



LAND USE COMMISSION  
STATE OF HAWAII  
2012 JUN 21 A 7:58

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A10-789
	)	
A&B PROPERTIES, INC.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
To Amend The Agricultural Land	)	DECISION AND ORDER;
Use District Boundary Into The	)	CERTIFICATE OF SERVICE
Urban District For Approximately	)	
545.229 Acres At Wailuku And	)	
Waikapū, Island Of Maui, State Of	)	
Hawai'i, Tax Map Keys: 3-8-05: Portion	)	
Of 23 And 37 And 3-8-07: 71, Portion Of	)	
101, And 104	)	
_____	)	

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

AND

CERTIFICATE OF SERVICE

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.

6/21/12  
Date

BY

A handwritten signature in black ink, appearing to be "C. [unclear]", written over a horizontal line.

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 August 25, 2010 ("Petition"), and a First Amendment To Petition For Land Use District Boundary Amendment on November 7, 2011 ("First Amendment") (as appropriate, the Petition and First Amendment are collectively referred to as the 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 545.229 acres of land, situated in Wailuku

and Waikapū, Island of Maui, State of Hawaiʻi, Tax Map Keys ("TMKs"): 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101, and 104 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District for the development of the Waiʻale Community Project ("Project").

The State of Hawaiʻi Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

### **FINDINGS OF FACT**

#### **PROCEDURAL MATTERS**

1. On August 25, 2010, Petitioner filed the Petition, Verification, Exhibits "1" through "8" of the Petition, including an Environmental Impact Statement Preparation Notice identified as Exhibit "7," Affidavit Of Service Of Petition For Land Use District Boundary Amendment, Affidavit Of Notification Of Petition Filing, and Certificate Of Service.

2. On September 1, 2010, Petitioner filed an Affidavit Of Sending Of First Amended Notification Of Petition Filing, Exhibits "1" and "2," and Certificate Of Service.

3. On September 22, 2010, the County of Maui Department of Planning ("DP") filed a Statement Of No Objections To Determination That The Land

Use Commission Is The Accepting Authority For The Environmental Impact Statement And Statement Regarding Whether The Project Will Have A Significant Effect and Certificate Of Service.

4. On September 23, 2010, and by a written Order dated October 11, 2010, the Commission (i) agreed to be the accepting authority pursuant to HRS chapter 343; and (ii) determined that the proposed action may have a significant effect upon the environment to warrant the preparation of an environmental impact statement.

5. On September 23, 2010, Clare H. Apana filed a Notice Of Intent To Intervene pursuant to HAR section 15-15-52(b).<sup>1</sup>

6. On October 7, 2010, Petitioner filed a First Amended Affidavit Of Service Of Petition For Land Use District Boundary Amendment and Certificate Of Service. Petitioner also filed a Certificate Of Service to reflect the additional service of the Petition on Alexander & Baldwin; Maui Electric Company, Limited ("MECO"); Hawaiian Telcom, Inc. ("Hawaiian Telcom"); and Clare H. Apana.

7. On October 7, 2011, Petitioner filed with the Commission a final environmental impact statement ("FEIS") for the Project.

8. On November 4, 2011, and by a written Order dated November 15, 2011, the Commission accepted the FEIS.

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<sup>1</sup> Clare H. Apana did not file a Petition For Intervention pursuant to HAR section 15-15-52(e) to become a party in the proceedings.

9. On November 7, 2011, Petitioner filed a First Amendment, Verification, Exhibits "9" through "11," Affidavit Of Service Of First Amendment To Petition For Land Use District Boundary Amendment, Affidavit Of Sending First Amended Notification Of Petition Filing, and Certificate Of Service.

10. On November 7, 2011, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of November 7, 2011.

11. On November 8, 2011, the Notice Of Hearing was published in the Honolulu Star-Advertiser, Hawai'i Tribune-Herald, West Maui Today, The Maui News and Kaua'i Publishing Company dba The Garden Island in compliance with HAR section 15-15-51.

12. On November 8, 2011, Petitioner filed a Certificate Of Service (Re: Notice Of Hearing)

13. On November 22, 2011, Petitioner filed an Affidavit Of Service Regarding Notice Of Hearing, Exhibits "A" through "D," and Certificate Of Service.

14. On December 7, 2011 the State of Hawai'i Office of Planning ("OP") filed its Statement Of Position.

15. On December 16, 2011, the DP filed its Position Statement.

16. On January 6, 2012, the Commission conducted its site visit of the Petition Area.

17. On January 11, 2012, a prehearing conference was held by the Commission's Executive Officer with the parties via teleconference.

18. On January 12, 2012, the Commission issued its Prehearing Order.

19. On January 20, 2012, Petitioner filed its List Of Witnesses, List Of Exhibits, and Exhibits "19" through "34." Exhibits "12" through "18," consisting of the various affidavits, were previously filed with the Commission and served on all parties.

20. On January 23, 2012, OP filed its List Of Witnesses, List Of Exhibits, Exhibits "1" and "3" through "11," and Certificate Of Service.

21. On January 26, 2012, the DP filed its List Of Witnesses, List Of Exhibits, and Exhibits "2" through "6."

22. On February 1, 2012, Petitioner filed its First Amended List Of Witnesses, First Amended List Of Exhibits, Exhibit "35," and Certificate Of Service.

23. On February 1, 2012, OP filed its Exhibit "2" and Certificate Of Service.

24. On February 6, 2012, the DP filed its List Of Witnesses – Amendment No. 1, Exhibits "1" and "7," and Certificate Of Service.

25. On March 29, 2012, the DP filed its List Of Witnesses – Amendment No. 2, Exhibit "8," and Certificate Of Service.

26. On April 2, 2012, OP filed its First Amended List Of Exhibits, Exhibits "12" through "16," and Certificate Of Service.

27. The Commission held evidentiary hearings in this docket on February 16, 2012, and February 17, 2012, in Makena, Maui, Hawai'i, and April 4, 2012, in Kahului, Maui, Hawai'i.

28. On February 16, 2012, the Commission received oral and/or written public testimony from the following individuals: Eric Miyajima, Scott Sakakihara, Jacob Verkerke, Lyn McNeff, Hōkūao Pellegrino, Kay Fukumoto, Laks Abraham, Eric Yoshizawa, Michael Lee, Clare H. Apana, Richard "Dick" Mayer, Robin Knox, Lucienne de Naie, Roderick Fong, Daniel K. Kanahale, Kaniloa Kamaunu, Johanna Kamaunu, Janet Six, and Wilmont Kamaunu Kahaiali'i.<sup>2</sup>

29. On April 4, 2012, the Commission received oral and/or written public testimony from the following individuals: Michael Lee, Nick Harders, Hanalei Fergerstrom, Hannah Bernard, Lucienne de Naie, Richard "Dick" Mayer, His Highness Kukini, Johanna Kamaunu, Kaniloa Kamaunu, Clare H. Apana, and Pono Kealoha.<sup>3</sup>

30. On April 4, 2012, the Commission closed the evidentiary portion of the proceedings following the completion of the parties' cases-in-chief.

31. On May 21, 2012, the Commission met in Kahului, Maui, Hawai'i, to consider the Petition. At the meeting, the Commission received oral and/or written

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<sup>2</sup> The Commission also admitted into the record public written testimony previously submitted by Wallette Pellegrino and Joseph Pontanilla. In addition, the DP refiled its Exhibit "8" to replace the version originally filed on March 29, 2012.

<sup>3</sup> The Commission also admitted into the record public written testimony previously submitted by Abraham Freeman and William M. Tam.

public testimony from the following individuals: Leimomi Johnson, Peter Lee for Clyde T. Hayashi, Bill Kamai, Bruce U`u, Hannah Bernard, Clare Apana, Bill Frampton, Janet Six, Lucienne de Naie, Kaniloa Kamaunu, Ke`eaumoku Kapu, Johanna Kamaunu, Ray Shimabuku, and Peter Ganaban. Following the receipt of public testimony, the parties provided their closing arguments on the Petition. Thereafter, a motion was made and seconded to grant the Petition subject to conditions. There being a vote tally of 6 ayes, 1 nay, and 2 excused, the motion carried.

#### DESCRIPTION OF THE PETITION AREA

32. The Petition Area consists of approximately 545.229 acres of land located in the Kahului Isthmus Region of the Island of Maui, Hawai`i. According to the United States Geological Survey ("USGS"), Wailuku, Hawai`i, 7.5-minute topographic quadrangle map, a small portion of the Petition Area is located in the Wailuku district and the remaining portion is located in the Waikapū district. Kūihelani Highway borders the Petition Area on the east. East Waiko Road intersects Kūihelani Highway and divides the Petition Area into two sections: one section lies north of East Waiko Road (Petition Area "A" consisting of approximately 422.594 acres) and the other south of East Waiko Road (Petition Area "B" consisting of approximately 122.635 acres). Current access to the Petition Area is off of East Waiko Road and Kūihelani Highway.

33. The Petition Area consists of TMKs: 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101, and 104. All parcels are owned by Alexander & Baldwin,

Inc.<sup>4</sup> Alexander & Baldwin, Inc., has provided Petitioner with its written authorization to file the Petition to reclassify the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District for the development of the Project.

34. The area surrounding the Petition Area consists of residential, industrial, vacant, and agricultural land uses. To the north, and adjacent to the Petition Area, is the master-planned Maui Lani community of residential, commercial, recreational, and educational uses. To the east are Kūihelani Highway and sugarcane fields. To the south are Waikapū Stream and sugarcane fields. To the west are light industrial uses including the Wailuku Agribusiness Company, Inc., and the County's closed Waikapū landfill.

35. The Petition Area is bordered to the north by lands within the State Land Use Urban District and to the east, west, and south by lands within the State Land Use Agricultural District. A portion of land within the State Land Use Urban District lies between Petition Area "A" and Petition Area "B," and a portion of land within the State Land Use Urban District lies to the west of the Petition Area.

36. Since 2004, the Petition Area has been in a state similar to its current configuration, except that the majority of Petition Area "B" was being cultivated. Petition Area "A" is currently leased to several tenants for cattle and horse grazing, sand stockpiling, a cattle feed lot, and a storage yard for construction and

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<sup>4</sup> Petitioner is a wholly owned subsidiary of Alexander & Baldwin, Inc.

asphalt paving equipment. Petition Area "B" is currently fallow sugarcane fields, with an orchid farm and a former scrap yard.

37. The Petition Area generally slopes in an east or northeasterly direction with an average slope of approximately 2 to 3 percent. Elevations range from 154 to 308 feet above mean sea level ("MSL"). Petition Area "B" has been graded to have fairly consistent land slopes, while the north side has more rolling terrain and a few small gulches.

38. The annual average temperature in the Petition Area is 75.6 degrees Fahrenheit ("°F"). The Petition Area experiences an average winter temperature of approximately 72.2°F and an average summer temperature of approximately 78.5°F. Annual average wind speed in the property is approximately 12.8 miles per hour. Total precipitation in the Petition Area averages approximately 18.5 inches annually. Precipitation occurs mostly during the winter and relatively infrequently during the summer. Precipitation averages approximately 9.1 inches during the winter, approximately 4.6 inches during the spring, approximately 3.7 inches during the fall, and less than one inch during the summer.

39. According to the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, most of the Petition Area is designated Zone X, which denotes areas determined to be outside both the 500-year and 100-year flood plains.

## PROPOSAL FOR RECLASSIFICATION

40. The Project is a master-planned residential community which includes the following uses: village mixed-use, commercial, business/light industrial, multi-family and single-family residential, community center, regional and neighborhood park, greenway and open space, cultural preserves, middle school, and related infrastructure. A total of approximately 2,550 residential units are planned at the Project.

41. The Petition Area includes approximately 50 acres of land that will be provided to the County of Maui for the development of affordable housing (40 acres), community center (7 acres), and park (3 acres), in satisfaction of zoning requirements for Petitioner's Maui Business Park Phase II development. Approximately 300 residential units have been estimated for the 40 acres associated with the Maui Business Park Phase II zoning requirements, and are included in the Project's 2,550 total residential units. Additionally, affordable housing units will be developed for the Project in compliance with the Maui County Residential Workforce Housing Policy (Chapter 2.96, Maui County Code). A total of approximately 563 affordable single-family and multi-family units in four income categories (gap income, above moderate income, moderate income, and below moderate income) are projected based on the provisions of the current workforce housing policy. The actual allocation

of affordable units will be based on discussions and agreement with the County of Maui Department of Housing and Human Concerns ("DHHC").

42. The vertical construction expenditures for the 2,250 proposed housing units (including the residential component of the "live/work" units in the village mixed-use area but excluding the 300 residential units within the 40 acres to be contributed to the County of Maui) are estimated at \$337.2 million. Other estimated vertical construction costs include \$46 million for the 230,000 square feet of neighborhood commercial area; \$26.2 million for the 175,000 square feet of light industrial area; and \$50 million for the commercial component of the village mixed-use area.

43. The required offsite and onsite infrastructure improvements, including new roads, intersection improvements and traffic signals, wastewater systems (onsite wastewater treatment plant ("WWTP")), drinking water system (onsite system and offsite tanks), drainage systems, and electrical and communications systems, are preliminarily estimated to cost approximately \$273 million in 2010 dollars.

44. The total construction expenditures for the Project are estimated at \$732.4 million in 2010 dollars.

45. The Project is expected to be substantially completed within ten years from Commission approval.

## PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

46. The financial statements of Alexander & Baldwin, Inc., as of December 31, 2010, reflect total assets of \$2.5 billion, total liabilities of \$1.4 billion, total shareholder's equity of \$1.1 billion, and net income of \$92 million. Development of the Project is intended to be financed through internally generated funds.

## STATE AND COUNTY DESIGNATIONS

47. The Petition Area is designated within the State Land Use Agricultural District, as reflected on the Commission's official map, M-5 (USGS Wailuku, Hawai'i, 7.5-minute topographic quadrangle).

48. The Petition Area is zoned Agricultural.

49. The Petition Area is designated as Agriculture by the *Wailuku-Kahului Community Plan*.

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

## NEED FOR THE PROJECT

51. ACM Consultants, Inc., prepared a market assessment for the Project dated September 15, 2010.

52. Maui in general has seen growth in its population, tourism, and economy over the past two decades.

53. The recommended Directed Growth Areas for Maui, as currently shown in the Draft *Maui Island Plan*, are estimated to provide additional supply of 11,623 housing units by 2030, with the Project included. However, some of these potential developments will likely meet with governmental or community resistance, leading to long delays; meanwhile, others may never be completed for various financial reasons.

54. The economic downturn being witnessed across the nation has significantly affected Maui and if the Project came online today, it would likely be facing the same types of sales difficulties that other ongoing developments are experiencing. However, the Project will still need to go through the entitlement, design, and construction processes before sales can occur. As such, release of the Project's housing units may be very well timed with the economic recovery. Once market conditions improve, the Project can expect to see heightened demand, due to its proximity to the island's primary shipping and transportation venues, government and judiciary facilities, financial institutions, secondary education campus, and retail centers. Furthermore, with the lack of new housing starts during this period, there will likely be a strong resurgence in demand, after the short-term supply has been expended.

55. The Project will be primarily targeted toward the workforce market segment. Statistical evidence has clearly shown that regardless of conditions, this market segment has the most demand.

56. The Wailuku-Kahului area is the most desirable area for island residents with nearly 90 percent of the residential sales between 2004 to 2005 attributed to residents (as opposed to offshore buyers). Only Makawao approaches the desirability of Wailuku-Kahului (with approximately 80 percent island residents). As such, the Project is consistent with the long-term pattern of settlement on the Island of Maui.

57. Based on these factors, a residential unit absorption range of approximately 200 to 300 units per year could be anticipated for the Project.

58. The 40 acres of currently available commercial and industrial land will only provide a short-term supply for Central Maui, based on historical absorption in the region. Although Central Maui has the lowest ratio of population-to-acres of commercial/industrial subdivision land, the strong demand for this type of property is evidenced by new development absorption rates that are similar or higher than other regions. This is due to its location with respect to major transportation facilities in Kahului, as well as having the governmental seat in Wailuku Town. On average, land in commercial and industrial business parks in Central Maui has been absorbed within

a range of 5 to 19 acres per year. The wide range of absorption rates was attributed to cyclical market conditions, in addition to the overall lack of land entitled for such use.

59. The Project's 92.2 acres of commercial, business/light industrial, and village mixed-use land call for neighborhood commercial retail/office and small-scale light production and distribution uses in support of the neighborhood, as well as the overall Central Maui region. Absorption of the estimated 250,000 square feet of village mixed-use floor area is forecasted to be at between 30,000 and 45,000 square feet per year. With respect to the commercial uses, it is assumed that 60 percent, or approximately 138,000 square feet, of the commercial floor area would be immediately occupied upon completion of the neighborhood commercial retail/office center. The remaining space is forecasted to be absorbed at between 15,000 and 20,000 square feet per year, up to stabilized occupancy. Finally, annual absorption of the business/light industrial floor area is forecasted to be between 15,000 and 25,000 square feet.

#### SOCIAL IMPACTS

60. The Wailuku-Kahului population is expected to grow by 8,989 persons between 2015 and 2025, an increase of nearly 16 percent, and over approximately the same time period as the Project's timeframe. The projected increase in population will result in an increased demand for housing and employment opportunities.

61. It is estimated that the Project would include 6,767 residents at full buildout. Of this total, approximately 338 residents, or 5 percent, would be comprised by in-migrant residents. The housing demand in Wailuku-Kahului is expected to increase by 4,869 homes between 2015 and 2025, an increase of almost 22 percent. The Project is intended to address the demand for housing, particularly the demand for workforce housing.

#### ECONOMIC IMPACTS

62. ACM Consultants, Inc., prepared an economic and fiscal impact assessment for the Project dated September 15, 2010.

63. The Petition Area is currently used for pasture, a cattle feed lot, an orchid farm, a construction baseyard, and sand stockpiling. These uses provide rental income to Petitioner and employment for Maui residents. As the development of the Project proceeds, existing lessees will be relocated within the Petition Area and/or relocated offsite. Any loss of onsite jobs will be offset by the number of jobs generated during the construction and operation of the Project.

64. It is estimated that the Project will result in an annual average of 293 jobs directly related to its construction. In addition, an estimated 300 indirect jobs were projected on an annual basis. The number of indirect jobs could also extend to O`ahu by an average of 158 jobs per year. Employment could total approximately 7,500 direct and indirect jobs over the term of the Project.

65. The Project is forecasted to result in approximately \$17.1 million per year in direct payroll. Most construction positions are anticipated to be filled by Maui laborers. Indirect payroll on Maui is estimated at \$11.4 million. Indirect payroll on O`ahu is projected at \$6.8 million. Total direct and indirect payroll from construction of the Project is estimated at approximately \$352.4 million.

66. During construction of the Project, the State will receive revenues through excise taxes based on final and intermediate sales, estimated at \$41.8 million and \$5.4 million, respectively.

67. Following completion of the Project, an estimated 1,000 jobs are projected, including jobs resulting from relocating businesses to the Project. Both the State and County are expected to receive revenues from the operation of the Project. State revenues would be generated from personal income taxes and excise taxes. Because 95 percent of the residents of the Project are expected to already reside on Maui, the amount of new excise taxes are calculated at \$226,000 per year from the in-migrant residents.

68. The State is expected to incur expenses from the operation of the middle school, the provision of services to residents, and debt service attributed to general improvements. At full buildout, the 58 in-migrant students are estimated to cost the State of Hawai`i Department of Education ("DOE") approximately \$712,000 per year. The in-migrant residents are projected to cost the State approximately \$1.46

million annually for services, with annual general improvement debt service of approximately \$125,000.

69. The total net revenues to the State from the Project is estimated at - \$2.7 million. The negative net annual revenue is the result of the Project's targeting of the workforce segment of the population. State services to such developments are typically subsidized by revenues received from the visitor industry, businesses, and communities with higher annual household incomes.

70. County revenues would primarily stem from real property taxes. The net real property taxable value of the Project is estimated at \$278 million. The residential component of the Project is estimated to generate \$1.1 million in annual real property taxes. By contrast, the undeveloped Petition Area currently generates approximately \$10,000 per year in property taxes.

71. The costs incurred by the County as a result of the Project are estimated at \$841,000 plus an estimated annual debt service of \$68,000. This amount is attributed solely to the approximately 338 in-migrant residents as it is presumed that the majority of the future residents of the Project already lives on Maui and do not represent an additional cost to the County. The net revenue to the County as a result of the Project is estimated at approximately \$192,000 per year.

## IMPACTS UPON RESOURCES OF THE AREA

### Agricultural Resources

72. The United States Department of Agriculture, Natural Resource Conservation Service, soil survey classifies the Petition Area by two soil types: Jaucas Sand, 0 to 15 percent slopes; and Pu'uone Sand, 7 to 30 percent slopes. The Pu'uone Sand occupies approximately 94 percent of the Petition Area north of East Waiko Road and 44 percent of the Petition Area south of East Waiko Road. The remaining areas are comprised by Jaucas Sand.

73. The University of Hawai'i, Land Study Bureau ("LSB"), developed the Overall Productivity Rating, which classified soils according to five levels, with "A" representing the class of highest productivity soils and "E" representing the lowest. These letters are followed by numbers which further classify the soil types by conveying such information as texture, drainage, and stoniness. The majority of Petition Area is located on lands designated "E," or very poor by the LSB. These lands have the lowest productivity rating under the LSB classification system. Machine tillability is very poorly suited, thus grazing is the typical use for this type of soil. A small portion of the Petition Area along its northeast boundary with Maui Lani is designated "C" by the LSB.

74. In 1977, the State of Hawai'i Department of Agriculture developed a classification system to identify Agricultural Lands of Importance to the State of

Hawai'i ("ALISH"). The classification system is based primarily, though not exclusively, upon the soil characteristics of the lands. The three classes of ALISH lands are: "Prime," "Unique," and "Other," with all remaining lands termed "Unclassified." When utilized with modern farming methods, "Prime" agricultural lands have a soil quality, growing season, and moisture supply necessary to produce sustained crop yields economically. "Unique" agricultural lands possess a combination of soil quality, growing season, and moisture supply to produce sustained high yields of a specific crop. "Other" agricultural lands (of "importance to the State of Hawai'i") include those that have not been rated as "Prime" or "Unique." The Petition Area has been classified as "Other" by the ALISH classification system.

75. The Petition Area has not been identified or designated as important agricultural land ("IAL") by the County of Maui or the Commission pursuant to part III of HRS chapter 205 entitled *Important Agricultural Lands*.

76. Agricultural uses to be impacted by the Project include pasture use (grazing of cattle and horses on approximately 162 acres), a feed lot (5 acres), and an orchid farm (plant nursery on approximately 10 acres). All tenants have been aware of the planned future development and use of the Petition Area for some time. Future development of the area has been discussed for several years within the context of the *Maui Island Plan* update process, wherein the Petition Area has been proposed for future

urban growth. These uses are currently under short-term, month-to-month licenses.

Petitioner will work with these tenants to seek alternative sites for relocation.

77. In 2009, the Commission approved Alexander & Baldwin, Inc.'s, petition to designate approximately 27,102 acres of its land in Central Maui as IAL, pursuant to HRS sections 205-44 and 45. This voluntary designation represented a long-term commitment toward the continued agricultural use of these lands. The vast majority of these lands was and continues to be in active sugar cultivation by Hawaiian Commercial & Sugar Company ("HC&S") and represent the core of the sugar plantation.

78. Reclassification and development of the Petition Area will not have an adverse impact on agricultural resources nor on actual or potential agricultural production in the vicinity of the Petition Area or in the County of Maui or State. Given the closures of Wailuku Sugar and Pioneer Mill and Maui Land & Pineapple's shutdown of its pineapple operations, large acreages of land on Maui have been released from cultivation and are available for future agricultural uses, including diversified agriculture. There is sufficient agricultural land available on Maui and in the State to accommodate the loss of land for the Project.

## Flora and Fauna

79. Robert W. Hobdy prepared a botanical and fauna survey report for the Project dated April 2007 and supplemented the report with a biological resources survey report dated March 2011.

80. The vegetation of the Petition Area is dominated by buffelgrass (*Cenchrus ciliaris*), which occupies most habitats. Also common are kiawe (*Prosopis pallida*), golden crown-beard (*Verbesina encelioides*), Guinea grass (*Megathyrsus maximus*), and `uhaloa (*Waltheria indica*). The old agricultural fields have sparse stands of remnant sugarcane with an assortment of weeds. The pasture areas are primarily kiawe trees and buffelgrass. The sand excavation areas are highly disturbed with bare ground and hardy weeds.

81. A total of 131 species of plants were recorded during the most recent survey in 2011. Four indigenous native plants were found: `uhaloa (*Waltheria indica*), `ilima (*Sida fallax*), kou (*Cordia subcordata*), and popolo (*Solanum americanum*). All four of these are widely spread and common in Hawai`i, as well as in other Pacific islands. An additional two species, niu (*Cocos nucifera*), and ko, or sugarcane (*Sacharum officinarum*), are of Polynesian origin and common. The vegetation throughout the Petition Area is dominated by a great variety of non-native plants. The four native species and the two Polynesian introductions are all common and of no particular environmental concern.

82. No federally listed endangered or threatened native plant species were encountered nor were any species that are candidates for such status seen during the surveys in 2007 and 2011. No special habitats or rare plant communities were seen on the Petition Area. As a result of these above conditions, there is little botanical concern on the Petition Area and the Project is not expected to have a significant negative impact on the botanical resources in this part of Maui. Therefore, no recommendations are deemed necessary or appropriate regarding the botanical resources on the Petition Area.

83. Six species of non-native mammals or their signs were observed on the Petition Area during four site visits. Most common were axis deer (*Axis axis*). One herd was seen, but their tracks, scat, antler rubbings, and signs of feeding were seen throughout the area. Also common were cattle (*Bos Taurus*), which were in the pastures or concentrated in feed lots. Uncommon or rare were horses (*Equus caballus*), mongoose (*Herpestes auropunctatus*), and feral cats (*Felis catus*) and dogs (*Canis familiaris*). Other non-native mammals one would expect to see in this habitat include mice (*Mus domesticus*) and rats (*Rattus* spp.). These rodents feed on seeds, fruits, insects, eggs, and herbaceous vegetation and are prey for the cats and mongoose.

84. Nineteen species of birds were seen during four site visits to the Petition Area. Included were 18 introduced, non-native species and one migratory species, the kolea, or Pacific golden-plover (*Pluvialis fulva*). The common bird species

included zebra dove (*Geopelia striata*), common myna (*Acridotheres tristis*), spotted dove (*Streptopelia chinensis*), gray francolin (*Francolinus pondicerianus*), northern cardinal (*Cardinalis cardinalis*), and house finch (*Carpodacus mexicanus*). The remaining 13 species were uncommon to rare in the Petition Area. None of the endangered nēnē goose (*Branta Sandwicensis*) were seen in this kiawe forest habitat. Should the proposed parks and open spaces of the Project attract the nēnē, appropriate mitigation measures will be undertaken. The non-native barn owl (*Tyto alba*), which is occasionally seen in the Petition Area and at other lower elevation areas closer to human activities and structures, is often mistaken for the native pueo, which was not observed during the surveys and usually frequents middle elevation pastures and scrub forests where human activity is minimal. Two native seabirds, the endangered Hawaiian petrel (*Pterodroma sandwichensis*) and the threatened Newell's shearwater (*Puffinus newelli*), may fly over the Petition Area on their way to their burrows high in the mountains. Any significant outdoor lighting within the Project will be shielded to direct the light downward to minimize disorientation of these seabirds. No native bird species were found in the Petition Area during four site visits and none are to be expected in this habitat.

85. A special effort was made to look for the native Hawaiian hoary bat by making an evening survey at four sites in the area. When present in an area, these bats can be easily identified as they forage for insects. Their distinctive flight patterns

are clearly visible in the glow of twilight. No evidence of such activity was observed though visibility was excellent and plenty of flying insects were seen. In addition, a bat-detecting device (Batbox IIID) was employed, set to the frequency of 27,000 Hertz which these bats are known to use for echolocation. No bats were detected at any site using this device.

86. An abundance of insect species were observed in the Petition Area during four site visits. The onset of the wet season stimulates the emergence of many species from dormancy. A total of 36 species were recorded in nine insect orders. Three native species were seen, including the endemic and endangered Blackburn's sphinx moth (*Manduca blackburni*) as well as two indigenous dragonflies, the globe skimmer (*Pantala flavescens*) and the green darner (*Anax junius*). The remaining 33 species were an array of non-native insect introductions or accidental arrivals.

87. The endangered Blackburn's sphinx moth has been seen in the egg and larval stages of growth, and they were found on their alternate host plant species, the non-native tree tobacco (*Nicotiana glauca*). Tree tobacco is a non-native weed that is widely prevalent throughout Maui. Of the approximately 300 observed tobacco trees, approximately 7 percent of the tree tobacco plants (or approximately 20 widely scattered shrubs) were found to have one or more eggs on the leaves. Petitioner, in cooperation with the U. S. Fish and Wildlife Service ("USFWS"), will develop a mitigation plan for the Blackburn's sphinx moth at the Petition Area with the aim of

preventing any “take” of the Blackburn’s sphinx moth. The USFWS has been consulted and has offered assistance in the development of a mitigation plan.

88. Petitioner has been advised by the State of Hawai‘i Department of Land and Natural Resources (“DLNR”), Division of Forestry and Wildlife (“DOFAW”), that pursuant to HRS chapter 195D, Conservation of Aquatic Life and Land Plants, an Incidental Take License and approved Habitat Conservation Plan may be needed as the endangered Blackburn’s sphinx moth, nēnē, and the Hawaiian hoary bat are known to occur in the vicinity of the Project. Petitioner should consult with DLNR, DOFAW, on the potential impacts and to determine a preferred approach to ensure compliance with the State endangered species law.

#### Archaeological and Historical Resources

89. Scientific Consultant Services, Inc., completed an archaeological inventory survey (“AIS”) for the Project in February 2010.

90. Several previous archaeological investigations have occurred on portions of the Petition Area and are described in the AIS. These investigations have led to the documentation of burials, a terrace, and several historic-period sites. These include State Site Nos. 50-50-04-4200, -4201, -4202, -3525, -5504, and -6679.

91. State Site Nos. 50-50-04-4200, -4201, and -4202 consist of burial features and a multi-stepped terrace. A burial treatment and preservation plan was prepared for these features in 1998 (Kennedy and Moore 1998). These burial features

will be preserved in place in Preservation Area 1 of the Project. State Site No. 50-50-04-3525 consist of burial features that were re-interred by the Maui/Lāna`i Islands Burial Council in 1995. State Site No. 50-50-04-5504 is an inadvertently discovered burial site located along the eastern portion of the Petition Area near Kūihelani Highway. State Site No. 50-50-04-6679 includes multiple inadvertent burial features associated with the former Hawaiian Cement sand mining area.

92. The AIS for the Petition Area yielded only one previously unrecorded archaeological site. The site consisted of a subsurface imu and was designated as State Site No. 50-50-04-6578. The AIS evaluated three sites for significance. These included the newly identified imu (State Site No. 50-50-04-6578), a segment of Spreckels Ditch (State Site No. 50-50-04-1508), and the inadvertently discovered burial site (State Site No. 50-50-04-5504).

93. State Site No. 50-50-04-6578 is a late-traditional/early historic period imu that has been documented and sampled with no further work recommended.

94. State Site No. 50-50-04-1508 is a small utilized section of the Spreckels Ditch that is located in the eastern portion of the Petition Area. This site has been documented with no further work recommended.

95. State Site No. 50-50-04-5504 is an in situ burial located along the eastern portion of the Petition Area near Kūihelani Highway.

96. Full-time archaeological monitoring has been recommended during future ground altering disturbance at the Petition Area where natural, sandy matrices that are relatively undisturbed occur. The AIS was submitted to the DLNR, SHPD, for review. By letter dated February 28, 2010, the DLNR, SHPD, accepted the AIS.

97. Archaeological Services Hawai'i, LLC, prepared a burial preservation plan entitled *A Final Burial Site Component of a Data Recovery Plan and Preservation Plan* for the Project dated June 2010. The burial preservation plan provides for the preservation in place of inadvertent burial features of State Site Nos. 50-50-04-5504 and 50-50-04-6679.

98. State Site No. 50-50-04-6679 consists of 33 partially intact primary burial features, 13 burial pits which are highly probable to contain human skeletal remains, 6 disturbed, possible primary, burials, and secondarily deposited/scatters of human skeletal remains with no primary/in situ component representing 36 individuals. All of these burial features will be preserved in place within the Project's five established preservation areas (Preservation Areas 1 through 5), totaling in excess of 30 acres within the Petition Area. The burial preservation plan for State Site No. 50-50-04-6679 provides for the relocation of two partially intact primary burial features and five secondary scatters. The re-interment location for the burial features is within the closest appropriate preservation areas established around existing intact primary burials.

99. The burial preservation plan includes both short-term and long-term preservation measures.

100. Short-term protective measures are implemented at preservation areas during the interim period before and during construction. The majority of the burial sites are currently within gate controlled areas of the Project to limit and discourage access. The burial features are further protected by orange caution fencing around the burial sites. Additionally, burials are covered with a layer of sand, tarp, and plywood or wooden grate. Periodic field inspections are performed to ensure that burial features are protected from the elements.

101. Long-term measures are a mitigation strategy to protect the site in perpetuity. These preservation measures include provisions for landscaping, signage, recordation, access, buffer zones, and surface demarcation.

102. The burial preservation plan was reviewed by the Maui/Lānaʻi Islands Burial Council in July 2010 and the DLNR, State Historic Preservation Division (“SHPD”), subsequently accepted the preservation plan by letter dated September 13, 2010.

#### Cultural Resources

103. Hana Pono, LLC, prepared a cultural impact assessment for the Project in March 2011.

104. The Project resides in a culturally significant and unique land area. There are potential adverse effects to the remaining cultural resources extant on the Petition Area that can be mitigated with proper community consultation and proactive planning on the part of Petitioner.

105. A large percentage of the Project sits on remnants of previously altered sand dunes. Due to the underlying sandy nature of much of the Petition Area, there is the potential for discovering additional burials during earth-disturbance activities.

106. The once majestic and geologically unique swath of Aeolian, lithified sand dunes has been decimated by large-scale agriculture, development, sand mining, and a general lack of understanding of the uniqueness of this natural feature. The remaining intact portions of sand dunes within the Petition Area are one of its most authentically unique natural features.

107. Currently, the Waikapū Stream borders along the southern boundary of the Petition Area. Although not situated within the Petition Area, Waikapū Stream is a significant cultural landmark and natural resource. Appropriate natural landscaping and signage along its border will serve to integrate and embrace the stream into the Project while noting its historic and cultural significance to the region.

108. The significant and unique natural, cultural landmarks in the Petition Area, such as the remaining Pu`u One, Waikapū Stream, and the proposed cultural preserves (approximately 33 acres are proposed to be set aside where the greatest concentrations of burials occur), provide the opportunity to create educational “touchpoints” that can enhance the uniqueness and sense-of-place of the Project.

109. To assure the cultural integrity of the Project, a qualified cultural specialist will participate in various cultural-related activities. Activities would include the development and implementation of a cultural orientation program for construction personnel, advice concerning inadvertent finds and related protocol, advice and assistance relating to planned burial preserves within the Project (e.g., signage, access, landscaping, etc.), advice and assistance concerning potential educational “touchpoints” to enhance the Project’s unique sense of place, and advice and assistance with Project names.

#### Groundwater Resources

110. Tom Nance Water Resource Engineering prepared a drinking water supply alternative analysis for the Project dated December 2011.

111. The Petition Area overlies the Kahului Aquifer, which encompasses an approximately 9.5-square mile area that extends across the isthmus of Maui.

Groundwater occurs under the compressed alluvium that functions as a caprock over the Haleakalā basalts. Over most of the isthmus, the top of the groundwater lens is

approximately 4 feet above MSL and consists of drinking water quality. The Kahului Aquifer has not been designated as a Groundwater Management Area ("GMA"). The sustainable yield of the aquifer is 1 million gallons per day ("MGD") based on the assumption that approximately 20 percent of the rainfall directly on the 9.5-square mile area becomes recharged to the underlying groundwater and approximately 44 percent of this recharge can be safely pumped by wells. In addition to this natural recharge, the aquifer is fed by other sources, including underflow from Haleakalā and the West Maui Mountains; irrigation flow from sugarcane fields, other agricultural activities, and The Dunes at Maui Lani Golf Course; and leakage from the Wai`ale Reservoir.

#### Parks and Recreational Resources

112. Diverse recreational opportunities are available in the Wailuku-Kahului region. Numerous recreational parks and facilities are located in proximity to the Petition Area. These include Honoli`i Park, Kahului Community Center & Pool, Lihikai Park, Mokuhau Park, Pōmaika`i Park, Wai`ale Neighborhood Park, War Memorial Complex & Keopuolani Regional Park, and Wells Community Complex.

113. The Project includes lands reserved for active regional and neighborhood parks, greenways, and open space. The provision of lands for park purposes will be undertaken in consultation with the County of Maui Department of Parks and Recreation to ensure that park and playground assessment requirements are appropriately addressed.

## Scenic Resources

114. The Petition Area is situated within Central Maui. The slopes of Haleakalā (East Maui Mountains), Waikapū Valley, and Mauna Kahalawai (West Maui Mountains) are visible from the Petition Area and will remain so with the development of the Project. The Petition Area itself is not considered a scenic or unique scenic corridor or area, except for a large remnant of the Pu'u One sand dunes. An approximately 28-acre remnant of these dunes will be preserved and be visible from surrounding areas within and outside of the Petition Area. In addition, the regional and neighborhood parks, greenways, and open space will be landscaped to ensure visual buffering and softening of the built landscape.

115. The design guidelines for the Project will specify that the developers will mitigate the potential impact of exterior lighting on "night sky" resources and avoid light pollution.

## ENVIRONMENTAL QUALITY

### Noise

116. Terry A. Hayes Associates Inc. prepared a noise study for the Project dated May 12, 2011.

117. Construction activity will result in temporary increases in ambient noise levels in the Petition Area on an intermittent basis. Construction noise levels will exceed the allowable noise levels listed in the Maui County *Noise Reference Manual* and

the applicable provisions in HAR. Petitioner will comply with the Maui County *Noise Reference Manual* and the HAR, and take steps necessary to reduce noise levels where feasible. These measures may include equipping mobile construction equipment with properly operating mufflers, using quieter grading and construction equipment, and using onsite electrical sources of power rather than diesel generators where feasible. The Project is not expected to generate sufficient ground-borne vibration to warrant noise control measures as the use of heavy construction equipment will be less than the Federal Transit Administration standard for construction vibration levels.

118. Operational-related noise generated from vehicles and stationary uses associated with the Project can impact sensitive receptors within and outside the Petition Area. Noise from stationary mechanical equipment, including ventilation and air conditioning systems, will exceed the State maximum permissible noise levels for Class A and B land uses. Noise from truck loading/unloading associated with light industrial and commercial land uses will also be generated and will be mitigated by limiting such activities to between the hours of 7:00 a.m. and 10:00 p.m.

119. Mechanical equipment serving the Project will be enclosed in rooms to mitigate excessive noise to residences and the users of the parks and school.

120. Exterior and interior noise level standards would potentially be exceeded at residences that face Kūihelani Highway and East Waiko Road. Residents of units with exterior useable space facing Kūihelani Highway and East Waiko Road will

be given notice of possible exterior noise levels generated from traffic. All residential units will be designed to minimize interior noise levels. These design measures will be established to maintain noise levels at interior spaces to less than an average day-night level ("L<sub>dn</sub>") of 45 A-weighted decibel ("dBA"). Measures to meet the 45 dBA L<sub>dn</sub> standard may include, but are not limited to, using perimeter walls, sound-rated interior walls between uses, or other site planning and building placement that could reduce or eliminate the light-of-sight between the noise source and the residential units.

121. Interior noise levels at the proposed school would potentially exceed the applicable standards. Therefore, all educational classrooms will be designed in compliance with the DOE *Educational Specifications (EDSPECS) for Middle/Intermediate Schools*.

122. The Project will include a regional park that borders Kūihelani Highway and Road C, a neighborhood park that borders Kūihelani Highway, and a cultural preserve in the northeastern portion of the Petition Area. The 300 feet closest to Kūihelani Highway on the southern portion of the Petition Area will be developed with active recreational land uses (e.g., ball fields or basketball courts) as opposed to passive recreational land uses (e.g., art garden).

123. There is the potential for long-term impacts related to daily operations of Kahului Airport as the Petition Area lies west of the flight paths to and from Kahului Airport. The State of Hawai'i Department of Transportation ("DOT") is

concerned with impacts such as aircraft noise and vibrations from daily flight operations in and out of Kahului Airport. As residential uses encroach on airport facilities, it could limit the ability of DOT to serve the existing and growing needs of the County and State. Petitioner and subsequent owners should notify and disclose to future buyers the potential for aircraft noise and overflights from aircraft operations at Kahului Airport.

#### Air Quality

124. Terry A. Hayes Associates Inc. prepared an air quality study for the Project dated May 2011.

125. Construction activity will result in temporary emissions from construction vehicle exhaust, as well as fugitive dust emissions due to ground disturbance. Petitioner will implement various measures to control any impacts to air quality, such as using water or chemicals to control fugitive dust during demolition, construction operations, grading, or clearing; applying asphalt, water, or chemicals on roads, material stockpiles, and other surfaces to reduce fugitive dust; covering moving, open-bodied trucks; and maintaining and cleaning roadways. The Project will not result in an adverse effect related to construction air quality.

126. Regional operational emissions will be generated from vehicle trips, including approximately 29,225 average daily trips at full Project buildout. Project daily emissions will represent approximately 0.35 percent of State emissions for

each of the analyzed pollutants. These low percentages of emissions are not considered substantial. Therefore, the Project will not result in adverse effect related to regional operational emissions.

127. Odors associated with operation of the Project as well as adjacent land uses may impact air quality. The possible onsite WWTP could potentially generate nuisance odors to the surrounding areas. If the facility is built, it will be constructed using best available control technology to meet the United States Environmental Protection Agency and State hydrogen sulfide regulations. An Odor Management Plan would be completed during the final design phase of the wastewater treatment plant.

#### Water Quality

128. To mitigate potential groundwater contamination, best management practices ("BMPs") for the future use of the Petition Area will be implemented. Covenants will be imposed which inform potential homebuyers that activities at the Petition Area could impact the groundwater beneath the Petition Area, requires compliance with all applicable environmental and other governmental laws, rules and regulations and requires efforts to prevent groundwater contamination from fertilizers, pesticides, metals, petroleum products, solvents, and other contaminants. Industrial users will be required to protect groundwater contamination from metals, petroleum products, solvents, and other contaminants, including runoff collection and treatment and to institute spill prevention containment and control programs. As

recommended by DWS, the operators of proposed active parks and schools will be advised to implement Integrated Pest Management (management practices to prevent groundwater contamination from over-reliance and overuse of fertilizers and pesticides.

129. In addition to reducing peak flow rates, the proposed stormwater management system will provide water quality treatment to reduce the discharge of pollutants to the maximum extent practicable. Examples of stormwater BMPs that will be employed include grass swales, open space and reduced impervious coverage, and stormwater retention and infiltration.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### Highway and Roadway Facilities

130. Austin, Tsutsumi & Associates, Inc., prepared a traffic impact assessment report ("TIAR") for the Project dated March 21, 2011.

131. The TIAR examined traffic operations for three scenarios: (i) Existing traffic conditions describing how the study intersections were operating at the time of the traffic counts; (ii) Base Year traffic conditions describing 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 (iii) Future Year traffic conditions describing 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.

132. The Petition Area is located west of Kūihelani Highway, south of the Maui Lani development, east of Wai`ale Road, and north of the intersection of Honoapi`ilani Highway/Kūihelani Highway. The Petition Area includes existing cane haul roads and unimproved dirt roads.

133. Manual turning movement traffic counts and field observations were conducted on September 28 and 29, 2010, to determine existing traffic conditions at the following study intersections: Ku`ikahi Drive/Honoapi`ilani Highway (Signalized), Ku`ikahi Drive/Wai`ale Road (Signalized), Maui Lani Parkway/Kamehameha Avenue (Unsignalized), Maui Lani Parkway/Kūihelani Highway (Signalized), Waiko Road/Honoapi`ilani Highway (Signalized), Waiko Road/Wai`ale Road (Unsignalized), and Waiko Road/Kūihelani Highway (Signalized). Based on the count data, the weekday AM peak hour of traffic occurs between 7:15 AM and 8:15 AM and the weekday PM peak hour of traffic occurs between 4:00 PM and 5:00 PM.

134. Honoapi`ilani Highway and Kūihelani Highway serve as the primary arterials through the Waikapū area. While the former generally serves traffic originating from or destined towards Wailuku, the latter serves traffic originating from or destined to Kahului, Hāna, or Upcountry. During the AM peak hour of traffic,

congestion occurs along Honoapiʻilani Highway headed towards Wailuku due to operations along the Punana Leo O Maui Preschool and at the Main Street/South High Street intersection; the northbound queue extends to near Kehalani Parkway, which is situated approximately 0.8 mile south of Main Street. No congestion was observed to occur along Kūihelani Highway within the study area.

135. Waiʻale Road, in addition to its service as a collector road for Waikapū Gardens and the nearby industrial areas, currently provides an alternate north-south route between east Wailuku and Waikapū. However, its ability to process traffic is limited by its slow posted speed limits and termination as a minor approach to Waiko Road.

136. Maui Lani Parkway provides access to both Honoapiʻilani Highway via Kuʻikahi Drive and Kūihelani Highway, as well as the residential area of Maui Lani. Currently, between Kuʻikahi Drive and Waiʻale Road, Maui Lani Parkway is a two-lane, two-way roadway with a wide median to accommodate future roadway expansion. The opening of the Kuʻikahi Drive extension in June 2010 has significantly reduced traffic volume along Waiko Road, especially southbound right-turns and eastbound left-turns at the Waiko Road/Kūihelani Highway intersection. Traffic along Waiko Road was observed to operate relatively smoothly during both peak hours of traffic. Within the study area during the AM peak hour of traffic, some congestion was observed at intersections along Kuʻikahi Drive and Maui Lani Parkway (Kuʻikahi

Drive/Wai`ale Road intersection and at the Maui Lani Parkway/Kamehameha Avenue intersection). During the PM peak hour of traffic, congestion occurred at the Maui Lani Parkway/Kamehameha Avenue intersection. During the PM peak hour of traffic, congestion was not observed at any of the other study intersections.

137. Traffic volumes at the study intersections were projected to Year 2022 to establish Base Year traffic conditions. The projection utilized the Maui Transportation Demand Forecasting Model to derive future growth. In addition, standard trip generation methodology was used for developments that were not included in the model. The result was an approximate 60 percent increase in demand along Honoapi`ilani Highway and 70 percent along Kūihelani Highway over existing conditions.

138. Anticipated improvements to be implemented by the Base Year in 2022 include the following: (i) the 2002 Maui Lani Development Roadway Master Plan recommendations which include widening Ku`ikahi Drive to four lanes between Wai`ale Road and Maui Lani Parkway, widening Maui Lani Parkway to four lanes between Ku`ikahi Drive and Kūihelani Highway, extending Maui Lani Parkway to four lanes between Ku`ikahi Drive and Wai`inu Road – creating a complete connection between Ka`ahumanu Avenue and Kūihelani Highway, and widening Kamehameha Avenue to four lanes between Maui Lani Parkway and Papa Avenue; and (ii) the County of Maui's plan to extend Wai`ale Road from its existing terminus at Waiko Road

further southward to intersect Honoapiʻilani Highway, including improving Waiko Road between Waiʻale Road and Kūihelani Highway to incorporate a widened 36-foot pavement width within the 60-foot right-of-way.

139. The following improvements are also recommended to be implemented by the Base Year in 2022:

- (i) Kuʻikahi Drive/Honoapiʻilani Highway: provide exclusive left-turn, through, and right-turn lanes for the eastbound and westbound approaches;
- (ii) Kuʻikahi Drive/Waiʻale Road, northbound approach: provide exclusive left-turn, through, and right-turn lanes; southbound approach: provide double left-turn, through, and right-turn lanes; eastbound approach: provide exclusive left-turn, through, and right-turn lanes;
- (iii) Kuʻikahi Drive/Maui Lani Parkway, northbound approach: provide double left-turn and shared through/right-turn lanes; southbound approach: provide left-turn, through, and right-turn lanes; eastbound approach: provide shared left-turn/through lane and exclusive channelized right-turn lane connecting to a new southbound lane along Maui Lani Parkway; westbound approach: provide shared left-turn/through and exclusive right-turn lane;
- (iv) Maui Lani Parkway/Kamehameha Avenue: signalize the intersection; northbound and southbound approaches: provide exclusive left-turn, through, and right-turn lanes; eastbound approach: provide double left-turn, through, and right-turn lanes; westbound approach: provide left-turn, through, and shared through/right-turn lanes; and
- (v) Maui Lani Parkway/Kūihelani Highway, northbound approach: provide double left-turn, through, and shared through/right-turn lanes; eastbound approach: provide a left-turn, shared left-turn through, and right-turn lanes.

140. To determine Future Year 2022 with Project, Project generated traffic was estimated using the trip rates contained in the nationally published and locally accepted Institute of Transportation Engineers *Trip Generation, 8<sup>th</sup> Edition*. The Project is projected to generate approximately 2,575 and 3,270 trips during the AM and PM peak hours of traffic, respectively. Vehicular access to the Project will be provided via new connections to Kūihelani Highway, Waiko Road, and Kamehameha Avenue.

141. Analysis of the intersections would indicate that sufficient capacity exists along Kūihelani Highway and Honoapiʻilani Highway to accommodate the traffic demand. In some instances, Level of Service (“LOS”) E or F is anticipated at minor movements to intersections. However, this is generally where the volume is low and a traffic signal will not be warranted.

142. Recommended improvements for Future Year 2022 with Project include the following:

- (i) Kamehameha Avenue: extend southward as a two-lane section with turning lanes at major intersections;
- (ii) Waiko Road: provide turning lanes at unsignalized intersections;
- (iii) Kuʻikahi Drive/Waiʻale Road, eastbound approach: re-stripe to provide a shared through/right-turn lane;
- (iv) Kuʻikahi Drive/Maui Lani Parkway, eastbound approach: provide an exclusive left-turn lane and restripe the shared left-turn/through lane recommended during Base Year 2022 as an exclusive through lane; westbound approach: provide an exclusive left-turn lane, through, and right-turn lanes;

- (v) Maui Lani Parkway/Kamehameha Avenue, eastbound approach: provide a shared through/right-turn lane instead of the right-turn lane recommended in Base Year 2022; westbound approach: provide an exclusive right-turn lane while maintaining two exclusive through lanes;
- (vi) Waiko Road/Kamehameha Avenue: it is recommended that this intersection be signalized when warranted;
- (vii) Waiko Road/Road B: it is recommended that this intersection be signalized when warranted;
- (viii) Waiko Road/Kūihelani Highway, eastbound approach: provide double left-turn lanes;
- (ix) Road C/Kūihelani Highway, northbound approach: provide exclusive left-turn lane; southbound approach: provide exclusive right-turn lane; eastbound approach: provide exclusive left-turn and right-turn lanes; and
- (x) Road E/Kūihelani Highway, northbound approach: provide exclusive left-turn lane; southbound approach: provide dedicated right-turn and left-turn lanes; eastbound approach: provide shared left-turn/through and dedicated right-turn lane.

143. The DOT recommends that Petitioner submit a revised TIAR for DOT review and obtain acceptance from DOT prior to approval of a change of zone from the County of Maui. The revised TIAR should address the concerns expressed by the DOT in testimony and in DOT's letter (STP 8.0522 dated September 2, 2011). The TIAR should provide and validate all recommended mitigation measures for potential Project-related traffic impacts on State facilities to the satisfaction of the DOT.

144. The DOT recommends that direct accesses to Kūihelani Highway be limited to the proposed intersection with Road C and the existing intersection with

East Waiko Road, as delineated in the TIAR and as approved by DOT. The Road E access to Kūihelani Highway will not be allowed. A third access on Kūihelani Highway may be permitted if it is located approximately one-half mile south of the East Waiko Road intersection and if it meets Federal and State highway guidelines. Petitioner should pay to DOT the fair market value for access rights to Kūihelani Highway in addition to any required mitigation measures for potential Project-related traffic impacts on State facilities. The DOT comments on accesses are limited to this Project and any other future development or intensification of use of the proposed accesses will require a reassessment by DOT.

145. The DOT recommends that Petitioner use the existing agricultural road that crosses Kūihelani Highway, approximately 850 feet south of the East Waiko Road intersection, only for existing agricultural operations. Petitioner should close the agricultural access and remove the agricultural road and the existing traffic signal on Kūihelani Highway at that location when the State land use district boundary is amended from Agricultural to Urban for the Project or when required and approved by DOT.

146. The DOT recommends that Petitioner close the existing access road on Kūihelani Highway, located approximately 2,200 feet north of the East Waiko Road intersection, when required and approved by DOT.

147. The DOT recommends that Petitioner permit access to Road B from TMK: 3-8-07: 102, which is currently leased for cattle ranching, whereby the owner of parcel 102 may close the existing access from Kūihelani Highway that is located approximately 300 feet north of the East Waiko intersection.

148. The DOT recommends that Petitioner provide for future north-south road connectivity by establishing road right-of-way or stubout to extend Kamehameha Avenue to the south boundary of the Project.

149. The DOT recommends that Petitioner fund and provide for the planning, design, and construction of all traffic improvements required to mitigate local and direct Project generated and/or related traffic impacts, in accordance with the revised TIAR, as approved by DOT. Petitioner should dedicate land to accommodate auxiliary lanes on Kūihelani Highway at each access as recommended in the revised TIAR.

150. The DOT recommends that Petitioner provide all required traffic improvements to support each phase of the Project as recommended by the revised TIAR and/or the updated revised TIAR and complete said traffic improvements for each phase prior to the issuance of a certificate of occupancy for the first residential unit, or any other building in that phase.

151. The DOT recommends that any significant changes in Project phasing and development should require the revised TIAR and any additional

mitigation required as a result of these changes to be provided in the updated TIAR, which should be submitted to DOT for review and approval.

152. The DOT recommends that Petitioner provide its fair-share contribution toward the cost of regional transportation improvements to State highways. The regional transportation improvements may be located along Kūihelani Highway and/or along Honoapiʻilani Highway. Regional improvements may also include the reservation and contribution of land for such improvements.

153. The DOT recommends that a Memorandum of Agreement (“MOA”) between Petitioner and the DOT be prepared to document all aspects of the agreed upon improvements required to mitigate Project generated and related transportation impacts to local and regional State highway facilities. Petitioner should work with the DOT to finalize and execute such MOA prior to Petitioner being granted tentative subdivision approval.

#### Water Supply/Service

154. Austin Tsutsumi & Associates, Inc., prepared a preliminary engineering and drainage report dated April 2011 that addressed the water supply/service impacts and requirements of the Project.

155. There are no existing domestic waterlines servicing the Petition Area. The County of Maui Department of Water Supply (“DWS”) has two transmission waterlines in the vicinity of the Petition Area. The 18-inch Kīhei Water Development

transmission line runs along Wai'ale Road then cuts through the Petition Area in a southeasterly direction towards Kihei. The 36-inch Central Maui Water Transmission System transmission lines cut through the eastern portion of the Petition Area and head towards Kihei. There are also several DWS storage tanks in the vicinity of the Petition Area.

156. The Project will ultimately require an average of 1.87 MGD if the water supply consists of an all drinking water system built to DWS standards. Since non-drinking groundwater suitable for irrigation use is available onsite, a dual system, consisting of drinking water for personal consumption and non-drinking water for irrigation, will reduce the required average supply of drinking water from 1.87 to 1.10 MGD. Irrigation use will be provided by the non-drinking water system's wells, possibly supplemented by R-1 quality treated wastewater effluent.

157. The jointly developed drinking water system will ultimately require five wells, each outfitted with a 500 gallons per minute ("GPM") pump and with one of the five wells providing standby capacity. Two of these five wells, identified as State Nos. 5030-01 and 5131-02, have already been drilled, cased, and pump tested with excellent results. The other three wells, which will be added incrementally with increasing demand, are expected to have similar yields and pumped water quality.

158. The drinking water system will be developed by Mr. Michael Atherton and Petitioner while working with the County to jointly developing new water sources for Central Maui.

159. All five of the drinking water system wells will be located in the Waikapū Aquifer. The State of Hawai'i Commission on Water Resource Management ("CWRM"), the State agency in charge of regulating groundwater use, has set the sustainable yield of the aquifer at 3.0 MGD. There are no active wells in the aquifer. At full buildout, the wells to supply the Project and Waikapū Country Town developments will draw an average of approximately 2.0 MGD, or approximately two thirds of the aquifer's sustainable yield. The robust groundwater conditions tapped by Wells 5030-01 and 5131-02, combined with the recent and detailed rainfall-recharge calculations by the USGS, suggest that the aquifer's actual sustainable yield is greater than 3.0 MGD.

160. An alternative potential drinking water source is the Kahului Aquifer. Although the Kahului Aquifer has a sustainable yield of 1 MGD, there are numerous other sources of recharge that are not included in the State's calculations including: underflow of groundwater from Haleakalā and the West Maui Mountains, surface runoff from the West Maui Mountains, and 25 to 30 MGD of irrigation return by HC&S. The source of water sufficient for the Project exists in the Kahului Aquifer, but it may need to be treated by reverse osmosis to get saline water to the drinking water range.

161. Another possible drinking water source is the proposed Wai`ale Water Treatment Facility ("WTF"). The proposed WTF is planned to be located on approximately 3.5 acres near the upper Wai`ale Reservoir site in Wailuku, on lands owned by Alexander & Baldwin, Inc. The proposed WTF will treat surface water primarily from Waihe`e Stream utilizing membrane filtration. A total of three filter units are currently being proposed for the WTF, which would yield a sustained average production capacity of approximately 9 MGD. The WTF is estimated to cost \$30 million. Detailed engineering design of the proposed WTF has been undertaken, including designs for piping connections to the County's Central Maui water system. The plant is approximately 80 percent designed. Petitioner continues to work with the County to address design and regulatory matters relating to the proposed WTF.

162. Waihe`e Stream is the principal source of water for the WTF. It is one of four streams designated in the *Na Wai Eha* Surface Water Management Area ("SWMA"). The additional streams constituting the *Na Wai Eha* SWMA are Waiehu, `Iao, and Waikapū Streams. Surface water use permit applications filed with CWRM for uses existing as of March 13, 2008, total more than the amount considered available for off-stream use. The appeal of the *Na Wai Eha* decision may lead to increases in stream flow and less water available for off-stream use.

163. The DWS relayed to Petitioner that their Central Maui Water System has no additional water source to service new customers. Water sources for the

Central Maui Water System are provided by groundwater from the `Īao Aquifer and surface water from the West Maui Mountains. The `Īao Aquifer is designated as a GMA by the CWRM, while the surface water is from streams that constitute the *Na Wai Eha* SWMA.

164. DWS' existing 18-inch and 36-inch transmission and distribution lines will be utilized, to the extent possible, to convey water needed for the Project. Any new transmission lines that will be needed will be sized to handle the maximum day demand for the Project plus the maximum fire flow of 2,000 gpm. The waterlines will be of ductile iron and designed to meet the DWS' Water System Standards ("WSS") for pipeline sizing.

165. Onsite distribution waterlines will primarily be composed of 12-inch waterlines, with some 16-inch waterlines, and will be located within the Project's internal roadways. The waterlines will be sized to provide water for drinking, irrigation, and fire suppression purposes. The waterlines will also be sized to meet the pressure and velocity requirements of the WSS. Fire hydrants will be installed at a maximum of 250-foot intervals within the Petition Area, per the WSS. Further analysis of the water transmission and distribution system will be undertaken as part of the detailed engineering design process for the Project.

166. New water storage reservoirs will be required to meet the storage requirements for the Project. The reservoir capacity is based on the WSS Criterion 1 for

reservoir capacity, which is to meet the maximum day consumption, with the reservoir full at the beginning of the 24-hour period with no source input to the reservoir.

167. Supply requirements for the non-drinking irrigation system will average approximately 0.8 MGD at full buildout. This will be supplied by wells in the Kahului Aquifer and by the reuse of treated wastewater. Historically, groundwater recharge due to the activities of HC&S has made pumping large amounts of water from the aquifer with no deterioration in water quality possible. Should HC&S terminate its operations at a future time, the aquifer's remaining natural sources of recharge, which consist of direct rainfall, underflow from Haleakalā, underflow from the West Maui Mountains, and surface runoff from the West Maui Mountains, will be adequate to sustain the remaining, non-HC&S use of groundwater.

#### Wastewater Disposal

168. Austin Tsutsumi & Associates, Inc., prepared a preliminary engineering and drainage report dated April 2011 that addressed the wastewater disposal impacts and requirements of the Project.

169. There are two County sewer lines in the vicinity of the Petition Area: a 12-inch gravity line along South Kamehameha Avenue that services a portion of Maui Lani and a gravity line that runs through Waikapū Gardens and along Wai'ale Road that conveys wastewater to the Wailuku Wastewater Pump Station and ultimately to the Kahului Wastewater Reclamation Facility ("KWRF") for treatment.

170. The Petition Area is located in a Critical Wastewater Disposal Area ("CWDA") designated by the Maui Wastewater Advisory Committee. Designation as a CWDA allows the State of Hawai'i Department of Health ("DOH") to impose standards that are higher than those set forth in HAR chapter 11-62, Wastewater Systems. Pursuant to HAR section 11-62-05, a County water advisory committee can designate a CWDA if one or more of the following concerns are raised: high water table, impermeable soil or rock formation, steep terrain, flood zone, protection of coastal waters and inland surface waters, high rate of cesspool failure, and protection of groundwater resources.

171. The Petition Area is located outside of the Underground Injection Control ("UIC") line. The primary purpose of the UIC line is to protect potential sources of safe drinking water by not allowing wastewater injection wells or cesspools within the UIC line. Underground injection wells may be used if Petitioner constructs a wastewater treatment facility within the Petition Area to service the Project. Use of these wells is one of several methods to dispose of wastewater generated by a treatment facility.

172. The projected average daily wastewater flow from the Project at full buildout is approximately 910,000 gallons per day ("gpd"), and the design average flow, which includes dry weather infiltration, is approximately 980,000 gpd.

173. There are two alternatives for treating the wastewater generated by the Project. One alternative involves conveying the wastewater from the Project to the KWRF, in the event that there is capacity available to treat the flows, either with or without future expansion of the KWRF. This alternative is estimated to cost \$11 million. The second alternative is an onsite WWTP. The cost of an onsite WWTP is estimated at \$33 million.

174. Based on the design average flow of 980,000 gpd for the Project, the onsite WWTP would be designed to treat approximately 1.0 MGD of wastewater. The onsite WWTP would be designed to produce R-1 water, which could then be reused primarily for irrigation purposes. The treatment process would consist of secondary treatment followed by filtration and disinfection. The proposed location for the onsite WWTP alternative is in the north central portion of the Petition Area. An onsite sewer system would be installed to provide wastewater collection service to all proposed lots. The wastewater from the southern half of the Project would be conveyed, via gravity flow, directly to the WWTP. The wastewater from the northern half of the Project would be conveyed, via gravity flow, to the northeastern portion of the Petition Area, where a wastewater pump station would be used to pump the flow to the onsite WWTP.

175. Should Petitioner construct an onsite WWTP, there is the potential to attract hazardous wildlife and threaten aviation safety at Kahului Airport. Federal

Aviation Administration ("FAA") Advisory Circular 150/200-33B Hazardous Wildlife Attractants On or Near Airports ("FAA Advisory Circular") recommends a distance of five statute miles between the farthest edge of the air operation area ("AOA") and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure space. Though FAA Advisory Circular is termed "advisory," it is a requirement for certified airports such as Kahului Airport.

176. The entire Petition Area is located within five miles of the Kahului Airport AOA. The DOT recommends that an MOA be executed between Petitioner and DOT to ensure that the FAA Advisory Circular conditions are met relative to wastewater facilities, and that the Project does not create a safety hazard to aircraft operations. This MOA should be executed prior to the granting of final subdivision approval of the initial phase of onsite development by Petitioner.

#### Drainage

177. Austin Tsutsumi & Associates, Inc., prepared a preliminary engineering and drainage report dated April 2011 that addressed the drainage impacts and requirements of the Project.

178. The Petition Area slopes generally in an east or northeasterly direction. There are no onsite drainageways or storm drain systems to carry concentrated stormwater runoff. Any runoff from the Petition Area is generally widely dispersed and sheet flow in nature. The Petition Area south of East Waiko Road drains

east to Kūihelani Highway where an existing swale on the mauka side of the roadway intercepts runoff. The southern section of the Kūihelani Highway swale drains into Waikapū Stream. The northern section of the highway swale drains north and through a drainline under East Waiko Road where the runoff continues in a northerly direction. Two cross culverts under Kūihelani Highway carry flow to the makai sugarcane fields. Runoff ultimately flows into either Waikapū Stream or the Waihe`e Irrigation Ditch. Both drainageways flow south to Keālia Pond and Mā`alaea Bay. It is estimated that runoff from the Petition Area south of East Waiko Road is 50 cubic feet per second ("cfs").

179. The Petition Area north of East Waiko Road drains northeasterly to Kūihelani Highway, the Waihe`e Irrigation Ditch, and Maui Lani. Along Kūihelani Highway, runoff is intercepted by the existing swale on the mauka side of the highway. The first portion of the swale discharges runoff into the Waihe`e Irrigation Ditch while the lower portion of the swale continues north along Kūihelani Highway. The majority of this portion of the Petition Area flows northward to Maui Lani. Runoff is likely to infiltrate before it becomes concentrated. It is estimated that runoff from the Petition Area north of East Waiko is 339 cfs.

180. Project runoff will be collected by open swales and storm drain systems and will be routed to one of several detention basins. Prior to retention, the southern portion of the Petition Area will produce a 100-year, 24-hour stormwater

runoff of 459 cfs and the northern portion of the Petition Area will produce a 100-year, 24-hour runoff of 1,526 cfs. The installation of the proposed detention basins will result in a decrease in runoff from existing conditions. The Waikapū Stream and Keālia Pond drainage systems will be protected from any peak flow increases.

181. In addition to reducing peak flow rates, the proposed stormwater management system will provide water quality treatment to reduce the discharge of pollutants to the maximum extent practicable. Instead of just managing the infrequent peak storm events, the more common smaller storms will be targeted for treatment.

182. The Project will incorporate stormwater BMPs to control water quality. Examples of stormwater BMPs that will be employed include grass swales, open space and reduced impervious coverage, and stormwater retention and infiltration.

183. Drainage improvements with open swales, storm drains, and detention and retention basins have the potential to attract hazardous wildlife and threaten aviation safety at Kahului Airport. FAA Advisory Circular recommends a distance of five statute miles between the farthest edge of the AOA and the hazardous wildlife attractant if the attractant could cause hazardous wildlife movement into or across the approach or departure space. Though FAA Advisory Circular is termed "advisory," it is a requirement for certified airports such as Kahului Airport.

184. The entire Petition Area is located within five miles of the Kahului Airport AOA. The DOT recommends that an MOA be executed between Petitioner and DOT to ensure that the FAA Advisory Circular conditions are met relative to drainage facilities, and that the Project does not create a safety hazard to aircraft operations. This MOA should be executed prior to the granting of final subdivision approval of the initial phase of onsite development by Petitioner.

#### Solid Waste Disposal

185. The County provides residential curbside refuse pick up and disposal services in six major districts: Central Maui (including Wailuku, Kahului, and South Maui), Makawao (including Kula, Pukalani, Pā`ia and Ha`ikū), Lahaina (West Maui), Hāna, Lāna`i, and Moloka`i. The Central Maui Landfill - Refuse & Recycling Center is located near the intersection of Pūlehu Road and Hansen Road in Pu`unēnē, Maui. This facility accepts refuse from commercial and residential customers as well as provides recycling services.

186. In 2006, approximately 1.5 pounds of the 4.6 pounds of waste generated per day by individuals were recycled for a net waste generation amount of 3.1 pounds per day. Assuming an average household size of 3.0 persons, at full buildout, the solid waste generated by the Project is estimated to average approximately 23,715 pounds per day.

187. The construction of Project has the potential to impact the County's solid waste disposal operations. Coordination with the County and its Central Maui Landfill - Refuse & Recycling Center for the disposal/recycling of construction debris may be required. Disposal will be in accordance with appropriate regulations and standards.

188. In the *Public Facilities Assessment Update County of Maui (2007)*, R. M. Towill Corporation projected that the Central Maui Landfill would have adequate capacity to accommodate commercial and residential waste through 2025. This projection was arrived at by multiplying the County's de facto population projections by an estimate of pounds per person per day of waste generated, and assumes that solid waste generated by industrial and commercial growth will be captured by a corresponding trend in projected population growth. The majority of the County's waste goes to the Central Maui Landfill, which is projected to reach capacity in 2026. However, as proposed under the County's Integrated Solid Waste Management Plan ("ISWMP") (February 2009), through various initiatives, including the increased diversion of waste materials through recycling and composting, the landfill capacity could be extended to 2042.

189. A solid waste management plan will be coordinated with the County of Maui Department of Environmental Management ("DEM"), Solid Waste Division, for the disposal of onsite and construction-related waste material, and

Petitioner will work with contractors to minimize the amount of solid waste generated during the construction of the Project.

190. The closed Waikapū Landfill borders the Petition Area. The DOH, Solid and Hazardous Waste Branch (“DOH, SHWB”), has concerns regarding certain types of activities occurring that may impact the closed Waikapū Landfill. When the landfill closed in 1989, there were no monitoring requirements to ensure public health, safety, and welfare. DOH, SHWB, concerns are similar to those regarding Commission Docket No. A04-754 Maui Lani 100, LLC, and are primarily tied to a potential release incident or fire resulting from subsurface disturbance. Thus, DOH, SHWB, recommends the establishment of a 300-foot perimeter buffer area to reduce the risk from the landfill, and that uses within the buffer be limited to parking, roadway, other infrastructure uses, and open space.

#### Schools

191. The DOE operates two high schools, two intermediate schools, and four elementary schools in the Wailuku-Kahului region. These include Henry P. Baldwin High School, Maui High School, `Īao Intermediate School, Maui Waena Intermediate School, Kahului Elementary School, Lihikai Elementary School, Wailuku Elementary School, and Pōmaika`i Elementary School.

192. The Project is estimated to generate approximately 1,150 school-age residents. The amount of in-migration students is projected at 58 students. These new

students are estimated to cost the DOE approximately \$712,000 annually (\$12,276 per student). A minimum of approximately 830 students would live in the Project.

193. The DOE determined that the greatest need in Central Maui for school facilities is at the middle school level. Petitioner has been coordinating with the DOE regarding a proposed site for the middle school within the Project conceptual master plan. The final configuration and design of the proposed middle school will need to be confirmed by the DOE.

194. The Project is located in the Central Maui School Impact Fee District and will be subject to school impact fees. Petitioner anticipates that both land and monetary contributions to the DOE will be required to fulfill the impact fee requirements. An educational agreement between Petitioner and DOE will be executed prior to the Project receiving a County change of zone approval.

#### Police and Fire Protection

195. The County of Maui Police Department, Wailuku Patrol District, provides police protection services to the Petition Area. There are approximately 115 uniformed patrol officers and other personnel that serve this division.

196. The County of Maui Department of Fire and Public Safety provides fire protective services to the Petition Area. The Kahului Fire Station is located on Dairy Road. In 2009, there were approximately 48 firefighters and other personnel in the Kahului District. The Project and all related structures will be designed and built in

compliance with all fire protection requirements. Fire apparatus access roads and water supply for fire protection will comply with the Uniform Fire Code.

197. The Project is not anticipated to adversely impact police and fire protection services.

#### Civil Defense

198. The closest siren to the Petition Area is located approximately 1.5 miles to the north in Kahului. It is recommended that Petitioner install two 121 dB(c) omni-directional sirens, one at the southern portion of the Petition Area in the proposed park area and the other at the northern portion of the Petition Area around the planned community center. The exact placement of the sirens will be determined by the State of Hawai'i Department of Defense, Office of Civil Defense ("DOD, OCD"), as soon as it can view the ongoing development plans. Petitioner will coordinate with the DOD, OCD, to provide suitable sites for access and installation of warning sirens.

#### Emergency/Medical Services

199. The Maui Memorial Hospital, located in Kahului, is the only major medical facility on the Island of Maui. Acute, general, and emergency care services are provided by the 194-bed facility. Non-emergency health care is provided by clinics and offices throughout Wailuku-Kahului, such as Kaiser Permanente, which operates facilities in Wailuku and Maui Lani.

200. The Project is not anticipated to adversely impact emergency/medical services. The commercial areas of the Project will provide an opportunity to have doctors' offices and/or a medical clinic located onsite to serve the community and neighboring areas.

Electrical, Telephone, and Cable Service

201. MECO facilities currently consist of a steel pole-line supported 69 kilovolt (kV) transmission circuit along Kūihelani Highway. MECO's primary distribution circuits are available in the Maui Lani development located north of the Petition Area. MECO intends to extend these circuits to the Petition Area to serve as backups. The backup circuits will be extended from existing MECO facilities along Kamehameha Avenue from Maui Lani Parkway, requiring a new duct line to be installed. MECO also has plans to construct a Kūihelani Substation which will be located east of the intersection of Kūihelani Highway and Maui Lani Parkway, approximately 2,800 feet north of the Petition Area. Construction of the substation is expected to be completed in 2013.

202. The Project is expected to generate a demand of approximately 51 megawatts of electricity per day. MECO has indicated that electrical service for the Project will be obtained from the Kūihelani Substation by extending primary distribution circuits underground to the Petition Area along Kūihelani Highway.

203. Hawaiian Telcom's facilities currently consist of underground cables installed in a duct and manhole/hand-hole system on Kamehameha Avenue in the Maui Lani development to the north of the Petition Area. Spare ducts are stubbed out for extension at the end of Kamehameha Avenue at Pōmaika'i Elementary School to serve the Petition Area. Hawaiian Telcom plans to provide fiber optic ("FO") cable for each service instead of copper cables as they have in the past. This will allow the telephone company customer to obtain telephone, data, and cable TV ("CATV") services.

204. Oceanic Time Warner Cable ("OTWC") provides CATV, data, and telephone services, and has facilities at the Maui Lani development near the northwest corner of the Petition Area, with FO cables installed on Maui Lani Parkway to serve the Maui Lani development. OTWC's duct line and FO cables are available on Kamehameha Avenue at Pōmaika'i Elementary School. Duct lines and FO cables will be extended into the Petition Area to provide cable service to the Project.

#### Sustainability

205. Petitioner has prepared the Wai'ale Sustainability Plan to serve as a guide for the Project as it progresses through design and development. With the application of sustainable planning principles into the planning, design, and implementation of a comprehensive sustainable design strategy, the Project aspires to be a sustainable community in Hawai'i.

206. The sustainable planning and design principles being considered and integrated into the ongoing planning and design of the Project include Low Carbon Community Planning Principles, Smart Growth Planning and Design Principles, and Leadership in Energy and Environmental Design for Neighborhood Developments Planning Principles.

#### COMMITMENT OF STATE FUNDS AND RESOURCES

207. The State is expected to incur expenditures on an annual basis from the ongoing operation of the proposed middle school, other services to residents (e.g., operation of civic, health, and social services), and debt service attributed to general improvements. The DOE in particular will incur costs to service the in-migrant students expected at full buildout of the Project. It is expected that the Project will have a negative net annual revenue at full buildout primarily as a result of the Project's target market comprised by the workforce segment of the population. In general, State services to workforce residential communities are subsidized by revenues received from the visitor industry, businesses, and communities with higher annual household incomes. Notwithstanding the negative net annual revenue, it is expected that the Project will increase the State's personal income tax revenues and be a source of additional general excise taxes during construction and operation.

## CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

208. 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 Project includes "city-like" concentrations of people, structures, urban services and related land uses.

Criterion Nos. 2A, 2B and 2C. The Project is in proximity to Wailuku-Kahului's primary employment and trading center. Infrastructure systems are in proximity or can be provided to service the needs of the Project. The Project is planned to accommodate about one half of the future residential units forecast for the Central Maui region.

Criterion No. 3. The Project's topography (slopes of 2 percent to 3 percent) and drainage characteristics can accommodate urban development without adverse environmental effects.

Criterion No. 4. Portions of the Petition Area are contiguous with or in proximity to existing Urban designated areas situated at Maui Lani to the north and along East Waiko Road to the south.

Criterion No. 5. The Petition Area is designated for future urban growth as reflected on the Draft *Maui Island Plan*.

Criterion No. 6. The Petition Area conforms to or will conform to the standards in Criterion 1 through 5.

Criterion No. 7. The urbanization of the Petition Area will not contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.

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

209. 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 Project are as follows:

Section 226-5, Objective and policies for population. To achieve the population objective, it shall be the policy of this State 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 226-6, Objectives and policies for the economy-in general. To achieve the general economic objectives, it shall be the policy of this State

to: a) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives; and b) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.

Section 226-13, Objectives and policies for the physical environment-land, air, and water quality. To achieve the land, air, and water quality objectives, it shall be the policy of this State 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 226-15, Objectives and policies for facility systems-solid and liquid wastes. To achieve the solid and liquid waste objectives, it shall be the policy of this State to: a) Encourage the adequate development of sewerage 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, Objective and policies for facility systems-water. To achieve the facility systems water objective, it shall be the policy of this State to: a) Coordinate development of land use activities with existing and potential water supply; b) Support research and development of 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 transportation objectives, it shall be the policy of this State to: a) Encourage a reasonable distribution of financial responsibilities for transportation among participating governmental 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 this 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 226-103, Economic priority guidelines. Priority guidelines for water use and development: a) Maintain and improve water conservation programs to reduce the overall water consumption rate; b) Encourage the improvement of irrigation technology and promote the use of nonpotable water for agricultural and landscaping purposes; c) Increase the support for research and development of economically feasible alternative water sources; and d) Explore alternative funding sources and approaches to support future water development programs and water system improvements.

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; b) Manage a growth rate for Hawai'i's

economy that will parallel future employment needs for Hawai'i's people; and c) 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; and b) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

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; b) Create incentives for development which would increase home ownership and rental opportunities for Hawai'i's low- and moderate-income households, gap-group households, and residents with special needs; c) Encourage public and private sector cooperation in the development of rental housing alternatives; and d)

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.

Section 226-108, Sustainability. Priority guidelines and principles to promote sustainability: a) Encouraging planning that respects and promotes living within the natural resources and limits of the State; b) Promoting a diversified and dynamic economy; c) Encouraging respect for the host culture; d) Promoting decisions based on meeting the needs of the present without compromising the needs of future generations; and e) Considering the principles of the ahupua'a system.

The Project will be a master-planned community for residents to live, work, learn, and play. Residential communities will be connected to village mixed-use areas supported with commercial, retail, office, civic, and other public facilities through a system of pedestrian/bicycle paths and greenways. Existing residential and industrial land uses are found in proximity to the Petition Area. The design and the entitlement process as well as the actual construction and operation of the Project will generate new employment opportunities, both directly and indirectly, on Maui. The Project will not have any adverse impacts to surface, ground, and coastal waters. All drainage improvements will be designed so that there will be no increase in the peak rate of stormwater runoff leaving the Petition Area compared to existing conditions. The use

of detention basins, debris basins, and natural swales or channels will store and filter the stormwater, removing pollutants (via percolation) prior to exiting the Petition Area. The Project will not exacerbate any hazard conditions. Most of the Petition Area is designated as Zone X, which denotes areas determined to be outside both the 500-year and 100-year flood plains. Development within the Waikapū Stream floodway will be avoided. The Petition Area is located outside of the tsunami inundation zone. All structures within the Project will be constructed in compliance with the County Building Code to mitigate potential damage caused by earthquakes and hurricanes. The Project is located in proximity to existing public services and infrastructure. Petitioner is exploring potential water source opportunities, 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. Petitioner is considering two alternatives for treating the wastewater generated by the Project: construction of an onsite WWTP and conveying the wastewater to the KWRF. The Project will promote the optimal use of solid wastes through programs of waste prevention, energy resource recovery, and recycling. The Petition Area has not been identified or designated as IAL by the County of Maui or the Commission. The reclassification of the Petition Area will not substantially impair actual or potential agricultural production in the vicinity of the Petition Area or in the County of Maui or State, and is reasonably necessary to

accommodate urban growth. The Project will provide a range of housing types which will serve to meet the varied housing needs of the region. Additional housing choices will provide healthy competition and allow for a more balanced housing market.

Petitioner will implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the United States Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of the Project. Petitioner will also provide information to home purchasers about energy conservation measures that may be undertaken by individual homeowners. To this end, the Project is in conformance with the above-noted objectives, policies, and priority guidelines of the Hawai'i State Plan.

210. 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 Housing Functional Plan: The Project will help to alleviate the public demand for affordable housing units on Maui.

State Employment Functional Plan: The Project will improve the quality of life for workers and families by providing workforce housing that will be in proximity to regional employment centers.

State Energy Plan: The design and construction of the Project will include measures to promote energy conservation, sustainable design, and environmental stewardship.

State Recreation Functional Plan: The Project will address recreational needs through the provision of a regional park, neighborhood parks, greenways, and open space.

State Transportation Functional Plan: The Project's roadway system will be developed in consultation with the DOT and the County of Maui Department of Public Works ("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: An AIS and a Data Recovery Plan and Preservation Plan for the Project have been reviewed and accepted by the DLNR, SHPD.

## CONFORMANCE WITH THE COASTAL ZONE OBJECTIVES AND POLICIES

211. The Project is consistent with the applicable objectives of the Coastal Zone Management Program. In particular, it is consistent with preserving natural and historic resources, preserving open space resources, providing improvements important to the state's economy, improving the development process, and stimulating public participation.

## CONFORMANCE WITH THE COUNTYWIDE POLICY PLAN

212. The *Countywide Policy Plan* was adopted in March 2010 and is a comprehensive policy document for the County of Maui to 2030. The plan replaces the *General Plan of the County of Maui 1990 Update* and provides the policy framework for the development of the forthcoming *Maui Island Plan* as well as for updating the nine detailed Community Plans. The *Countywide Policy Plan* provides broad goals, objectives, policies, and implementing actions that portray the desired direction of the County's future.

213. The Project is consistent with the goals, objectives, and policies of the *Countywide Policy Plan* with respect to protecting the natural environment, preserving local cultures and traditions, expanding housing opportunities for residents, strengthening the local economy, improving parks and public facilities, diversifying transportation options, improving physical infrastructure, and promoting sustainable land uses and growth management.

#### CONFORMANCE WITH THE MAUI ISLAND PLAN

214. The *Maui Island Plan* has not yet been adopted by the Maui County Council. The backbone of the *Maui Island Plan* will be the Directed Growth Strategy, which will include Directed Growth Maps specifying “urban growth boundaries” for the Island of Maui. As of November 2010, the Project is within the “urban growth boundary” of the Directed Growth Maps put forth by: (i) DP; (ii) the Maui Planning Commission; and (iii) the General Plan Advisory Committee.

#### CONFORMANCE WITH THE WAILUKU-KAHULUI COMMUNITY PLAN

215. The Project is consistent with the objectives and policies of the *Wailuku-Kahului Community Plan*, including those relating to economic activity, the environment, cultural resources, housing, social infrastructure, education, land use, water and utilities, liquid and solid waste, drainage, energy, transportation, and urban design.

#### 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 section 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 545.229 acres of land, situated in Wailuku and Waikapū, Island of Maui, State of Hawai'i, TMKs: 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101, and 104 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 part III of HRS chapter 205 entitled *Important Agricultural Lands*, 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, 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. 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.

5. 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.

6. 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 545.229 acres of land, situated in Wailuku and Waikapū, Island of Maui, State of Hawai'i, TMKs: 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101, and 104, 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. **Water.** Petitioner shall provide the necessary water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to service the Petition Area.
2. **Water Conservation.** Petitioner shall implement water conservation and best management practices in the design and construction of the Petition Area.

3. **Parks.** Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.

4. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents of the State of Hawai'i in accordance with the affordable housing requirements of the County of Maui.

Petitioner shall comply with all housing requirements to the satisfaction of the DHHC.

5. **Highway and Road Improvements.** Petitioner shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in an MOA agreed to and executed between the DOT and Petitioner. Petitioner shall submit to the DOT prior to application for a zone change an updated TIAR. Petitioner shall obtain acceptance of the Project's TIAR from DOT and shall execute the MOA prior to final subdivision approval of the initial phase of onsite development by Petitioner.

The MOA shall include, but not be limited to, the following terms and conditions: (i) the accepted TIAR shall be incorporated in the MOA by reference; (ii) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (iii) a schedule of agreed to improvements and a schedule for future TIAR updates or revisions to be accepted by DOT; (iv) development

of the Project shall be consistent with the executed MOA and TIAR; and (v) any fees or in-kind contribution that is roughly proportional to any indirect or secondary impacts caused by the Project.

Petitioner shall construct roadway improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW.

6. **Disclosure Regarding Highway Traffic Noise.** Petitioner shall include a provision in each of its sales, lease, and conveyance documents, whereby each person who may from time to time own the Petition Area, any portion thereof, or hold any other interest therein or occupy any improvements thereon, makes the same acknowledgement and the following agreements in favor of the State of Hawai'i: (a) such person assumes complete risk of and forever releases the State of Hawai'i from all claims for damages and nuisances occurring on the Petition Area and arising out of or related to highway traffic noise from Kūihelani Highway and (b) such person waives any right to (i) require the State of Hawai'i to take any action to eliminate or abate any highway traffic noise from Kūihelani Highway; and (ii) file any suit or claim against the State of Hawai'i for injunction or abatement of any highway traffic noise from Kūihelani Highway and for any damages or other claims related to or arising therefrom.

7. **Notification of Proximity to Kahului Airport.** Petitioner and all subsequent owners shall notify and disclose to all prospective developers, purchasers,

and/or lessees within the Project, as part of any conveyance document (deed, leases, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

8. **Hazardous Wildlife Attractants on or Near Kahului Airport.** As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, and wastewater treatment facilities or associated settling ponds) serving the Project. Petitioner shall enter into an MOA with DOT to document hazardous wildlife attractant mitigation prior to final subdivision approval of the initial phase of onsite development by Petitioner.

9. **Wastewater.** Should an onsite wastewater facility be pursued to accommodate wastewater flows from the development, consultation with and approval from the DOH shall be sought pursuant to HAR chapter 11-62, Wastewater Systems. The site's location within the CWDA and the protection of groundwater resources shall be considered as part of the review and approval of such a facility.

Petitioner shall design, fund, and construct a wastewater treatment facility and transmission lines to accommodate the development of the Petition Area to the

satisfaction of the DEM and the DOH.

10. **Stormwater Management and Drainage.** Petitioner shall construct and maintain, or cause to be maintained, stormwater and drainage system improvements as designed in compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement BMPs and incorporate low impact development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.

Petitioner shall construct drainage improvements to accommodate the development of the Petition Area in accordance with the requirements of the DPW.

11. **Civil Defense.** Petitioner shall fund and install two civil defense warning sirens as specified by and in locations and timeframes determined by the DOD, OCD.

12. **Archaeological and Historic Preservation.** Petitioner shall comply with the mitigation and preservation measures recommended and approved by the DLNR, SHPD. This includes, but is not limited to, the implementation of the Preservation and Data Recovery Plan, the establishment of the Cultural Preserve, and continuous archaeological monitoring during site excavation activities.

13. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are

identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR, SHPD, Maui Island Section, 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, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, 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.

14. **Established Access Rights Protected.** Pursuant to Article XII, section 7, of the Hawai'i State Constitution, 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.

15. **Sustainability.** Petitioner shall comply with the implementation of its Sustainability Plan for the Project and Petition Area.

16. **Endangered Species.** To address the potential impacts on the endangered Blackburn's sphinx moth and other endangered species in the Petition Area, Petitioner shall consult with the DLNR, DOFAW, and the USFWS to develop mitigation measures to avoid adverse impacts to endangered species. Mitigation

measures may include obtaining approval of a Habitat Conservation Plan and Incidental Take License and Permit.

17. **Waikapū Landfill Buffer.** A buffer area at least 300 feet wide extending from the boundary of the Waikapū Landfill shall be established, within which allowable uses shall be limited to parking, roadway, other infrastructural uses, and open space. Any deviation from these uses shall be approved by the DOH, SHWB.

18. **Public School Facilities.** In conjunction with educational plans for a middle school facility within the Petition Area, an Education Contribution Agreement specifying the fair share contribution for the development, funding, and/or construction of school facilities shall be executed with the DOE prior to zone change approval.

19. **Compliance with HRS Section 205-3.5, Related to Agricultural Uses on Adjacent Agricultural Land.** For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:

A. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS section 165-2; and

B. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS chapter 165, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

20. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten years from the date of the Decision and Order approving the Petition.

21. **Compliance with Representations.** 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. **Order to Show Cause.** If Petitioner fails to complete the 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 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.

23. **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.

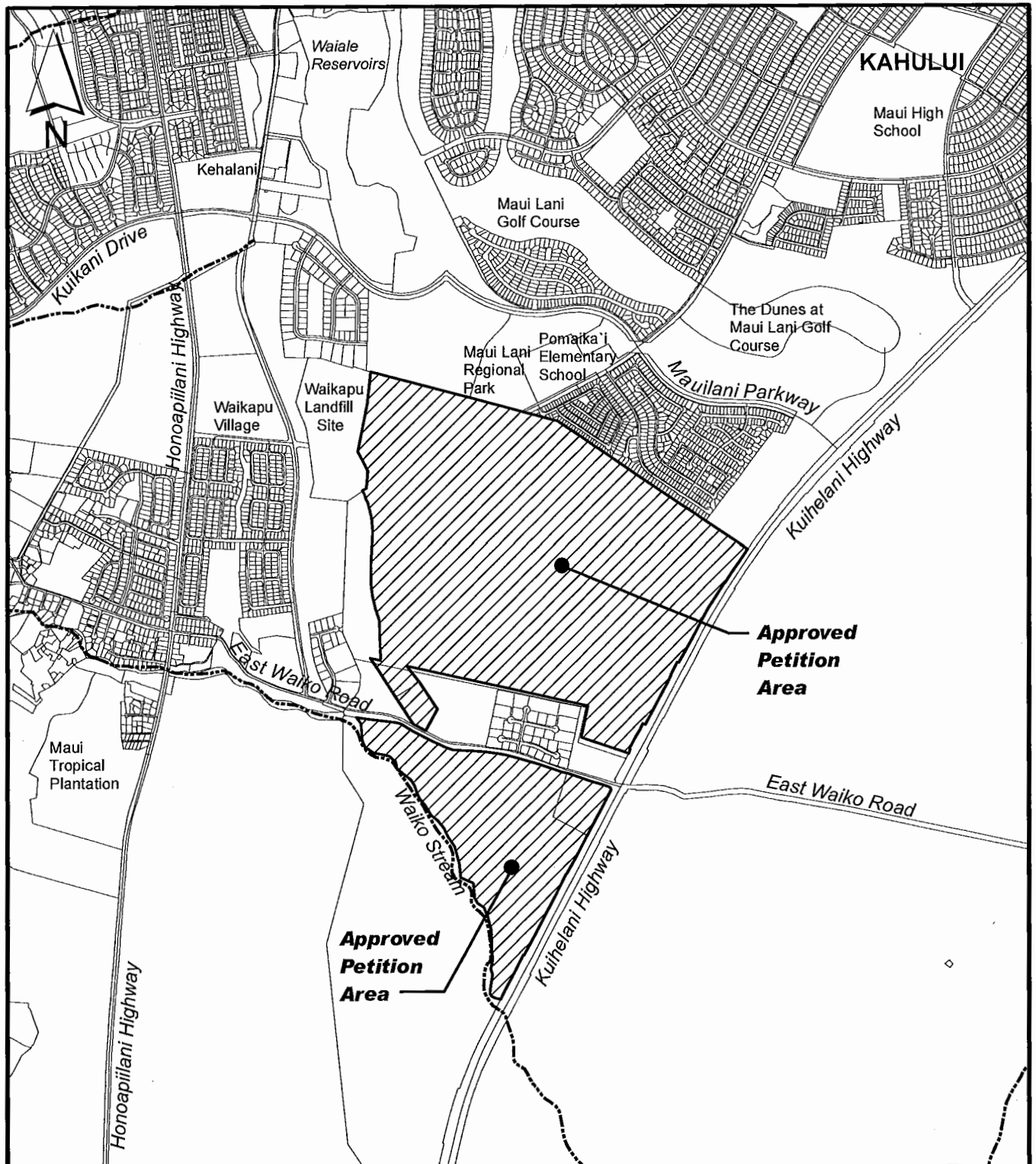
24. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed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

25. **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.

26. **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.

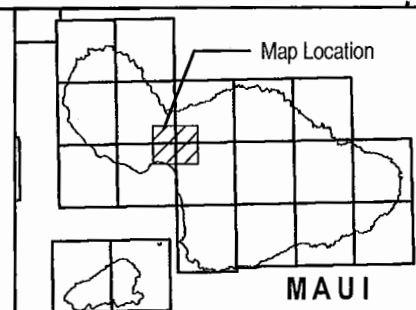
27. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR section 15-15-92.



**A10-789 A & B PROPERTIES, INC.  
LOCATION MAP**

Tax Map Keys: 3-8-05: Portion Of 23 And 37 And  
3-8-07: 71, Portion Of 101, And 104  
Wailuku And Waikapū, Island Of Maui,  
State Of Hawai'i,  
Scale 1: 24, 000

**Exhibit "A"**




ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 21st day of June, 2012. This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 21st, day of June, 2012, per motion on May 21, 2012.

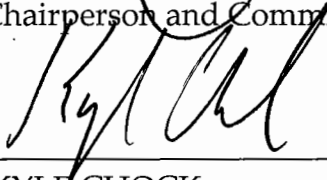
LAND USE COMMISSION

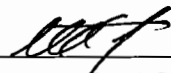
APPROVED AS TO FORM

  
Deputy Attorney General

STATE OF HAWAII

By   
NORMAND LEZY  
Chairperson and Commissioner

By   
KYLE CHOCK  
Vice- Chairperson and Commissioner

By   
NICHOLAS W. TEVES JR.  
Vice- Chairperson and Commissioner

By   
CHAD McDONALD  
Commissioner

By   
RONALD HELLER  
Commissioner

By (voted no)  
JAYE NAPUA MAKUA  
Commissioner

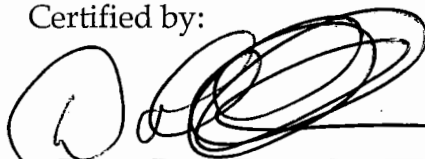
By (excused)  
ERNEST MATSUMURA  
Commissioner

Filed and effective on:

6/21/12

By   
LISA JUDGE  
Commissioner

Certified by:

  
DANIEL ORODENKER  
Executive Officer

By (excused)  
THOMAS CONTRADES  
Commissioner



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. A10-789
	)	CERTIFICATE OF SERVICE
A&B PROPERTIES, INC.	)	
	)	
To Amend The Agricultural Land	)	
Use District Boundary Into The	)	
Urban District For Approximately	)	
545.229 Acres At Wailuku And	)	
Waikapū, Island Of Maui, State Of	)	
Hawai'i, Tax Map Keys: 3-8-05: Portion	)	
Of 23 And 37 And 3-8-07: 71, Portion Of	)	
101, And 104	)	
_____	)	

CERTIFICATE OF SERVICE



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of ) DOCKET NO. A10-789  
)  
A&B PROPERTIES, INC. ) CERTIFICATE OF SERVICE  
)  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban Land )  
Use District For Approximately 545.229 )  
Acres Of Land At Wailuku And )  
Waikapū, Maui, Hawai'i, Tax Map )  
Keys: 3-8-05: Por. 23 And 37 And 3-8- )  
07: 71, Por. 101, And 104 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a 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	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
BRYAN YEE, ESQ. Deputy Attorney General Hale 'Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
CURTIS T. TABATA, Esq. Matsubara-Kotake 888 Mililani Street, 8 <sup>th</sup> Floor Honolulu, Hawaii 96813			X
William Spence, Director Department of Planning County of Maui 250 South High Street Wailuku, Hawaii 96793		X	
MICHAEL HOPPER, Esq. Corporation Counsel County of Maui 250 South High Street Wailuku, Hawaii 96793			X

Honolulu, Hawai'i, June 21st, 2012.



DANIEL ORODENKER  
Executive Officer