

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	)	DEPARTMENT OF HOUSING AND
HUMAN CONCERNS, COUNTY OF	)	HUMAN CONCERNS, COUNTY
MAUI	)	OF MAUI
	)	
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	)	
_____	)	

LAND USE COMMISSION  
 STATE OF HAWAII  
 2011 MAY -2 A 10:25

PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

VERIFICATION

EXHIBITS "1" THROUGH "13 "

AFFIDAVIT OF SERVICE OF PETITION  
FOR LAND USE DISTRICT BOUNDARY AMENDMENT

AFFIDAVIT OF SENDING OF NOTIFICATION OF PETITION FILING

AND

CERTIFICATE OF SERVICE

BENJAMIN M. MATSUBARA, #993-0  
 CURTIS T. TABATA, #5607-0  
 WYETH M. MATSUBARA, #6935-0  
 Matsubara - Kotake  
 888 Mililani Street, 8<sup>th</sup> Floor  
 Honolulu, Hawai'i 96813

Attorneys for Petitioner  
 DEPARTMENT OF HOUSING AND  
 HUMAN CONCERNS, COUNTY OF  
 MAUI

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**PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

DEPARTMENT OF HOUSING AND HUMAN CONCERNS, COUNTY OF MAUI ("Petitioner") by and through its attorney, BENJAMIN M. MATSUBARA, respectfully petitions the Land Use Commission of the State of Hawai'i ("Commission") to amend the land use district boundary of approximately 73.000 acres of land at Lanai City, Island of Lanai, Hawai'i, ("Property") more particularly described below, from the State Land Use Agricultural District to the State Land Use Urban District for the planned Lanai Affordable Housing Project ("Project"). This Petition is made pursuant to Sections 205-4 and 201H-38, Hawai'i Revised Statutes ("HRS"), as amended, and Section 15-15-97(b), Hawai'i Administrative Rules ("HAR"), Title 15, Subtitle 3, Chapter

15, Subchapter 13, as amended. In support of this Petition, Petitioner respectfully presents the following:

1. Standing. The fee simple ownership of TMK: (2) 4-9-2: portion of 58, comprising of approximately 73.000 acres of land, is vested in Petitioner, a public body and body corporate and politic of the State of Hawai'i, whose principal place of business is 2200 Main Street, Suite 546, Wailuku, Maui, Hawai'i 96793. Petitioner possesses the requisite standing to file this Petition pursuant to HRS §205-4(a) and HAR §15-15-46(2) and (3).

2. Authorized Representatives. Mr. Benjamin M. Matsubara and the law firm of Matsubara - Kotake have been appointed to represent the Petitioner pursuant to HAR §15-15-35(b). All correspondence and communications in regard to this Petition shall be addressed to, and served upon, Mr. Benjamin M. Matsubara, Matsubara - Kotake, 888 Mililani Street, 8<sup>th</sup> Floor, Honolulu, Hawai'i and JoAnn Ridaao, Director, Department of Housing and Human Concerns, County of Maui, 2200 Main Street, Suite 546, Wailuku, Maui, Hawai'i 96793.

3. Relief Sought. Petitioner desires to amend the land use district boundary to reclassify approximately 73.000 acres of land at Lanai City, Island of Lanai, Hawai'i from the State Land Use Agricultural District to the State Land Use Urban District.

4. Authority for Relief Sought. Petitioner files this Petition pursuant to HRS Sections 205-4 and 201H-38 and HAR Section 15-15-97(b).

5. Description of the Property. The Property is situated in Lanai City, Island of Lanai, Hawai`i and consists of approximately 73.000 acres of land.

A map identifying the location of the Property is attached as Exhibit 1. A survey map and metes and bounds description of the Property is attached as Exhibit 2. A Tax Map showing the Property is attached as Exhibit 3.

6. Petitioner's Property Interest. The fee simple ownership of TMK: (2) 4-9-2: portion of 58, comprising of approximately 73.000 acres of land is vested in Petitioner. Petitioner's deed for the Property is attached as Exhibit 4.

7. Petitioner's Financial Condition. Petitioner is a department of the County of Maui and is exempt from this requirement.

8. Reclassification Sought, Proposed Use of Property and Conformity to Urban District Standards. The Property is presently classified within the State Land Use Agricultural District. Petitioner seeks to reclassify the Property to the State Land Use Urban District to develop the Project. 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.

The Project is consistent with the standards for urban districts pursuant to HAR §15-15-18. The Project will have "city-like" concentrations of people, structures,

streets and urban level of services, and the Project is proximately located to centers of trading and employment, accessible to basic services, has satisfactory topography, reasonably free from adverse environmental effects, contiguous with existing urban areas, and is within the Lanai Community Plan region and is designated "Single-Family" use.

9. Projected Number of Lots, Lot Size, Number of Units, Densities, Selling Price, Intended Market and Development Timetables. The residential development of the Property will consist of approximately 425 single-family and multi-family residential units. There will be approximately 208 single-family lots of approximately 6,000 square feet and approximately 217 multi-family units on approximately 13.29 acres of land.

The exact product mix and pricing has not been determined, but the market study performed by ACM Consultants, Inc. indicates that an acceptable price range for the first phase of approximately 50 single-family residences is \$100,000 to under \$300,000, with subsequent phases of 15 to 20 units per year. The market study is attached to the Final Environmental Assessment as Appendix F which is attached hereto as Exhibit 5.

The homes are intended to be affordable and the Petitioner shall follow the principles and standards of the Residential Workforce Housing Policy (Chapter 2.96, Maui County Code) to the greatest possible extent.

The Project is anticipated to be developed over five phases and will be completed in approximately 17 years based upon the absorption rate.

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.

As a result of Petitioner's inability to provide a time schedule for the incremental plan, Petitioner filed a 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. The Incremental Plan is attached to this Petition as Exhibit 6 and the Order Granting Petitioner Department of Housing and Human Concerns, County of Maui's Petition for Declaratory Order, DR11-44, filed April 6, 2011 is attached to this Petition as Exhibit 7.

10. Environmental Impact. Exhibit 5 to this Petition is the Final Environmental Assessment ("EA") prepared for the Project. On December 29, 2009, the

accepting authority, the Department of Housing and Human Concern, County of Maui, accepted the EA and issued its finding of no significant impact.

11. Description of the Property, Surrounding Area and Use of Land. The Property is approximately 73.000 acres and is located within Lanai City and is currently vacant. It is surrounded by Lanai High School and Elementary School, a Department of Hawaiian Home Lands subdivision, Olopuia Woods Subdivision and vacant agricultural lands.

12. Soils Classification, Agricultural Lands of Importance to the State of Hawai'i, and Productivity Rating. The U.S. Department of Agriculture Natural Resources Conservation Service classifies the soils within the Project site as Molokai-Lahaina association of soils.

The Detailed Land Classification - Island of Lanai published by the University of Hawai'i Land Study Bureau (LSB), evaluates the quality or productive capacity of certain lands on the Island for selected crops and overall suitability in agricultural use. A five-class productivity rating system was established with "A" representing the class of highest productivity and "E" the lowest. The Property is designated "C" by the LSB.

The Agricultural Lands of Importance in the State of Hawai'i (ALISH) land classification system was developed by the State Department of Agriculture in 1977. The ALISH map designates the Property as "Prime".

13. Topography. The Property is characterized as having a level to gently sloping topography and lies at an elevation of approximately 1,562 feet above mean seal level.

14. Assessment of the Impacts of the Proposed Development on the Environment. A discussion of the impacts of the Project on the environment is contained herein and in Petitioner's EA.

a. Flora and Fauna. The flora and fauna study conducted by Robert Hobdy dated August 2008 determined that the vegetation on the Property is dominated by non-native species, and no endangered, threatened or candidate plant species or their habitat were found on the Property.

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.

No endangered insects or invertebrates were observed on the Property. Robert Hobdy's flora and fauna study is attached to the EA as Appendix B and Robert Hodby's letter report is attached to the Petition as Exhibit 8.

b. Groundwater. 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. The Lanai Aquifer Map included in the Maui County Water Use & Development Plan - Lanai is attached to this Petition as Exhibit 9.

c. Archaeological and Historical Resources. 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. The AIS and SHPD's acceptance letter is attached to the EA as Appendix D.

d. Cultural Resources. 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. The CIA is attached to the EA as Appendix E.

e. Agriculture. 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. The Agricultural Impact Assessment citing to a Decision Analysts, Hawaii, Inc. December 2006 report is attached to this Petition as Exhibit 10.

f. Air and Noise Quality. 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. The discussion on air quality and noise impacts is included in the attached EA.

g. Scenic and Open Space Resources. 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. The discussion of scenic and open space resources is included in the attached EA.

16. Assessment of the Impacts of the Proposed Development on the Availability of Public Services and Facilities.

a. Roadways and Public Transportation. 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.

It is recommended that the Fraser Ave./5th St. eastbound approach be restriped to provide a shared left-turn/through lane and an exclusive right-turn lane, and that an all-way stop-control warrant be performed for the Fraser Ave./5th St. intersection. If, however, the proposed bypass road connecting to 9th Ave. is constructed and connected to the Project, the improvements to the Fraser Ave./5th St. intersection may not be needed. The Traffic Impact Analysis Report dated October 16, 2009 is attached to the EA as Appendix G.

b. Water System. 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. The Preliminary Engineering Study is attached to the EA and Appendix H.

c. Wastewater System. 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. The Preliminary Engineering Study is attached to the EA and Appendix H.

d. Drainage. 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. The Preliminary Engineering Study is attached to the EA and Appendix H.

e. Electrical, Telephone, and Cable Television Services. 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.

f. Police and Fire Protection. 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.

g. Educational Facilities. 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.

h. Recreational Facilities. 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.

i. Solid Waste Disposal. 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.

j. Medical Facilities. 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.

17. Location of the Proposed Development to Adjacent Land Use Districts and Centers of Trading and Employment.

Adjacent land use districts are as follows:

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, Kaunalapau 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.

18. Economic Impacts of the Proposed Development. 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.

19. Housing Needs. Lanai lacks enough resident housing affordable to the community. Although the real estate industry had been robust on Lanai before the economic downturn, much of the housing sales have been to off-island buyers seeking vacation homes primarily in Koele and Manele Resorts as evidenced by the historic condominium sales and sales prices for the island. Similarly, the median sale prices of single-family residences in recent years have been above \$400,000 and well out of the affordable range of most residents. The scarcity of affordable housing for residents has resulted in multiple families living under one roof. The Market Study is attached to the EA as Appendix F.

20. Need for the Reclassification. It is anticipated that the economic downturn will improve in 2011, and the Project will be well positioned to capture a potential upswing in the real estate market. 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. The Market Study is attached to the EA as Appendix F.

21. Urban District Standard. 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.

22. Hawai'i State Plan. The Hawai'i State Plan, embodied in HRS Chapter 226, serves as a guide for goals, objectives, policies, and priority guidelines for the State. The State Plan provides a basis for determining priorities, allocating limited resources, and improving coordination of State and County plans, policies, programs, projects, and regulatory activities. 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.*

23. State Functional Plans. The Statewide planning system requires the development of State Functional Plans which are approved by the Governor of Hawai'i. The State Functional Plans guide the implementation of State and County actions in the areas of agriculture, conservation lands, education, energy, health, higher education,

historic preservation, housing, recreation, tourism, water resources development, transportation, employment, and human services. 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.*

24. Hawai'i Coastal Zone Management ("CZM") Program. The National Coastal Zone Management Program was created through passage of the Coastal Zone Management Act of 1972. Hawai'i's Coastal Zone Management ("CZM") Program, adopted as Chapter 205A, HRS, provides a basis for protecting, restoring and responsibly developing coastal communities and resources. 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.

25. Maui County General Plan. The Maui County General Plan (1990 Update) sets forth broad objectives and policies to help guide the long-range development of the County. The Project is consistent the Maui County General Plan's themes and objectives as they relate to housing, population, land use, economic activity and urban design.

26. Lanai Community Plan. 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.

27. County Zoning. 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.

28. County Special Management Area. The Hawai'i Coastal Zone Management Program embodies in Chapter 205A, HRS contains the general objectives and policies upon which all Counties within the State have structured specific legislation which created Special Management Areas ("SMA"). The Project site is located outside the boundaries of the County's SMA.

29. Development of the Property. Development of the Property will be substantially completed within seventeen (17) years after the date of the Commission's approval.

30. Hawaiian Customary and Traditional Rights. Petitioner is aware of and sensitive to the existence and practice of native Hawaiian customary and traditional rights that are protected by Article XII, Section 7 of the Hawai'i State Constitution. Based on research into the history of the area, there are no known traditional gathering activities or cultural practices affecting the Property.

30. Written Comments From Agencies and Organizations. Written comments from agencies and organizations regarding this Project are attached to the EA.

31. Petitioner's Proposed Findings of Fact, Conclusions of Law and Decision and Order. Pursuant to HAR §15-15-97(e)(2), Petitioner's Proposed Findings of Fact,

Conclusions of Law and Decision and Order is attached hereto and incorporated herein by reference as Exhibit 11.

32. Affidavit of Curtis Tabata regarding Petitioner meeting with interested community groups. Pursuant to HAR §15-15-97(e)(3), the affidavit of Curtis Tabata regarding Petitioner meeting with interested community groups is attached hereto and incorporated herein by reference as Exhibit 12.

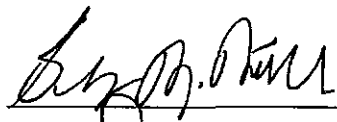
33. Maui County Council Resolution No. 10-12. Pursuant to HAR §15-15-97(e)(4), Maui County Council Resolution No. 10-12, Approving with Modifications the Lanai Affordable Housing Project pursuant to Section 201H-38, Hawaii Revised Statutes is attached hereto and incorporated herein by reference as Exhibit 13.

[The remainder of this page is intentionally left blank.]

Based on the foregoing, Petitioner respectfully requests that the Commission finds that the Petition meets the standards for determining Urban District boundaries pursuant to HAR Sections 15-15-18 and 15-15-21, and amends the land use district boundary of the Property from the State Land Use Agricultural District to the State Land Use Urban District.

DATED: Honolulu, Hawai'i, May 2, 2011.

Of Counsel:  
MATSUBARA - KOTAKE  
A Law Corporation

  
\_\_\_\_\_  
BENJAMIN M. MATSUBARA  
CURTIS T. TABATA  
WYETH M. MATSUBARA  
Attorneys for Petitioner  
DEPARTMENT OF HOUSING AND  
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Island of Lanai, State of Hawai'i, TMK	)	
(2) 4-9-2: portion of 58	)	
_____	)	

VERIFICATION

STATE OF HAWAII	)	
	)	SS.:
COUNTY OF MAUI	)	

JO-ANN T. RIDAO, being first duly sworn, on oath, deposes and says that:

1. I am the Director of the Department of Housing and Human Concerns, County of Maui and in this capacity I am familiar with matters related hereto and I am knowledgeable to testify on behalf of the Petitioner.

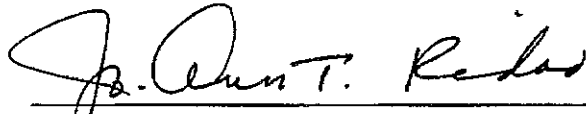
2. I have personal knowledge of the matters set forth in the foregoing Petition and I am qualified and competent to make this verification.

3. I make this verification pursuant to §15-15-39, Land Use Commission Rules.




4. I have read the foregoing document and the contents therefore are true and correct to the best of my knowledge and belief.

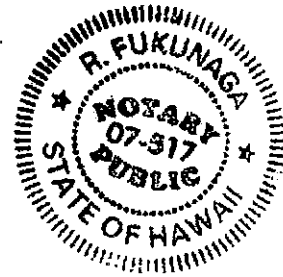
Dated: Wailuku, Maui, Hawai'i April 29, 2011

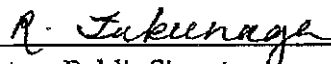
  
JO-ANN T. RIDAO

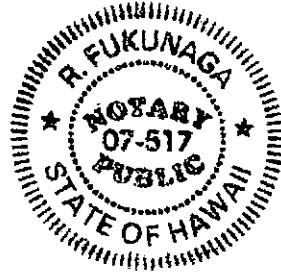
Subscribed and sworn to me  
this 29<sup>th</sup> day of April 2011

  
Name \_\_\_\_\_

Notary Public, State of Hawai'i **R. FUKUNAGA**  
My commission expires: \_\_\_\_\_ **Expiration Date: October 7, 2011**



STATE OF HAWAII NOTARY CERTIFICATION	
Doc. Description: Verification	
Date of Document: <u>4/29/11</u>	# Pages: <u>2</u>
Date of Notarization: <u>4/29/11</u>	
 Notary Public Signature	
Print Name: <u>R. Fukunaga</u>	
Notary Public, State of Hawai'i, <u>2nd</u> Circuit	
Notary Commission No. <u>07-517</u>	



(Stamp or Seal)