

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A11-792
	)	
DEPARTMENT OF HOUSING AND	)	PETITIONER'S PROPOSED
HUMAN CONCERNS, COUNTY OF	)	FINDINGS OF FACT,
MAUI	)	CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER
To Amend the Agricultural Land Use	)	
District Boundary into the Urban District for	)	
approximately 73.000 acres at Lanai City,	)	
Island of Lanai, State of Hawai'i, TMK	)	
(2) 4-9-2: portion of 58	)	
_____	)	

**PETITIONER'S PROPOSED FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW AND DECISION AND ORDER**

Petitioner DEPARTMENT OF HOUSING AND HUMAN CONCERNS, COUNTY OF MAUI ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on May 2, 2011 ("Petition"), pursuant to Hawai'i Revised Statutes ("HRS") sections 205-4 and 201H-38, and Hawai'i Administrative Rules ("HAR") chapter 15-15, to amend the land use district boundary to reclassify approximately 73.000 acres of land, situated in Lanai City, Island of Lanai, Hawai'i, ("Property"), Tax Map Key No. (2) 4-9-2: portion of 58 ("Petition Area"), from the state Land Use Agricultural District to the state Land Use Urban District. The reclassification is necessary to allow for the development of the proposed Lanai Affordable Housing Project ("Project").

The 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.

**I. PROCEDURAL MATTERS**

1. On February 28, 2011, the Commission received Petitioner's Notice of Intent to File a Land Use District Boundary Amendment Petition pursuant to HAR Section 15-15-97(b), Affidavit Attesting to Service, Exhibits "A" - "B", Affidavit Attesting to Publication and Certificate of Service.

2. On March 1, 2011, Petitioner filed its Petition for Declaratory Order in Docket No. DR11-44 to request a waiver of the time schedule requirement for incremental plans under HAR Section 15-15-50(c)(19) for the future filing of Petitioner's petition for district boundary amendment in Docket No. A11-792.

3. On April 6, 2011, the Commission entered its Order Granting Petitioner's Petition for Declaratory Order in Docket No. DR11-44 and granted the waiver of the time schedule requirement for incremental plans.

4. On \_\_\_\_\_, Petitioner filed its Affidavit re Service, Mailing, Filing with the Lieutenant Governor's Office and Publication of the Notice of Hearing, and COS.

5. On May 2, 2011 the Commission received Petitioner's Petition for Land Use District Boundary Amendment ("Petition"); Exhibits "1" through "13" of the Petition, and COS.

6. On \_\_\_\_\_, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of \_\_\_\_\_.

7. On \_\_\_\_\_ a prehearing conference was held at the Commission's conference room no. 405.

8. The Commission held evidentiary hearings in this docket on May 26, 2011 and May 27, 2011 in Lanai, Hawai'i.

## II. FINDINGS OF FACT

### A. Description of the Petition Area

9. The Petition Area is situated in Lanai City, Island of Lanai, Hawai'i and consists of approximately 73.000 acres of land, is comprised of TMK: (2) 4-9-2: portion of 58, and is owned in fee simple interest by Petitioner. [Pet. Ex. 5]

10. The Petition Area is currently vacant and is surrounded by Lanai High School and Elementary School, a Department of Hawaiian Home Lands subdivision, Olopuia Woods Subdivision and vacant agricultural lands. [Pet. Ex. 5]

11. The Petition Area is within Lanai City. Single and multi-family residential properties surround the town's commercial core located across Dole Park. Project

District 2 (Koele) is located north of Lanai City. Other urban areas include Lanai Airport, situate about 3.2 miles to the southwest, Kaumalapau Harbor, the commercial seaport situated about seven (7) miles to the southwest, and Lanai Project District 1 (Manele) situated about 8.0 miles to the south of Lanai City. [Pet. Ex. 5]

12. The Flood Insurance Rate Maps dated September 25, 2009 for the island of Lanai identifies the Petition Area in Zone X, an area of minimal flooding. [Pet. Ex. 5]

13. The U.S. Department of Agriculture Natural Resources Conservation Service classifies the soils within the Petition Area as Molokai-Lahaina association of soils. [Pet. Ex. 5]

14. The University of Hawai`i Land Study Bureau (LSB) rates the Petition Area lands as "C". [Pet. Ex. 5]

15. The Agricultural Lands of Importance in the State of Hawai`i (ALISH) map designates the Petition Area as "Prime". [Pet. Ex. 5]

16. The Petition Area is characterized as having a level to gently sloping topography and lies at an elevation of approximately 1,620 feet above mean seal level. [Pet. Ex. 5]

**B. Proposal for Reclassification**

17. The Project will consist of approximately 425 residential units. According to the Project's conceptual master plan, there will be 208 single-family residences on 6000 square foot minimum lots and 217 multi-family units on approximately 13.29 acres

of land. The project will include two parks and a site for a community center. [Pet. Ex. 5]

18. The Project is anticipated to be developed over five phases and will be completed in approximately 17 years based upon the absorption rate. [Pet. Ex. 5]

19. The Incremental Plan for the Project specifies five increments of development, specifying the number of units, improvements and infrastructure that will be completed for each increment prior to commencing the next subsequent increment. The Incremental Plan assures concurrency between the development of necessary infrastructure and the residential units built. The Incremental Plan, however, does not include a timetable for each phase due to the unknown availability of public funding. [Pet. Ex. 6]

20. As a result of Petitioner's inability to provide a time schedule for the incremental plan, Petitioner filed a Petition for Declaratory Order on March 1, 2011 to obtain a waiver of the time schedule requirement for incremental plans for this Petition for District Boundary Amendment. The Petition for Declaratory Order was granted at the Commission meeting on March 23, 2011, and the Commission entered its Order Granting Petitioner Department of Housing and Human Concerns, County of Maui's Petition for Declaratory Order, DR11-44, on April 6, 2011. [Pet. Ex. 7]

21. Petitioner has met with interested community groups to discuss the proposed Project. [Pet. Ex. 5]

22. The Project was approved and certified as a HRS Section 201H-38 affordable housing project by way of Resolution 10-12 which was adopted by the Council of the County of Maui on March 5, 2010. [Pet. Ex. 13]

**C. Justification for Reclassifying the Entire Project**

23. The budgetary context for a project such as the Lanai Affordable Housing Project is set forth by Chapter 2.80B of the Maui County Code, which has a year 2030 planning horizon. As the only affordable housing project sponsored solely by the County of Maui, it is important that the Department of Housing and Human Concerns ensure compliance with the Countywide Policy Plan's objective of increasing and maintaining affordable housing inventory, through prioritization of available infrastructure capacity. In order to meet this objective, there must be certainty that the project will be implemented without the need for future discretionary approvals. [Pet. Ex. \_\_]

24. Capital improvement funding approved by the County Council will include use of monies to provide future infrastructure capacities (i.e., infrastructure sizing for water, sewer and drainage systems are based on design criteria intended to meet ultimate buildout requirements). The commitment to fund these improvements will be based on reliance that there will be no future changes to infrastructure requirements based on future discretionary approvals which may bring into question the long-term feasibility of initial investments in infrastructure systems. [Pet. Ex. \_\_]

**D. Petitioner's Financial Capability to Undertake the Project**

25. Petitioner is a department of the County of Maui and is exempt from the requirement to provide financial statements pursuant to HAR Section 15-15-50(c)(8).

**E. Need for the Proposed Development**

26. Lanai lacks enough resident housing affordable to the community. The construction of the Lanai Affordable Housing project will enable the Island's residents to purchase or rent housing units and relieve the existing problem of multiple families living in the same unit. [Pet. Ex. 5]

**F. Economic Impacts**

27. On a short-term basis, the Project will support construction and construction-related employment. Accordingly, the Project will have a beneficial impact on the local economy during the period of construction. [Pet. Ex. 5]

**G. Social Impacts**

28. The proposed Project is not anticipated to have an adverse impact upon the population. [Pet. Ex. 5]

**H. Impacts Upon Resources of the Area**

**1. Agricultural Resources**

29. The Petition Area has remained fallow since the cessation of pineapple cultivation on Lanai in 1992. Of the 46,639 acres of Agricultural District lands on Lanai, the Petition Area's 73 acres represents 0.002 percent of the total. Ongoing agricultural

endeavors being undertaken on Lanai consists of approximately 4,200 acres of leased for cattle grazing, approximately 8.5 acres in town used for the Lanai Community Gardens, and 10 acres leased to a commercial farmer for growing fruits and vegetables. Given the small percentage of lands being used for active agriculture on Lanai, the Project is not deemed to have a significant impact on agriculture on the island. [Pet. Ex. 10]

## 2. Flora and Fauna

30. The vegetation on the Property is dominated by non-native species, and no endangered, threatened or candidate plant species or their habitats were found on the Property. [Pet. Ex. 5]

31. Four mammals were detected which included Axis deer, mouse, cat and horse. No evidence was found of the native Hawaiian hoary bat. Eleven non-native birds were identified on the Property. The Property is not a suitable habitat for Lanai's native forest birds or sea birds. [Pet. Ex. 5]

32. No endangered insects or invertebrates were observed on the Property. [Pet. Ex. 8]

## 3. Archaeological and Historical Resources

33. The archaeological inventory survey ("AIS") performed by Cultural Surveys Hawaii, Inc. ("CSH") dated November 2009 identified one historic property on the Project site consisting of a historic era culvert headwall (SIHP 50-40-98-6649).



Because the information relating to this site has been recorded and additional historic preservation mitigation would not add to the body of information, CSH recommends no further historic preservation work specific to the site is necessary. This recommendation was accepted by SHPD. [Pet. Ex. 5]

#### 4. Cultural Resources

34. The cultural impact assessment ("CIA") performed by CSH dated August 2009 found no traditional or cultural practices that will be adversely impacted by the Project. [Pet. Ex. 5]

#### 5. Groundwater Resources

35. Only the Central Aquifer sector on Lanai is believed to contain freshwater. The Petition Area lies above the Kaumalapau Aquifer sector and, therefore, there are no drinking water wells down gradient of the Petition Area. As a result, the Project will not impact any drinkable groundwater. [Pet. Ex. 9]

#### 6. Scenic Resources

36. The Project is not a part of nor does it lie within a scenic view corridor. The Property is located on the outskirts of Lanai City and would not affect views from inland vantage points. The proposed Project will not alter the essential county town ambiance of the city and is consistent and compatible with existing surrounding land uses. [Pet. Ex. 5]

### I. Environmental Quality

37. The Project is not anticipated to have any significant air quality or noise impacts. Air quality and noise impacts occurring during construction will be addressed through BMP's, monitoring, and compliance with all applicable regulations. [Pet. Ex. 5]

**J. Adequacy of Public Services and Facilities**

**1. Highway and Roadway Facilities**

38. Vehicular access to the Petition Area is off of 5th Street, a two-lane, two-way County road. [Pet. Ex. 5]

39. Existing roadways in the vicinity of the Project are located north east of the Project site. 5th Street is a two-lane, east-west, County roadway located on the north side of Lanai City. Fraser Avenue is a two-lane, primary north-south, County roadway located on the west side of Lanai City. Lanai Avenue is a two-lane, primary north-south, County roadway located on the east side of Lanai City. Existing LOS ratings for the AM and PM peak hours for the Fraser St./5th Ave. and Lanai Ave./5th St. intersections are either LOS A or B. Base year projections for AM and PM peak hours at Fraser St./5th Ave. and Lanai Ave./5th St. intersections without the Project at year 2017 are LOS B. Base year 2026 projections without the Project for both intersections are either LOS B or C. Future year 2017 projections with the Project continue to yield LOS B for both intersections except an anticipated LOS C rating for the west-bound lanes at the Fraser Ave./5th St. intersection. Future year 2026 projections with the Project continue

to yield LOS B ratings for the Lanai Ave./5th St. intersection, but mostly LOS E ratings at the Fraser Ave./5th St. intersection. [Pet. Ex. 5]

## 2. Schools

40. Lanai High and Elementary school provides elementary and secondary educational facilities for Lanai. The State DOE school's 2009 and 2010 enrollment is 542 students. Maui County is in the process of donating 42 acres to the DOE for the expansion of the School, and the Petitioner, the DOE and the DHHL are in discussions relative to the coordination of their master plans and infrastructure needs to their respective projects. [Pet. Ex. 5]

## 3. Parks and Recreational Facilities

41. Maui County's Department of Parks and Recreation administers the Lanai Community Center, the Lanai Gym and Tennis Courts, the Lanai Little League Field, Fraser Avenue Park and Kaumalapau Highway/Fraser Avenue Park. Privately owned parks available for public use include Dole Park, Waialua Park, Hulopoe Beach Park, Olopuia Woods Park, the Lanai Recreation Center, and two 18 hole championship golf courses and a nine hole golf course. The Project will include two parks consisting of 2.83 and 2.08 acres. The 2.83 acre park site will be developed in Phase 1 of the Project. [Pet. Ex. 5]

## 4. Water Service

42. Domestic water service for Lanai is provided by the Lanai Water Company, a private company regulated by the PUC. Service to Lanai City consists of two reservoirs: Koele Reservoir and Lanai City Reservoir. The Project is estimated to need approximately 0.278 MGD from the LWC. Combined with estimated usage, the water demand is below the 2.75 MG storage capacity of the Koele and Lanai City Reservoirs. [Pet. Ex. 5]

43. The Project is included in the draft Maui County Water Use & Development Plan - Lanai as a discretionary project that has been submitted for review. [Pet. Ex. \_\_]

#### 5. Solid Waste Disposal

44. The Lanai Landfill as of February 2009 has a remaining capacity of 178,000 cubic yards and an annual capacity usage of 13,400 cubic yards or 5,127 tons per year. [Pet. Ex. 5]

#### 6. Wastewater Disposal

45. Wastewater is treated at the County's Lanai Wastewater Treatment Facility. The WWTF has a design capacity of 0.5 MGD, and current usage is 0.297 MGD. The Project is estimated to produce 0.135 MGD. [Pet. Ex. 5]

#### 7. Drainage

46. Project runoff is estimated for a 50-year, one hour rainfall occurrence will be approximately 137.75 cfs which equates to a one hour volume of 496,000 cubic feet.

A 4 acre site has been included in the Petition Area for an on-site retention basin that will be six feet deep with a capacity of 800,000 cf. An overflow pipe will allow any excess runoff to discharge to the natural outflow point. [Pet. Ex. 5]

#### 8. Police and Fire Protection

47. Police service is provided by the Maui County Police Department. The Lanai police station is located in Lanai City and is staffed by two Commanders, six patrol officers, and a school resource officer. Fire service is provided by the Maui County Department of Fire and Public Safety. The Lanai Fire Station is staffed by three Captains, three drivers and twelve fire fighters. [Pet. Ex. 5]

#### 9. Emergency/Medical Services

48. The Lanai Community Hospital is the only major medical facility on Lanai. The 14 bed facility provides acute and long term medical care, as well as 24-hour emergency medical service. Also in Lanai City is the Straub Lanai Family Health Center which provides out-patient medical care for the island's residents including Kaiser Permanente members. In addition, air ambulance service is provided by Mercy Air Hawaii, Inc., while surface ambulance and emergency medical care services are provided by American Medical Response, Inc. [Pet. Ex. 5]

#### 10. Electricity and Telephone Service

49. Electrical is provided by Maui Electric Company, telephone service is provided by Hawaiian Telcom, Inc., cable television is provided by Time Warner Cable, Cox and Charter Communications. [Pet. Ex. 5]

#### 11. Energy Conservation

50. Petitioner's Sustainability Plan is intended to be a guide that evolves until Project completion. The Sustainability Plan identifies potential strategies and actions in support of goals, including energy conservation. [Pet. Ex. \_\_]

51. Energy management strategies and actions that may be incorporated into the project include: design buildings to take advantage of natural ventilation in order to reduce the need for air conditioning; install solar water heaters in residential units and educate potential home owners of the potential long-term savings; offer photo-voltaic panels as an option and educate potential home owners of the potential long-term savings; equip residences with Energy Star efficient appliances; allow the location and placement of clotheslines on the single-family lots; utilize cost effective energy efficient building materials, wherever possible; and encourage re-cycling by residents. [Pet. Ex. \_\_]

#### K. Commitment of State Funds and Resources

52. It is not known if future State funds will be available for the Project. [Pet. Ex. \_\_]

#### L. State Land Use Designation

53. The Petition Area is presently classified in the state Agricultural Land Use District. [Pet. Ex. 5]

**M. Conformance With Urban District Standards**

54. The Project is in conformity with section 15-15-18 of the Hawai'i Administrative Rules.

(1) The Petition Area includes lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

(2) The Petition Area is proximately located to centers of trading and employment; has access to basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection; and there is sufficient reserve areas for foreseeable urban growth.

(3) The Petition Area has satisfactory topography, drainage, and is reasonably free from the danger of any flood, tsunami, unstable soil conditions, and other adverse environmental effects.

(4) The Project is near Urban lands and is consistent with the goals, objectives and policies of the Lanai Community Plan.

(5) The Project will not contribute to scattered spot urban development.

(6) The Project conforms to the applicable goals, objectives and policies of the Hawai'i State Plan and relates to the applicable priority guidelines of the Hawai'i State Plan and adopted functional plans.

(7) The Project conforms to the applicable district standards. [Pet. Ex. 5]

**N. Conformance With The Goals, Objectives, and Policies of The Hawai'i State Plan**

55. The Project is consistent with the following applicable goals, objectives, policies, and priority guidelines of the Hawai'i State Plan.

***§ 226-5 Objectives and policies for population.***

*(b)(1) Manage the population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.*

\* \* \*

*(b)(7) 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.*

***§ 226-19 Objectives and policies for socio-cultural advancement – housing.***

*(a)(1) Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawaii's population.*

*(a)(2) The orderly development of residential areas sensitive to community needs and other land uses.*

\* \* \*

*(b)(3) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.*



\* \* \*

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

**§ 226-104 Population growth and land resources priority guidelines.**

(a)(1) *Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people.*

(b)(1) *Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.*

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

\* \* \*

(b)(9) *Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized.*

\* \* \*

(b)(12) *Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations.*

(b)(13) *Protect and enhance Hawaii's shoreline, open spaces, and scenic resources. [Pet. Ex. 5]*

**O. Relationship With Applicable Priority Guidelines and Functional Plans**

56. The Project is consistent with the following objectives, policies and implementing actions of the respective State Functional Plans.

State Housing Functional Plan

***Issue Area: Homeownership***

***Policy A(2): Encourage increased private sector participation in the development of affordable for-sale housing units.***

***Policy A(3): Ensure that (1) housing project and (2) projects which impact housing provide a fair share/adequate amount of affordable homeownership opportunities.***

***Issue Area: Rental Housing***

***Policy B(2): Encourage increased private sector participation in the development of affordable rental housing. [Pet. Ex. 5]***

**P. Conformance With the Coastal Zone Management Program**

57. The objectives and policies of the Hawai'i CZM Program encompass broad concerns such as impact on recreational resources, historic and archaeological resources, coastal scenic resources and open space, coastal ecosystems, coastal hazards, and the management of development. The Project is anticipated to not adversely impact the objectives and policies of the CZM Program. [Pet. Ex. 5]

**Q. Conformance With the County General Plan**

58. Council Resolution No. 10-12 adopted on March 5, 2010 exempts the 201H-38 Lanai Affordable Housing Project from compliance to the General Plan and community plans. Subsequent to the adoption of County Resolution No. 10-12, Ordinance No. 3732 adopting the General Plan Countywide Policy Plan 2030 took effect on March 24, 2010. Although exempt, the Project is consistent with the Countywide Policy Plan 2030 as follows:

With regard to the Countywide Policy Plan, Section 2.80B.030 of the Maui County Code states the following:

*The countywide policy plan shall provide broad policies and objectives which portray the desired direction of the County's future. The countywide policy plan shall include:*

1. *A vision for the County;*
2. *A Statement of core themes or principles for the county; and*
3. *A list of countywide objectives and policies for population, land use, the environment, the economy, and housing.*

Core principles set forth in the Countywide Policy Plan are listed as follows:

1. Excellence in the stewardship of the natural environment and cultural resources;
2. Compassion for and understanding of others;
3. Respect for diversity;
4. Engagement and empowerment of Maui County residents;
5. Honor for all cultural traditions and histories;
6. Consideration of the contributions of past generations as well as the needs of future generations;
7. Commitment to self-sufficiency;
8. Wisdom and balance in decision making;
9. Thoughtful, island-appropriate innovation; and
10. Nurturance of the health and well-being of our families and our communities.

Congruent with these core principles, the Countywide Policy Plan identifies goals, objectives, policies and implementing actions for pertinent functional planning categories, which are identified as follows:

1. Natural environment
2. Local cultures and traditions
3. Education
4. Social and healthcare services
5. Housing opportunities for residents
6. Local economy
7. Parks and public facilities
8. Transportation options
9. Physical infrastructure
10. Sustainable land use and growth management
11. Good governance

With respect to the 201H-38 Lanai Affordable Housing Project, the following goals, objectives, policies and implementing actions are illustrative of the project's compliance with the Countywide Policy Plan:

**Expand Housing Opportunities for Residents**

- Goal:** Quality, island-appropriate housing will be available to all residents.
- Objective:** Reduce the affordable housing deficit for residents.
- Policies:** Ensure that an adequate and permanent supply of affordable housing, both new and existing units, be made available for purchase or rental to our resident and/or workforce population, with special emphasis on providing housing for low- to moderate-income families, and ensure that all affordable housing remains affordable in perpetuity.

Ensure residents are given priority to obtain affordable housing units developed in their communities, consistent with the applicable regulations.

Establish pricing for affordable housing that is more reflective of Maui County's workforce than the United States Housing and Urban Development's median-income estimates for Maui County.

Develop neighborhoods with a mixture of accessible and integrated community facilities and services.

**Objective:** Increase the mix of housing types in towns and neighborhoods to promote sustainable land use planning, expand consumer choice, and protect the County's rural and small-town character.

**Policies:** Design neighborhoods to foster interaction among neighbors.

Encourage a mix of social, economic, and age groups within neighborhoods.

**Objective:** Increase and maintain the affordable housing inventory.

Develop public-private and nonprofit partnerships that facilitate the construction of quality affordable housing.

Streamline the review process for high-quality, affordable housing developments that implement the goals, objectives, and policies of the General Plan.

**Analysis:** The 201H-38 Lanai Affordable Housing Project will provide a mix of affordable housing opportunities to the Lanai community. Within the project master plan, various housing types are integrated with public facilities and services within walking and biking distance of residents. The street patterns have been sited for future connectivity to the adjacent Department of Hawaiian Home Lands property which is currently being master planned.

The County of Maui is conducting ongoing discussions with the Department of Education, Department of Hawaiian Home Lands and

Castle & Cooke Resorts, LLC to investigate potential public-private partnerships to finance infrastructure improvements in order to provide affordable housing and school expansion facilities. In order to streamline and expedite the entitlement process, the County of Maui has filed the State District Boundary Amendment Petition pursuant to Section 15-15-97 of the Land Use Commission Rules relating to government sponsored housing projects.

**Improve Parks and Public Facilities**

**Goal:** A full range of island-appropriate public facilities and recreational opportunities will be provided to improve the quality of life for residents and visitors.

**Objective:** Expand access to recreational opportunities and community facilities to meet the present and future needs of residents of all ages and physical abilities.

**Policies:** Expand and enhance the network of parks, multi-use paths, and bikeways.

**Objective:** Improve the quality and adequacy of community facilities.

**Policies:** Provide and maintain community facilities that are appropriately designed to reflect the traditions and customs of local cultures.

Maintain, enhance, expand, and provide new active and passive recreational facilities in ways that preserve the natural beauty of their locations.

**Analysis:** Parks and public facility sites have been integrated into the project master plan to accommodate the needs of the project's residents. In keeping with the character of Lanai City, plans for any public facility will be in accordance with the Lanai City Community Design Guidelines. Although not required, conceptual designs of the residential and multi-family housing incorporate design elements of the plantation character of Lanai City.

**Diversity Transportation Options**

- Goal:** Maui County will have an efficient, economical, and environmentally sensitive means of moving people and goods.
- Objective:** Provide an effective, affordable, and convenient ground-transportation system that is environmentally sustainable.
- Policy:** Design new roads and roadway improvements to retain and enhance the existing character and scenic resources of the communities through which they pass.
- Objective:** Reduce the reliance on the automobile and fossil fuels by encouraging walking, bicycling, and other energy-efficient and safe alternative modes of transportation.
- Policies:** Make walking and bicycling transportation safe and easy between and within communities.  
  
Require development to be designed with the pedestrian in mind.

**Analysis:** The roadways have been designed to reflect the existing rural small town character of Lanai City. Council Resolution No. 10-12 granted an exemption from the urban roadway standards identified in Title 18, Maui County Code. Further, within the project master plan, the residential sites are integrated with public facilities and services within walking and biking distance of residents. The development will be designed with the pedestrian in mind, especially safety of school children walking to the nearby school site.

**Improve Physical Infrastructure**

**Goal:** Maui County's physical infrastructure will be maintained in optimum condition and will provide for and effectively serve the needs of the County through clean and sustainable technologies.

**Objective:** Improve water systems to assure access to sustainable, clean, reliable, and affordable sources of water.

**Policies:** Ensure that adequate supplies of water are available prior to approval of subdivision or construction documents.

Develop and fund improved water-delivery systems.

**Objective:** Improve waste-disposal practices and systems to be efficient, safe, and as environmentally sound as possible.

**Policy:** Pursue improvements and upgrades to existing wastewater and solid-waste systems consistent with current and future plans and the County's Capital Improvement Program.

**Objective:** Significantly increase the use of renewable and green technologies to promote energy efficiency and energy self-sufficiency.

**Policies:** Support green building practices such as the construction of buildings that aim to minimize carbon dioxide production, produce renewable energy, and recycle water.

**Analysis:** The County of Maui is working cooperatively with the Department of Education, Department of Hawaiian Home Lands and Castle & Cooke



Resorts, LLC in order to coordinate infrastructure improvements, such as water and wastewater system upgrades necessary not only for the 201H-38 Lanai Affordable Housing Project but other projects envisioned for Lanai. In support of green building practices a Sustainability Plan has been included in the State District Boundary Amendment petition for the project.

**Promote Sustainable Land Use and Growth Management**

**Goal:** Community character, lifestyles, economies, and natural assets will be preserved by managing growth and using land in a sustainable manner.

**Objective:** Improve land use management and implement a directed-growth strategy.

**Policies:** Direct new development in and around communities with existing infrastructure and service capacity, and protect natural, scenic, shoreline, and cultural resources.

**Objective:** Design all developments to be in harmony with the environment and to protect each community's sense of place.

**Policies:** Protect and enhance the unique architectural and landscape characteristics of each Community Plan Area, small town, and neighborhood.

Ensure that adequate recreational areas, open spaces, and public-gathering places are provided and maintained in all urban centers and neighborhoods.

Use trees and other forms of landscaping along rights-of-way and within parking lots to provide shade, beauty, urban-heat reduction, and separation of pedestrians from automobile traffic in accordance with community desires.

**Analysis:** Growth is managed through the various community plans. The subject property is immediately adjacent to existing infrastructure and services and is identified in the Lanai Community Plan for future housing development. The 201H-38 Lanai Affordable

Housing Project implements the County's directed-growth strategy identified in the community plan. Further, to protect the community's sense of place the project incorporates design elements of the Lanai Community Design Guidelines to ensure that the project is compatible with the rural or small town character of Lanai City.

In summary, the 201H-38 Lanai Affordable Housing Project is consistent with the theme and principles of the Countywide Policy Plan. [Pet. Ex. \_\_\_]

**R. Conformance to the Lanai Community Plan**

59. The Project site is located in the Lanai Community Plan region, one of the nine Community Plan regions established in the County of Maui. Planning for each region is guided by the respective Community Plans, which are designed to implement the Maui County General Plan. Each Community Plan contains recommendations and standards which guide the sequencing, patterns, and characteristics of future development in the region. The Project is designated as "Single-Family" use on the Lanai Community land use map. Resolution No. 11-13 adopted by the Maui County Council granted an exemption from Chapter 2.80B, Maui County Code (MCC), General Plan and Community Plans for a portion of the Project that is not consistent with the single family designation on the land use plan. [Pet. Ex. 5]

**S. County Zoning**

60. The Petition Area is zoned "Interim" by Maui County zoning. While the current zoning does not allow the proposed Project, the HRS section 201H-38 application approved by the Maui County Council through Resolution No. 11-13

exempts the Project from Title 19, Zoning, MCC, and will allow for the proposed Project. [Pet. Ex. 5]

### **III. 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.

### **IV. CONCLUSIONS OF LAW**

1. Pursuant to HRS Chapters 201H and 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 73.000 acres of land, situated in Lanai City, Island of Lanai, Hawai'i, Tax Map Key No. (2) 4-9-2: portion of 58, to the state Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the state Land Use Urban District, is reasonable, not violative of HRS section 205-2 and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by *ahupua'a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

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

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

5. In the event any previously unidentified archaeological sites are found, Petitioner will comply with all applicable statutes and rules of SHPD.

6. 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.

7. There are no floral or faunal species that are threatened, endangered, or of concern under State or federal law in the Petition Area.

8. Air quality of the Petition Area will be impacted in the short-term by fugitive dust and exhaust emissions from stationary and mobile equipment during construction of the Project. Petitioner will comply with and implement all required and applicable statutes, ordinances, rules, and regulations to mitigate the effects of fugitive dust and exhaust emissions.

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

10. 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.

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

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

13. 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.

14. If properly designed and constructed, the proposed drainage system will not increase offsite runoff, nor cause an adverse impact to adjacent and downstream properties.

15. The location and design of the Project will minimize adverse visual impacts of the Project.

**V. DECISION AND ORDER**

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 73.000 acres of land, situated in Lanai City, Island of Lanai, Hawai'i, Tax Map Key No. (2) 4-9-2: portion of 58, 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. **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.
2. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.
3. **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.
4. **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 Hawaii 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.

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