commissioner

By Thomas Contrades
THOMAS CONTRADES
Commissioner

By _____
LISA JUDGE
Commissioner

By _____
NORMAND LEZY
Commissioner

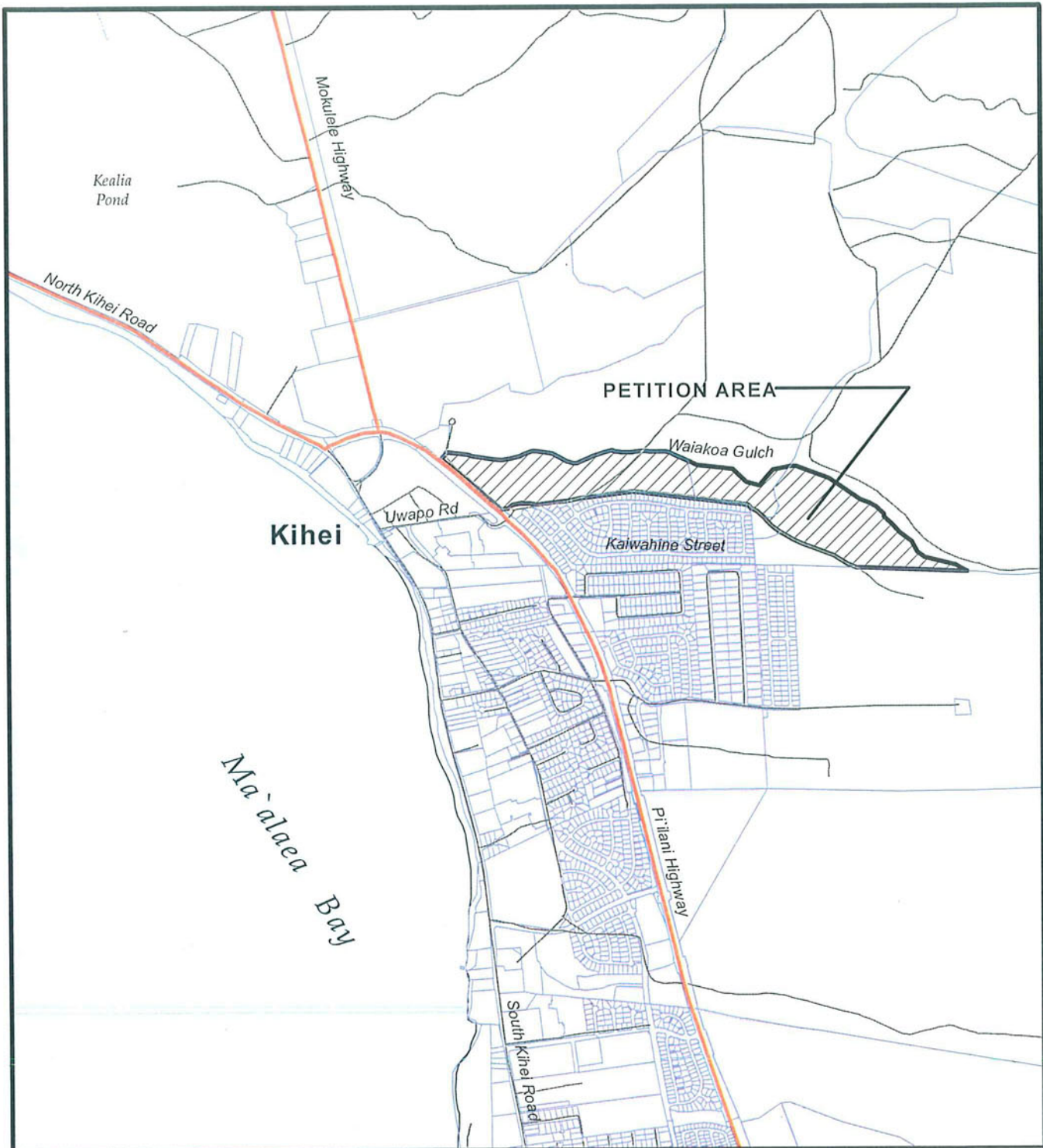
By Nicholas W. Teves, Jr.
NICHOLAS W. TEVES, JR.
Commissioner

Filed and effective on:

By VOTED "NO"
REUBEN S.F. WONG
Commissioner

Certified by:

ORLANDO DAVIDSON
Executive Officer



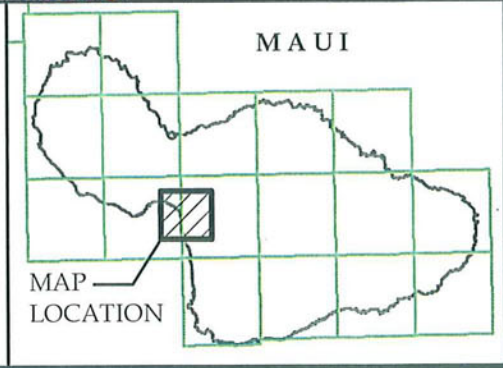
A07-772 A&B PROPERTIES, INC.

LOCATION MAP

Tax Map Key: 3-8-04: por. 2, por. 22, & por. 30,
Waiakoa, Kihei, Maui, Hawai'i

Scale: 1" = 2,000 ft.

EXHIBIT "A"



MAP LOCATION



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of) DOCKET NO. A07-772
)
A&B PROPERTIES, INC.) CERTIFICATE OF SERVICE
)
To Amend The Agricultural Land Use)
District Boundary Into The Urban Land)
Use District For Approximately 94.352)
Acres Of Land Situated In Waiakoa,)
Island And County Of Maui, State Of)
Hawai`i, Tax Map Key: 3-8-04: Portion)
Of 2, Portion Of 22, And Portion Of 30)
_____)

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:

HAND DELIVERED: ABBEY MAYER, Director
State Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

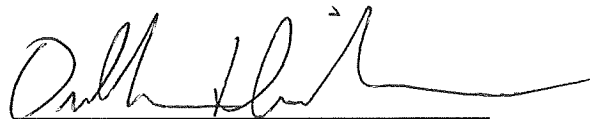
REGULAR MAIL: BRYAN C. YEE, Esq.
Deputy Attorney General
425 Queen Street
Honolulu, Hawaii 96813
ATTORNEY FOR STATE OFFICE OF PLANNING

REGULAR
MAIL: JEFFREY S. 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
ATTORNEY FOR COUNTY OF MAUI
DEPARTMENT OF PLANNING

CERTIFIED
MAIL: BENJAMIN M. MATSUBARA, Esq.
Matsubara - Kotake
888 Mililani Street, Eighth Floor
Honolulu, Hawaii 96813
ATTORNEY FOR PETITIONER

Dated: Honolulu, Hawaii, FEB 20 2009 .



ORLANDO DAVIDSON
Executive Officer