BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of MAUI ECONOMIC DEVELOPMENT BOARD, INC. To Reclassify Approximately 300 Acres of Land Currently in the Agricultural District into the Urban District at Kihei, Maui, Hawaii, Tax Map Key: 2-2-02: Portion of Parcel 42	DOCKET NO. A84-585 MAUI ECONOMIC DEVELOPMENT BOARD, INC.

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

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AMENDED
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MAUI ECONOMIC DEVELOPMENT BOARD, INC., a Hawaii non-profit corporation, (hereinafter "Petitioner"), filed this petition on November 9, 1984, pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure and District Regulations of the Land Use Commission, State of Hawaii, to amend the land use district boundaries for approximately 300 acres of land, Maui Tax Map Key 2-2-02: portion of parcel 42, (hereinafter the "Property") situate at Kihei, Island and County of Maui, State of Hawaii, from the Agricultural District to the Urban District. The Land Use Commission (hereinafter the "Commission"), having heard the evidence presented on this matter and having considered the full record as presented in Docket No. A84-585, hereby makes

the following Amended Findings of Fact, Conclusions of Law and Decision and Order:

FINDINGS OF FACT

PROCEDURAL HISTORY

1. The Commission conducted the hearing on this petition on January 30, 1985, pursuant to notice published in the Maui News and Honolulu Advertiser on December 28, 1984.

2. On July 15, 1985, the Commission filed its Decision and Order to reclassify approximately 150 acres of land in the southern portion of the Property from the Agricultural District into the Urban District and reclassified the balance of the Property, approximately 150 acres in the northern portion, from the Agricultural District into the Urban District on an incremental basis.

3. On August 21, 1985, Petitioner filed a Motion to Modify the Commission's Decision and Order, which Motion Petitioner amended on September 11, 1985, requesting that the Commission reclassify the north-mauka portion of the Property from the Agricultural District into the Urban District and reclassify the balance of the Property in the north-makai and southern portions from the Agricultural District into the Urban District on an incremental basis.

4. On September 24, 1985, the Commission approved Petitioner's Motion to Modify which approval the Commission vacated on September 25, 1985, because the Commission felt it had followed improper procedures in taking its action.

5. On November 7, 1985, the Commission filed its Order to vacate and to reopen the hearing to receive additional evidence and testimony in support of Petitioner's Motion to Modify which hearing the Commission conducted on November 22, 1985, pursuant to notice published in the Maui News and the Honolulu Advertiser on October 11, 1985.

6. No one intervened in this proceeding.

DESCRIPTION OF THE PROPERTY

7. The Property is situate at Waiohuli and Keokea, Kihei, Maui, and more specifically, east (mauka) of Piilani Highway, and north of the existing Kihei sewage treatment plant. The Property abuts Waipuilani Gulch on its northern side and Keokea Gulch on its southern boundary.

8. The Property is presently undeveloped, and its fee owner, Haleakala Ranch Company uses the Property for cattle grazing.

9. On November 9, 1984, Petitioner entered into an option agreement with Haleakala Ranch Company to purchase the Property. On November 7, 1984, Petitioner entered into a development agreement with Arroyo Development Corporation, a California corporation authorized to do business in Hawaii, ("Arroyo") to develop and purchase the Property from Petitioner.

10. The Property slopes to the west at a rate of approximately five percent. Elevation ranges between 100 and 200 feet above sea level.

11. The average annual rainfall for the Kihei area is 13.8 inches.

12. The United States Department of Agriculture ("USDA") Soil Conservation Service Soil Survey classifies soils of the Property as Waiakoa extremely stony silty clay loam, 3 to 25 percent slopes, eroded (WID2).

The Waiakoa series consists of well-drained soils and occur on the uplands of the Island of Maui. Waiakoa extremely stony silty clay loam, 3 to 25 percent slopes, eroded, exhibits medium runoff and severe erosion hazard. In most areas 50 percent of the surface layer has been removed by erosion. These soils are used for pasture and wildlife habitat.

The USDA Soil Conservation Service Soil Survey classifies the soil's capability as "VIIs" indicating that these soils have very severe limitations that both reduce the choice of plants and require very careful management.

13. The University of Hawaii Land Study Bureau's Detailed Land Classification report for the Island of Maui classifies the Property as class "E", indicating that lands are very poor for agricultural use.

14. The Department of Agriculture has not classified the Property under the State Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

15. The Federal Insurance Administration's Flood Insurance Study for the Island of Maui designates the Property as "Zone C", an area of minimal flooding.

PROPOSAL FOR DEVELOPMENT

16. Petitioner's previous proposal, which the Commission approved, was to develop a 300-acre Research and

Technology Park (hereinafter the "Park") in two increments of 150 acres each, with the first phase located in the southern half of the Property and the second phase located on the remaining northern half of the Property.

17. Petitioner now proposes to only switch the location of the two 150 acre increments within the Property.

18. The new First Increment consists of a 150-acre parcel and is located on the north-mauka portion of the Property. The new Second Increment consists of a 39-acre parcel located on the north-makai portion of the Property and a 111-acre parcel located on the remaining southern portion of the Property. Each increment will include access roads, water, sewer and electrical services and consist approximately of 25 lots sized between 2 and 10 acres.

19. Petitioner proposes to sell all of the initial 150 acres of the Property to be developed in the First Increment to Arroyo. Arroyo will in turn proceed with the subdivision of the Property.

Petitioner will require Arroyo either to sell in fee or to lease lots to businesses engaged in technology and research activities or in necessary support activities.

20. Petitioner proposes to develop the Park as a low-rise, low density facility, including extensive landscaping to create an attractive campus-like setting.

21. Petitioner will exercise control of the proposed Park by establishing design guidelines, standards for the

subdivision, to be recorded as covenants, conditions and restrictions that run with the Property, and by monitoring Arroyo or any subsequent developers of the Property, in the development and sale of lots, and in construction and operation of their businesses in the Park.

22. Petitioner anticipates Arroyo will start construction of the new First Increment in 1986 and complete construction by 1987. Petitioner anticipates that Arroyo and other developers will complete development of both Increments within a 10 to 15 year period.

23. Petitioner estimates Arroyo's cost of the development, will be $9,531,643 for the First Increment and $8,128,846 for the Second Increment, estimated in 1984 dollars as follows:

Cost Breakdown for

Proposed Development

Description	First Increment	Second Increment
Onsite		
General Site Work	$2,086,800	$2,058,300
Roadway	1,563,550	1,646,600
Drainage	531,750	600,100
Water	1,114,980	1,123,960
Sewer	557,500	561,000
Electrical, Telephone	-	-
CATV (Community Antenna Television)	912,000	768,000
Landscaping (Entry Road Only)	140,000	100,000
SUBTOTAL (Onsite)	$6,906,580	$6,857,960

Description	First Increment	Second Increment
Offsite		
Roadway	-	$ 318,400
Water	$1,560,150	-
Sewer	198,400	213,500
SUBTOTAL (Offsite)	$1,758,550	$ 531,900
TOTAL	$8,665,130	$7,389,860
10% Contingency	866,513	738,986
TOTAL INCLUDING CONTINGENCY	$9,531,643	$8,128,846

24. Petitioner anticipates saving approximately $500,000 by developing the north-mauka portion of the Property first rather than the southern portion as initially proposed, primarily due to savings in grading costs.

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

25. Petitioner is a Hawaii non-profit corporation whose role is to act as the catalyst for the development of the Park. Arroyo will actually develop the Park and incur development costs.

26. Petitioner, through its developer selection process, verified with Bank of Hawaii that Arroyo is financially capable of carrying out the proposed project. Petitioner will cause Arroyo, under its development agreement, to provide a bond for completion of the infrastructure for the

First Increment.

STATE AND COUNTY PLANS AND PROGRAMS

27. The south portion of the Property, consisting approximately 150 acres of land, is classified as Urban on the State Land Use District Map and will abut, on its western boundary, land in the urban district recently reclassified for a golf course in Land Use Commission Docket No. A84-576 filed by Haleakala Greens Corp.

The balance of the Property, or the north portion, is classified in the Agricultural District, but approved for incremental districting into the Urban District.

Petitioner currently proposes to reclassify a 111-acre portion of the existing 150-acre Urban District into the Agricultural District subject to incremental districting into the Urban District (the new Second Increment) and to reclassify a 111-acre portion of the existing Agricultural District, which is subject to incremental districting, into the Urban District, (the new First Increment).

28. The County of Maui ("County"), in its Kihei General Plan map adopted on December 5, 1975, presently designates the Property as Agriculture. The proposed Kihei-Makena Community Plan designates the Property as Project District 6 ("R&TP").

Maui County zoning of the Property is Agriculture with a 2-acre minimum lot size. Development of the Park will

require adoption of an appropriate amendment to the County Zoning Ordinance. The Maui County Council is presently reviewing a draft ordinance for the Park which includes performance standards and regulations for permitted uses.

29. The Property is not situate in the County Special Management Area.

NEED FOR THE PROPOSED DEVELOPMENT

30. The State Department of Planning and Economic Development ("DPED"), in its Hawaii High Technology Development Plan ("HTDP"), estimates that the international high technology market will grow from the current $800 million level to $6 billion by 1990.

Maui's economy is based on the pineapple, sugar and the tourism industries. Because pineapple and sugar industries in Hawaii have been declining in recent years, there is a need to diversify the County's economy in order to provide a more stable economic base.

31. DPED, in its report "Expanding Hawaii's Electronic Industry", estimates that the local electronics industry could generate 1,000 jobs and $50 million in annual sales revenue within the next five years. Of these 1,000 jobs, approximately 700 would be for engineers, skilled assemblers and technicians.

32. The Hawaii High Technology Development Corporation ("HTDC"), established by the State Legislature in 1983, encourages the growth of high technology industry throughout

the State and at the proposed development location on the Property.

33. Petitioner will only develop a portion of the Property (the new First Increment) to accommodate anticipated demand. Petitioner proposes to reclassify the New Second Increment to the Agricultural District, subject to incremental districting into the Urban District.

IMPACT UPON RESOURCES OF THE AREA

Agricultural Resources

34. Petitioner does not anticipate that the reclassification of the Property will have significant adverse effects upon agricultural activities or resources of the area. The State Department of Agriculture indicates that there is no known productive agricultural use for the Property, and that the Property does not meet the generally understood definitions of important agricultural land.

Historical/Archaeological Resources

35. The State Department of Land and Natural Resources ("DLNR"), by letter dated October 17, 1984, indicated to Petitioner that no historic sites on the Property are listed on the Hawaii Register or the National Register of Historic Places, nor has DLNR determined any to be eligible for inclusion on the National Register of Historic Places. However, the DLNR indicated that there is a good probability that cultural resources relating to the State's prehistory may be present but unrecorded on the Property.

Petitioner will conduct an archaeological reconnaissance survey of the Property prior to the start of any construction activity and submit a copy of the survey to the DLNR for review and comment.

Flora and Fauna

36. Petitioner does not believe the proposed development will significantly adversely impact any rare or endangered flora and fauna. Environment Impact Study Corporation conducted a survey of Haleakala Ranch Company properties adjacent to Kihei School and makai of Piilani Highway and found the primary vegetation type to be grassland scattered with Kiawe. The surveyors found the following fauna: barred dove, northern cardinal, mynah, house sparrow, Japanese white-eye, spotted munia, dog, cat, mongoose, and mice, but no rare or endangered birds or mammals.

Visual

37. Petitioner believes that any visual impact from the Park would be mitigated by the proposed golf course of Haleakala Greens Corp. along the highway.

Air Quality

38. Petitioner expects air quality at the Property to be reduced due to an increase in emissions from increased vehicular traffic to the area. Petitioner will control pollutants by careful screening of potential users by Petitioner.

Noise

39. Petitioner anticipates an increase in noise level at the Property due to more vehicular traffic and user activity in the Park. Petitioner does not expect the noise increase to have a significant adverse impact on existing nearby urban uses, because the proposed golf course and park landscaping will act as a buffer.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Water

40. Petitioner estimates the proposed Park will have an average water demand of 635,000 gallons per day ("GPD") and a maximum daily water demand of 950,000 GPD for potable and landscaped irrigation use.

Petitioner proposes to use the Central Maui Water System, which has a source capacity of about 8.5 million GPD, to provide potable water source to the proposed development.

41. Petitioner proposes to use sewage effluent from the Kihei Sewage Treatment Plant ("STP") to irrigate the landscaped areas, in order to reduce maximum daily water usage by 400,000 gallons.

The State Department of Health indicates the use of treated effluent from the Kihei STP for landscape irrigation may pose a health risk to surrounding residents.

Petitioner will comply with all State Department of Health and Environmental Protection Agency regulations

applicable to the use of treated secondary sewage effluent for irrigation.

42. Petitioner proposes to develop a new 1.0 million gallon storage reservoir located above existing reservoirs in Kihei to be connected to the Central Maui transmission line if effluent is not used for irrigation.

Petitioner will secure the required approvals from the County Department of Water Supply and pay for all charges in providing water to the proposed development.

Sewage Treatment and Disposal

43. Petitioner estimates the proposed Park will generate approximately 210,000 GPD of wastewater to be disposed of by the Kihei STP, located south of the Property. The Kihei STP has a design capacity of 4.0 million GPD with current flows fluctuating between 2.1 and 3.3 million GPD.

Solid and Industrial Waste Disposal

44. Petitioner will collect and dispose solid and industrial wastes from the proposed Park at the County sanitary landfill at Waikapu, located approximately 11 miles north of the Property by using private disposal firms. Petitioner will cause the disposal of industrial wastes to comply with Federal and State approved disposal methods.

Drainage

45. Petitioner states that runoff from lands east (mauka) of the proposed Park sheet flows across the Property

and is conveyed across Piilani Highway through drainage culverts ranging between 54 to 90 inches in diameter.

Petitioner will ensure that the amount of runoff from the proposed Park will not be greater than the existing volume from contributory flows into the coastal lowlands and flood plain by constructing retention basins to contain and control the rate of runoff, landscape to increase the percolation and absorption rate, and use subsurface retention systems consisting of large diameter perforated pipes buried under parking lots or open spaces in each lot.

Roadway and Highway Services and Facilities

46. Petitioner will provide access to the proposed Park from Piilani Highway at Lipoa Street and from a location three-fourths of a mile south of Lipoa Street. The Lipoa Street main entry road will be a 100 foot wide divided highway with a landscaped median strip and appropriate turn lanes. The second access road would be approximately 60 feet wide.

47. Warren S. Unemori Engineering, Inc. in its traffic impact report for the proposed development, concluded that traffic generated by the proposed project will not adversely impact the traffic capacity of Piilani Highway.

48. Petitioner will or will cause Arroyo to construct all improvements relating to access from Piilani Highway to standards promulgated by the appropriate State and County agencies.

Police and Fire Fighting Services

49. Maui County will provide police service from the police substation in the Kihei Community Center.

Maui County will provide fire fighting service from the Kihei Fire Station located on Kihei Road next to Kalama Park. The Fire Department indicates that the proposed Park would decrease the fire hazard of the Property.

CONTIGUITY OF THE PROPOSED DEVELOPMENT

50. Petitioner's proposed development will abut the recently approved Urban District for the Haleakala Greens Corp. golf course and be proximate to the Kihei urban area on the makai side of Piilani Highway.

CONFORMANCE TO THE HAWAII STATE PLAN

51. Petitioner's proposed development conforms with the following goals, objectives and policies of the Hawaii State Plan, Chapter 226, Hawaii Revised Statutes:

Sec. 6(a)(1)	Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.
Sec. 6(a)(2)	A growing and diversified economic base that is not overly dependent on a few industries.
Sec. 10(a)	Planning for the State's economy with regards to potential growth activities shall be directed towards achievement of the objective of development and expansion of potential growth activities that serve to increase and diversify Hawaii's economic base.

Sec. 10(b)(2) Expand Hawaii's capacity to attract and service international programs and activities that generate employment for Hawaii's people.

Sec. 10(b)(8) Provide public incentives and encourage private initiative to attract new industries that will support Hawaii's social, economic, physical, and environmental objectives.

STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

52. Petitioner's proposed development will represent an urban environment characterized by "city-like" concentrations of people, structures, streets and urban level of services.

53. Petitioner's proposed Park would expand an existing employment center on Maui and is proximate to existing infrastructure necessary to service the project.

54. The Property exhibits satisfactory topography and drainage and is reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.

INCREMENTAL DISTRICTING

Full development of the lands within the new Second Increment cannot be reasonably completed within five years of Petitioner obtaining all government approvals. Incremental districting of the new Second Increment from the Agricultural to the Urban District is warranted.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the State Land Use Commission, the Commission finds upon a preponderance of evidence that the reclassification of lands in the north-mauka portion of the Property, for the new First Increment consisting of approximately 111 acres of land, from the Agricultural District to the Urban District, in addition to the existing Urban District, and the reclassification of lands, approximately 111 acres currently in the Urban District in the southern portion of the Property into the Agricultural District and approximately 39 acres in the north-makai portion of the Property to be retained in the existing Agricultural District, totaling approximately 150 acres and described as the new Second Increment, being subject to incremental districting into the Urban District, also at Kihei, Island of Maui, State of Hawaii, and identified by Maui Tax Map Key: 2-2-02: portion of Parcel 42, pursuant to State Land Use District Regulation 6-2, for a research and technology park, subject to the conditions stated in the Order below, conforms to the standards established in the State Land Use District Regulations, is reasonable and non-violative of Section 205-2, Hawaii Revised Statutes, as amended, and the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes.

ORDER

IT IS HEREBY ORDERED that the lands within the new First Increment of the Petitioner's revised development plan, comprising of approximately 111 acres in the north-mauka portion of the Property, Maui Tax Map Key: 2-2-02: portion of 42, situate at Kihei, Island and County of Maui, representing an addition to the existing Urban District approximately identified on the map which is attached hereto as Amended Exhibit A and incorporated herein, shall be reclassified from the Agricultural to the Urban classification and the District Boundaries are amended accordingly.

IT IS ALSO HEREBY ORDERED that approximately 111 acres of land, representing a portion of the 150-acre existing Urban District, and described as a portion of the new Second Increment, more particularly identified as Maui Tax Map Key: 2-2-02: portion of 42, situate at Kihei, Island and County of Maui, shall be reclassified from the Urban District to the Agricultural District and that this 111-acre portion of the new Second Increment plus the 39-acre remaining balance of the new Second Increment, more particularly identified as Maui Tax Map Key: 2-2-02: portion of 42, situate at Kihei, Island and County of Maui, approximately identified on the map attached hereto as Amended Exhibit A and incorporated herein, also shall be approved for incremental districting pursuant to State Land Use District Regulation 6-2, and that this Commission will

reclassify the new Second Increment from the Agricultural to the Urban classification upon receipt of an application by Petitioner and a prima facie showing that there has been a substantial completion of the off-site and on-site improvements within the new First Increment in accordance with the Petitioner's development plan.

IT IS FURTHER ORDERED that the reclassification and incremental districting of the entire Property shall be subject to the following conditions:

1. Prior to any construction activity, Petitioner shall cause an archaeological reconnaissance survey of the Property to be conducted by a qualified archaeologist and shall submit copies of the completed survey report to the Historic Sites Office of the State Department of Land and Natural Resources for review and comment.
2. Petitioner shall make roadway and traffic improvements to the Lipoa Street/Piilani Highway intersection at the time it is deemed necessary due to increased traffic flow because of the golf course and research and technology park, as determined in consultation with the State Department of Transportation, with the Petitioner sharing equally in the expense of such improvements with the developer of the golf course.

3. Petitioner shall develop the Property as an industrial park for high technology users. High technology means emerging industries which are technology-intensive, including but not limited to electronics and biotechnology.

4. Petitioner shall develop a secondary irrigation water source which can be utilized for turf and landscape irrigation, in the event the primary water system exceeds established safety levels.

These conditions may be fully or partially released by the Commission as to all or any portion of the Property, upon timely motion and provision of adequate assurance of satisfaction of these conditions by the Petitioner or its developer.

DOCKET NO. A84-585 - MAUI ECONOMIC DEVELOPMENT BOARD

Done at Honolulu, Hawaii, this 25th day of February 1986, per motions on November 22, 1985 and December 10, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By _____
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By _____
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By _____
TORU SUZUKI
Commissioner

By _____
RICHARD B. F. CHOY
Commissioner

By _____
EVERETT L. CUSKADEN
Commissioner

By _____
WINONA E. RUBIN
Commissioner

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In the Matter of the Petition of MAUI ECONOMIC DEVELOPMENT BOARD, INC. To Reclassify Approximately 300 Acres of Land Currently in the Agricultural District into the Urban District at Kihei, Maui, Hawaii, Tax Map Key: 2-2-02: Portion of Parcel 42	DOCKET NO. A84-585 MAUI ECONOMIC DEVELOPMENT BOARD, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

CHRISTOPHER L. HART, Planning Director
Maui County Planning Department
200 South High Street
Wailuku, Hawaii 96793

B. MARTIN LUNA, Attorney for Petitioner
Carlsmith, Wichman, Case, Mukai and Ichiki
2145 Wells Street, Suite 201
P. O. Box 1086
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 25th day of February 1986.

ESTHER UEDA
Executive Officer

DOCKET NO. A84-585 - MAUI ECONOMIC DEVELOPMENT BOARD, INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on February 25, 1986.

EVERETT KANESHIGE, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

H. RODGER BETTS, Corporation Counsel
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