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SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Plaintiff:
MAUI LANI NEIGHBORS, INC.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

MAUI LANI NEIGHBORS, INC., a Hawai'i
Nonprofit Corporation;

Plaintiff,

vs.

STATE OF HAWAII; STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES; STATE OF HAWAII
BOARD OF LAND AND NATURAL
RESOURCES; WILLIAM AILA, JR. in his
official capacity as chair of the State of
Hawai'i Board of Land and Natural Resources;
COUNTY OF MAUI; COUNTY OF MAUI
PLANNING COMMISSION; COUNTY OF
MAUI DEPARTMENT OF PLANNING;
WILLIAM SPENCE in his official capacity as
County of Maui Planning Director; JOHN
DOES 1-10, JANE DOES 1-10, AND DOE
PARTNERSHIPS, CORPORATIONS,
GOVERNMENTAL UNITS OR OTHER
ENTITIES 1-10,

Defendants.

CIVIL NO. 14-1-0501 (2)
(Other Civil Action)

FIRST AMENDED VERIFIED
COMPLAINT; EXHIBITS "A" - "F";
DECLARATION OF HARLEY ICHIRO
MANNER, Ph.D.; DECLARATION OF TOM
PIERCE; CERTIFICATE OF SERVICE

I hereby certify that this is a full, true and
correct copy of the Original.

Clerk, Second Circuit Court

APPENDIX A

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FIRST AMENDED VERIFIED COMPLAINT

Plaintiff MAUI LANI NEIGHBORS, INC. (“MLN”), by and through its counsel, Tom Pierce, Attorney at Law, LLLC, alleges and avers as follows through this First Amended Verified Complaint, which supersedes the Verified Complaint, filed September 2, 2014. (This First Amended Complaint includes a new Count IX, and that is the only substantive change from the original Verified Complaint):

INTRODUCTION

1. This suit seeks declaratory, injunctive and other relief with respect to the *Central Maui Regional Sports Complex*, which is being developed by Defendant State of Hawai‘i (“State”) Department of Land and Natural Resources (“DLNR”). The Sports Complex is proposed for intensive, urban-type, active, recreational uses, and will consist of the following extensive urban infrastructure:

- three soccer fields;
- nine baseball/softball fields;
- lights for night time playing;
- over eight (8) acres of hardened surface area;
- parking for seven hundred (700) vehicles;
- multiple restroom facilities;
- concession stands;
- a water well and associated pumps for irrigation;
- a retention basin designed to handle the Sports Complex runoff; *and*,
- *a retention basin that will cover fifteen (15) to thirty-four (34) acres* that is designed to handle all of the surface water runoff from a 357 acre portion of a development called “Wai‘ale” being proposed by A&B Properties, Inc. (“A&B”),¹ which development has not received any of its necessary approvals.

(These intensive, urban uses being proposed by DLNR (including A&B’s retention basin for the Wai‘ale project) are collectively referred to herein as the “Sports Complex” or the “Sports Complex uses”.)

2. The profound infrastructural impact of this project may be illustrated by its price tag: now \$25 million, as estimated by DLNR. The funding for this “regional” Sports Complex is

¹ A&B Properties, Inc. is identified as the developer in the Final Environmental Impact Statement for Wai‘ale, discussed further *infra*. However, in the recent deed of conveyance of the Property to DLNR, the owner was identified as Alexander & Baldwin, LLC. These two entities are referred to herein collectively as (“A&B”).

a State program dubbed the *Sports Development Initiative*, which, is being led by Lieutenant Governor Shan Tsutsui (the “Lt. Governor”). The purpose of this Initiative is to create a new revenue source for the State by making Central Maui, and other designated places in the State, destinations for professional and amateur sports teams who are expected to travel from around the Pacific Asian Rim, and potentially from around the world, and spend extensive periods of time on Maui training or participating in large scale events. The Lt. Governor has explained that the *Hawai'i Tourism Authority* will be responsible for encouraging these *nonresident* sports teams to make Central Maui and other designated places their preferred destination for training and events.

3. In order to further the Lt. Governor’s Sports Development Initiative, and assure expenditure of appropriations made for a “Central Maui Regional Park,” the “**State Defendants**” (defined below) and “**County Defendants**” (defined below) have fast-tracked DLNR’s Sports Complex proposal. In the process, these Defendants have ignored numerous laws and permitted a use for Central Maui that would result in significant harm to the public, including MLN’s members, as summarized here and as further alleged below:

4. *First*, DLNR intends to squeeze this intensive Sports Complex on a narrow strip of land between two of the largest residential projects ever built on Maui: Maui Lani (with over 1,200 homes) and Wai`ale (with over 2,500 homes).

5. *Second*, because the land designated for the Sports Complex is within A&B’s Wai`ale project, and that project will not be fully entitled or have basic infrastructure for likely five years or more, DLNR has been permitted by the County Defendants to funnel the significant traffic anticipated from the Sports Complex through an inadequate road system located within the Maui Lani project, which road system has been deemed by DLNR’s own consultants to already be “over capacity.”

6. *Third*, the wastewater facility that is proposed to be built by A&B to ultimately supply “tertiary effluent water” to irrigate the three soccer fields, nine baseball/softball fields and the retention basin area, will not be constructed for years (if ever). That is because it is a contested proposed component of the Wai`ale project, which has not gone through an extensive, three-phase “Project District” review process that would occur through multiple hearings before County agencies and by the ultimate decision maker, the County Council. Therefore, as a “temporary” stopgap measure, DLNR has been permitted as part of its Sports Complex special

use permit to dig a well to take ground water for irrigation from the limited-capacity Kahului Aquifer. Based on DLNR's own assessment, this ground water will be pumped at an estimated rate of *400,000 gallons per day* from an Aquifer that has a sustainable yield, according to DLNR, of only one million gallons per day.

7. *Fourth*, DLNR's Sports Complex uses (which will result in over eight (8) acres of hardened surface area, significantly increased traffic, and noise and lights from potentially daily sports activities carried on by anticipated "sports tourists") are the exact opposite of the designated planned uses for this narrow strip of land. This land, which abuts Maui Lani, was specifically designated for a *passive community* park by the Maui County Council ("County Council") through the Maui Island Plan, which Plan, adopted by *ordinance* in 2012, has the force and effect of law. The designated land was specifically intended by the Maui Island Plan to provide a mitigating *buffer* between the already intensive residential uses occurring or intended to occur in the Maui Lani and Wai'ale projects. This buffer was to include green spaces for passive activities, such as walking, and to provide true open space for the surrounding communities.

8. *Fifth*, in complete disregard of the clear and unambiguous requirements set forth in statutes, ordinances, and administrative rules, the "County Defendants" (defined below) have determined, and permitted, the Sports Complex uses, including the retention basin, to proceed on land specifically zoned by Maui County for "Agricultural" uses, and specifically designated as "Agriculture" by the Wailuku-Kahului Community Plan (2002) ("WK Community Plan"), which Plan also was adopted by ordinance by the County Council, which also has the force and effect of law, and which may only be changed by an amendment approved by the County Council.

9. *Sixth*, County Defendants claim the intensive Sports Complex uses, including the retention basin, may be permitted as a "special use" on lands zoned "Agricultural" by reading in isolation a phrase in the County's special use ordinance that provides that "playing fields, accessory buildings and structures" may be considered a permitted special use for lands zoned Agricultural because the provision in question only permits *passive* recreational activities with limited associated structures.²

² All constitutional allegations and challenges made herein are made only with respect to the Hawai'i Constitution, not the United States Constitution.

10. *Seventh*, during the special use permit process, the Defendant Maui Planning Commission granted the ultimate entitlement permit for the construction of significant “backbone” infrastructure for A&B’s Wai`ale project, thereby reaching ultimate conclusions regarding the o Wai`ale project, including its appropriateness, and the accuracy of A&B’s assumptions for the surface water capacity for the project, even though the remainder of the Wai`ale project must still be subjected to *years* of governmental review through the Project District change in zoning process, and even though the backbone infrastructure that has now been permitted to proceed by the Maui Planning Commission was based on *very preliminary* assumptions made by A&B’s engineers and consultants.

11. *Eighth*, in violation of Hawai`i Revised Statutes (“HRS”) Chapter 343, the Hawai`i Environmental Policy Act (“HEPA”), DLNR failed to prepare a supplemental environmental impact statement (“EIS”) updating the EIS previously prepared by A&B for the Wai`ale project, and failed to have it approved by the accepting authority for the Wai`ale EIS, the State Land Use Commission (“LUC”). Instead, DLNR treated the Sports Complex project and the land on which they are proposed to be situated as if they were independent of the Wai`ale project. DLNR thus prepared only an environmental assessment (“EA”) that was accepted by the Defendant State Board of Land and Natural Resources (“BLNR”) which reviewed the environmental impacts in isolation from the cumulative impacts of the proposed Wai`ale development.

12. *Ninth*, The Sports Complex is part of one or more larger government projects, and DLNR’s attempt to proceed based on nothing more than an EA constitutes illegal segmentation under HEPA. The State Defendants acknowledge that the Sports Complex is part of the Lt. Governor’s Sports Development Initiative, which is intended to expand development of sports venues throughout the State, thus having significant cumulative impacts that have not received the necessary environmental review, *through the required EIS*, including the Sports Complex. Further, three “regional parks” have been recently proposed by the County and State Defendants for Central Maui but have yet to receive appropriate *comprehensive* review under HEPA with respect to the significant impacts associated with this concentration of parks proposed for intensive use on already overburdened existing public infrastructure. On information and belief, these parks are part of a larger government project that requires an EIS before any phase or component of it may be initiated.

13. The above facts, as alleged in greater detail below, reveal an abuse of authority and a failure to follow the clear and unambiguous mandates of various environmental, planning and zoning laws. As a result, the public has been denied their rightful opportunity to comment and have a meaningful voice in the process. As a further result, DLNR's Sports Complex uses have avoided scrutiny by the elected County Council members who would have the *sole and exclusive* discretion to ultimately approve or disapprove amendments to the Maui Island Plan, the WK Community Plan, as well as changes in zoning.

14. MLN has sought from County and State Defendants, but been denied, early and efficient resolution. On July 12, 2014, MLN served the State Defendants with a cease and desist letter, a copy of which is attached hereto as Exhibit "A" ("C&D Letter"), which letter was simultaneously served on the County. The C&D Letter, along with exhibits attached thereto, gave the State Defendants and the County Defendants a detailed explanation of the violations of law identified herein, and demanded that DLNR, by August 1, 2014, agree to stay construction, pending conformance with the law.

15. DLNR has subsequently denied MLN's claims made in the C&D Letter and issued a press release that it will initiate construction of the Sports Complex *on d September 2, 2014*. The State Defendants are apparently proceeding on the mistaken belief that they have a "good faith" basis to rely on the County Defendants' erroneous and abusive interpretation of the law. However, it is *the developer* who "assumes the risk" that the permitting agency is acting within its authority.³ In this case, the Maui Planning Commission has as a matter of law exceeded its authority in issuing the special use permit, as further explained herein. Therefore, DLNR has no legitimate basis to proceed considering the extensive legal issues that have been brought to DLNR's attention by MLN.

16. MLN seeks the declaratory, injunctive and other relief from the Court as further set forth in the Prayer for Relief. MLN is entitled to injunctive relief (including preliminary

³ See *Brescia v. North Shore Ohana*, 115 Hawai'i 477, 500, 168 P.3d 929, 952 (2007), wherein the Court explained:

[A]s this court noted in *Kepo'o v. Kane*, 106 Hawai'i 270, 295, 103 P.3d 939, 964 (2005), " '[a]gents of the government must act within the bounds of their authority; and one who deals with them assumes the risk that they are so acting.' " (quoting *Sangre de Cristo Dev. Co., Inc. v. United States*, 932 F.2d 891, 894 (10th Cir.1991)).... It is well accepted that a public employee not vested with decision making authority may not bind the state in its exercise of the police power. See *Godbold v. Manibog*, 36 Haw. 206 (1942) (holding that a state cannot be estopped by the unauthorized acts or representations of its officers).

injunctive relief as will be presented to the Court by separate motion) because MLN's members have no adequate remedy at law and would suffer irreparable injury without the Court's intervention.

JURISDICTION, STANDING, AND PRIVATE RIGHTS OF ACTION

A. Jurisdiction and Venue

17. This Court has original jurisdiction to hear and adjudicate these claims pursuant to the following statutory and constitutional provisions: Hawai'i Revised Statutes ("HRS") § 46-4 (enforcement of county zoning);⁴ HRS § 343-7 (actions under Hawai'i Environmental Policy Act ("HEPA")); HRS § 603-21.5(a)(3) (civil actions and proceedings); HRS § 603-21.7(a)(3) and (b) (suits in equity and related equitable relief), HRS § 603-21.9 (general powers to grant relief); HRS § 632-1 (declaratory judgment);⁵ HRS § 661-1 (claims against state founded upon any statute of the State); Haw. Const., Article XI, § 9 (environmental rights); and other state law.

18. Venue is proper because the land at issue (the "Property") is located on the Island of, and within the County of, Maui, State of Hawai'i.

B. MLN Has Standing to Represent its Members Who Are Maui Lani Property Owners

19. MLN has an express corporate purpose of supporting, promoting and advocating for sustainable and appropriate community planning, and legal state and county zoning consistent therewith, for the Central Maui region of the Island of Maui.

20. Each and every member of MLN holds an ownership interest in real property located within Maui Lani. Maui Lani is a master planned community, located in Central Maui, on the Island of Maui, State of Hawai'i, which is intended for over 1,200 residential units.

21. MLN's members are directly and concretely affected by the acts and omissions of the Defendants (or any one or more of them), and/or have suffered injury in fact.

22. The Maui Lani community, as well as other communities in Central Maui will be directly and significantly affected by the Sports Complex uses.

⁴ See *Pavsek v. Sandvold*, 127 Hawai'i 390, 392, 279 P.3d 55, 57 (Ct. App. 2012), as corrected (Aug. 3, 2012) (holding HRS § 46-4 creates a private right of action in favor of a real estate owner directly affected by an alleged LUO zoning violation, but that the owner's action is subject to the doctrine of primary jurisdiction).

⁵ "Controversies involving the interpretation of . . . statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right. HRS § 632-1.

23. The Maui Lani development includes three development projects that are adjacent to the Property, referred to as Traditions, Na Hoku and Legends.⁶ These three projects account for almost 600 of the house lots to be located within Maui Lani, and these house lots are in close proximity to the Property, and the residents from these house lots must use the roads that will be subjected to the increased Sports Complex traffic. Almost sixty (60) of the house lots within these three projects share a common boundary with the Property.

24. Therefore, MLN has membership standing. *See, e.g., Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 334, 167 P.3d 292, 327 (2007) (“An association may sue on behalf of its members—even though it has not itself been injured—when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”)

25. MLN also has organizational standing to sue for injury based on its own nonprofit corporation interests. *Id.*

C. MLN Has a Private Right of Action to Seek Declaratory Relief under HRS § 632-1

26. This Court has original jurisdiction to make binding adjudications of right with respect to, among other things, “[c]ontroversies involving the interpretation of ... statutes, municipal ordinances, and other governmental regulations....” HRS § 632-1. With respect to all claims for relief set forth herein, Plaintiff alleges that: (a) an actual controversy exists between contending parties; (b) antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; (c) Plaintiffs has asserted a legal relation, status, right, or privilege in which Plaintiff has a concrete interest, which has been denied and/or violated by the defendants named herein (or any one or more of them); and, (d) no special form of remedy exists.

D. MLN Has a Private Right of Action to Challenge Zoning Violations under HRS § 46-4

27. This Court has original jurisdiction to adjudicate a claim that use of real property violates zoning. MLN, which represents members who are property owners who own lands in close proximity to, or abutting the Property, has a private right of action under HRS § 46-4. *See Pavsek v. Sandvold*, 127 Hawai'i 390, 392, 279 P.3d 55, 57 (App. 2012), *as corrected* (Aug. 3, 2012) (holding HRS § 46-4 creates a private right of action in favor of a real estate owner

⁶ The location of Maui Lani, and these three development projects, and the Property, may be seen in Exhibit D.

directly affected by an alleged zoning violation, but that the owner's action is subject to the doctrine of primary jurisdiction). Under HRS § 46-4, MLN has no obligation to exhaust administrative remedies. *Pavsek, supra*. While under HRS § 46-4 the doctrine of primary jurisdiction applies, the Court has the obligation to assure that Plaintiff will not be unfairly disadvantaged in the process of evaluating its jurisdictional options:

A trial court has discretion in fashioning an appropriate remedy when applying the primary jurisdiction doctrine. As an alternative to staying the proceedings pending administrative resolution of predicate issues, the court has the discretion to dismiss the case without prejudice. *However, dismissal is an appropriate remedy only if the parties would not be unfairly disadvantaged.*

Pavsek, 127 Hawai'i at 402, 279 P.3d at 67 (quoting *Jou v. Nat'l Interstate Ins. Co. of Hawaii*, 114 Hawai'i 122, 128, 157 P.3d 561, 567 (App. 2007)) (bold emphasis in original, other emphasis added, internal quotes omitted).

28. In this case, Plaintiff would be disadvantaged if the Court dismissed any of the claims for relief herein that are determined to cognizable only under HRS § 46-4 for the following reasons: (a) construction by DLNR is imminent and Plaintiff has no ability to seek *injunctive* relief through any administrative proceeding; (b) County Defendants before, and after receiving the C&D Letter, had an opportunity to make lawful decisions or to cure unlawful decisions with respect to DLNR's proposal and the Property but failed to do so; and (c) further efforts by Plaintiff to request a different outcome from County Defendants would be futile and would not comport with judicial efficiency.

E. MLN Has a Private Right of Action for its State Constitutional Claims

29. This Court has original jurisdiction over State constitutional questions, of which there are three: (a) State and County Defendants' acts and/or omissions have resulted in due process violations injuring MLN's members, which are protected by Art. 1, § 5 of the Hawai'i Constitution; (b) the special use permit ordinance MCC § 19.30A.060(H) is unconstitutionally and impermissibly vague and ambiguous thereby permitting unbridled discretion to the Maui Planning Commission; and (c) State and County Defendants' acts and/or omissions have resulted in violations to environmental rights of MLN's members, which are protected by Article XI, § 9 of the Hawai'i Constitution.

F. MLN Has a Private Right of Action to Challenge DLNR's Action for a Failure to Prepare a Supplemental EIS under HEPA

30. The LUC was obligated to prepare, and have the Hawai'i Office of Environmental Quality Control ("OEQC") publish, a declaration that a supplemental EIS was not necessary for DLNR's proposed Sports Complex uses. *See Unite Here! Local 5 v. City & County of Honolulu*, 123 Hawai'i 150, 174, 231 P.3d 423, 447 (2010) (explaining in a supplement EIS challenge that "[HRS] section 343-3 mandates the OEQC to inform the public of [an approving agency's] negative declaration upon receipt of such notification from the [approving agency]."

31. DLNR's EA, approved by BLNR, did not accomplish the statutory requirements required under HEPA. It was not intended to evaluate the need for a supplemental EIS to the Wai'ale EIS, and it was submitted to the wrong agency. Therefore, the public never had the notice it was entitled to under HEPA. *See Unite Here! Local 5, supra*.

32. For the supplemental EIS challenge, the judicial proceeding may be brought anytime within 120 days "after the proposed action is started." *Id.* (interpreting HRS § 243-7(a)). The proposed action has not started because construction of the Sport Complex has not yet been initiated.

G. MLN Has a Private Right of Action to Challenge DLNR's Action for Illegal Segmentation under HEPA

33. Under HAR § 11-200-7, a group of actions proposed by an agency shall be treated as a single action when the component actions are phases or increments of a larger total undertaking, or an individual project represents a commitment to a larger project. DLNR's Sports Complex is part of the Sports Development Initiative, and/or part of a governmental plan to build "regional sports facilities" on at least three properties in Central Maui, of which the Sports Complex is one component.

34. MLN has a timely private right of action under HRS § 343-7(a), which provides that an illegal segmentation challenge under HEPA may be brought any time within one hundred twenty days of the agency's decision to carry out or approve the action, or, if a proposed action is undertaken without a formal determination by the agency that a statement is or is not required, a judicial proceeding shall be instituted *within one hundred twenty days after the proposed action is started*.

35. At the time of filing of this Complaint, none of the three proposed actions identified above have been started, and there has been no formal determination by an agency that

a statement is or is not required with respect to the Sports Development Initiative, and/or a government plan to build regional sports facilities throughout Central Maui.

H. MLN Has a Private Right of Action under Public Nuisance

36. MLN's members will suffer injury in fact from the use of the inadequate roadway system within Maui Lani by DLNR for the Sports Complex for potentially five years or more. MLN may seek declaratory and injunctive relief that will benefit its members and the public in general. Therefore, MLN has standing to bring, and a private right of action under, the doctrine of public nuisance. *Akau v. Olohana Corp.*, 65 Haw. 383, 389, 652 P.2d 1130, 1134 (1982) (holding "that a member of the public has standing to sue to enforce the rights of the public even though his injury is not different in kind from the public's generally, if he can show that he has suffered an injury in fact, and that the concerns of a multiplicity of suits are satisfied by any means, including a class action.")

THE PARTIES

37. Plaintiff MAUI LANI NEIGHBORS, INC. ("Plaintiff" or "MLN") is a Hawai'i non-profit membership corporation duly organized under the laws of the State of Hawai'i. MLN's corporate purpose includes supporting, promoting and advocating for sustainable and appropriate community planning, and legal state and county zoning consistent therewith, for the Central Maui region of the Island of Maui. MLN's members consist of property owners within the Maui Lani master planned community, located in Central Maui, on the Island of Maui, State of Hawai'i. At the time of filing this Complaint, MLN consists of over one hundred (100) members who represent over sixty (60) lots located within Maui Lani. Landowners within Maui Lani continue to enroll as members in MLN. Therefore, MLN's membership is increasing, and will continue to increase after the filing of this Complaint.

38. Defendant STATE OF HAWAII ("State") is a State of the United States of America, under which the other State Defendants, identified immediately below, serve.

39. Defendant DLNR is the department of the State charged with the obligation to manage, administer, and exercise control over public lands, including parks. HRS § 171-3.

40. Defendant STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES ("BLNR") is the executive board of DLNR, and as such makes key decisions for DLNR, including decisions related to public lands, including parks.

41. Defendant WILLIAM AILA JR. ("**BLNR Chairperson**") is the chairperson of BLNR, and is assigned discretion to make certain decisions on behalf of DLNR and to implement decisions made by BLNR, including decisions related to public lands, including parks.

42. The State, DLNR, BLNR, and the BLNR Chairperson are collectively referred to in this Complaint as the "**State Defendants**".

43. Defendant COUNTY OF MAUI ("**County**") is a political corporation subject to suit pursuant to HRS § 46-1.5(22), and also subject to the delegation of certain county powers, and the limitations therein, as set forth in HRS Chapter 46.

44. Defendant DEPARTMENT OF PLANNING, County of Maui ("**Planning Department**"), is directly supervised by the Mayor of the County of Maui, Maui County Charter § 7-5(1), and consists of, among other agencies and persons, the Planning Commission and the Planning Director, and is charged with carrying out, facilitating or implementing the obligations of the Planning Commission and the Planning Director, including those obligations relating to the County General Plan, the Maui Island Plan, the Directed Growth Plan and the various community plans for the County, including the WK Community Plan.

45. Defendant MAUI PLANNING COMMISSION ("**Planning Commission**") is a part of the Planning Department, has certain obligations to carry out with respect to review and recommendations on the County Planning Documents, and has the obligation to review and approve or reject special use permits pursuant to Maui County Code ("**MCC**") § 19.510.070.

46. Defendant WILLIAM SPENCE ("**Planning Director**") is named in his official capacity only, and is the Planning Director of the Planning Department, and, among other powers and duties, he is the administrative head of the Planning Department, serves as the chief planning officer of the County, and is the technical advisor to the Mayor of the County of Maui, the Maui County Council and the Planning Commission on all planning and related matters, and performs such other duties and functions as shall be required by law or as shall be assigned by the Mayor of the County of Maui, Maui County Charter § 8-8.3.

47. The County, the Planning Department, the Planning Commission, and the Planning Director are collectively referred to in this Complaint as the "**County Defendants**".

48. The State Defendants and County Defendants are collectively referred to herein as "**Defendants**".

49. Additional Defendants John Does 1-10, Jane Does 1-10, and Doe Partnerships, Corporations, Governmental Units or Other Entities 1-10 (collectively, "Doe Defendants") are persons or entities who may be liable to Plaintiff or who may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiff. Plaintiff has reviewed the permits, records, state and federal statutes, and other documents, but is unable to ascertain whether or not all parties liable to Plaintiff are named therein. Plaintiff will identify such Doe Defendants when their names and capacities are ascertained. Plaintiff is informed and believes and thereon alleges that some of these Doe Defendants are, and at all times relevant herein, were, in some manner presently unknown to Plaintiff engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for the damages to Plaintiff and the public, as alleged herein.

FACTUAL ALLEGATIONS

A. The Property and its Relationship to Maui Lani and the Wai`ale Project

50. The Sports Complex will be located on a 65.378 acre parcel located in Central Maui recently designated by the County as tax map key number (2) 3-8-007:104 (the "Property").

51. The Property is immediately adjacent to the Maui Lani project where MLN's members reside and own property.⁷

52. For over a decade, A&B and other developers have been planning to develop, or have been developing, much of the land in Central Maui.

53. One of the projects that has been in the process of being developed in Central Maui is Maui Lani, a 1,000 acre master planned community that includes over 1,200 single family homes, a golf course, a school, as well as commercial uses.⁸ The southeastern portion of Maui Lani contains the three residential projects referred to as Traditions, Legends and Na Hoku, which developments contain almost 600 house lots. Most of the 600 house lots have already been developed with homes, and of these homes, almost sixty (60) immediately abut the Property.⁹

⁷ See Exhibit 1 of C&D Letter (Exhibit "A") (Central Maui Regional Park Site Plan, dated 3/8/2013).

⁸ See Exhibit 4 of C&D Letter (Exhibit "A") (showing general location of Maui Lani and location with respect to Wai`ale project).

⁹ See Exhibit "D" (map identifying parts of the Maui Lani Development, including Traditions, Legends and Na Hoku, and also showing the general location of the Property).

54. While the Maui Lani project was being developed over the last decade, A&B initiated work on developing the land immediately south of Maui Lani (the “Wai`ale” project), which is intended for 2,550 residential units, commercial areas and recreational areas.¹⁰

55. The Wai`ale project incorporates two contiguous land areas separated by Waiko Road, which runs east-west (collectively the “Wai`ale Land”).¹¹ The total acreage identified by A&B for the Wai`ale project at its inception was 545 acres. Of the 545 acres, a little over 422 acres of land is located immediately north of Waiko Road (“North Wai`ale Land”). A little over 122 acres of land is located immediately south of Waiko Road (“South Wai`ale Land”).¹²

56. The Property is located within, and is part of, the North Wai`ale Land.

57. The Property is located within, and is part of, the proposed “Wai`ale” project.¹³ The lands that are part of the Wai`ale project have been the subject of only *initial* review and entitlements, and many more years of assessment and review have been acknowledged to be necessary, both by A&B and by the County and the State.

B. Adoption of the Wailuku-Kahului Community Plan (2002)

58. State and County laws require the County to develop, adopt and follow a County General Plan, which is separated into specific parts, including the Maui Island Plan and the community plans for respective parts of Maui County, including the one that is relevant here, the WK Community Plan.

59. The Maui Island Plan and the WK Community Plan went through years of planning, and included contributions from the community, the County, the affected landowners, and the State.

60. The County General Plan, the Maui Island Plan and the respective community plans are, by State and County law, intended to be the bedrock for land use decision making in Hawai`i.

¹⁰ See Exhibits 3, 4 and 5 of C&D Letter (Exhibit “A”) (Wai`ale maps). See also Exhibit D (map of Maui Lani project).

¹¹ See Exhibit 3 of C&D Letter.

¹² See Exhibits 3 and 4 of C&D Letter.

¹³ See Exhibit 4 of C&D Letter (Exhibit A) (regional location map showing Wai`ale and Maui Lani); Exhibit 5 of C&D Letter (Exhibit A) (conceptual community master plan map for Wai`ale, including the Property).

61. Amendments to the Maui Island Plan and the community plans are required where a proposed land use would be inconsistent with specific designations made with respect to specific properties therein.

62. The most recent version of the WK Community Plan was adopted by the County Council in 2002.

63. The Property lies within the area governed by the WK Community Plan.

64. The WK Community Plan specifically designates the Property for “Agriculture.”

65. The County is initiating, or will soon initiate, a comprehensive update process for the WK Community Plan, which is not anticipated to be complete for a number of years, but which will, among other things, include implementation of the work accomplished through the Maui Island Plan.

C. Initiation of Maui Island Plan (Early 2000s)

66. After the adoption of the WK Community Plan, the County and the community initiated work on the Maui Island Plan (“**Maui Island Plan**”), which would carry on for about a decade before its adoption in December of 2012.

67. The Maui Island Plan, through its Chapter 8, entitled the Directed Growth Plan, included for the first time in Maui County history urban growth boundaries, as well as designated green spaces for open space, buffers and parks.

68. By late 2011, the urban growth boundaries, greenways, and other planning designations were being mapped in tentative form. However, the designations continued to be debated, including the specific classified uses for each designation.

69. By the time of adoption of the Maui Island Plan by the County Council in 2012, some of the tentative designations and classifications would change. Relevant to this action, the location of green spaces within Wai`ale would change, and the designation of which green spaces would be designated for “regional” and “community” parks would change. (The adopted version of the Maui Island Plan is described in allegations further below.)

D. The Wai`ale Final Environmental Impact Statement (November 2011)

70. In or about 2010, A&B initiated work on an environmental impact statement for the Wai`ale master planned community, including all parts of the Wai`ale Land.

71. On November 4, 2011, the Hawai'i State Land Use Commission ("LUC") determined the Wai'ale Final Environmental Impact Statement ("FEIS" or "Wai'ale FEIS") to be adequate.

72. The FEIS specifically identified the Property as being part of the Wai'ale master plan community.

73. The FEIS expressly informed decision makers that all of the Wai'ale Land, including the Property, would go through a change in zoning, specifically a change from Agricultural to Project District.

74. The FEIS expressed to decision makers that the Wai'ale project was intended to be consistent with the Maui Island Plan.

75. The FEIS identified a need for an open space buffer between Maui Lani and Wai'ale.

76. The FEIS included a preliminary engineering report ("PER") for the Wai'ale project.

77. The PER included a plan for a retention basin, with a volume of 176 acre-feet, which would cover thirty-four (34) acres of land area. The retention basin was designed to handle all of the surface water runoff calculated to be created from the 422-acre North Wai'ale Land. The retention basin was designated to be sited within the Property.¹⁴

78. The PER in the FEIS included certain build out assumptions for the Wai'ale project that were made in order to conclude that drainage from the project would be less in its developed state than existed in its undeveloped state.

79. The PER did not assume that the Property would be developed with *more than eight (8) acres of hardened surface area*, as would result from development of DLNR's Sports Complex, based on DLNR's subsequent engineering report.

E. The State District Boundary Amendment (June 2012)

80. At the same time that A&B was preparing the Wai'ale FEIS, A&B also petitioned the LUC for a State district boundary amendment, pursuant to HRS Chapter 205, from State "Agriculture" to State "Urban" for all of the land designated for the Wai'ale project, including the Property (the "Petition Area"). The petition was filed by A&B on August 25, 2010 but would not be approved until 2012.

¹⁴ See Exhibits 3 and 10 of PER, attached to Wai'ale FEIS, and attached hereto as Exhibit "C".

81. Throughout the application process and the petition hearing, A&B—consistent with its representations in the EIS—identified the Property as being part of the Wai`ale project, and therefore part of the “Petition Area” that was being evaluated by the LUC for the district boundary amendment. A&B also represented to the LUC that the Property would be a critical part of the Wai`ale project, especially with respect to its use as a *buffer* between Wai`ale and Maui Lani, as well as its importance as the site for a retention basin to accept surface water runoff from a 357 acre portion of the Wai`ale development.

82. To assure consistency with County planning documents, A&B also represented at the LUC hearing that it would obtain *for the entire Petition Area* an amendment to the Maui Island Plan, as necessary, after its adoption in final form by the County Council, as well as an amendment to the WK Community Plan, which A&B acknowledged was necessary.

83. A&B further represented that the *entire Petition Area* would be submitted to the County Council for a change in zoning, which would include *a comprehensive evaluation* of the impacts of the entire Wai`ale project, including an opportunity for appropriate County conditions. This evaluation process would, as A&B represented to the LUC, occur through the three-phase process that is necessary for a change in zoning to County “Project District.”

84. A&B also made representations to the LUC through the Wai`ale EIS, which was accepted by the LUC. Notably, A&B made *no impact assumptions* with respect to the Property. Instead, A&B presented the Property as essentially a mitigation area—one that would: (a) provide an open space area that would provide a “*buffer*” between Maui Lani and Wai`ale; and (b) contain the massive retention basin designed to handle surface water runoff from 357 acres of the Wai`ale development.

85. At the hearing on A&B’s district boundary amendment petition before the LUC, A&B representatives, as well as the Planning Director emphasized to the LUC that decisions with respect to the park uses had not yet been made and would not be made and evaluated until the County initiated the comprehensive review process for the WK Community Plan, or as would occur during the three-phase change in zoning process to Project District.

86. Based on A&B’s representations, the LUC re-designated the 545-acre Wai`ale Land from State Agriculture to State Urban by granting a state district boundary amendment (“DBA”). This DBA was granted through Findings of Fact, Conclusions of Law, Decision and Order, filed by the LUC on June 21, 2012 (“LUC D&O”).

87. The conditions established by the LUC, which are part of the LUC D&O encumber the entire Petition Area (which includes the Property), are recorded on title, and run with the land. Those conditions are binding on A&B and its successors and assigns, including the current owner of the Property, the State through DLNR.

88. Among those conditions in the LUC D&O is the obligation of the landowner to proceed “*in substantial compliance*” with the representations made by the petitioner, A&B, during the LUC proceedings.

F. The Maui Island Plan (December 2012)

89. The Maui Island Plan was adopted by the County Council in December 2012.

90. The Maui Island Plan through its Directed Growth Plan identifies both a “community park” and a “regional park” for Central Maui, and provides maps showing the specific location for the community and regional parks.¹⁵

91. Specifically, the Maui Island Plan provides a detailed explanation of the need for a *passive recreation community park*, which park shall be located on the north side of Waiko Road (*i.e.*, the North Wai`ale Land), while providing for a “Central Maui Regional Park” located south of the South Wai`ale Land.

92. The Maui Island Plan explains the passive recreation community park will help provide buffer for the Maui Lani residents and help mitigate the impacts of the residential and commercial uses planned for the Wai`ale Project.

G. The County’s Property Purchase from A&B for the Central Maui Regional Park Purchase (September 2013)

93. In September 2013, the County purchased 209 acres from A&B for the express purpose of developing it as a regional park. This 209 acre parcel is south of Waiko Road and south of, but immediately abutting, the South Wai`ale Land.¹⁶

94. The County’s purchase of this land for Central Maui’s *regional park* is consistent with the Maui Island Plan, which designates the location of the regional park *south* of Waiko Road.¹⁷

¹⁵ See Exhibit 9 of C&D Letter (providing map excerpt from Maui Island Plan).

¹⁶ See Exhibit 7 of C&D Letter (Exhibit A) (showing the approximate boundaries of the 209 acre parcel purchased by the County). Compare to Exhibit 9 of C&D Letter (showing map from Maui Island Plan designating the same property for the “Central Maui Regional Park” but showing a “Community Park” designated for the Property).

¹⁷ See Exhibits 6 and 9 of the C&D Letter (Exhibit A).

95. Unlike the Property, the 209 acres purchased by the County meets the County's 100-acre minimum lot size requirement for a "PK-3 Regional Park District."¹⁸

H. The Environmental Assessment for Sports Complex (June 2013)

96. In or about 2012, DLNR initiated work on an environmental assessment for the Sports Complex.

97. On June 23, 2013, the State of Hawai'i Office of Environmental Quality Control ("OEQC") published DLNR's finding of no significant impact ("FONSI") on the *Central Maui Regional Park Final Environmental Assessment* ("Sports Complex FEA" or "FEA").

98. DLNR identified BLNR as the accepting authority for the FEA. On October 11, 2013, BLNR accepted the FEA as final.

99. The FEA proposed to use the Property for, among other things, four¹⁹(4) soccer fields; nine (9) baseball/softball fields, lights for night time playing; over eight (8) acres of hardened surface area consisting of roads and parking for 700 vehicles and related curbs and gutters; multiple restroom facilities; concession stands.

100. The FEA also explained a 5.8 acre storm water retention basin was planned to accommodate surface water runoff from the Sports Complex.²⁰

101. However, another section of the FEA further explains that A&B's retention basin that was preliminarily described in the Wai'ale FEIS would be a "key component" of DLNR's proposed development:

A large drainage detention basin (to be constructed by the Wai'ale developer) in the northeastern corner of the park *is also a key component of this design*, which will allow for the retention of a larger amount of runoff, an estimated 176 acre-feet, from the Wai'ale master planned community.²¹

102. In its EA, DLNR failed to inform the public or decision makers about the fact that the Sports Complex was part of a larger State action, the Sports Development Initiative.

¹⁸ See MCC § 19.615.040; see also Exhibit 8 of C&D Letter (providing portions of relevant parts of the MCC).

¹⁹ For reasons not known at this time, subsequent to filing the Sports Complex FEA, DLNR revised its proposal from four soccer fields to three.

²⁰ FEA at 5 (emphasis added).

²¹ FEA at 7 (emphasis added). See also FEA at 9 (explaining the retention basin will be constructed "by the Wai'ale developer"); FEA at 32 ("[A] stormwater retention basin will store stormwater and help to mitigate sediment loads in runoff from the Wai'ale development to the south.).

I. Announcement of the Sports Development Initiative (Oct. 2013)

103. On October 11, 2013, the same day BLNR approved the EA, the Lt. Governor confirmed the Property was part of the Sports Development Initiative during an interview with news service *Maui Now*:

With our new [Sports Complex] facility, we will be able to host hundreds of *off island* families and provide a boost to our local businesses,” he stated at the time. . . .

Once completed, *the park could serve as a venue to host local, statewide, national, and international sporting events*. It has the potential to be a *revenue generator* for Maui and the state,” said Tsutsui.²²

104. On October 15, 2013, Governor Neil Abercrombie (the “**Governor**”) held a press conference to announce a new “Sports Development Initiative.” According to the official press release, the Governor appointed the Lt. Governor to “spearhead” the Initiative.

105. The press release explained that the purpose of this Initiative is “to diversify our visitor industry and generate more revenue for our state.”

106. The Governor issued an official press release, dated October 15, 2013, regarding the Sports Development Initiative, and explained therein that:

[T]he initiative will identify, promote and engage opportunities to establish Hawaii *as a premier sports destination for professional, amateur and youth athletics*. The improvement of current facilities and development of world-class, state-of-the-art venues are also part of the initiative, intended to attract sporting events and athletic training opportunities not *only on Oahu but throughout the state*.²³

107. A October 15, 2013 Star-Advertiser reported as follows:

Facilities improvement will be a major piece of the state’s newly formed Sports Development Initiative, said Lt. Gov. Shan Tsutsui, who will lead the effort. Its function is to coordinate efforts throughout Hawai‘i to improve the state’s sports *industry*. . . . The initiative includes working with the [Hawai‘i Tourism Authority] in negotiations with the NFL for the Pro Bowl, as we as possible preseason games, Tsutsui said. . . . Abercrombie said the initiative will be *all-encompassing* There will also be an *emphasis on hosting new events*. “We [the State] can be an anchor, not just a crossroad or a bridge,” Abercrombie said. “Everything from surfing to rugby to baseball. *International in scope*.”

²² See <http://mauinow.com/2013/10/11/breaking-4-7-m-released-for-central-maui-regional-park/> (emphasis and bracketed material added).

²³ See <http://governor.hawaii.gov/blog/lt-gov-tsutsui-to-lead-new-sports-development-initiative/> (emphasis added).

(Emphasis and bracketed material added, ellipses denotes omitted content).

108. A November 26, 2013, Maui Now news article reported as follows:

Lt. Governor Shan Tsutsui of Maui returned from a week-long trip to Korea, where he discussed economic cooperation and his Hawai'i Sports Development Initiative. . . . The [L]t. [G]overnor . . . met with the Korea Baseball Association to discuss its participation in an amateur youth baseball exchange, possibly in the summer of 2014. . . .

109. A June 25, 2014, Hawai'i News Now news story reported as follows: "Since taking on the [Lt. Governor] position, Tsutsui worked on initiatives such as . . . the Hawaii Sports Development initiative -- aiming to build a thriving sports industry in Hawaii."

110. The State has failed to prepare an EIS for the Sports Development Initiative.

J. Subdivision of the North Wai'ale Land (December 2013)

111. On October 24, 2013, the County granted A&B final approval for a consolidation-resubdivision of the North Wai'ale Land through Subdivision File Number 3.2226, entitled the "Maui Lani Subdivision." The approved subdivision includes "Lot 12-A-3," which delineates the boundaries of the 65.378 acre Property. Lot 12-A-3 has recently been designated by the County as tax map key number (2) 3-8-007:104.

112. During the subdivision process, the County did not require, among other things, consistency with the Maui Island Plan and the WK Community Plan, a Traffic Impact Analysis Report before the change in zoning, a change in zoning, an agreement with the State Department of Transportation before permitting any part of the Wai'ale project to proceed, or roadway improvements, all as were required under the LUC D&O.

K. Special Use Permit Hearing (March 25, 2014)

113. On October 10, 2013, DLNR applied to the Planning Commission ("Planning Commission") for a County Special Use Permit ("SUP") for a "regional park."

114. On March 25, 2014, the Planning Commission held a short hearing on the SUP application and approved the Sports Complex.

115. The Planning Director, acting on behalf of the Planning Commission, filed the Planning Commission's "Findings of Fact, Conclusions of Law, and Decision and Order" (the "MPC D&O"), dated April 7, 2014.

116. The MPC D&O explained that DLNR was requesting a County Special Use Permit to construct the various sports complex and retention basin infrastructure previously alleged herein. MPC D&O at 2.

117. The MPC D&O identified MCC § 19.510.070, entitled “Special Use Permits,” as the basis of the Planning Commission’s authority to grant the permit. The MPC D&O concluded that the Planning Commission could permit the Sports Complex on land zoned as Agricultural because “playing fields, accessory buildings and structures” are listed as a special use in the Agricultural District, and may be permitted through a SUP. *Id.* at 14.

118. The MPC D&O confirms that the Maui Planning Commission was expressly approving the 176 acre-foot retention basin identified in the PER in the Wai`ale FEIS, which was purportedly designed to handle all of the surface water runoff from the North Wai`ale Land after it was fully developed as part of the Wai`ale master plan:

“The large drainage detention basin will replace the temporary retention [sic] basin *and is also a key component of the park design*. The drainage detention basin with an estimated 176 acre-foot capacity, will allow for a larger amount of runoff from the park *as well as the Waiale development*.”

Id. at 16 (emphasis added).²⁴

119. The MPC D&O stated that under the SUP rules the Planning Commission needed to find the Sports Complex uses, including the retention basin, were consistent with the Maui Island Plan. *Id.* at 9, 12. With respect to this requirement, the MPC D&O declared the uses were consistent. *Id.*

120. However, the MPC D&O fails to even acknowledge the specific parts of the Maui Island Plan, including maps, which specifically designated and classified the Property for a passive “Community Park,” and designated an entirely different 209 acre parcel of land south of the Wai`ale Land for a “Central Maui Regional Park.”

121. The MPC D&O acknowledged that the WK Community Plan designates the Property for Agriculture, and that the Maui Planning Commission has an obligation to assure consistency with community plans. *Id.* at 12. However, the MPC D&O nonetheless states that the

²⁴ The MPC D&O sometimes refers to a *detention* basin, as here in this quote, even though use of that term is inconsistent with the PER in the FEIS and the language provided in the FEA, which refer to a *retention* basin. Detention basins and retention basins work on entirely different hydrology principles and have different potential impacts on the surrounding area.

Sports Complex uses, including the retention basin, are consistent with the Agriculture designation.

122. The MPC D&O also acknowledged that the intersection that would be used by the Sports Complex within Maui Lani was already operating at the worst possible level of service, which is “LOS F.” The D&O also acknowledged that traffic would increase at this intersection with the development of the Sports Complex. *Id.*

123. However, the MPC D&O nonetheless concluded that the Sports Complex could meet MCC § 19.510.070(B)(5), *i.e. that*: “The proposed project will not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the area.”

L. DLNR’s Post-Approval Impact Reports (April 2014)

124. Subsequent to obtaining a finding of no significant impact on the Sports Complex FEA, DLNR made public three impact reports regarding the Sports Complex uses: a traffic impact report; a noise report; and, a light report.

125. DLNR did not explain why these were not provided during the environmental assessment process.

126. The noise and impact reports both recognize and identify *significant* impacts to Maui Lani landowners from noise and traffic. The light report fails to include an analysis for lay persons.

M. Conveyance of the Property from A&B to DLNR and Grant of Easements in Favor of A&B (June 26, 2014)

127. On June 26, 2014, A&B and DLNR executed and recorded with State of Hawai‘i Bureau of Conveyances a “Warranty Deed with Reservation of Easements Covenants, Reservations and Restrictions” as Document No: A-52900488 (“Deed”).

128. The Deed conveyed the Property from A&B to DLNR subject to twenty-one (21) easements, of which seven (7) were recorded at the same time as the Deed was recorded.

129. The Deed and the seven (7) easements included a map showing the Property and the location of the easements on the ground. A true and correct copy of that map is attached hereto as **Exhibit “F”**, which map shows that a significant portion of the Property is encumbered by easements in favor of A&B specifically for the benefit of the Wai‘ale Property and the Wai‘ale master plan.

130. Among the seven (7) easements were Easements 3B, and Easements 4 and 5, which were “for drainage purposes, including the free flowage of storm water runoff, and the

installation of drainage equipment, including but not limited to inlet headwalls, outlet headwalls, drain inlets, storm drain manholes, underground pipes, cut-off ditches (open channels), drainage basins, roadside swales, drywells, spillways, pipe arch culverts and circular culverts (collectively, the “Drainage Systems”) and access thereto.”

131. The Easements 4 and 5 include specific agreements between DLNR and A&B with respect to A&B’s continuing rights to use the easements for drainage purposes for the Wai`ale project. The language shows that A&B reserved the right to shed surface water from the North Wai`ale Land to the same extent as specified in the PER attached to the FEIS, and as represented to the LUC during the petition for the DBA.

132. Easements 4 and 5 prohibit DLNR from using the Property in any way that would affect A&B’s drainage and retention basin rights.

133. Easements 4 and 5 provide that DLNR and A&B will cooperate in the construction of A&B’s “drainage systems,” and that DLNR would ultimately be required to connect the Sports Complex drainage system with A&B’s drainage system.

134. In addition, Easements 4 and 5 provided that A&B would have the exact same volume of the retention basin identified in the PER in the Wai`ale FEIS (176 acre-feet). However, the easements explain that any additional retention basin volume needed by DLNR for the Sports Complex would need to be developed *in addition* to A&B’s reserved drainage rights within the Property for the Wai`ale project.

135. The easements further provided that DLNR “shall be solely responsible to develop the Burdened Property in a manner that is compatible with the Drainage Systems.”²⁵

N. MLN’s Efforts to Obtain a Voluntary Stay from DLNR (July/August 2014)

136. On July 12, 2014, MLN served DLNR, the County and A&B with the C&D Letter pursuant to HRS § 607-25. The C&D Letter, plus accompanying exhibits, gave the State Defendants and the County Defendants a detailed explanation of the violations of law identified herein. The C&D Letter demanded that DLNR, by August 1, 2014, agree to stay construction, pending conformance with the law. The C&D letter is attached hereto as **Exhibit “A”** and incorporated herein by reference.

²⁵ Grant of Drainage Basin and Access Easements, dated June 26, recorded in the State of Hawai`i Bureau of Conveyances as Doc No: A-52900486, at 2-3 (emphasis added).

137. On July 31, 2014, DLNR ignored the C&D letter and held a publicized groundbreaking ceremony in support of the initiation of construction of the Sports Complex. The Governor, the Lt. Governor, and Maui County Mayor Alan Arakawa made public statements in support of the Sports Complex, and publicly rejected MLN's cease and desist demand. For example, when Tsutsui was asked about MLN's complaints, he stated: ". . . *we are moving forward*"²⁶ The Governor publicly stated, "No-one will remember five years from now what the arguments were all about. . . ."²⁷

138. On August 1, 2014, DLNR formally responded to the C&D Letter, and expressed its intention to continue development: "[T]he State of Hawai'i is committed to construction of the sports complex We have obtained all necessary approvals and we believe we have complied with all legal requirements for the park as planned. We will not be relocating the sports complex."²⁸

139. Subsequently MLN, through its attorney, has made multiple requests for a voluntary stay by DLNR pending resolution, including through the C&D Letter. DLNR has rejected the requests. On August 29, 2014, DLNR issued a press release stating its intention to begin construction on September 2, 2014.

CLAIMS FOR RELIEF

COUNT I – VIOLATION OF ZONING; HRS § 46-4

140. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

141. The Sports Complex uses are not permitted by Title 19 ("Zoning") of the Maui County Code, and therefore violate zoning, as alleged herein.

A. General Allegations Common to Count I Claims

142. The scope of the County's power to zone land within Maui County is subject to the limitations set forth in HRS § 46-4 ("Zoning Enabling Statute").

²⁶ See "Groundbreaking Held for Central Maui Regional Park, *Maui Now*, July 31, 2104, found at <http://mauinow.com/2014/07/31/groundbreaking-held-for-new-central-maui-regional-sports-complex/>.

²⁷ *Id.*

²⁸ See Letter of 8/1/2014 from W. Aila to T. Pierce, attached hereto and incorporated herein by reference as Exhibit "B". See also Declaration of Tom Pierce, attached hereto.

143. The Zoning Enabling Statute requires counties to establish, and follow General Plans: “Zoning in all counties *shall* be accomplished *within the framework of a long-range, comprehensive general plan* prepared or being prepared to guide the overall future development of the county.” HRS § 46-4 (Emphasis added); *cf.* HRS § 226-58 (the Hawai‘i State Planning Act, which provides for long range planning for the State, and requires the counties to establish “general plans”); *see also Kauai Springs, Inc. v. Planning Com’n of County of Kauai*, 130 Hawai‘i 407, 425, 312 P.3d 283, 301 (App. 2013) (“HRS § 46–4, inter alia, confers authority upon each county to zone, to adopt a *comprehensive general plan* to guide the overall future development of the county, and to exercise the zoning power by ordinance.”) (emphasis added).

144. The Zoning Enabling Statute further requires the powers granted to the counties to be “construed . . . in such a manner as to promote the orderly development of each county . . . *with a long-range, comprehensive general plan* to ensure the greatest benefit for the State as a whole.” *Id.* (emphasis added).

145. In order to assure proper implementation of the Zoning Enabling Statute, the Maui County Charter (2013) (“**Charter**”) requires the County to prepare a General Plan through a specific process that includes state and public input, with final recommendations made by a citizen advisory committee that reports to the Maui Planning Commission, with that Commission making recommendations to the County Council. *Id.* § 8-8.5(1); § 8-8.5(5).

146. The Charter treats adoption of zoning laws the same as adoption of the General Plan and its subparts: both are *laws* created through adoption by ordinance affirmed by the County Council. *Id.* § 8-8.6.

147. MCC Chapter 2.80B establishes an hierarchy of planning efforts and related documents that all fall under the General Plan. These consist of: (a) “the Countywide Policy Plan;” (b) the Maui Island Plan,” and, (c) the respective “Community Plans.” MCC § 2.80B.030(A). *Cf.* MCC § 2.80B.030(B) (“The countywide policy plan, Maui island plan, and community plans authorized in this chapter are and shall be the general plan of the County, as provided by section 8-8.5 of the charter.”); Charter § 8-8.5(6) (“The community plans generated through the citizen advisory councils and accepted by the planning commission, council, and mayor are part of the general plan.”).

148. Pursuant to MCC § 2.80B.030(G), the Maui Island Plan contents must include a “Directed Growth Plan,” which establishes the direction for growth for the next twenty-years,

including through specific designations and classifications made in writing and through map illustrations. MCC § 2.80B.030(G)(1)(b). The Directed Growth Plan “is the backbone of the [Maui Island Plan].” Maui Island Plan at 8-2.

149. The Maui Island Plan, the Directed Growth Plan and the WK Community Plan are not simply guidance documents. Instead, MCC Chapter 2.80B establishes that its express purpose is “to provide [County] plans that clearly identify provisions that are meant to be policy guidelines *and provisions that are intended to have the force and effect of law.*” MCC § 2.80B.010 (emphasis added).

150. County agencies may not disregard the express designations and classifications relating to specific properties that are set forth in county planning documents. Instead, *all* administrative actions of government agencies are expressly required to “conform to the general plan,” and all the parts thereunder. MCC § 2.80B.030(B).

151. Further, all zoning within a county “must” assure consistency with general and community plans, and specific designations and classifications for Properties within those plans are “*binding on all county officials.*” *Kauai Springs*, 128 Hawai‘i at 194, n.8, 284 P.3d at 967, n.8 (emphasis added).

152. The County’s “Comprehensive Zoning Provisions,” Title 19, Article II (MCC §§ 19.04.010 – 19.45) reiterate the mandates set forth in MCC 2.80B.030(G), and also reiterate the requisite standards set forth in the Zoning Enabling Statute: “The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised charter of the County, *and the general plan and the community plans of the County.*” MCC § 19.04.015(A) (Emphasis added). *Cf.* MCC § 19.04.015(C) (“The purpose and intent of this comprehensive zoning article is also to provide reasonable development standards *which implement the community plans of the County.*”) (emphasis added).

B. The Sports Complex Uses Violate Zoning Because They Are Inconsistent with the WK Community Plan Designation

153. Most of the North Wai‘ale Land, which includes the Property, is specifically identified in the “Wailuku-Kahului Community Plan Land Use Matrix.” This Matrix is attached to the WK Community Plan and identifies properties by tax map key number throughout the Wailuku-Kahului Community. The North Wai‘ale Land is identified by tax map parcel number

(2) 3-8-007-101, which is the tax map key that used to be assigned for the unsubdivided 353.301 acres abutting Maui Lani before its recent subdivision.

154. The North Wai`ale Land, which includes the Property, is designated as “Agriculture” by the WK Community Plan, as it was adopted by the County Council in 2002.

155. The WK Community Plan’s “Agriculture” designation for the Property has the force and effect of law.

156. The MCC, including the Comprehensive Zoning Provisions, requires consistency with the WK Community Plan where a property, such as here, is designated for a specific use.

157. DLNR’s Sports Complex uses are inconsistent with the WK Community Plan and therefore constitute a violation of zoning, specifically, a violation of MCC Title 19.

C. The Sports Complex Uses Violate Zoning Because They Are Inconsistent with the Maui Island Plan

158. The Directed Growth Plan “is the backbone of the [Maui Island Plan].” Maui Island Plan at 8-2.

159. The Directed Growth Plan includes a specific section relating to the Wai`ale project. Maui Island Plan at 8-19 to 8-20. The section explains that “Wai`ale is the largest proposed town on the island, and the largest planned growth area proposed for the Wailuku-Kahului community plan region.” Maui Island Plan at 8-19. Because of its size, the Maui Island Plan explains the importance of using greenbelts, open space and parks to prevent sprawl:

To prevent sprawl and further urbanization of prime agricultural resource land, a hard edge must be maintained around Wai`ale Town. *A network of greenbelts, open space, and parks will be utilized to contain urban development, maintain a clear distinction between existing communities and the new town, and to prevent urbanization of agricultural lands south of the site.*

Id. (Emphasis added).

160. The Directed Growth Plan contains a very detailed discussion of “planned protected areas” for Wailuku and Kahului, which areas “include some of the island’s most

treasured cultural, environmental, and recreational resources,” and which areas “contain any number of irretrievable resources.”²⁹

161. The Directed Growth Plan explains that one of its purposes is to “promote the protection and availability of “passive and active recreational amenities” by identifying five categories of planned protected areas, namely: “preservation areas, regional parks, greenways, greenbelts, and sensitive lands.” Maui Island Plan at 8-5.

162. The planned protected areas are identified in the Directed Growth Plan’s protected areas map, Figure 8-2.³⁰ Maui Island Plan at 8-4. Significant here, the Directed Growth Plan delineates in or around Wai’ale four planned protected areas in its Figure 8-2, including a “Central Maui *Community Park*” area (also shown in the same light green) within the North Wai’ale Land, with a portion of that park abutting Maui Lani and Kuihelani Highway.

163. The Directed Growth Plan provides a matrix that, among other things, defines the basic “characteristics” of each of the five planned protected area categories. Importantly, the Directed Growth Plan tracks the definitions found in MCC Chapter.³¹

164. Specifically, the Directed Growth Plan adopts the exact same definition for “greenbelt” and “greenway” as set forth in MCC § 2.80B.020. In addition, the *park* category is defined very similarly to “park” in the MCC: “Land areas devoted to passive (picnic facilities and gathering areas) and/or active (including, but not limited to, bike paths, hiking trails, ball fields, and tennis courts) uses that serve recreational needs.” Maui Island Plan at 8-5.

165. Finally, the Directed Growth Plan describes the specific intended uses, *respectively*, for the (1) Central Maui Community Park and (2) the Regional Park and County Facilities area, Maui Island Plan at 8-20, 8-25, as further summarized below.

166. *First*, the Directed Growth Plan notes that the regional and community parks for Central Maui are both “intended to maintain a significant amount of *open space*,” Maui Island

²⁹ The Maui Island Plan (at 8-13) provides the following complete description of planned protected areas: Planned protected areas include some of the island’s most treasured cultural, environmental, and recreational resources. These resources can come in the form of a coastal ridge, a burial ground, or an urban park. The planned protected area can be for the public’s benefit and use, or to allow the natural habitat to exist in an unaltered state. The intent of the Protected Area is to provide one additional layer of protection to those areas that contain any number of irretrievable resources. The purpose and intent of each planned protected area is described after each planned growth area section.

³⁰ A copy is attached to the C&D Letter (Exhibit “A”) as Exhibit 6. See also Exhibit 9 of Exhibit “A” (map excerpt from Exhibit WC-1 of Maui Island Plan).

³¹ Pertinent definitions are provided in Exhibit 8 to the C&D Letter (Exhibit “A”).

Plan at 8-25 (emphasis added), which, pursuant to the MCC, means a significant amount of the two areas must be “*essentially free of structures or impervious surfaces . . .*” MCC § 19.04.040 (emphasis added). See Exhibit 8 (providing this definition and others).

167. *Second*, the Directed Growth Plan clearly identifies for *active* recreation the regional park designated to be located *south of the South Wai`ale Land*. For example, it provides in one place: “A *regional* park will be provided to the *South of Wai`ale* to provide a clear separation between the new community and Ma`alaea, *and to allow for the placement of active and passive recreational opportunities*, County baseyards and like County facilities.” Maui Island Plan at 8-20 (emphasis added). And, it provides in another place that the *southern “Regional Park and County Facilities”* area “*should allow for the placement of sports fields* with suitable topography for sports usage and may include an agricultural park and community gardens.” Maui Island Plan at 8-25 (emphasis added).

168. However, the Directed Growth Plan does not designate the *community* park proposed within the North Wai`ale Land for active recreation. Instead, “A *community* park is . . . planned for the Wai`ale area to provide a *clear separation* between the new community and Maui Lani.” *Id.* (Emphasis added). Consistent with this, the Plan says in another section: “The Central Maui *community* park will be established north of the Wai`ale planned growth area, proximate to a high concentration of existing and proposed residential and industrial uses, Pomaika`i Elementary School, and the primary employment center on the island.” Maui Island Plan at 8-25 (emphasis added).

169. *Finally*, the Directed Growth Plan explains that the final boundaries, and the specific uses for each of the parks, would be finalized during the community plan update process and during the project review for Wai`ale: “The distinct boundaries of the park, *specific location of the recreational uses*, and the *precise amenities* will be further defined during the [WKC] Plan update and the Wai`ale project review and approval process.” Maui Island Plan at 8-25 (emphasis added). The WK Community Plan update has not started and/or is not yet complete, and A&B has not initiated a request for any of the entitlements it needs from the County for the Wai`ale Land.

170. The Maui Island Plan’s passive Community Park designation and classification for the Property has the force and effect of law.

171. The MCC, including the Comprehensive Zoning Provisions therein, require consistency with the Maui Island Plan, and specifically designations and classifications set forth in the Directed Growth Plan therein.

172. DLNR's Sports Complex uses are inconsistent with the Directed Growth Plan, and thus the Maui Island Plan, and therefore constitute a violation of zoning, specifically a violation of MCC Title 19.

D. The Sports Complex Uses Violate Zoning Because They Violate MCC Chapter 19.30A

173. The County Council has designated the Property to be within the "Agricultural District."

174. Therefore, any use on the Property must comply with MCC Chapter 19.30A, which covers uses permitted within the Agricultural District.

175. Under MCC Chapter 19.30A, the only permitted uses are those permitted as: (a) "principal use" under MCC § 19.30A.050(A); *or* (b) an "accessory use" under MCC § 19.30A.050(B); *or* (c) a "special use" under MCC § 19.30A.060.³²

176. The Sports Complex uses, including the retention basin, are not permitted as a "principal use" under MCC § 19.30A.050(A), which primarily relates to direct agricultural uses, such as raising livestock or growing crops. *See* Note 32 herein.

177. The Sports Complex uses, including the retention basin, are also not permitted under the "accessory uses" because accessory uses must be "*incidental or subordinate to, or customarily used in conjunction with a permitted principal use,*" MCC § 19.30A.050(B) (emphasis added), in this case a principal Agricultural use. *See* Note 32 herein. The uses intended for the Sports Complex and the retention basin are not intended to subordinate a principal agricultural use.

178. Finally, the Sports Complex uses are not permitted as "special uses" under MCC § 19.30A.06. Section MCC § 19.30A.060 covers a small assortment of uses that usually would take only a *small portion* of the surrounding agricultural land (*e.g.*, a telecommunications tower). *See* Note 32 herein.

179. A retention basin for a large master planned residential complex is not an identified special use under MCC § 19.30A.060.

³² *See* Exhibit 8 of C&D Letter (Exhibit "A") (providing relevant sections of MCC § 19.30A).

180. The hardening of over eight (8) acres of land with structures, roads and vehicular parking, as proposed by DLNR through the Sports Complex project is not an identified special use under MCC § 19.30A.060.

181. The extensive *active* recreational structures and uses identified by DLNR through the Sports Complex project are not an expressly identified special uses under MCC § 19.30A.060.

182. The “playing fields, accessory buildings and structures” uses set forth in Subsection H of MCC § 19.30A.060 do not apply for the uses proposed by DLNR through the Sports Complex project, for among other reasons, the following.

183. The “playing fields, accessory buildings and structures” phrase is conditioned upon those structures being consistent with the “open land recreation uses” phrase which introduces Subsection H of MCC § 19.30A.060.³³

184. The Sports Complex uses are not “open land recreation uses” because “open land recreation” is a defined term under the MCC that is *specifically limited to activities carried out in conjunction with scenic interests*. MCC § 19.04.040.

185. Scenic interests are not active recreational pursuits such as those proposed by DLNR. This is confirmed by the MCC, which provides separate definitions for “active recreation” and “passive recreation”, which must be read to give context to the entire ordinance. Through its definitions, the MCC clearly establishes that “passive recreation,” rather than “active recreation” activities occur on “open land recreation areas.” MCC § 19.04.040.

186. In summary, the Sports Complex uses, including the retention basin for A&B’s Wai`ale project are not permitted as principle, accessory or special uses under MCC § 19.30A, and therefore they violate MCC § 19.30A.

³³ Subsection H provides in pertinent part:

The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070 of this title, has been obtained . . . :

H. *Open land recreation uses*, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.11, *including* commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, roller blading, *playing fields, accessory buildings and structures*. . . . The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses and golf driving ranges;

MCC § 19.30A.060. (Emphasis added).

E. The Sports Complex Uses Violate Zoning Because They Violate MCC § 19.510.070

187. MCC § 19.510.070, entitled “special use permits,” sets forth the requirements that must be met for a planning commission to grant a special use permit.

188. MCC § 19.510.070(A) provides that “A special use permit shall comply with the provisions of this section and with the policies and objectives of the general plan and community plans of the county, the Hawai`i Revised Statutes, and the revised charter of the county.” (Emphasis added).

189. As a matter of law, the Sports Complex uses cannot meet the compliance requirements of MCC § 19.510.070(A), for among other reasons, because: (a) those uses are inconsistent with the WK Community Plan; (b) those uses are inconsistent with the Maui Island Plan, including the Directed Growth Plan therein; (c) those uses cannot meet the requirements of MCC Chapter 19.30A relating to Agricultural Districts.

F. The Sports Complex Uses Violate Zoning Because They Violate the LUC D&O

190. The LUC D&O includes the Property within the “Petition Area” covered by the DBA, and therefore encumbers the Property through its conditions and other obligations placed on the landowner.³⁴

191. The LUC D&O is recorded on title and it runs with the land, and is binding on A&B, and on A&B’s successors and assigns, including DLNR as the new owner of the Property.

192. Condition 21 of the LUC D&O provides that the Wai`ale Land *shall* be developed “in substantial compliance with the representations” made by A&B’s representatives during the DBA process.³⁵

193. Any substantial deviation from the proposal made by A&B would be in violation of the LUC D&O.

194. A&B’s representations to the LUC include those made in the Wai`ale FEIS. The FEIS includes the PER, which provided assumptions on hardened surface area for the North Wai`ale Land, and the related surface water runoff calculations. Any substantial deviation from those assumptions, or from the originally planned retention basin, would violate the terms of the LUC D&O.

³⁴ See Exhibit “E” (map from LUC D&O showing “Approved Petition Area”).

³⁵ LUC D&O at ¶ 21.

195. A&B also represented through the Wai`ale FEIS that the impacts related to the Wai`ale project, including the retention basin, would be further evaluated during subsequent land entitlement requests. These land entitlements, are, as confirmed by A&B, at minimum: (a) a request to the County Council for an amendment to the WK Community Plan changing the designation for the Wai`ale Land from Agriculture to Project District; (b) a request to the County Council for an amendment to the Maui Island Plan; and, (c) an application to the County Council for a change in zoning for the Wai`ale Land from Agricultural District to Project District.

196. Other representations of A&B made to the LUC were memorialized in the D&O as Findings of Fact (“FOF”).

197. FOF ¶ 180 refers to A&B’s representations with respect to the drainage plan and retention basins for the Wai`ale project, and concludes that based on A&B’s design of the retention basin and other parts of the drainage system, stormwater runoff from the Wai`ale Land would result in “a decrease in runoff from existing conditions.”

198. FOF ¶ 180 does not account for the more than eight (8) acres of hardened surface area that would result from development of DLNR’s Sports Complex because the Sports Complex design had not been created when the surface water runoff assumptions were made by A&B’s engineer.

199. Another representation made by A&B is memorialized in FOF ¶ 122, which expressly distinguishes between “passive recreational uses” and “active recreational uses” in its discussion of the four parks designated to be included within Wai`ale.

200. FOF ¶ 122 identifies for “active recreation” only the southern portion of the South Wai`ale Land, not the northern portion of the North Wai`ale Land where the Property is located.

201. This southern portion of the Petition Area identified in FOF ¶ 122 was shown as one of the parks in the Wai`ale project in the Wai`ale FEIS, which FEIS was presented by A&B to the LUC.³⁶

202. Finally, A&B’s representations to the LUC include those made through the oral testimony of its representatives during the hearing on the DBA petition.

203. Through the oral testimony, A&B confirmed an amendment to the WK Community Plan would be necessary for the 545 acre Petition Area, which includes *all* the land within the Wai`ale project, including the Property.

³⁶ This “southern portion of the petition area” is identified in Exhibit 7 of the C&D Letter (Exhibit “A”).

204. A&B also confirmed an amendment to the Maui Island Plan would be necessary for the Petition Area, if the final adopted version resulted in inconsistencies with A&B's proposed uses.

205. A&B also confirmed a three-phase change in zoning process would occur wherein the Petition Area would be subjected to careful scrutiny as the County Council evaluated whether to permit a change in zoning from Agricultural to Project District. *Cf.* MCC § 19.45.050 (providing the three phase processing procedure for Project District applications).

206. Thereafter, the LUC heard detailed testimony from the County Planning Director that further reinforced the above representations made by A&B.

207. The Planning Director confirmed that an amendment to the WK Community Plan would be necessary for the Petition Area.

208. The Planning Director further confirmed that the Maui Island Plan was in draft form and could possibly change before adoption by the County Council.

209. The Planning Director also emphasized to the LUC that the Maui Island Plan expressly provided that there would be additional evaluation of the "green park areas" identified in the Maui Island Plan that would occur during the comprehensive amendment process to the 2002 WK Community Plan, which was anticipated to begin sometime after adoption of the Maui Island Plan

210. The Planning Director explained to the LUC that the "green park areas" would also be evaluated during the change in zoning process.

211. While Condition 21 of the LUC D&O related to representations made by the Petitioner (A&B), Condition 5 required A&B to prepare a new traffic impact analysis report ("TIAR") *before* seeking any land entitlements, including a change in zoning.

212. All of the conditions in the LUC D&O are binding on DLNR as the successor in interest to a portion of the LUC Petition Area.

213. The Sports Complex uses proposed by DLNR violate the express conditions of the LUC D&O, including, but not limited to, the conditions set forth in the above allegations. MCC Title 19 (the Comprehensive Zoning Provisions) requires consistency with the LUC D&O, and therefore the Sports Complex uses violate zoning.

G. Conclusion with Respect to Count I Allegations

214. MLN requests relief against all named defendants herein consistent with the forgoing allegations in this Count, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

COUNT II—DECLARATORY RELIEF THAT THE SPECIAL USE PERMIT IS VOID AS A MATTER OF LAW

215. A special use permit cannot be granted for a use that is neither permitted by law nor by zoning regulations. *See, e.g.*, 83 AM. JUR. 2D ZONING AND PLANNING XVIII (2014) § 814.

216. Where a permit is issued by a governing body in violation of an ordinance, even under a mistake of fact, it is void as a matter of law. *Id.* § 822.

217. A special use permit is strictly limited to those instances where the use has been “*expressly permitted by ordinance.*” *Neighborhood Bd. No. 24 v. State Land Use Comm’n (“Waianae Coast”)*, 64 Haw. 265, 270-71, 639 P.2d 1097, 1101-02 (1982) (emphasis added).

218. As alleged above in Count I, the uses intended through the Sports Complex are *not* expressly permitted by the MCC.

219. As a matter of law, the Maui Planning Commission lacked the authority to grant a special use permit for the Sports Complex uses.

220. The special use permit granted to DLNR for the Sports Complex uses is void as a matter of law.

221. MLN requests relief against all named defendants herein consistent with the foregoing allegations in this Count, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

COUNT III—THE SPECIAL USE ORDINANCE IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

222. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

223. Section 6 of the MPC D&O provided analysis and a conclusion that the Sports Complex uses (which include A&B’s retention basin and over eight (8) acres of hardened surface area, and parking for 700 vehicles) were permitted on the Property even though it is part of the County Agricultural District. Specifically, the MPC D&O concluded the Sports Complex uses were specified as permitted special uses under MCC § 19.30A.060(H) because that provision includes the terms “playing fields, accessory buildings and structures.”

224. MCC § 19.30A.060(H) provides in relevant part as follows:

The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070 of this title, has been obtained . . . :

H. ***Open land recreation uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.11, including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, roller blading, playing fields, accessory buildings and structures.*** Certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai`i Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses and golf driving ranges;

Id. (emphasis added).

225. The power to rezone land is within the exclusive purview of the County Council and may not be delegated. HRS § 46-4.

226. The language “playing fields, accessory buildings and structures” within MCC § 19.30A.060(H) is vague and ambiguous, gives unchecked, overbroad, and unbridled discretion to the Maui Planning Commission, and improperly confers legislative power on the Maui Planning Commission in violation of the Hawai`i Constitution and HRS § 46-4.

227. In addition, the language “playing fields, accessory buildings and structures” within MCC § 19.30A.060(H) is vague and ambiguous, and fails to give the public required notice of the intensity of uses that may be permitted by the Maui Planning Commission, and therefore violates Art. 1, § 5 of the Hawai`i Constitution, the due process clause. *See, e.g., Save Sunset Beach Coal. v. City & Cnty. of Honolulu*, 102 Haw. 465, 472-73, 78 P.3d 1, 8-9 (2003).³⁷

228. MLN requests relief against all named defendants herein consistent with the foregoing allegations in this Count, declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

³⁷ The *Save Sunset Beach* explains:

The usual presumption of validity may not be accorded spot zoning because of the absence of widespread community consideration of the matter. A determination of the use of a specific and relatively small parcel will affect only the parcel owner and the immediate neighbors. When that is the case, limited community interest will mean little or no public debate. *This limited interest, in turn, elevates concern over whether the rights of the individuals affected are adequately safeguarded, and deference is inappropriate.*

(Emphasis in original; internal brackets and quotations omitted).

**COUNT IV—DECLARATORY RELIEF WITH RESPECT TO INTERPRETATION OF
PK-3 REGIONAL PARK DISTRICT**

229. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

230. The recreational component of the Sports Complex use is declared by DLNR, the Planning Director and the Maui Planning Commission to be intended for a “regional park.”

231. A regional park is a specific zoning district in the Maui County. *See* MCC § 19.615.040 (*PK-3 Regional Park District*) (which permits intensive active recreational activities as the principal use).³⁸

232. A minimum lot size of one hundred acres is expressly required for a Regional Park District. MCC § 19.615.040(C)(1).

233. The Property cannot meet the minimum lot size requirement set forth in MCC § 19.615.040(C)(1) because it is only 65 acres in size.

234. MLN requests relief against all named defendants herein consistent with the foregoing allegations in this Count, declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

COUNT V – VIOLATIONS OF HAWAI’I ENVIRONMENTAL POLICY ACT

235. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

236. As alleged in further detail below: (a) DLNR has an obligation to supplement the Wai’ale FEIS because the Sports Complex uses are part of the Wai’ale project, and the Sports Complex EA does not constitute as a supplementation for an EIS; and (b) State Defendants and/or County Defendants’ actions or omissions constitute illegal segmentation of a larger project because the Sports Complex is part of a larger project, the Sports Development Initiative, and/or the Sports Complex is part of a larger plan to create a number of regional parks in Central Maui.

A. General Allegations Common to Count V Claims

237. The Hawai’i Supreme Court, quoting *Sierra Club v. Hawai’i Tourism Authority*, 100 Hawai’i 242, 327, 59 P.3d 877, 901 (2002) (“*Sierra v. HTA*”) explained:

³⁸ *See* Exhibit 8 of C&D Letter (Exhibit “A”) (providing the text of these MCC sections, as well as the related definitions for “active recreation” and “passive recreation”).

The main thrust of HEPA is to require agencies to consider the environmental effects of projects before action is taken. It does so by providing a procedural mechanism to review environmental concerns. HRS § 343-1 (1993). The legislature explained that HEPA provides an “environmental review process [that] will integrate the review of environmental concerns with existing planning processes of the State and counties *and alert decision makers to significant environmental effects which may result from the implementation of certain actions.*” HRS § 343-1. . . . Consequently, HEPA does not confer substantive rights or remedies. To insist that a prospective plaintiff demonstrate substantive standing pursuant to a statute that confers only procedural rights ignores the plain language

Superferry, 115 Hawai‘i at 322, 167 P.3d at 315 (emphasis added).

238. HEPA is a cornerstone of the State’s statutory protections of the environment. Its fundamental purpose is to ensure that state agencies fully and publicly examine the environmental impacts of certain actions before those actions proceed:

In the “Findings and purpose” section, the legislature states its finding that “the process of reviewing environmental effects is desirable because environmental consciousness is enhanced, *cooperation and coordination are encouraged, and public participation during the review process benefits all parties involved and society as a whole.*” HRS § 343-1 (1993) The definition of FEIS describes that “[t]he initial statement [is] filed for public review” and that the final statement “is the document that has incorporated the public’s comments and the responses to those comments.” HRS § 343-2.

Superferry, 115 Hawai‘i at 327, 167 P.3d at 320 (emphasis added).

239. Moreover, the Hawai‘i Supreme Court has particularly emphasized that adherence to HEPA with respect to environmental review and planning: “[A]n environmental review process will integrate the review of environmental concerns *with existing planning processes of the State and counties* and alert decision makers to significant environmental effects which may result from the implementation of certain actions.” *Sierra v. HTA*, 100 Hawai‘i at 276, 59 P.3d at 911 (quoting from the HRS § 343-1).

240. HEPA establishes a framework for environmental review covering many categories of actions. *See* HRS § 343-5(a). These include actions that “[p]ropose the use of state or county lands or the use of state or county funds.” *Id.* § 343-5(a)(1).

241. When an EIS is required, it means the applicant must prepare an extensive informational document disclosing “the environmental effects of a proposed action, effects of a

proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.” HRS § 343-2. “Effects” include ecological impacts, “such as the effects on natural resources and . . . affected ecosystems,” and aesthetic, historic, cultural, *economic, social, and health impacts, whether primary, secondary, or cumulative, and including impacts resulting from actions believed to be beneficial on balance.* HAR § 11-200-2 (emphasis added).

242. The authority to accept a final statement rests with the agency initially receiving and agreeing to process the request for approval—in this case the LUC. HAR § 343-5(c). Acceptance of an EIS is a formal determination based on whether the statement “fulfills the definition of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement.” HRS § 343-2; HAR § 11-200-23(a).

243. No development activity may commence without acceptance of a required FEIS, which “shall be a condition precedent to approval of the request and commencement of the proposed action.” *Id.* § 11-200-23(d).

244. Process is the bedrock principle underlying HEPA. HEPA regulations recognize that “the EIS process involves more than the preparation of a document; it involves the entire process of research, discussion, preparation of a statement, and review.” HAR § 11-200-14. This requires “at a minimum: identifying environmental concerns, obtaining various relevant data, conducting necessary studies, receiving public and agency input, evaluating alternatives, and proposing measures for avoiding, minimizing, rectifying or reducing adverse impacts.” *Id.* “An EIS is meaningless without the conscientious application of the EIS process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the proposed action.” *Id.*

B. Failure to Supplement

245. DLNR violated HEPA by failing to prepare a supplemental environmental impact statement (“SEIS”) to the Wai’ale FEIS, which SEIS would need to be reviewed and approved by the LUC, which was the agency that reviewed and accepted the Wai’ale FEIS.

246. An EIS that has been accepted with respect to a particular action is usually qualified by certain “characteristics,” identified by the HEPA rules to include: “the size, scope, location, intensity, use, and timing of the action, among other things.” HAR § 11-200-26.

247. An EIS will no longer satisfy HEPA where it has changed “substantively in size, scope, intensity, use, location or timing, among other things.” *Id.* Thus, the HEPA rules explain that: “If there is any change in any of these characteristics which may have a significant effect, the original statement that was changed *shall no longer be valid* because an essentially different action would be under consideration and *a supplemental statement* shall be prepared and reviewed as provided by this chapter.” HAR § 11-200-2 (emphasis added). This language (*i.e.*, “shall”) is mandatory, and neither DLNR nor any other agency has the discretion to provide an exception to the rule. *Cf. Unite Here! Local 5 v. City & County of Honolulu*, 123 Hawai‘i, 150, 174, 231 P.3d 423, 447 (2010) (“HAR § 11-200-2 defines ‘supplemental statement’ as ‘an additional *environmental impact statement* prepared for an action for which a statement was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things.’”) (emphasis added).

248. The Sports Complex uses have changed substantively in size, scope, intensity, use, location or timing, among other things, over the uses identified in the Wai‘ale EIS.

249. Therefore, a SEIS is required to the Wai‘ale EIS, which SEIS must be reviewed and accepted by the LUC because the LUC was the initial accepting authority.

C. Illegal Segmentation

250. HAR § 11-200-7 prohibits segmentation of a project; it instead requires all parts and phases of a project to be considered in an EA and EIS before any work commences on any portion of the project:

A group of actions proposed by an agency or an applicant *shall be treated as a single action* when:

- (1) The component actions are *phases or increments* of a larger total undertaking;
- (2) An individual project is a *necessary precedent* for a larger project;
- (3) An individual project *represents a commitment* to a larger project; or
- (4) The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole.

HAR § 11-200-7 (emphasis added).

251. The Hawai'i Supreme Court recently emphasized the importance of HAR § 11-200-7, and the harm to the public associated with segmentation or "piecemealing" of projects:

Rules like HAR § 11-200-7 are meant to keep applicants or agencies *from escaping full environmental review* by pursuing projects in a piecemeal fashion. See [Office of Environmental Quality Control, State of Hawai'i, *A Guidebook for the Hawaii State Environmental Review Process* 6] at 19 [(2004)] ("The proposed action must be described in its entirety and cannot be broken up into component parts which, if each is taken separately, may have minimal impact on the environment. *Segmenting a project in this incremental way to avoid the preparation of an environmental impact statement is against the law.*"); Kenneth A. Manaster & Daniel P. Selmi, 2 State Environmental Law § 13.10 (2006) (discussing the problem of "segmentation" or "piecemealing" of projects, including "situations ... in which the agency tries to mask the full nature of its project or divides up what is clearly a larger action into smaller pieces that will be implemented simultaneously," "where a private applicant plainly has definite plans for additional, related projects in the future," or where "a project unquestionably will give rise to later, secondary actions by other individuals[.]").

Sierra Club v. Dep't of Transp., 115 Hawai'i 299, 338, 167 P.3d 292, 331 (2007) (emphasis and bracketed material added).

252. Under HAR § 11-200-7, a group of actions proposed by an agency shall be treated as a single action when the component actions are phases or increments of a larger total undertaking, or an individual project represents a commitment to a larger project.

253. Upon information and belief, and as alleged herein, the Sports Complex violates HEPA's requirement for comprehensive review of government project because it is (a) part of a larger project relating to the State's Sports Development Initiative, which relates to State developments Statewide, and/or (b) part of a government regional park plan that, upon information and belief, is intended to build "regional sports facilities" on three or more properties in Central Maui, which properties have been recently identified for "regional parks." Therefore, all parts of these separate regional park projects, and or the Sports Development Initiative, should be treated as a single action under HEPA.

254. The FEA for DLNR's Central Maui *Regional Park* Sports Complex was accepted on June 2013. However, DLNR failed to inform the public that the Sports Complex was part of a larger project, and DLNR failed to evaluate the Sports Complex as part of a larger project,

DLNR also failed to issue a declaration that a supplement to the Wai`ale EIS was unnecessary and therefore the Sports Complex FEA has no legal effect under HEPA.

255. The County announced its purchase of 209 acres for a Central Maui Regional Park in October 2013. (However, the County failed to inform the public that it was part of a larger project.)

256. The County announced the development of another regional park on an approximately 26 acre property within Maui Lani in February 2014. (However, the County failed to inform the public that it was part of a larger project.)

257. Pursuant to HEPA, an EIS must be prepared, and accepted, adequately evaluating the environmental and social impacts of the Sports Development Initiative.

258. Pursuant to HEPA, an EIS must be prepared and accepted, adequately evaluating the environmental and social impacts of the governmental undertaking to site multiple regional parks within Central Maui.

259. Upon information and belief, development has not initiated as to the Sports Development Initiative, or with respect to the regional park scheme for Central Maui.

260. The Sports Complex uses constitute illegal segmentation in violation of the requirements set forth in HAR § 11-200-7, and development of the Sports Complex may not proceed until State and/or County Defendants have fulfilled their environmental impact statement obligations to the public as required by HEPA.

D. Conclusion as to Count V Allegations

261. MLN requests relief against all named defendants herein consistent with the foregoing allegations in this Count, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

COUNT VI – VIOLATION OF ARTICLE XI, § 9 OF THE HAWAI`I CONSTITUTION

262. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

263. Hawai`i Constitution Art. XI, § 9, provides:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.”

264. Through HRS § 607-25, the Hawai'i Legislature has identified statutes that are deemed "environmental quality laws" cognizable under Art. XI, § 9. *County of Hawai'i v. Ala Loop Homeowners*, 123 Hawai'i 391, 410, 235 P.3d 1103, 1122 (2010).

265. Plaintiff has alleged claims for relief that are identified as "environmental quality laws" by the Hawai'i Legislature through HRS § 607-25, including: HRS chapters 46, 205, and 343 "and ordinances or rules adopted pursuant thereto under chapter 91," including other environmental quality laws that are otherwise cognizable under Art. XI, § 9.

266. The violations set forth in the allegations in the Counts above constitute an impairment of the public's right to a clean and healthy environment, and are therefore cognizable under Haw. Const. Art. XI, § 9, and are therefore violations of MLN's members' constitutional rights under Haw. Const. Art. XI, § 9. *See, e.g., Sierra Club v. Hawaii Tourism Auth. ex rel. Bd. of Directors*, 100 Hawai'i 242, 276-77, 59 P.3d 877, 911-12 (2002) (explaining HRS Chapter 343 is cognizable under Haw. Const. Art. XI, § 9).

267. MLN requests relief against all named defendants herein consistent with the foregoing allegations in this Count, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

COUNT VII—PUBLIC NUISANCE

268. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

269. Public nuisance encompasses any unreasonable interference with a right common to the general public. Public nuisance also is an offense against the public order and economy of the State and violates the public's right to life, health, and the use of property, while, at the same time it annoys, injures, endangers, renders insecure, interferes with, or obstructs the rights or property of the whole community, or neighborhood, or of any considerable number of persons.

270. Because DLNR seeks to construct the Sports Complex before the Wai'ale project is permitted and developed, DLNR intends to use existing streets and intersections within Maui Lani for ingress and egress to the Sports Complex that are used by the public.

271. The streets within Maui Lani were never designed to handle the additional traffic from the Sports Complex, and are already deemed to be overcapacity and operating at the lowest level of service used by traffic consultants.

272. The Sports Complex uses therefore constitute a public nuisance.

273. MLN requests relief against all named defendants herein consistent with the foregoing allegations in this Count, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

COUNT VIII—VIOLATION OF DUE PROCESS

274. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

275. Citizens' due process rights are violated where the expedited special use process improperly avoids the more thorough change in zoning process:

As courts have repeatedly recognized, unlimited use of the special permit to effectuate essentially what amounts to a . . . [rezoning] would *undermine the protection* from piecemeal changes to the zoning scheme *guaranteed landowners by the more extensive procedural protections of boundary amendment statutes*.

Waianae Coast, 64 Haw. at 272, 639 P.2d at 1102-03 (emphasis and bracketed material added).³⁹

276. DLNR was required, at minimum, to seek from the County Council an amendment to the WK Community Plan for the Property, an amendment to the Maui Island Plan for the Property, and a change in zoning from the Agricultural District to Project District. As a matter of law, this change in zoning could only occur in conjunction with the remainder of the Wai`ale project being submitted for a change in zoning.

277. MLN's members were denied the opportunity to testify before the County Council during the required hearings, and have their concerns heard and addressed.

278. MLN's members, as property owners in proximity to the Property, have a property interest in the outcome of the County Council hearings on the county planning documents and the change in zoning, and therefore a property right to a meaningful hearing on the community plan amendments and the change in zoning.

279. Because of State and County Defendants' unlawful acts and omissions, MLN's members were denied their right to meaningful hearings before the County Council and that denial constitutes a violation of the MLN's members' due process rights guaranteed by Art. 1, § 5 of the Hawai'i Constitution.

³⁹ While *Waianae Coast* related to a State district boundary amendment, the Court uses county zoning cases to explain its position inasmuch as Chapter 205 is a form of statewide zoning.

280. MLN requests relief against all named defendants herein consistent with the forgoing allegations in this Count, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

**COUNT IX—DECLARATORY AND OTHER RELIEF THAT NOTICE TO
SURROUNDING NEIGHBORS WAS INADEQUATE**

281. MLN repeats, realleges and incorporates by reference each and every allegation set forth above.

282. MCC § 19.510.070 (entitled “special use permits”) provides *inter alia* that “[a]ll applications for a special use permit shall comply with the application procedures established in sections 19.510.010 and 19.510.020 of this code.” MCC § 19.510.070(C).

283. MCC § 19.510.010 is entitled “general application procedures.” MCC § 19.510.010(E), set forth immediately below, requires a developer to certify that it has properly noticed homeowners within a 500 foot radius of the subject property that the developer is seeking a special use permit (hereinafter referred to as “Application Notice”):

At the time of the filing of the application, the applicant shall file a notice of application, which is in a form prescribed by the planning director, and an affidavit certifying that the notice of application was mailed to all owners and lessees of record located within a five-hundred-foot distance from the subject parcel. The notice of application shall include the following information: (1) The name, address and telephone number(s) of the owner and the owner's authorized agent, if applicable; (2) A brief description of the existing uses and uses proposed by the application; and (3) A location map and a description of the location of the proposed development which includes, but which is not limited to, the tax map key number and street address, if available, of the subject parcel.

284. MCC § 19.510.020 is entitled “applications which require a public hearing.” MCC § 19.510.020(A)(4), set forth immediately below, requires a developer to certify that it has properly noticed homeowners within a 500 foot radius of the subject property that a public hearing will be held on the special use permit (hereinafter referred to as “Public Hearing Notice”):

The applicant shall provide notice of the public hearing date on the application to the owners and lessees of record located within a five-hundred-foot distance from the parcel identified in the application by complying with the following procedures:

- (a) The applicant shall: (i) Mail a notice of the date of the public hearing of the application in a form prescribed by the director of planning by certified mail, return receipt requested, to each of the owners and lessees not less

than thirty calendar days prior to the date of the public hearing,(ii) Submit each of the return receipts for the certified mail to the planning director not less than ten business days prior to the date of the public hearing, and (iii) Publish the subject matter, in a form prescribed by the planning director, once a week for three consecutive weeks prior to the date of the public hearing in a newspaper which is printed and issued at least twice weekly in the County and which is generally circulated throughout the County,

(b) For purposes of this section, notice shall be considered validly given if the applicant has made a good faith effort to comply with subsection (A)(4)(a) of this section;

285. DLNR had an obligation to timely fulfill the Application Notice requirements and the Public Hearing Notice requirements.

286. MLN has been diligently requesting documents from State and County Defendants. MLN has also reviewed portions and or all of the special use application files submitted by DLNR to the County Defendants. The documents obtained thus far by MLN fail to include the documents evidencing compliance with the Application Notice requirements and the Public Hearing Notice requirements.

287. Upon information and belief, DLNR failed to fulfill the Application Notice requirements, including, among other reasons, failing to provide certified mail notice to all owners or lessees within a 500 foot radius of the Property.

288. Upon information and belief, DLNR failed to fulfill the Public Hearing Notice requirements, including, among other reasons, failing to provide certified mail notice to all owners or lessees within a 500 foot radius of the Property.

289. Upon information and belief, County Defendants (or one or more of them) failed to fulfill their obligation of assuring DLNR met the Application Notice requirements and the Public Hearing Notice requirements.

290. Upon information and belief, some of MLN's members were denied their legal right to be informed of the Application Notice and/or the Public Hearing Notice, and have been harmed as a direct result of the omissions and violations of the MCC by Defendants (or one or more of them).

291. Any breach of the Application Notice and/or Public Hearing notice requirements by Defendants (or one or more of them) constitutes a violation of MLN's members' due process rights under Art. 1, § 5 of the Hawai'i Constitution.

292. MLN requests relief against all named Defendants herein consistent with the foregoing allegations in this Court, including declaratory, injunctive and other relief consistent therewith, or as set forth in the Prayer for Relief, or as otherwise permitted by the Court.

PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court:

A. Assume jurisdiction over this action;

B. Enter declaratory judgments consistent with the foregoing, including but not limited to the following:

(i) The Sports Complex uses violate zoning for, among other reasons, a failure to obtain an amendment to the WK Community Plan, a failure to obtain an amendment to the Maui Island Plan, and a failure to obtain a change in zoning;

(ii) The special use permit issued by the Maui Planning Commission for the Sports Complex uses is void as a matter of law because, among other reasons, MCC Chapter 19.30A (Agricultural District) does not expressly permit the Sports Complex uses;

(iii) The special use ordinance, MCC § 19.30A.060(H), is unconstitutionally vague and ambiguous, because it gives unchecked, overbroad, and unbridled discretion to the Maui Planning Commission in the granting of special use permits in instances such as the current matter, and further fails to give sufficient notice to the public with respect to the intensity of the uses permitted on Agricultural District lands in violation of the due process clause, Art. 1, § 5 of the Hawai'i Constitution, and the ordinance is therefore illegal, null and void, including the special use permit rendered to DLNR for the Sports Complex uses;

(iv) The Property cannot meet the minimum lot size requirements for PK-3 Regional Park District (MCC § 19.615.040), which is a lot size of one hundred acres, and therefore the uses proposed by DLNR cannot proceed on the Property;

(v) DLNR's proposed action, the Sports Complex, violates HEPA because DLNR failed to prepare a supplemental EIS to the Wai'ale FEIS as required by HEPA and/or because the Sports Complex has been illegally segmented from a larger project, namely the Sports Development Initiative and/or the comprehensive regional parks scheme for Central Maui being pursued by State and/or County Defendants, and no part of DLNR's Sports Complex uses may legally proceed without first attaining full compliance with HEPA;

(vi) Because of the HEPA violations, DLNR's Sports Complex FEA is automatically rendered null and void and of no legal effect;

(vii) The foregoing violations of law are unconstitutional violations of MLN's members' environmental rights, which are protected under Article XI, § 9 of the Hawai'i Constitution;

(viii) The public streets within Maui Lani were never designed to handle the additional traffic from the Sports Complex, and are already deemed to be overcapacity and operating at the lowest level of service used by traffic consultants, and this additional traffic constitutes a public nuisance;

(ix) The County and/or State Defendants have violated MLN's members' due process rights, protected under Art. 1, § 5 of the Hawai'i Constitution, as a result of Defendants' unlawful acts and/or omissions, including the failure to apply for required land entitlements from the County Council, which would therefore provide for a full and meaningful hearing for MLN's members; and

(x) The Property cannot meet the minimum lot size requirements for PK-3 Regional Park District (MCC § 19.615.040), and therefore the uses proposed by DLNR cannot proceed on the Property;

B. For preliminary and permanent injunctive relief enjoining the Defendants, and their employees, agents, servants, and representatives, and any other persons acting in concert with them, under their authority, or with their approval, from approving or carrying out the Sports Complex uses, or any portion thereof, unless and until they have achieved full compliance with the laws set forth above;

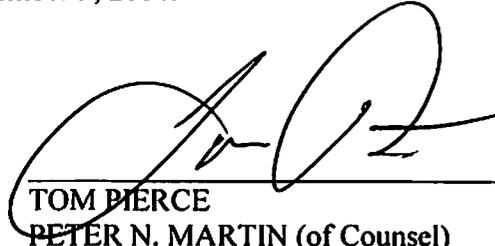
C. For the Court to retain continuing jurisdiction to review the Defendants' compliance with all judgments and orders entered herein;

D. For such additional judicial determinations and orders as may be necessary to effectuate the foregoing;

E. For reasonable attorneys' fees and costs of suit incurred herein by MLN, as provided by law, including but not limited to, pursuant to HRS § 607-25 (actions based on failure to obtain government permit or approvals); and

F. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between MLN and Defendants.

DATED: Makawao, Hawai'i, September 9, 2014.



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July 12, 2014

William Aila
Chairperson
Board of Land and Natural Resources¹
Department of Land and Natural Resources
State of Hawai'i
P.O. Box 621
Honolulu, Hawai'i 96809

VIA CERTIFIED U.S. MAIL AND
U.S. MAIL
AND VIA EMAIL:
william.j.aila@hawaii.gov

Re: Cease and Desist Demand – Proposed Central Maui Sports Complex

Dear Mr. Aila:

I represent Maui Lani Neighbors, Inc. (“MLN”), a Hawai'i nonprofit corporation. MLN is composed of homeowners who live in the Maui Lani project, which includes over 600 homes. MLN has the mission of supporting, promoting and advocating for sustainable and appropriate community planning, and legal state and county zoning consistent therewith, for the Central Maui region of the Island of Maui. MLN has been investigating a State of Hawai'i, Department of Land and Natural Resources (“DLNR”) proposed project most recently referred to by DLNR as the *Central Maui Regional Sports Complex* (“Sports Complex”), and has determined that DLNR cannot legally proceed. ***MLN hereby demands that DLNR cease and desist from any further development activities related to the Sports Complex.***

DLNR proposes constructing the Sports Complex on a 65 acre parcel located in Central Maui. The Sports Complex will change the entire character of the proposed parcel, which is currently located in the Agricultural District, as zoned by the County of Maui (“County”). The Sports Complex will include: three soccer fields and nine baseball/softball fields, all fixed with lights for night time playing; acres of hardened surface area consisting of roads, 700 parking stalls, and related curbs and gutters; multiple restroom facilities; concession stands; and a very large retention basin that is intended to hold water generated not only from the Sports Complex

¹ The Board of Land and Natural Resources is identified in this letter for the purpose of providing notice to an approving government agency relating to environmental impact statement issues.

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EXHIBIT "A"

but also from the “Wai’ale” project described below. In short, the proposed 65 acre parcel will be permanently taken out of agricultural use. *See Exhibit 1.*²

Moreover, for likely the next seven years or more, the Sports Complex will be accessed directly through the Maui Lani neighborhood via Maui Lani Parkway, *see Exhibit 2*, a street that is already overcapacity despite only having been designed and built a few years ago. Users of the proposed Sports Complex would access Maui Lani Parkway either from the northwest (Wailuku side) or the east (via Kuihelani Highway). They would then have to travel to a four-way stop, and turn south on South Kamehameha Avenue, pass by another node of congestion, Pomaika`i School, and then enter the street providing access to the Sports Complex. The four-way stop significantly slows traffic during peak periods. MLN anticipates that when traffic is backed up, which is already common, drivers seeking to access the Sports Complex will make use of the smaller, internal residential roads, which permit a driver to bypass the four-way stop. *See Exhibit 2.*

Finally, DLNR’s Sports Complex development includes a plan to build a 5.8 acre retention basin that the DLNR specifically explained would be constructed to handle surface water runoff from the adjacent Wai’ale project, described further below. Thus, this retention basin is being permitted by the County of Maui through an expedited review process before the Maui Planning Commission, even though the rest of the Wai’ale project to which the retention basin is related is slated for a thorough review process before the Maui County Council. *See Part I below for further description of the Sports Complex project.*

The Sports Complex is poorly conceived and was hurriedly vetted by DLNR. That alone is reason for DLNR to pause and consider other alternatives. However, DLNR must cease and desist development activities of any kind because of a considerable number of illegalities associated with the proposed development, including, but not limited to, the following.³

- **Violation of zoning.** On March 25, 2014, the Maui Planning Commission granted DLNR a Special Use Permit purporting to grant DLNR the right to construct the Sports Complex and retention basin on the Subject Property. The recreational uses specified for the Sports Complex, as well as the urban uses associated with the retention basin, are not uses that are qualified to be permitted under a special use permit. Instead, a change in zoning is necessary. The Maui Planning Commission lacked the authority to grant DLNR the special use permit. Therefore, the special use permit granted to DLNR is illegal, null and void. *See Part II(A), below.*
- **Violation of Maui Island Plan.** The uses specified for the Sports Complex and the retention basin are inconsistent with the *Community Park* designation in the Maui Island Plan, Directed Growth Plan. The *Community Park* designation is focused on passive recreational uses for the surrounding community members, not a regional park for

² Site Map from Final Environmental Assessment titled “Central Maui Regional Park” (June 2013) (“Sports Complex FEA” or “FEA”) (showing depiction of proposed improvements, with a portion of the Maui Lani project showing along the northern boundary).

³ MLN identifies the following violations of law without waiving any right to bring any and all other claims before any agency or court as MLN deems applicable.

nonresidents, as is intended through the Sports Complex (see discussion further below). Therefore an amendment to the Maui Island Plan, Directed Growth Plan would be necessary for any form of the project to proceed. Therefore, the special use permit granted to DLNR is illegal, null and void. *See Part II(B) and II(C), below.*

- ***Violation of Wailuku-Kahului Community Plan.*** The uses specified for the Sports Complex and the 5.8 acre retention basin are clearly inconsistent with the *Agriculture* designation in the Wailuku-Kahului Community Plan. Therefore, a community plan amendment is necessary. Therefore, the special use permit granted to DLNR is illegal, null and void. *See Part II(B) and II(D), below.*
- ***Failure to Prepare Supplemental EIS.*** Because the Subject Property was already part of the Wai'ale environmental impact statement ("EIS"), and because that EIS did not evaluate the impacts of the uses specified for the Sports Complex, a supplemental environmental impact statement is required, and, under the express EIS rules, the environmental assessment prepared by DLNR does not qualify as a supplemental EIS. The Maui Planning Commission did not have the required information before it to make its decision. Therefore, the special use permit granted to DLNR is illegal, null and void. *See Part II(E), below.*
- ***Violation of Land Use Commission's Decision and Order.*** During the State district boundary amendment process, the State of Hawai'i Land Use Commission specifically identified the southern portion of the South Wai'ale Land for *active* recreation, and clearly intended to limit the Subject Property to *passive* recreation uses. This limitation is a restrictive covenant running with the land and it limits the permitted uses of the Subject Property. Therefore, the special use permit granted to DLNR is illegal, null and void. *See Part II(F), below.*
- ***Violation of Subdivision Ordinance and State Enabling Statute.*** The County granted final consolidation-resubdivision approval and thereby exempted the resubdivision from consistency with the County general plan, the Maui Island Plan and the Wailuku-Kahului Community Plan. That exemption violates the State enabling statute, which requires consistency with county general plans, and the related plans. Further, the Public Works Director abused his discretion or exceeded his authority by failing to require that any park in the subdivision be for the benefit of the persons who will be living in the subdivision, as required by the State enabling statute. Therefore, the subdivision is illegal, null and void. *See Part II(G), below.*
- ***Subject Property Cannot Conform to PK-3 Regional Park District.*** Finally, even if DLNR were to go back through the entitlement process, including requesting a change in zoning, the 65 acre Subject Property may not be used for a regional park. That is because the County's *PK-3 Regional Park District* requires a minimum lot size of 100 acres. *See Part II(H), below.*

Based on the foregoing and the analysis below, MLN demands, pursuant to Hawai'i Revised Statutes ("HRS") § 607-25, that DLNR immediately *cease and desist* from any further action to develop the Sports Complex until DLNR has all legally necessary approvals to proceed. Please confirm in writing *by not later than Friday, August 1, 2014*, that DLNR will cease and

desist from any development activities relating to the Sports Complex until DLNR either relocates the proposed Complex to a better location, or until it revises the proposed uses for the Subject Property to make them consistent with a passive recreation community park.

I. OVERVIEW

A. Brief Background Summary

For over a decade, A&B⁴ and other developers have been planning or developing much of the land in Central Maui. This started with Maui Lani, a 1,000 acre master planned community, which now consists of over 600 single family homes, a golf course, a school, and a significant commercial complex. While the Maui Lani project was being developed over the last decade, A&B was working through the planning phase for the development of the land immediately south of Maui Lani, the “Wai`ale” project, which is intended for 2,550 residential units, making it the largest housing project ever proposed for the Island of Maui. Wai`ale involves two contiguous land areas separated by Waiko Road (collectively the “Wai`ale Land”). See Exhibit 3.⁵ The total acreage for the project is 545 acres. Of that total, a little over 422 acres of land is located immediately north of Waiko Road (“North Wai`ale Land”) and a little over 122 acres of land is located immediately south of Waiko Road (“South Wai`ale Land”). See Exhibits 3 and 4.

The 65 acre property where the Sports Complex is proposed (which is believed to still be held by A&B at the time of this letter) is part of the North Wai`ale Land (hereinafter referred to as “Subject Property”), and was created through a consolidation and resubdivision of a number of parcels that was granted final approval by the County in October 2013.⁶ Specifically, the 65-acre Subject Property consists of a narrow strip of land that abuts Maui Lani, making it the northernmost part of the Wai`ale Land. See Exhibit 4.⁷ See also Exhibit 1. The Subject Property is bounded by Kuihelani Highway (to the east), the Maui Lani project (to the north), sand dunes and Hawaiian burials intended for a preservation area (to the west), and the residential component of the proposed Wai`ale development (to the south). See Exhibit 5.⁸

The County Directed Growth Plan, which is part of the Maui Island Plan (both discussed below), explained that there was a need for a *passive* recreation community park on the north side of Waiko Road that would help mitigate and buffer the impacts of the residential and

⁴ “A&B as used herein means A&B Properties, Inc., including its predecessors or parent or subsidiary entities, who may have owned the Wai`ale Project Land, and including its agents, representatives and employees.

⁵ Showing annotated tax map from “Wai`ale EIS.”

⁶ A&B consolidated and resubdivided the parcels located on the north side of Waiko Road to create a five-lot subdivision, of which the 65-acre Subject Property is identified as Lot 12-A-3. Subdivision File Number: 3.2226, entitled the “Maui Lani Subdivision,” granted final subdivision approval by the County of Maui Director of Public Works on 10/24/2013.

⁷ Figure 2-1 from Wai`ale EIS (identifying Maui Lani north of the identified Wai`ale Land).

⁸ Exhibit 5 is Figure O-1 of the Wai`ale Final Environmental Impact Statement, prepared by A&B, and accepted as adequate by the State of Hawai`i Board of Land and Natural Resources (“BLNR”) on November 4, 2011 (“FEIS” or “Wai`ale FEIS”).

commercial uses planned for the Wai`ale Project. The Maui Island Plan, adopted in December 2012, prescribed a “community park” to be situated in the North Wai`ale Land. A “community park” is expressly defined by the MCC and has been given a specific zoning district with permitted uses that are generally passive in nature. *See* MCC 19.615.030.⁹ Thus, if the Subject Property was, in fact, used for a *passive* community park, such as walking trails and open space, it would meet the mandates of the Maui Island Plan.

However, DLNR’s Sports Complex, which was not proposed and evaluated until *after* the adoption of the Maui Island Plan, is entirely inconsistent with the goal of creating a low impact buffer area to be used by the surrounding community. Rather than act as a buffer to mitigate the density caused by A&B’s two massive residential projects—Maui Lani and Wai`ale—the Sports Complex is instead expressly intended to do the exact opposite. It is being deliberately designed and built to encourage its use as a venue for nonresidents. The DLNR proposal thus offers no mitigation whatsoever to the existing and future homeowners.

The need for 600 parking stalls (with overflow parking for 100 more vehicles) speaks volumes about the intensity of the project. That means that DLNR anticipates there will be events at the park with up to 700 vehicles in attendance. Each of those vehicles will probably conservatively carry, on average, three people, meaning that up to 2,100 people may be using the 65 acre Subject Property at a time. This is not all. According to the official announcements from State of Hawai`i officials, the Subject Property also stands a high chance of being used intensively, and continuously as a training facility, or for extensive and noisy sports events, which would carry on into the evenings, and involve people potentially from all over the world.

These users will, by necessity, based on the design of the project, enter and exit the Subject Property by driving through the Maui Lani project via Maui Lani Parkway and South Kamehameha Avenue. Maui Lani’s roads must handle all of the Sports Complex traffic from 2015 to 2022, as confirmed by DLNR’s own traffic consultant. This consultant has also confirmed what the community already knows—that these two roadways are already “overcapacity.”

The funding source for the Sports Complex leaves no doubt with respect to the above scenario. The Sports Complex is specifically funded by the State under Governor Abercrombie’s “*Sports Development Initiative*,” which was revealed to the public on October 15, 2013. According to the official press release, Governor Abercrombie appointed Lieutenant Governor Shan Tsutsui to “spearhead” the Initiative. The press release unambiguously explains that the

⁹ **PK-2 Community Park District.** The purpose and intent of the “PK-2 Community Park District” is to “provide park areas designed to meet the passive and active recreational needs of a community comprised of several neighborhoods.” MCC § 19.615.030(A). The same section further explains, “This district shall be located adjacent to or in areas designated for residential use, shall be operated by a public or private non-profit organization, and shall not be operated for a commercial purpose. This district shall primarily be located in the state urban and rural districts.” *Id.* The principal uses in the community park district are: campgrounds; community centers; fishing; open land recreation; picnicking; playgrounds; playing courts of community scale but not including tennis centers; playing fields for outdoor community uses; swimming pools; and, non-motorized trail activities. MCC § 19.615.030(B)(1). The minimum lot size for a community park is 25 acres. MCC § 19.615.030(C)(1).

purpose of this Initiative is not to meet community needs, or to create quiet open space buffers and greenways between the Wai`ale Project and the Maui Lani project. Rather, the Initiative's goal is, in the words of Lieutenant Governor Tsutsui, "to diversify our visitor industry and generate more revenue for our state."¹⁰

The Lieutenant Governor went on to state during the videotaped press release that the Hawaiian Tourism Authority—not the community, or even the County—would have the primary discretion to determine who would be able to use the sports facilities created through this new initiative, which is primarily intended to create a new source of revenue for the State. The State's official press release, issued October 15, 2013, explained the goals of the initiative:

This initiative will help to expand *sports entertainment* and participation opportunities in Hawaii, while also strengthening *our visitor economy* – particularly during the shoulder seasons when *visitor arrivals* are less robust," Gov. Abercrombie said. "With Shan at the helm, we hope to take advantage of each island's unique characteristics and *bring athletic events* that fit into their individual environments.

While collaborating with the *Hawaii Tourism Authority*, University of Hawaii System, Stadium Authority, and private sports organizations, the initiative will identify, promote and engage opportunities to establish Hawaii *as a premier sports destination for professional, amateur and youth athletics*. The improvement of current facilities and development of world-class, state-of-the-art venues are also part of the initiative, intended to attract sporting events and athletic training opportunities not only on Oahu but throughout the state.

See State press release, link at Note 10 (emphasis added).¹¹

The Governor presented this initiative to the legislature and was successful in having it swiftly funded as part of House Bill 1700 for the State Budget, which included appropriations for capital improvement projects slated for 2013/14 and 2014/15 fiscal years.¹² HB1700, which was approved by the legislature and signed into law in May of this year as Act 122, includes a capital

¹⁰ See <http://governor.hawaii.gov/blog/lt-gov-tsutsui-to-lead-new-sports-development-initiative/>.

¹¹ *Maui Now* published the following relevant quotes from Lt. Gov. Tsutsui:

With our new facility, we will be able to host *hundreds* of off island families and *provide a boost to our local businesses*," he stated at the time. . . .

Once completed, the park could *serve as a venue to host local, statewide, national, and international sporting events. It has the potential to be a revenue generator for Maui and the state*," said Tsutsui.

See <http://mauinow.com/2013/10/11/breaking-4-7-m-released-for-central-maui-regional-park/> (emphasis added).

¹² See Governor's Testimony in support of HB1700 Relating to State Budget (3/5/2014) at 2. The Governor stated:

[T]he Office is supportive of budget requests . . . , The Governor assigned the Office of the Lieutenant Governor with the Sports Development Initiative in October 2013 *to grow the sports industry in Hawaii at the professional, amateur and youth levels throughout the State*. This funding is requested to support that initiative

improvement project item entitled “Central Maui Region Sports Complex, Maui,” and further described as “design and construction for establishment of a regional park in the area of Central Maui; Ground and Site Improvements; Equipment and Appurtenances.” The bill designated \$4.7 million for fiscal year 2013/14 for design, construction, and another \$5.0 million for fiscal year 2014/15 for construction.

Even before Act 122 was signed into law, and even before DLNR had obtained what it believed were the necessary approvals to proceed, DLNR had published a request for proposals and determined the successful bidder. The winning bid contractor was confirmed in or around May 2014. DLNR has announced to the public that it intends to break ground this summer.

Oddly, just days before the Governor and Lieutenant Governor made their Sports Development Initiative announcement, and identified the Subject Property as one of the recipients of Initiative funds, the County had consummated the purchase of 209 acres of land from A&B south of South Wai‘ale for the specific purpose of a “Central Maui Regional Park.” None of the politicians explained why there were suddenly *two* Central Maui regional parks, when the Maui Island Plan adopted by the County Council had only identified the need for *one*.

A final very concerning aspect of the Sports Complex proposal is the 5.8 acre storm water retention basin, which DLNR acknowledges is “*for the Wai‘ale development to be developed by the Wai‘ale developer*. See Sports Complex Final Environmental Assessment (“FEA”) at 5 (emphasis added). Another section of the FEA further explains that the retention basin is a “key component” of the proposal:

A large drainage detention basin (to be constructed by the Wai‘ale developer) in the northeastern corner of the park *is also a key component of this design*, which will allow for the retention of a larger amount of runoff, an estimated 176 acre-feet, *from the Wai‘ale master planned community*.

FEA at 7 (emphasis added). See also FEA at 9 (explaining the retention basin will be constructed “by the Wai‘ale developer”); FEA at 32 (“[A] stormwater retention basin will store stormwater and help to mitigate sediment loads in runoff from the Wai‘ale development to the south.). The Maui Planning Commission granted the special use permit even though the Planning Department advised the Commission of this strictly urban use of land being proposed for land zoned *Agriculture*.¹³

B. Brief Chronology of Events

The following table provides the chronological outline for this matter and the relationship between the various planning and entitlement steps that have been taken over the last decade.

<i>Maui Island Plan Begins</i>	2007	The County, community, and various landowners, including A&B, embark on five years of planning meetings that will result in the Maui Island Plan, and the Directed Growth Plan, which plans are to direct Maui’s growth through 2030, including the
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¹³ See also *Maui Planning Department’s Report to the Maui Planning Commission (3/25/2014)* at 2 (“The proposed regional park will be comprised of the following elements: . . . Retention basin (5.8 acres)”), and also at 16 (“The large drainage detention basin will replace the temporary retention basin *and is also a key component of the park design*. The drainage detention basin with an estimated 176 acre-feet capacity, will allow for a larger amount of runoff from the park *as well as the Waiale development*.”) (Emphasis added).

	Subject Property.
<p>November 2011</p> <p><i>A&B's Wai'ale EIS</i></p>	<p>A&B's EIS for Wai'ale is accepted. At the time this EIS is completed, the Maui Island Plan is still in <i>draft</i> form, and it has preliminarily shown a regional park to be located in the North Wai'ale Land. In light of the fact that the Maui Island Plan is not complete, A&B did not attempt to identify or evaluate the specific park uses for the Subject Property, or their impacts. The EIS also explains that any park use for the Subject Property will need a community plan amendment and a change of zoning. The EIS also specifically provides that, as requested by the State Department of Transportation, additional traffic impact studies will be necessary for any substantive changes to the Wai'ale project as identified in the EIS.</p>
<p>June 2012</p> <p><i>LUC Sets Location for Active Recreation</i></p>	<p>The State Land Use Commission grants a district boundary amendment from <i>Agriculture to Urban</i> for Wai'ale, and specifically limits active recreation to a triangular section located at the southern part of the South Wai'ale Land.</p>
<p>December 2012</p> <p><i>Maui Island Plan Adopted</i></p>	<p>The Maui Island Plan is adopted and includes the <i>final</i>, detailed boundaries in the Directed Growth Plan. The <i>preliminary</i> location for the regional park has shifted. The <i>final</i> Maui Island Plan establishes a large <i>regional</i> park for a 209 acre parcel located south of, and abutting, the South Wai'ale Land, and it establishes a smaller <i>community</i> park for the North Wai'ale Land. The Maui Island Plan also provided that yet greater specificity for the uses within the two parks would occur during the Wailuku-Kahului Community Plan Update and during A&B's entitlement process for Wai'ale.</p>
<p>June 2013</p> <p><i>DLNR's Sports Complex EA</i></p>	<p>DLNR's environmental assessment for a proposed "Central Maui Regional Park" is accepted. The EA inaccurately claims the traffic, noise and visual impacts of the Sports Complex were evaluated in the Wai'ale EIS, and that the EIS found the impacts were insignificant. The EA fails to discuss the implications of the recent adoption of the Maui Island Plan. The EA does not substitute for a supplemental EIS, which is required by law.</p>
<p>September 2013</p> <p><i>County Purchases 209 acres for Regional Park</i></p>	<p>The <i>Central Maui Regional Park and Facilities</i> that was identified in the Maui Island Plan on land immediately south of the South Wai'ale Land is purchased by the County on September 27, 2013. The 209-acre parcel was purchased from A&B for \$5.2 million.¹⁴ The land purchased by the County may be seen in Exhibits 6 and 9. The land is immediately south of the South Wai'ale Land, as is depicted in Exhibit 7. The County's purchase of this land for the <i>Central Maui Regional Park and Facilities</i> land is fully consistent with the Maui Island Plan. Importantly, this land is also of sufficient size to be rezoned to <i>PK-3Regional Park District</i> because it is greater than 100 acres in size. Whereas, the Subject Property cannot meet that zoning requirement, because it is only 65 acres in size.</p>
<p>October 2013</p> <p><i>Government Announcements</i></p>	<p><i>10/11/13:</i> Lt. Gov. Tsutsui makes a press release providing that \$4.7 million in funding will be released for the construction of the "Central Maui Sports Complex," apparently to be located on the Subject Property, which was identified for a <i>community</i> park in the Maui Island Plan, not a regional park.</p> <p><i>10/15/13:</i> Governor Abercrombie announces the Sports Development Initiative and appoints Lt. Gov. Tsutsui to lead the Initiative, which is intended to develop new sports venues that will encourage professional and amateur sports teams from the Asia Pacific region, and from around the world, to train and conduct events in Hawai'i</p>

¹⁴ <http://mauinow.com/2013/10/15/first-pitch-tossed-at-future-central-maui-regional-park/>

October 24, 2013 <i>Subdivision Approval</i>	The County grants final approval for a consolidation-resubdivision of the North Wai`ale Land, including carving out a 65-acre lot for the Subject Property. However, the subdivision fails to require consistency with the General Plan, the Maui Island Plan and the Wailuku-Kahului Community Plan; it also failed to require that any parks derived from the resubdivision process be used for the benefit of the surrounding community.
March 25, 2014 <i>SUP Approved</i>	On March 25, 2014, the Maui Planning Commission grants a special use permit for the Sports Complex. This permit is illegal, null and void because, by law, the Commission lacks the authority to grant a special use permit for (1) the active recreational uses of the Sports Complex, or (2) the retention basin, which is intended for the Wai`ale project.
April/May 2014 <i>New DLNR Impact Analyses</i>	After having its EA accepted and being granted a special use permit, DLNR <i>then</i> publishes three impact studies, never before provided to the public or to government agencies, relating to lighting, noise and traffic impacts anticipated from the Sports Complex. The lighting study is indecipherable because it fails to include a narrative summary. However, the noise and traffic studies both confirm significant impacts never before revealed.

II. ANALYSIS OF VIOLATIONS OF LAW

A. The Sports Complex and Retention Basin May Not Proceed Based on a Special Use Permit

On March 25, 2014, the Maui Planning Commission (“MPC”) unlawfully granted a special use permit (“SUP”) to DLNR for the purpose of permitting the Sports Complex and a large retention basin designed to hold runoff water from the Wai`ale project. Under the law, including the express provisions of the Maui County Code (“MCC”), a SUP to conduct certain uses on lands zoned *Agriculture* is permitted for *only* certain limited, expressly identified, uses. The Sports Complex and retention basin proposed by DLNR are not uses that may be permitted through the SUP process; instead, the law mandates that there be a change in zoning. Therefore, the County Planning Director acted *ultra vires* and exceeded his authority in determining that the MPC had the authority to issue a SUP for the uses proposed for the Sports Complex and retention basin. Similarly, the MPC acted *ultra vires* and exceeded its authority in granting the SUP for the Sports Complex and retention basin for which the law mandates that there be a change in zoning.

A SUP cannot be granted for a use that is neither permitted by law nor by zoning regulations. *See, e.g.*, 83 AM. JUR. 2D ZONING AND PLANNING XVIII (2014) § 814. Where a permit is issued by a governing body in violation of an ordinance, even under a mistake of fact, it is void as a matter of law. *Id.* § 822. Special exceptions are specific types of decisions clearly embraced by the principle that, in pertinent governmental land use decisions, the weight to be accorded a master plan or comprehensive plan recommendation depends upon the language of the statute, ordinance, or regulation establishing standards pursuant to which a decision is to be made. *Id.* § 823. As a general rule, when a zoning ordinance enumerates specifically the permitted uses within a particular zone, the ordinance establishes that the only uses permitted in the zone are those designated as uses permitted as of right and uses permitted by special exception, and any use other than those permitted and being carried on as of right or by special exception is prohibited. *Id.* § 829.

The Hawai'i Supreme Court (in a case very similar to the present case) has confirmed the above general limitations on SUPs, and, moreover, *specifically* held that the use of SUPs is *strictly limited to those instances where the use has been "expressly permitted by ordinance"*:

The special use or exception evolved as a land use control device from a recognition of the hardship frequently visited upon landowners due to the inherent rigidity of the Euclidean zoning system, and of the inapplicability of variance or boundary amendment procedures to all land use problems. Unlike . . . a rezoning in its effect of reclassifying land, . . . a special permit allows the owner to put his land to *a use expressly permitted by ordinance* or statute on proof that certain facts and conditions exist, without altering the underlying zoning classification. . . .

Neighborhood Bd. No. 24 v. State Land Use Comm'n ("Waianae Coast"), 64 Haw. 265, 270-71, 639 P.2d 1097, 1101-02 (1982) (ellipses and emphasis added; internal citations omitted).¹⁵

As demonstrated below, the uses intended through the Sports Complex are *not expressly permitted by the MCC*, in violation of Hawai'i law.

- i. *The uses proposed by DLNR for the Sports Complex must occur on land zoned to PK-3 Regional Park District, while the retention basin must be zoned Project District*

There is the significant fact that the MCC has an entire chapter establishing designations for four different kinds of park districts, including delineating specific criteria for community parks and regional parks. See MCC Chapter 19.615. The uses intended by the Sports Complex fall squarely within the criteria set forth in the *PK-3 Regional Park District* (with the exception of the fact that the Subject Property does not meet the 100-acre minimum lot size requirement, as discussed below). See Exhibit 8 (providing *PK-2 Community Park District* and *PK-3 Regional Park District*, as well as other portions of the MCC).

Specifically, the purpose and intent of the *PK-3 Regional Park District* is to "*provide park areas designed for more intensive recreational and cultural facilities and uses than are permitted in the PK-1 neighborhood park district and the PK-2 community park district.*"

¹⁵ The *Waianae Coast* Court went on to explain that citizens' due process rights are violated where the expedited SUP process improperly avoids the more thorough change in zoning process:

As courts have repeatedly recognized, unlimited use of the special permit to effectuate essentially what amounts to a . . . [rezoning] would undermine the protection from piecemeal changes to the zoning scheme guaranteed landowners *by the more extensive procedural protections of boundary amendment statutes.*

Waianae Coast, 64 Haw. At 272, 639 P.2d at 1102-03 (ellipses, emphasis and bracketed material added). The Hawai'i Supreme Court has also warned government agencies to avoid illegal "spot zoning," which can easily occur through improper use of the SUP process:

Spot zoning is an arbitrary zoning action by which a small area within a large area is singled out and specially zoned for a use classification different from and inconsistent with the classification of the surrounding area *and not in accord with comprehensive plan.*

Life of the Land, Inc. v. City Council of City & Cnty. of Honolulu, 61 Haw. 390, 429, 606 P.2d 866, 890 (1980) (emphasis added; internal quotes omitted).

(Emphasis added). The principal uses for *PK-3* include: “*Athletic complexes for regional competitive activities.*” MCC § 19.615.040(B)(1). A *PK-3* use may only be permitted in lands that have been designated as either rural or urban by the State Land Use Commission. MCC § 19.615.040(A). The permitted *accessory* uses include, relevant to here: comfort stations; “[l]imited commercial uses such as ticket sales, souvenir shop, snack bar or other eating facility which are designed and scaled to meet the needs of the members, guests or users of the park;” off-street parking and loading; and pavilions. MCC § 19.615.040(B)(2). Finally, before a *PK-3* zoning may be granted, the applicant must submit to the county a project master plan, and development plan, that must be reviewed at a public hearing. MCC § 19.615.040(D); MCC § 19.510.080.

It is a fundamental principal of statutory construction that when interpreting any section of an ordinance or statute, it must be read in the context of the entire ordinance or statute and construed in a manner consistent with its comprehensive purpose. *See, e.g., Aluminum Shake Roofing, Inc. v. Hirayasu*, 110 Hawai‘i 248, 131 P.3d 1230 (2006). Reading the MCC comprehensively, it would be absurd to interpret the SUP criteria to permit something as intensive and expansive as the Sports Complex under the expedited SUP review process *where there is an entire zoning district that has been specifically created to deal with the types of impacts related to the Sports Complex uses*, and where that zoning district includes special requirements that must be followed in such cases to assure appropriate planning. *See* MCC § 19.615.040(D) (requiring the applicant of a regional park district to prepare and submit a project master plan and development plan pursuant to Article V of MCC § 19.615.040).

If the Planning Department had adhered to the established park district requirements, it would have to deny the proposed Sports Complex and its uses for the proposed 65-acre Subject Property because the development and related uses did not meet the minimum lot requirement of 100 acres. However, absurdly, under the Planning Department’s apparent reasoning, it does not matter that the Sports Complex does not meet the *PK-3 Regional Park District* criteria, because, under the Planning Department’s rubric, it can simply be granted under the SUP procedures. That reasoning is clearly flawed because it would otherwise render meaningless the existence of the *PK-3 Regional Park District*, which was obviously established by the County Council for a purpose. *See, e.g., Allstate Ins. Co. v. Schmidt*, 104 Haw. 261, 265, 88 P.3d 196, 200 (2004) (“When construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language *in the context of the entire statute and construe it in a manner consistent with its purpose.*”) (Emphasis added).¹⁶

¹⁶ The fact that the County Council established a minimum lot size of 100 acres is significant. The decision was likely made to mitigate the impact to surrounding neighborhoods by assuring sufficient acreage, as well as to promote the efficient use of County park funds by constraining recreational uses to core locations. Alternatively, the appropriate applicant *could* have proposed a *community* park district, as was intended and required by the Maui Island Plan. This would have required *more passive recreation* opportunities and less active recreation opportunities, and this type of park would have met the 25-acre minimum lot requirements. However, the community park would be required to serve the surrounding community. Therefore, it could not have been funded under the State Sports Development Initiative, which is actually contrary to a *community* park purpose because its goal is to encourage use of the amenities by nonresidents.

The attempt to grant approval for the retention basin under the SUP process is also inconsistent with review of the MCC as a whole, as well as with the factual background here. The Planning Department's report to the MPC, as well as DLNR's FEA, expressly stated that a 5.8 acre retention basin would be constructed on the Subject Property to receive increased surface water generated from new hardened surfaces in the *Wai'ale project*. These reports also stated that A&B would be responsible for the retention basin's construction. The retention basin is thus identified as an express clear part of the *Wai'ale project*, which is a master planned *urban* use. The *Wai'ale project* must still go through the community plan amendment process and a rezoning to *Project District* under MCC § 19.45 (entitled "*Project District Processing Regulations*"). The retention basin cannot be approved under the SUP procedures.

- ii. *The uses proposed for the Sports Complex and retention basin are not expressly permitted principal or accessory uses.*

Even if one reads the *Agriculture District* zoning ordinance, MCC § 19.30A, *in isolation* (i.e., not as part of the rest of the MCC), the same conclusion must be reached: The uses contemplated by the Sports Complex project are not expressly permitted in the County *Agriculture District*, which is the current zoning for the Subject Property. This can first be seen by evaluating whether the uses proposed in the Sports Complex are expressly permitted *principal* or *accessory* uses. See Exhibit 8 (providing relevant sections of MCC § 19.30A). The answer is "no" as to both.

The uses intended for the Sports Complex and the retention basin are clearly not permitted as a "principal use" under MCC § 19.30A.050(A), which primarily relates to agricultural uses. See Exhibit 8 (providing MCC § 19.30A.050(A)).

The uses intended for the Sports Complex are also clearly not permitted under the "accessory uses" because accessory uses must be "*incidental or subordinate to, or customarily used in conjunction with a permitted principal use.*" MCC § 19.30A.050(B) (emphasis added). See Exhibit 8 (providing text of MCC § 19.30A.050(B)). The uses intended by the Sports Complex and the retention basin are clearly not intended to subordinate a principal agricultural use.

- iii. *The uses proposed for the Sports Complex and retention basin are not expressly permitted under the special uses.*

The uses intended for the Sports Complex and retention basin are also not expressly permitted under the SUP section, MCC § 19.30A.060. That section covers a small assortment of uses that usually would take only a *small portion* of the surrounding agricultural land (e.g., a telecommunications tower). See Exhibit 8 (providing text of MCC § 19.30A.060).

With respect to the retention basin, DLNR expressly confirmed that it was sized to accept and handle surface water runoff from the *Wai'ale project*, and that it would, in fact, be constructed by A&B. See Part I, above (providing citations to documents). Therefore, absolutely no credible argument can be made that MCC § 19.30A.060 expressly permits a retention basin for a 2,500 unit master planned residential complex that has not yet obtained the necessary community plan amendments or a change in zoning. This alone causes the SUP granted by the Maui Planning Commission to fail.

With respect to the proposed recreational uses for the Sports Complex, only Subsection H from MCC § 19.30A.060 could possibly be applicable. However, even Subsection H does not expressly permit the uses proposed by DLNR through the Sports Complex project. Subsection H provides in pertinent part:

The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070 of this title, has been obtained . . . :

H. *Open land recreation* uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.11, including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, roller blading, playing fields, accessory buildings and structures. . . . The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses and golf driving ranges;

MCC § 19.30A.060 (emphasis added).

At first blush, one might mistakenly think that the uses intended by the Sports Complex are expressly permitted by Subsection H, above, because it mentions “open land recreation” and “playing fields.” However, Subsection H, and the terms used therein, must be interpreted consistent with the MCC Zoning definitions. Three definitions are pertinent here.

First, “open land recreation” is a defined term under the MCC, and as shown below it is *specifically limited to activities carried out in conjunction with scenic interests*:

“*Open land recreation*” means public or private recreational use or enjoyment, including, but not limited to, parks, picnic grounds, beaches, beach accesses, greenways and areas for hiking, fishing, hunting, camping, equestrian activities, *and other scenic interests*, on a parcel or area of land or water which may be improved but which contains no buildings and which is set aside, designated, or reserved for such purposes.

MCC § 19.04.040 (emphasis added).

Second, the MCC provides separate definitions for “active recreation” and “passive recreation” definition, which must be read to give context to the entire ordinance. Through its definitions, the MCC clearly establishes that “passive recreation” activities occur on “open land recreation areas”:

“Passive recreation” means leisure time activities *other than active recreation*, including walking, hiking and picnicking *on open land recreation areas.*” *Id.*

MCC § 19.04.040 (emphasis added).

It is significant that the scenic interests identified under the “open recreation area” definition are, by their nature, also *passive* recreational activities that would ordinarily be carried out in a natural setting. Thus, these natural setting, scenic interest, passive recreational uses, *can*

be seen as consistent with agricultural uses, thereby make it appropriate to grant them under the SUP process.¹⁷

Finally, In contrast, the Sports Complex uses are *not* scenic, do *not* occur in a natural setting, and do *not* involve passive recreation uses. Instead, the Sports Complex uses fall squarely under the “active recreation” definition:

“Active recreation” means leisure time activities, *usually of a more formal nature and performed with others, often requiring equipment and facilities*, and taking place *at prescribed places, sites, or fields.*”

MCC § 19.04.040 (emphasis added).

Moreover, the active recreational uses intended by the Sports Complex are proposed to be carried out in a distinctly *urban* environment. Notably, the Sports Complex uses require extensive hardening of the land from necessary structures and pavement, as well as significant grading and grubbing during the development process. Clearly these “active recreation” uses are antithetical to the intent and purpose of the *Agriculture*, considering the Sports Complex uses would erase any remaining hint of an agricultural nature to the Subject Property. Rather, the proposed Sports Complex development contains a distinct *urban* use that requires a change in zoning and is clearly not permitted under the limited permitted special use exceptions set forth in MCC § 19.040.060.

In summary, the SUP procedures cannot be used to permit the Sports Complex. The law clearly mandates that there be a change in zoning for such intensive uses. Moreover, because the Maui Planning Commission failed to adhere to the Maui Island Plan and the Wailuku-Kahului Community Plan, it breached its public trust obligations (discussed in the next section below). Therefore the SUP is illegal, null and void.

B. The Maui Island Plan and the Wailuku-Kahului Community Plan Have the Force and Effect of Law

In violation of the law, the Maui Planning Commission granted a use that conflicts with the specific directives of the Maui Island Plan, Directed Growth Plan, adopted by the County Council in 2012 (“MI Plan”), and that is inconsistent with the Wailuku-Kahului Community Plan, adopted by the County Council in 2002 (“WKC Plan”).

Both of these planning documents went through years of planning involving the community, County, the affected landowners, and even the State. Moreover, both of these planning documents are, by State and County law, intended to be the bedrock for land use decision making in Hawai‘i, and the failure of a government agency to abide by them constitutes a violation of State statute, County ordinance, and also constitutes an actionable breach of public trust.

¹⁷ DLNR may not argue that “parks” in Subsection H was intended to mean both active and passive parks. “The doctrine of ejusdem generis states that where general words follow specific words in a statute, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Peterson v. Hawaii Elec. Light Co.*, 85 Hawai‘i 322, 328, 944 P.2d 1265, 1271 (1997).

At the State level, the State has established the Hawai'i State Planning Act, HRS Chapter 226, which provides for long range planning for the state. This statute requires the counties to establish general plans. HRS § 226-58. Further, the County's power to zone is expressly limited by the State's enabling statute, which provides in pertinent part that, "Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county." HRS § 46-4. Recently, in the context of a special use permit, the Hawai'i Supreme Court held that County agencies, pursuant to HRS § 46-4, the enabling statute, and article XI, section I of the Hawai'i Constitution, have a trust obligation to the public to follow the General Plan and its subsidiary parts, and a failure to do so constitutes an actionable breach of public trust. *See Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kauai*, 130 Haw. 407, 425, 312 P.3d 283, 301 (Ct. App. 2013) *cert. granted*, SCWC-29440, (Haw. Sept. 4, 2013) and *aff'd*, 133 Haw. 141, 324 P.3d 951 (2014).¹⁸

At the County level, the Maui County Charter (2013) ("Charter") requires the County to prepare general and community plans through a specific process that includes state and public input, with final recommendations made by a citizen advisory committee that reports to the Maui Planning Commission, with that Commission making recommendations to the County Council. *Id.* § 8-8.5(1). Community Plans are an express part of the General Plan, and are required to include specific implementing directives. *Id.* § 8-8.5(5).¹⁹ The Charter treats adoption of zoning laws the same as adoption of general plans and community plans—all three require adoption by ordinance affirmed by the County Council. *Id.* § 8-8.6.

MCC Chapter 2.80B establishes an hierarchy of planning efforts and related documents that all fall under the General Plan. These consist of "the Countywide Policy Plan," the Maui Island Plan," and the respective "Community Plans." MCC § 2.80B.030(A). *Cf.* MCC §

¹⁸ *Kauai Springs, Inc.*, explained in pertinent part, as follows:

In sum, *HRS § 46-4*, inter alia, confers authority upon each county to zone, to adopt a comprehensive general plan to guide the overall future development of the county, and to exercise the zoning power by ordinance. Relevant to the County's *public trust duty* in this case, the Kaua'i General Plan and the zoning ordinance for issuing a Use Permit and a Class IV Zoning Permit provide for the protection of water and watershed areas. Therefore, as in *Kelly*, the County's public trust duty under article XI, section I of the Hawai'i Constitution, "[c]oupled with the State's power to create and delegate duties and responsibilities to the various counties through the enactment of statutes," 111 Hawai'i at 225, 140 P.3d at 1005 (emphasis added), establishes that the County (through the Planning Commission) *had a duty* to conserve and protect water in considering whether to issue the Use Permit and the Class IV Zoning Permit to Kauai Springs.

(Emphasis added).

¹⁹ Section 8-8.5(5) of the Charter provides:

The community plans created and revised by the citizen advisory committees shall set forth, in detail, land uses within the community plan regions of the county. The objectives of each community plan shall be to implement the policies of the general plan. Each community plan shall include implementing actions that clearly identify priorities, timelines, estimated costs, and the county department accountable for the completion of the implementing actions.

2.80B.030(B) (“The countywide policy plan, Maui island plan, and community plans authorized in this chapter are and shall be the general plan of the County, as provided by section 8-8.5 of the charter.”); Charter § 8-8.5(6) (“The community plans generated through the citizen advisory councils and accepted by the planning commission, council, and mayor are part of the general plan.”). The relevant community plan with respect to the issues presented here is the WKC Plan.

The MI Plan includes Chapter 8, entitled the “Directed Growth Plan” which the MI Plan explains provides “the framework for future community plan and zoning changes and guides the development of the County’s short-term and long-term capital improvement plan budgets.” The MI Plan further emphasizes the Directed Growth Plan “is the backbone of the [MI Plan],” and directs growth in Maui through the adoption of urban and rural growth boundaries.” MI Plan at 8-2.²⁰

The MI Plan, the Directed Growth Plan or the WKC Plan are not simply guidance documents. Instead, MCC Chapter 2.80B establishes that its express purpose is “to provide [County] plans that clearly identify provisions that are meant to be policy guidelines *and* provisions that are intended to have the *force and effect of law*.” (Emphasis added). A Planning Director, Public Works Director or a Planning Commission may not ignore County planning documents. Instead, *all* administrative actions of government agencies are expressly required to “conform to the general plan.” MCC § 2.80B.030(B). The Hawai‘i Supreme Court confirmed this, as well, in *Kauai Springs, Inc.*, above, as well as in *Leone v. Cnty. of Maui*, 128 Hawai‘i 183, 194, n.8, 284 P.3d 956, 967, n.8 (Ct. App. 2012), where the Court explained that zoning “must” assure consistency with general and community plans, and that the plans are “binding on all county officials.”

C. The Maui Planning Commission Lacked the Authority to Permit a Regional Park Where the Directed Growth Plan Required a Community Park

The Directed Growth Plan includes a specific section relating to the Wai‘ale project. MI Plan at 8-19 to 8-20. The section explains that “Wai‘ale is the largest proposed town on the island, and the largest planned growth area proposed for the Wailuku-Kahului community plan region.” MI Plan at 8-19. Because of its size, the MI Plan explains the importance of using greenbelts, open space and parks to prevent sprawl:

To prevent sprawl and further urbanization of prime agricultural resource land, a hard edge must be maintained around Wai‘ale Town. *A network of greenbelts, open space, and parks will be utilized to contain urban development, maintain a clear distinction between existing communities and the new town, and to prevent urbanization of agricultural lands south of the site.*

(Emphasis added).

²⁰ The MI Plan (at 8-3) further explains:

The Directed Growth Plan, which is grounded on the recommendations found throughout the MI Plan, establishes the location and general character of future development. The Directed Growth Plan will provide the framework for future community plan and zoning changes and guide the development of the County’s short-term and long-term capital improvement plan budgets.

The Directed Growth Plan contains a very detailed discussion of “planned protected areas” for Wailuku and Kahului, which areas “include some of the island’s most treasured cultural, environmental, and recreational resources.”²¹ The Directed Growth Plan explains that one of its purposes is to “promote the protection and availability of “passive and active recreational amenities” by identifying five categories of planned protected areas, namely: “preservation areas, regional parks, greenways, greenbelts, and sensitive lands.” MI Plan at 8-5. These planned protected areas are identified in the Directed Growth Plan’s protected areas map, Figure 8-2 (attached here as Exhibit 6). MI Plan at 8-4. *See also* Exhibit 9 (map excerpt from Exhibit WC-1 of MI Plan). Significant here, the Directed Growth Plan delineates in or around Wai’ale four planned protected areas in its Figure 8-2:

- A “*Regional Park and County Facilities*” area (shown in light green) south of Waiko Road on land south of, and abutting, the South Wai’ale Land;
- A “*Central Maui Community Park*” area (also shown in the same light green) within the North Wai’ale Land, with a portion of that park abutting Maui Lani and Kuihelani Highway.
- A “*greenway*” area (shown in speckled green) between the Central Maui Community Park and the Maui Lani development and Kuihelani Highway (this has been outlined in orange and identified with an arrow, as it is difficult to see); and,
- Two *preservation* areas (shown in dark green) along the most northwest portion of the North Wai’ale Land.

See Exhibit 6.

The Directed Growth Plan provides a matrix that, among other things, defines the basic “characteristics” of each of the five planned protected area categories. Importantly, the Directed Growth Plan tracks the definitions found in MCC Chapter 19 (pertinent definitions are provided in Exhibit 8). Specifically, the Directed Growth Plan adopts the exact same definition for “greenbelt” and “greenway” as set forth in MCC 2.80B.020. In addition, the *park* category is defined very similarly to “park” in the MCC: “Land areas devoted to passive (picnic facilities and gathering areas) and/or active (including, but not limited to, bike paths, hiking trails, ball fields, and tennis courts) uses that serve recreational needs.” MI Plan at 8-5. Finally, the Directed Growth Plan describes the specific intended uses, *respectively*, for the (1) Central Maui

²¹ The MI Plan (at 8-13) provides the following complete description of planned protected areas:

Planned protected areas include some of the island’s most treasured cultural, environmental, and recreational resources. These resources can come in the form of a coastal ridge, a burial ground, or an urban park. The planned protected area can be for the public’s benefit and use, or to allow the natural habitat to exist in an unaltered state. The intent of the Protected Area is to provide one additional layer of protection to those areas that contain any number of irretrievable resources. The purpose and intent of each planned protected area is described after each planned growth area section.

Community Park and (2) the Regional Park and County Facilities area, MI Plan at 8-20, 8-25,²² as further summarized below.

First, the Directed Growth Plan notes that the regional and community parks for Central Maui are both “intended to maintain a significant amount of *open space*,” MI Plan at 8-25 (emphasis added), which, pursuant to the MCC, means a significant amount of the two areas must be “*essentially free of structures or impervious surfaces . . .*” MCC § 19.04.040 (emphasis added). *See Exhibit 8* (providing this definition and others).

Second, the Directed Growth Plan clearly identifies the regional park to be located south of the South Wai‘ale Land for *active* recreation, but does not do so for the *community* park proposed within the North Wai‘ale Land:

A *community* park is also planned for the Wai‘ale area to provide a clear separation between the new community and Maui Lani. A *regional* park will be provided to the *South of Wai‘ale* to provide a clear separation between the new community and Ma‘alaea, *and to allow for the placement of active and passive recreational opportunities*, County baseyards and like County facilities. Preservation areas will be established to protect Hawaiian Burials and intact sand dunes.

MI Plan at 8-20 (emphasis added).

Third, the Directed Growth Plan expressly provides that the *southern “Regional Park and County Facilities”* area “*should allow for the placement of sports fields with suitable topography for sports usage and may include an agricultural park and community gardens.*” (Emphasis added). MI Plan at 8-25. *See also* footnote 22 herein.

²² The Directed Growth Plan provided the following detailed description of the two respective parks, the Preservation area, and the County Facility Area:

The Central Maui Regional Park, Community Park, Preservation, and County Facility Area is a planned open-space area within and adjacent to the Wai‘ale mixed-use new town (*See* Figure 8-2). It is envisioned that the parks and preservation areas will be comprised of both passive and active park uses, including a network of pedestrian and bicycle pathways. *The parks are intended to maintain a significant amount of open space* and provide a *distinct separation* between the communities of Waikapū and Mā‘alaea, Kahului, and Waikapū. *The regional park’s design should allow for the placement of sports fields with suitable topography for sports usage and may include an agricultural park and community gardens.* The Protected Area will also include a preserve that will protect rich historical and cultural resources which are spread throughout the Central Maui Sand Dune system. *The Central Maui community park will be established north of the Wai‘ale planned growth area, proximate to a high concentration of existing and proposed residential and industrial uses, Pomaika‘i Elementary School, and the primary employment center on the island.* The Central Maui Regional Park may provide an area for the offices of the County Department of Parks and Recreation, a community center, County baseyards and like County facilities, and a location for the annual County Fair. The distinct boundaries of the park, specific location of the recreational uses, and the precise amenities will be further defined during the Wailuku – Kahului Community Plan update and the Wai‘ale project review and approval process.

MI Plan at 8-25 (emphasis added).

Fourth, in contrast to the regional park, the Directed Growth Plan does not identify the *Central Maui Community Park* for active recreation but rather identifies its necessity as a *buffer*: “The Central Maui *community* park will be established north of the Wai`ale planned growth area, proximate to a high concentration of existing and proposed residential and industrial uses, Pomaika`i Elementary School, and the primary employment center on the island.” MI Plan at 8-25 (emphasis added). *See* also footnote 22 herein.

Finally, the Directed Growth Plan explains that the final boundaries, and the specific uses for each of the parks, would be finalized during the community plan update process and during the project review for Wai`ale: “The distinct boundaries of the park, *specific location of the recreational uses*, and the *precise amenities* will be further defined during the [WKC] Plan update and the Wai`ale project review and approval process.” MI Plan at 8-25 (emphasis added). *See* also footnote 22 herein. Notably, the WKC Plan update process is not complete, and A&B has not even initiated a request for any of the entitlements it needs from the County.

Thus, the Maui Planning Commission was outside its authority in granting the SUP for a regional park for the Subject Property where the Directed Growth Plan specifically identified the Subject Property for a *community* park. The two uses are entirely different, as may be seen from MCC §§ 19.615.030 (*PK-2 Community Park District*) and 19.615.040 (*PK-3 Regional Park District*). Specifically, *PK-2* permits passive recreational activities as the principal use, while *PK-3* permits intensive active recreational activities as the principal use. *See Exhibit 8* (providing the text of these MCC sections, as well as the related definitions for “active recreation” and “passive recreation”).

D. The Maui Planning Commission Lacked the Authority to Grant the Sports Complex on Land Designated in the Wailuku-Kahului Community Plan for Agriculture

Neither DLNR nor the County disputes the fact that the Subject Property is currently designated as *Agriculture* in the WKC Plan. While the Maui Island Plan was adopted in 2012, the WKC Plan is now over a decade old, and the update process for the WKC Plan is just getting underway. Therefore, there is a clear conflict between the MI Plan and the WKC Plan. Nevertheless, until it is amended, it remains the law. *See* Part II(B), above; *cf. Leone v. Cnty. of Maui*, 128 Hawai`i 183, 194, n.8, 284 P.3d 956, 967, n.8 (Ct. App. 2012) (explaining that zoning “must” assure consistency with general and community plans, and that the plans are “binding on all county officials”).

Therefore, any person proposing a use inconsistent with the WKC Plan must first obtain a community plan amendment to assure consistency between a proposed use and the community plan designation. Here, the WKC Plan must be amended to *Park* so that a park may be placed on the Subject Property without violating the WKC Plan, which has the force and effect of law.

However, with respect to the 5.8 acres of land designated for the retention basin for the surface water runoff generated in large part from the Wai`ale development (*see* discussion in Part I(A), above), that land area needs a community plan amendment to *Urban*, as was contemplated by A&B during the Wai`ale EIS process (discussed in Part II(D), below).

In summary, a community plan amendment is certainly required before, or concurrent with, the appropriate changes in zoning. The SUP is therefore illegal, null and void based on

DLNR's failure to obtain appropriate community plan amendments, and by the Maui Planning Commission overstepping its authority.

E. A Supplemental Environmental Impact Statement Is Required

Notwithstanding the fact that DLNR obtained a finding of no significant impact ("FONSI") for the Sports Complex based on its environmental assessment, this does not remove DLNR's obligation to prepare an EIS. When an EIS has been triggered, as occurred with the Wai'ale Project, any change in the "size, scope, location, intensity, use, [or] timing of the action" triggers the need for a *supplemental* EIS. Hawai'i Administrative Rules ("HAR") § 11-200-6.

HAR § 11-200-6 is unequivocal. It provides that "[i]f there is any change in *any* of these characteristics which *may* have a significant effect, the original statement that was changed *shall* no longer be valid because an essentially different action would be under consideration and a supplemental statement *shall* be prepared and reviewed as provided by this chapter." *Id.* (emphasis added). This language (*i.e.*, "shall") is mandatory, and neither DLNR nor any other agency has the discretion to provide an exception to the rule. *Cf. Unite Here! Local 5 v. City & Cnty. of Honolulu*, 123 Hawai'i, 150, 174, 231 P.3d 423, 447 (2010) ("HAR § 11-200-2 defines 'supplemental statement' as 'an additional *environmental impact statement* prepared for an action for which a statement was previously accepted, but which has since changed substantively in size, scope, intensity, use, location, or timing, among other things'.") (emphasis added).

Here, a supplemental EIS ("SEIS") is clearly required because the impacts of the Sports Complex, as proposed by DLNR, *were at no time assessed* in the Wai'ale EIS—even though DLNR's environmental assessment mistakenly states otherwise. In fact, the Wai'ale EIS made it clear that its intentions for the Subject Property were only preliminary at the time. The EIS made no effort to evaluate the impacts of a sports complex because that idea in its current form did not yet exist. Instead, the EIS specifically explained that the specifics of the park to be located on the Subject Property would be worked out during the WKC Plan process, as well as during A&B's application for rezoning to *Project District* for Wai'ale.

Furthermore, the environmental assessment prepared by DLNR for the Sports Complex cannot be considered a substitute for a SEIS because DLNR's Sports Complex proposal immediately triggered the need for an SEIS, and, at any rate, DLNR's environmental assessment did not provide the level of study and analysis required for a SEIS.

This is further explained below by first reviewing the Wai'ale EIS and then the Sports Complex environmental assessment.

i. The Wai'ale EIS Did Not Analyze any of the Impacts Now Being Proposed by DLNR through its Sports Complex Initiative

A&B prepared and submitted an environmental impact statement for the Wai'ale project. The accepting authority for the EIS was the State of Hawai'i Board of Land and Natural Resources ("BLNR"). BLNR accepted the Wai'ale Final Environmental Impact Statement ("FEIS" or "Wai'ale FEIS") on November 4, 2011. A careful review of the FEIS shows that while it does identify the Subject Property as a "regional park," it does not identify the actual intended uses of the Subject Property.

In fact, the FEIS makes clear in a number of places that *further studies regarding the specific uses for the proposed park would be necessary*. The FEIS explains that the County Department of Parks and Recreation had expressed its concern that the Subject Property *was not large enough for a regional park*. Moreover, the FEIS explains that the Parks and Recreation Department had expressed its opinion that the *draft* MI Plan had not yet identified the best location for a regional park. The Parks Department suggested A&B *wait* on establishing the specific park uses for the Subject Property until the County Council completed its work on the MI Plan. Wai`ale FEIS at 132.²³ It is clear from the FEIS that A&B followed this suggestion. (*Importantly, subsequent to the A&B's completion of the FEIS, the delineation of the regional parks in the MI Plan changed considerably: The final MI Plan identified the 209 acres immediately south of the South Wai`ale Land for the regional park, while it designated the Subject Property for a community park.*)

The fact that there would be more government scrutiny regarding the regional park was also anticipated in another section where the FEIS explained that a district boundary amendment to *Urban* was necessary so that then the County Council could consider a change in zoning from *Agriculture* to *PK-3 Regional Park District*:

Additionally, in order for these areas to be zoned and utilized for recreational park purposes, they must be situated within the Urban Growth Boundary (UGB) so that appropriate zoning can be eventually obtained through the County's zoning process (per [MCC §] 19.615.040 which states that regional parks must be situated either in the State Land Use "Urban" or "Rural" Districts)."

Wai`ale FEIS at 26.²⁴

Notably, A&B expressly identifies the fact that its project will need to meet the directives in the Maui Island Plan. For example, the FEIS states "the objectives of Wai`ale are to: Create a new residential community *consistent with the parameters and design concepts of the Draft Maui Island Plan*." FEIS at 206 (emphasis added).²⁵

²³ The Wai`ale FEIS provided as follows:

During the Draft EIS public review period, the County Department of Parks and Recreation wrote that it: "...wishes to withhold comment until County Council has completed its review of the Maui Island General Plan 2030. The Department is not in agreement with the Regional Park area designated in the Central Maui Regional Park map in the Directed Growth Plan section of the Island Plan, as it does not provide adequate area needed to accommodate a Regional Park." Wai`ale includes lands reserved for active regional and neighborhood parks, greenways and open space. The provision of lands for park purposes will be undertaken in consultation with the County's Department of Parks and Recreation (DPR) to ensure that park and playground assessment requirements are appropriately addressed.

Wai`ale FEIS at 132.

²⁴ The reference to MCC § 19.615.040 is erroneous because that section requires a proposed regional park district to contain a minimum lot area of 100 acres. MCC § 19.615.040C)(1). See Exhibit 8. However, the Subject Property could be permitted as a *PK-2 Community Park District*, which has a minimum lot requirement of only 25 acres. MCC § 19.615.040(c)(1).

²⁵ See also Wai`ale FEIS at 7, 13-14.

Other parts of the FEIS establish that the intensive uses DLNR is now proposing through the Sports Complex were not at all being proposed by A&B, as the examples below illustrate:

- The FEIS provides that the park will be for “open space,” and for a “buffer.” Wai`ale FEIS at 26, 123, 217.²⁶ As the MCC definitions provided above explain, “open space” uses are to be “*essentially free of structures or impervious surfaces*,” and “buffer” uses are “deliberately left in a specific condition, typically to protect a natural resource, mitigate development impacts, or protect the character of a community.” (Emphasis added) See Exhibit 8 (providing definitions).
- The FEIS explains the Subject Property is intended to provide “a spatial separation,” suggesting more of an open space buffer, rather than intensive uses. FEIS at 29.²⁷
- The FEIS includes an analysis of noise impacts for the Subject Property. FEIS at 86-91. Notably, it evaluates the impact *surrounding* noises would have *on users of the park*, thus suggesting a quiet, passive park, environment.
- As a final example, a review of the FEIS, as well as the traffic impact analysis attached to it as Appendix J, shows that the FEIS did not make any assumptions for the increased traffic relating to the Subject Property now being proposed by DLNR. This is consistent with one of the caveats stated in the FEIS explaining that the State Department of Transportation specifically required a new traffic impact analysis report if there would be “*any* substantive changes or refinements to the Wai`ale master plan.” Wai`ale FEIS at 85.

Reading the Wai`ale FEIS in total, it is clear that the Subject Property was identified for park activities. However, the specific activities within the park were intended to be determined and evaluated at a later date in the planning and development entitlement process. Thus, none of the impacts from the uses now proposed by DLNR for the Sports Complex were evaluated in the FEIS.

ii. *The Environmental Assessment Prepared for the Sports Complex Does Not Fulfill DLNR’s Obligation to Prepare a Supplemental EIS*

In December 2012, the County adopted the MI Plan. Six months thereafter, in June 2013, the BLNR accepted DLNR’s finding of no significant impact (“FONSI”) from the *Central Maui Regional Park Final Environmental Assessment* (“Sports Complex FEA” or “FEA”).

While the FONSI was certainly wrong as a matter of law because of the significant impacts that are associated with the Sports Complex, as noted at the beginning of this Part II(E),

²⁶ The FEIS (at 26) provides in pertinent part: “The Wai`ale master plan has sought to incorporate *the open space buffer* between Maui Lani and Wai`ale as articulated in the *Draft Maui Island Plan*. Within the Wai`ale master plan, areas designated for *park space* and planned cultural preserves *Seek* to provide that *open space buffer*. . . .” (Emphasis added).

²⁷ The FEIS (at 29) provides in pertinent part as follows: “A regional park is proposed along the northern boundary of Wai`ale, providing a *spatial separation* between the neighborhoods of Wai`ale and Maui Lani. This park is intended to support regional and Wai`ale recreational activities and would be within walking distance or a bicycle ride from residential communities and schools.”

the FONSI determination is of no binding legal significance because HAR § 11-200-2 specifically requires an SEIS under the circumstances presented here. In addition, the FEA is replete with material omissions and misrepresentations, which are briefly discussed below. Had the appropriate SEIS been done, these issues would have likely been addressed and/or corrected. However, as things stand now, they are egregious inadequacies—even for the purposes of an environmental assessment. These inadequacies are as follows:

- The FEA fails entirely to make any attempt to address noise, light and traffic impacts. In fact, the FEA asserts that the traffic impacts that would be associated with the Sports Complex had already been evaluated in the Wai`ale EIS, and were determined to be insignificant. This is patently false.
- The FEA, prepared *after* the MI Plan has been adopted by the County, fails to mention the significant directives in the MI Plan and Directed Growth Plan. This by itself renders the entire FEA inadequate, considering:
 1. the MI Plan directly deals with the Subject Property;
 2. the MI Plan provides that the Subject Property shall be used for a *passive* recreation *community* park, not an *active* recreation *regional* park;
 3. the *final* designated location in the MI Plan for the regional park had changed subsequent to the publication of the Wai`ale EIS, which was based only on the *draft* MI Plan; and,
 4. the final MI Plan, approved by the County Council, has the force and effect of law with respect to the permitted uses on lands that have been specifically identified therein.²⁸
- The FEA fails to explain or evaluate the *actual* use of the park, which is the use as recently enunciated in Governor Abercrombie's Sports Development Initiative. This Initiative clearly provides that the *principal* use of the Subject Property will be for professional and amateur sport teams flying in from potentially all parts of the world using the park in a uniquely intensive manner that must be specifically evaluated.²⁹ Any

²⁸ The FEA's only reference to the Countywide Policy Plan is, itself, entirely misleading. To show consistency, the FEA relies on an out of date, 2011, study prepared for an unknown purpose:

The County of Maui adopted a *Countywide Policy Plan* in March 2010. The Plan includes broad goals and more specific goals and objectives. Generally, the project supports the goals set forth in the Plan (PBR Hawai'i & Associates 2011).

FEA § 7.6, at 35.

²⁹ Specifically, the FEA only provided the following minimal description of the intended uses:

The park will act as a partial northern boundary to the larger Wai`ale master planned community, as well as a southern boundary to the existing Maui Lani master planned community. Accessible by bicycle and walkable from residential areas, the park will act as a recreational area for the general public. *The park will provide a venue for sports tournaments.*

FEA § 2.2, at 4-5 (emphasis added).

*community sports opportunities under the Initiative are intentionally secondary, or accessory in nature.*³⁰

- The FEA’s “alternative action” fails to even discuss the most obvious alternative to the Sports Complex—that of a *community park for passive recreation*, as intended by the MI Plan. FEA § 3.3, at 6-7. Instead, the FEA suggests (in direct contradiction to the enunciated purpose of the Sports Development Initiative) that the Sports Complex, aka the “preferred alternative,” will benefit the adjacent homeowners:

The park will be used by nearby residents in the Wai’ale and Maui Lani communities. With Pomaika’i Elementary School nearby, as well as a potential 18-acre middle school including 6 acres of school fields which will be adjacent to the park, the park’s sports fields will be available for use by students and the general public.

FEA § 3.3.2, at 7.

Compounding the above inadequacies is the fact that DLNR actually published noise, lighting and traffic studies *after* it obtained confirmation of its FONSI from BLNR and *after* it was granted the SUP from the Maui Planning Commission. Neither BLNR, nor the Maui Planning Commission, were given the opportunity to review these studies. These three recently provided studies are briefly discussed below in comparison to the relevant section in the Sports Complex FEA.

Noise. Section 4.8 of the FEA provides a one paragraph “assessment” of noise. The paragraph simply identifies the *baseline* ambient noise levels (based on a report that is not attached to the FEA and that was generated in 2011 for apparently a different purpose). Yet, *after* DLNR was successful in obtaining a FONSI, and was granted the SUP, it then published a noise impact assessment, dated April 22, 2014, for the proposed Sports Complex. The assessment clearly establishes that there will be significant noise impacts from the Sports Complex whenever there is more than one game being played on the field—a likely scenario considering the number of sports fields. With respect to Maui Lani homeowners attempting to enjoy their properties from outside their homes, the study explained: “These activities will be audible in the backyards of the adjacent residences *and may be considered intrusive*. . . .³¹ Even when the homeowners are inside, the study acknowledged impacts whenever there would be cheering or shouting—a very likely event: “Sporting event noises will likely only be audible inside the residences when there is a significant amount of cheering and shouting on the athletic fields.” See footnote 31. Finally, while the assessment evaluates the impact on the Maui Lani neighborhood, it does not attempt to evaluate the impact on homeowners in residential units

³⁰ While it is likely that the neighboring community will be granted some use of the Sports Complex, nowhere in the FEA does DLNR alert the community or the decision makers that the Sports Complex is really intended, under the State’s Sports Development Initiative, to attract professional and amateur sports *visitors* for the purpose of creating a new income stream for the Hawai’i economy. Nor, are community members or decision makers alerted that the Hawai’i Tourism Authority will have the primary role of deciding who may use the recreational amenities, and when, and for how much time, and for what intensity.

³¹ D.L. Adams Assoc., Central Maui Regional Park Noise Assessment (DLAA #14-22) (4/22/2014) at 2.

planned for Wai`ale, even though these homeowners will be downwind from the prevailing trade winds, and thus, according to the study, would be more greatly impacted. *See* footnote 31.

Traffic. The number of errors and omissions (or outright false statements) made in the FEA with respect to traffic are troubling, as shown below:

- The FEA acknowledges that the Sports Complex “may increase the amount of vehicular and foot traffic to the park, especially during weekends and scheduled game events.” FEA § 5.1, at 21. However, the FEA then suggests the impact on the Maui Lani homeowners would be “temporary.” *Id.* The FEA fails to explain that “temporary” is a relative term, considering the Wai`ale EIS had already suggested that the route through Maui Lani (Maui Lani Parkway and Kamehameha Avenue, *see* Part I(A), above) would likely be used *until 2022*.
- The FEA also states that the Wai`ale EIS had already determined there would be no impact from the Sports Complex.³² As discussed earlier, this is patently false. The FEA makes this representation even though it is abundantly clear that the Wai`ale EIS did not attempt to evaluate the impact from a use that had not yet been specifically determined by A&B.
- Similar to the situation with noise impacts, DLNR did not publish a traffic impact analysis report until May 20, 2014 (“2014 TIAR”),³³ *after* it had obtained all the approvals it believed it needed. The 2014 TIAR reveals the Maui Lani Parkway and Kamehameha Avenue intersection are *already* operating at unacceptable Levels of Service, namely “*Level of Service F and overcapacity conditions*,” even before including the significant increase in traffic from the proposed Sports Complex. 2014 TIAR § II(C), at 6.
- The 2014 TIAR goes on to explain that in the *next year* (2015), the Sports Complex would add to the overcapacity by “generat[ing] approximately 213 PM peak hour trips and 369 Saturday peak hour trips.” 2014 TIAR § IV(A), at 16.
- Additionally, the 2014 TIAR confirms that “temporary” access through Maui Lani means probably at least until 2022, but that it could be *even longer*:

At the time of this writing *it is uncertain when the Waiale Development would be completed*, therefore, Year 2022 was selected as the build out

³² The FEA *mis-states* in pertinent part:

Proficiency on the traffic network to mitigate the potential impacts of the Central Maui Regional Park *has already been evaluated as part of the Wai`ale Environmental Impact Statement (2011) in which the proposed improvements to the park were included*. An evaluation of traffic impacts during peak travel periods (AM and PM) did not show that the park would have a significant impact as most of the organized activity at the park would generally occur during off peak periods during the weekday and on weekends.

Sports Complex FEA § 5.1, at 21 (emphasis added).

³³ R.M. Towill Corp., *Traffic Impact Analysis Report Central Maui Regional Sports Complex* (May 20, 2014) (“2014 TIAR”).

year of that development to be consistent with the March 2011 Waiale Development TIAR. Furthermore, the Waiale Development is currently being revised and an update TIAR is planned as a result.

2014 TIAR, § IV(B), at 22 (emphasis added)

Lights. With respect to the impact of the evening lights, the FEA fails to even address potential impacts, even though sports fields lighting is an inherent nuisance that is always a significant issue for nearby communities. However, again, *after* obtaining the approvals it believed it needed, DLNR apparently attempted to evaluate lighting impacts. DLNR has published lighting drawings, dated April 17, 2014, prepared by Musco Lighting. However, the drawings do not include any decipherable analysis of the impacts for a layperson.

In summary, the FEA, which is inadequate even as an environmental assessment, certainly does not qualify as a SEIS. An SEIS is mandated by the law in light of DLNR proposing a new and substantially different use on land that was already the subject of an EIS, and for which the EIS did not evaluate the impacts now being proposed. In addition to the other legal obstacles described herein, it is clear that the Sports Complex may not lawfully proceed until DLNR prepares the SEIS, and the SEIS has been determined legally adequate.

F. The LUC Identified the Southern Portion of the South Wai`ale Land for Active Recreational Uses

Seven months after the Wai`ale FEIS, on June 21, 2012, the State Land Use Commission (“LUC”), pursuant to HRS Chapter 205, re-designated the 545-acre Wai`ale Land from *Agriculture to Urban* by granting a state district boundary amendment (“DBA”). This DBA was granted through Findings of Fact, Conclusions of Law, Decision and Order, filed by the LUC on June 21, 2012 (“LUC D&O”).

The LUC granted the DBA for the Wai`ale Land subject to an express promise from A&B (which is recorded on title and which runs with the land, and which obligates A&B’s successors and assigns) that the Wai`ale Land would be developed “in substantial compliance with the representations” made by A&B during the DBA process. LUC D&O at ¶ 21.³⁴ A&B’s representations include those made through its application, exhibits, evidence presented at the DBA hearing, and including the representations A&B made in the Wai`ale FEIS.

Some of the key representations of A&B are set forth in the D&O as Findings of Fact (“FOF”). FOF ¶ 122 expressly identifies that the “southern portion of the Petition Area” (*i.e.*, a

³⁴ See § 21 of LUC FOF/COL & Order. “Substantial” means actual compliance to necessary elements of the LUC FOF/COL & Order. See, e.g., *Sundquist Homes, Inc. v. County of Snohomish*, 276 F. Supp. 2d 1123, 1127 (W.D. Wash. 2003) *aff’d sub nom. Sundquist Homes Inc. v. Snohomish County*, 166 F. App’x 903 (9th Cir. 2006):

Substantial compliance has been defined as actual compliance in respect to the *substance essential to every reasonable objective of the statute*. It means a court should determine whether the statute has been followed *sufficiently so as to carry out the intent for which the statute was adopted*. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

(Emphasis added).

southern triangular section designated as park in the final MI Plan for the South Wai`ale Land) was to be used for “active recreational uses,” “as opposed to passive recreational uses”:

The Project will include [1] a regional park that borders Kuihelani Highway and Road C [*i.e.*, the Subject Property], [2] a neighborhood park that borders Kuihelani Highway [this is a narrow strip fronting most of the highway], and [3] a cultural preserve in the northeastern portion of the Petition Area. [4] *The 300 feet closest to Kuihelani Highway on the southern portion of the Petition Area [*i.e.*, the southern triangular part of the South Wai`ale Land] will be developed with active recreational land uses (e.g., ball fields or basketball courts) as opposed to passive recreational land uses (e.g., art garden).*

LUC D&O, FOF ¶ 122 (emphasis and bracketed material added).

This southern portion of the Petition Area, which is identified in FOF ¶ 122, was already identified as “park” by A&B in the Wai`ale EIS, and is shown with annotations in **Exhibit 7**. Identifying this southern, triangular, park-designated, section of the South Wai`ale Land for *active* recreational uses is consistent with the fact that A&B, the County and other government agencies had been discussing for decades the idea of a regional park *south* of Waiko Road.³⁵ This long term goal was consummated when the County purchased 209 acres from A&B in September 2013 for the express purpose of the County regional park. The approximate boundaries of the 209 acre parcel purchased by the County are annotated on **Exhibit 7**. This is consistent with the MI Plan, which shows the regional park south of Waiko Road. *See Exhibits 6 and 9.*

Importantly, FOF ¶ 122 expressly distinguishes between “passive recreational uses” and “active recreational uses” in its discussion of the four parks, and identifies for “active recreation” only the southern portion of the South Wai`ale Land. Reading FOF ¶ 122 with the above context confirms the Subject Property was to be limited to passive recreational uses.

This understanding is entirely consistent with the other facts that have been set forth above: (1) the fact that the County Parks and Recreation Department had expressed during the Wai`ale EIS process that it was concerned that the Subject Property was inappropriate for a regional park; (2) the fact that, thereafter, the final MI Plan designated the 209 acres purchased by the County for the regional park and designated the Subject Property for a community park; and (3) the fact that A&B had already identified in the Wai`ale EIS that there was a need for a *true* open space buffer between Maui Lani and Wai`ale, which identified point was further confirmed in the MI Plan.

Therefore, if DLNR were to proceed with its current Sports Complex proposal for the Subject Property, it would violate HRS Chapter 205, as well as the LUC D&O. The LUC D&O, like all LUC D&Os, was recorded as required by law, and the obligations therein run with the

³⁵ *See, e.g., <http://mauinow.com/2013/10/15/first-pitch-tossed-at-future-central-maui-regional-park/>: [Mayor] Arakawa says acquisition of the new park lands has been in the works for more than 20 years, when former A&B executive Mercer “Chubby” Vicens proposed the idea of selling A&B land in Waikapū to the county for a park complex.”*

land binding all future owners of the property, including the State of Hawai'i.³⁶ DLNR is bound by the LUC's decision. The Subject Property may not be used for active recreational uses.

G. The Exemptions for the Consolidation-Resubdivision Process Set Forth in the MCC Violate the State Enabling Statute, and the Public Works Director Otherwise Exceeded His Authority in Granting a Consolidation-Resubdivision of the North Wai'ale Land

On October 24, 2013, the County granted A&B final approval for A&B's consolidation-resubdivision request relating to the boundary adjustment of a number of parcels consisting of the North Wai'ale Land. This was done through Subdivision File Number: 3.2226, entitled the "Maui Lani Subdivision," which the County Director of Public Works approved on 10/24/2013, including the final subdivision map. The approved subdivision includes "Lot 12-A-3," which delineates the boundaries of the Subject Property.

Ordinarily, a large master planned project that still requires a project district, like Wai'ale, would not be able to proceed as to any of its intended development proposals until the project district approval was received, as well as all related approvals. Yet, here, A&B was permitted to carry out part of its master plan process—the creation of a park, as well as the creation of a retention basin, without there being any subdivision conditions being placed on the land. Apparently, it was the County's determination that the above could be permitted because of the exemptions set forth in MCC Chapter 18 relating to consolidations-resubdivisions.

However, as a matter of law, the consolidation-resubdivision exemptions of Chapter 18 violate the State enabling statute, HRS § 46-4, at least as to the statute's mandates with respect to the implementation of the directives in the County's general plan, and subsidiary planning documents (*i.e.*, the MI Plan, the Directed Growth Plan and the WKC Plan). As was already identified in Part II(B), above, "Zoning in all counties *shall* be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county." HRS § 46-4. Moreover, a Public Works Director may not ignore County planning documents. Instead, *all* administrative actions of government agencies are expressly required to "conform to the general plan." MCC § 2.80B.030(B). *Cf. Leone v. Cnty. of Maui* (holding directives in community plans are "binding on all county officials").

The County's subdivision ordinance specifically reflects the County's obligation to assure consistency with the general plan and delegates to the Public Works Director the obligation to assure consistency during the subdivision process:

The director shall determine whether a proposed subdivision is consistent with the county general plan, community plans, State land use classification, and zoning after consultation with the planning director. If the subdivision does not involve a special management area permit, planned development, or project district, the director shall impose any conditions necessary to ensure consistency of land uses and shall require that

³⁶ See "Declaration of Conditions," and "Notice of Imposition of Conditions by the Land Use Commission," each filed in the State of Hawai'i Bureau of Conveyances on June 27, 2012, with respective Doc. Nos.: A-45610753 and A-4561052.

an applicant execute and record with the bureau of conveyances of the State of Hawaii or the land court of the State, as the case may be, a unilateral agreement incorporating such conditions, which shall be limited to a declaration of permissible uses.

MCC § 18.04.030(D).

Notwithstanding the above section, which appears to entail any and all subdivisions, MCC § 18.04.020(C) exempts consolidation-resubdivisions from the consistency requirement. However, there is no County discretion permitted with respect to general plans, and the related county planning documents, under the clear and unambiguous language in the State enabling statute. Therefore, MCC § 18.04.020(C) violates the State enabling statute, at least as to its exemption of consolidation-resubdivisions from the obligation to assure consistency with the general plan and subsidiary parts. Here, the failure of the Public Works Director to require consistency permitted A&B to subdivide the Subject Property so that it could be used for a regional park and an urban retention basin, even though, as discussed earlier, both of those uses are inconsistent with the WKC Plan's designation of *Agriculture*, and the MI Plan's designation of community park. Therefore the A&B consolidation-resubdivision for the North Wai`ale Land is illegal, null and void.

Further, irrespective of the above, the Public Works Director exceeded his authority and/or abused his discretion. While the consolidation-resubdivision ordinance permits an applicant to avoid a number of significant public health and safety benefits requirements that would otherwise be conditions of final subdivision approval for a standard subdivision, MCC § 18.04.020(C), these exemptions are not absolute. The Public Works Director has the discretion, and obligation, to impose requirements where a subdivision will have a significant or substantial impact upon public facilities or infrastructure. *See* MCC § 18.04.020(E). Here, the Director failed to require the Subject Property to be designated as a community park, as specifically designated in the MI Plan, and the Directed Growth Plan therein. The Director also in the process violated the State enabling statute's requirement that parks and playgrounds created from subdivisions be for the benefit of the residents in or around the park:

[E]ach county shall adopt ordinances to require a subdivider, as a condition to approval of a subdivision to provide land in perpetuity or to dedicate land for park and playground purposes, *for the use of purchasers or occupants of lots or units in subdivisions.*

HRS § 46-6(a) (emphasis added).³⁷

Thus, the consolidation-resubdivision for the North Wai`ale Land is illegal, null and void, at least with respect to the ability of DLNR to use the Subject Property for the Sports Complex and the retention basin.

³⁷ Additionally, in light of the retention basin, which DLNR has confirmed runs in favor of A&B's Wai`ale project, it is difficult to imagine how A&B can convey a deed to DLNR reserving rights in the retention basin for a clearly urban use without violating MCC § 19.30A.040, which provides in pertinent part: "No deed, lease, agreement of sale, mortgage or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district."

H. The Sports Complex Must Go Elsewhere Because Subject Property Cannot Meet the *PK-3 Regional Park District* Minimum Lot Requirements

DLNR cannot cure the problems discussed above in this letter by simply now going through the rezoning process. That is because the *PK-3 Regional Park District* requires a minimum lot size of 100 acres, and the Subject Property is only 65 acres in size. As discussed above in earlier sections, both during the Wai`ale EIS process, as well as the MI Plan process, agencies identified the fact that the Subject Property was too small for a regional park. Therefore, if DLNR still desires to implement the Sports Development Initiative in Central Maui, it must find an appropriate property on which to do it, where the property can be zoned *PK-3*. The appropriate property is the 209 acre parcel purchased by the County for a Central Maui Regional Park.

III. CONCLUSION

We sincerely hope that DLNR will appreciate the legal significance of the foregoing and confirm its intention to cease and desist from further development of the Sports Complex, as demanded herein.

Very Truly Yours,



Tom Pierce

cc: Tina Hoenig (President of Maui Lani Neighbors, Inc.)
BY EMAIL, U.S. MAIL AND CERTIFIED MAIL TO:
William Spence, Planning Director, County of Maui
David Goode, Public Works Director, County of Maui
Current Chair, State of Hawai`i Land Use Commission
Grant Chun, V.P., Maui, A&B Properties, Inc.

Figure 4 Site Map



Central Maui Regional Park ± 65.0 AC.
Phase 1

High School-Major League Field (400' to C.F.)
Softball Field (300' to C.F.)

Phase 2

Soccer Fields (60 yds x 100 yds)
Bronco League (250' to C.F. 11-12 yrs)

Central Maui Regional Park Site Plan

PREPARED BY PBR HAWAII
 NORTH LEVEL SCALE: 1"=100'
 MARCH 8, 2013
 PBR HAWAII
 R. M. TOWELL CORPORATION

EXHIBIT 1

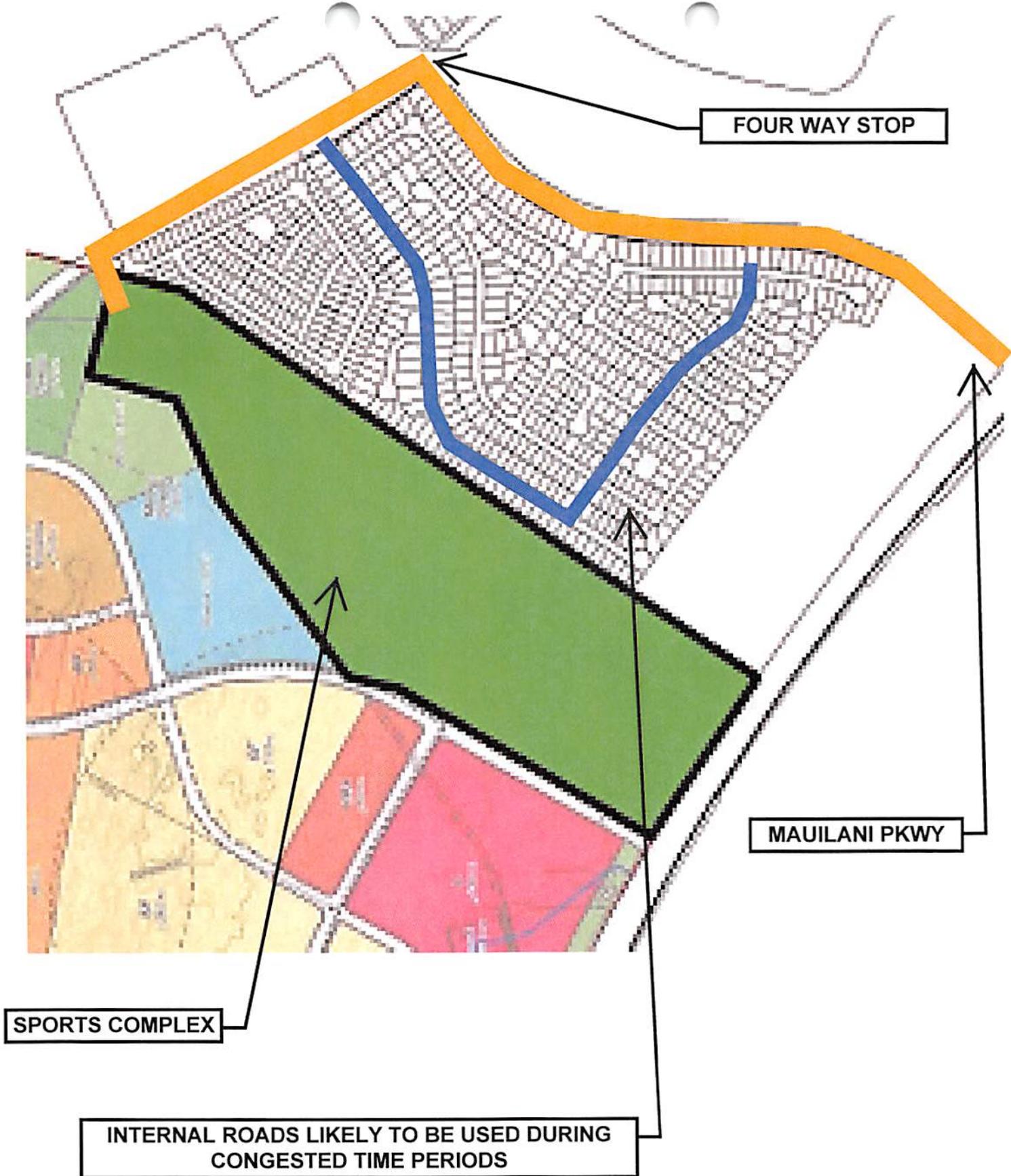
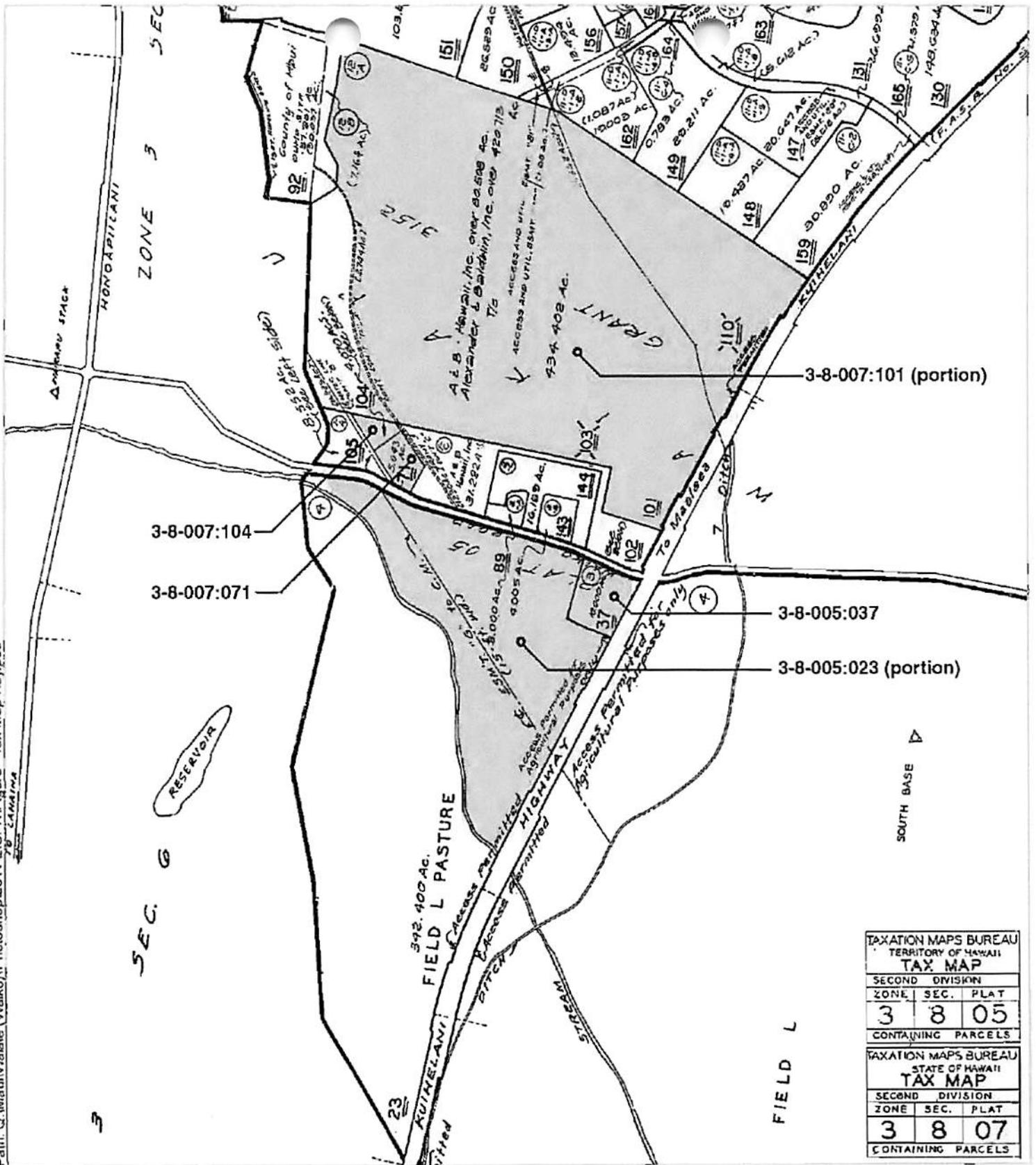


EXHIBIT 2



LEGEND

Project Area

Figure 2-2
Tax Map Key

WAI'ALE

A&B PROPERTIES, INC.

KAHULUI, MAUI



Source: Tax Map Key 3-8-05xxx and 3-8-07xxx
Disclaimer: This graphic has been prepared for general planning purposes only.

EXHIBIT 3

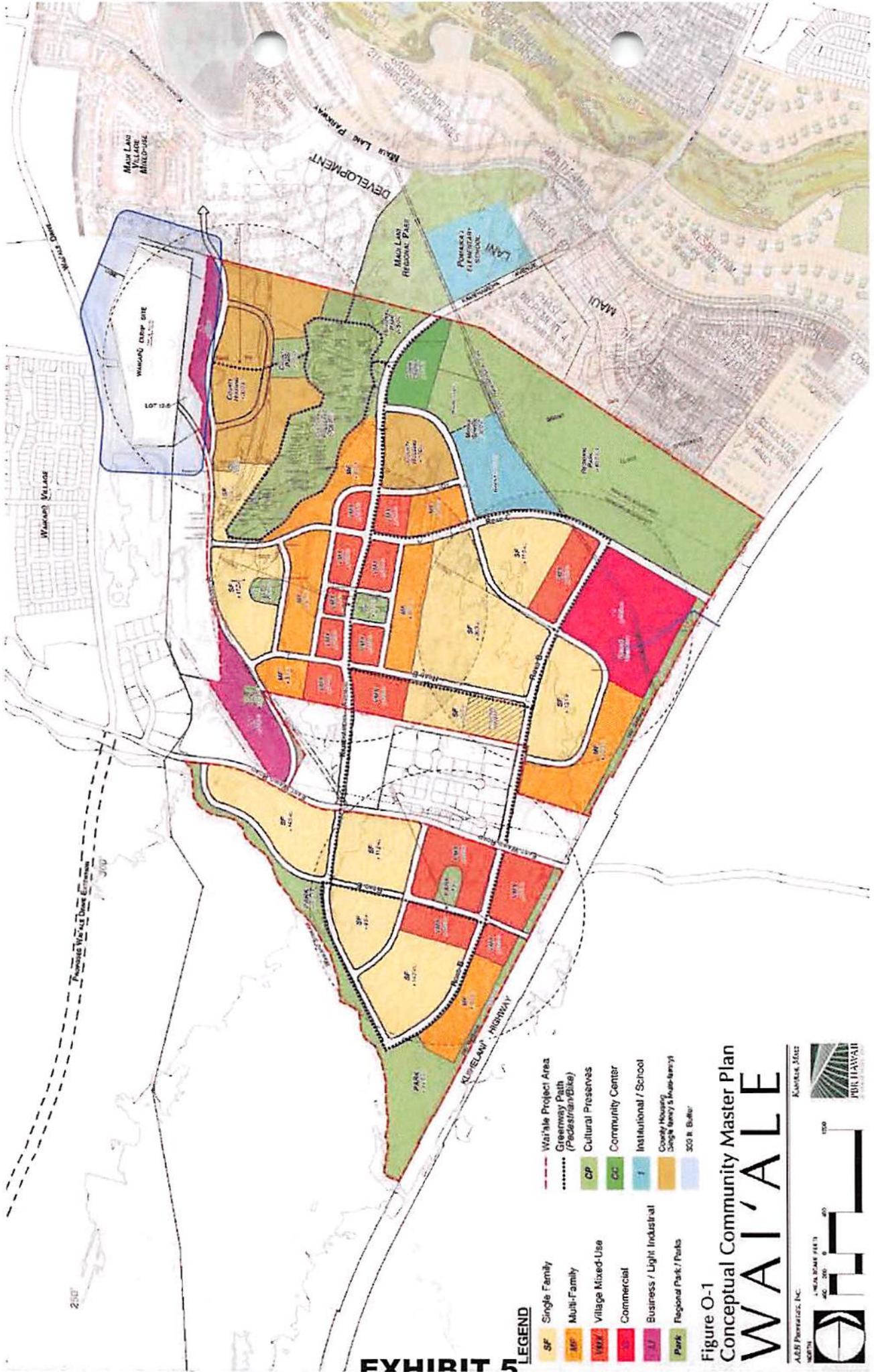


EXHIBIT 2

LEGEND

- SF Single Family
- MF Multi-Family
- VMX Village Mixed-Use
- Commercial
- LI Business / Light Industrial
- Park Regional Park / Parks
- CP Cultural Preserves
- CC Community Center
- I Institutional / School
- CH County Housing
(Single Family & Multi-Family)
- 300 ft Buffer
- Wai'ale Project Area
- Greenway Path
(Pedestrian/Bike)

Figure O-1
Conceptual Community Master Plan

WAI'ALE

ACES Planning, Inc. Kaniaka, Maui
 NORTH 0 200 400 600 800 1000



Directed Growth Plan

Wailuku – Kahului – Planned Protected Areas

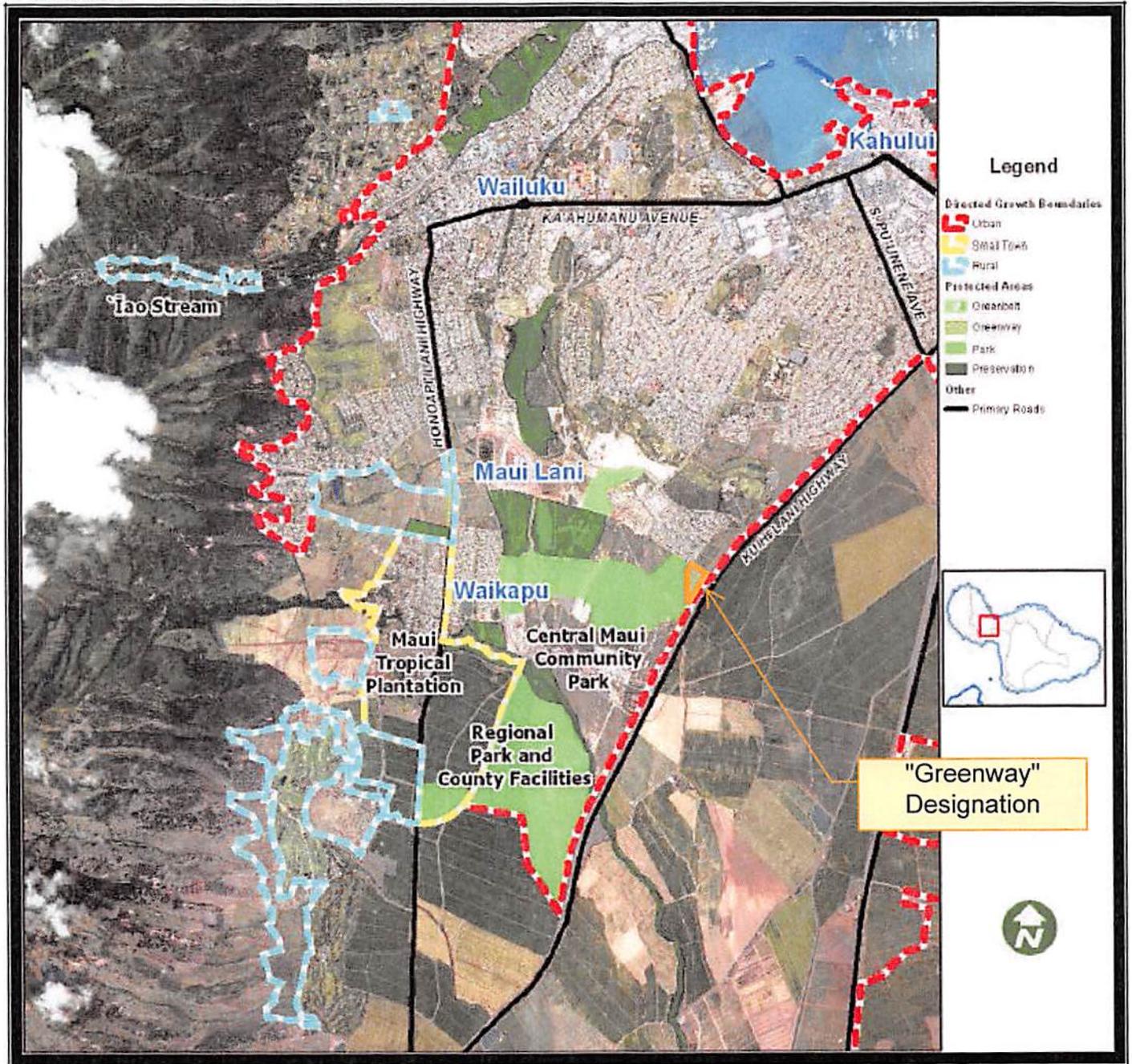
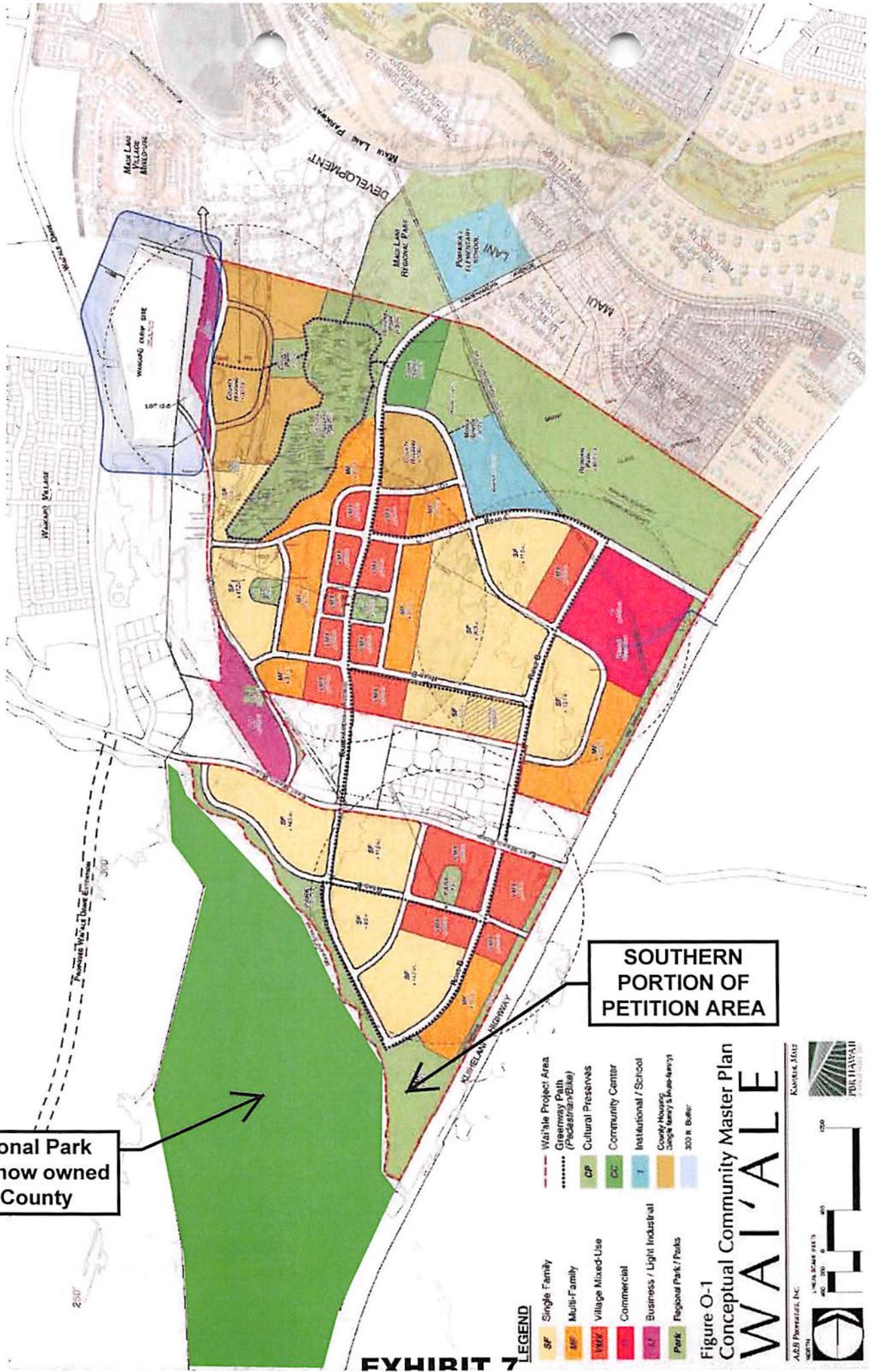


Figure 8-2: Central Maui Regional Park, Community Park, Preservation, and County Facility Area

Regional Park Land, now owned by County



SOUTHERN PORTION OF PETITION AREA

- LEGEND**
- SF Single Family
 - MF Multi-Family
 - VMU Village Mixed-Use
 - C Commercial
 - LI Business / Light Industrial
 - P Regional Park / Parks
 - CP Cultural Preserves
 - CC Community Center
 - I Institutional / School
 - CH County Housing (Single Family & Multi-Family)
 - 300 R Buffer
 - Wai'ale'ale Project Area
 - Greenway Path (Pedestrian/Bike)

Figure O-1
Conceptual Community Master Plan
WAI'ALE

ACB Planners, Inc. Kona, HI 97701
 1" = 100' SCALE FEET
 0 100 200 300
 NORTH
 KONTAK MAT
 FOR HAWAII

MAUI COUNTY CODE

Selected Sections

The County planning documents and environmental documents discussed in the attached letter are grounded in implementing, or relying on, the Maui County Code ("MCC"). Key definitions and rules from the MCC are provided below.

General Plan

MCC Chapter 2.80B, entitled "General Plan and Community Plans," relates to all of the County's planning documents. These include the Countywide Policy Plan, the Maui Island Plan (which includes the Directed Growth Plan), and the nine County community plans, including the relevant one here, the Wailuku-Kahului Community Plan. Below are three relevant definitions from MCC Chapter 2.80B.

"Buffer" generally refers to the designated area around a land use or geographic feature, deliberately left in a specific condition, typically to protect a natural resource, *mitigate development impacts, or protect the character of a community.*

"Greenbelts" means *an extensive area of largely undeveloped or sparsely occupied land* established along natural corridors to protect environmental resources *and to separate distinct communities.* Greenbelts may include accessory structures and ancillary uses consistent with the purpose and intent of the greenbelt area.

"Greenway" means typically a long, narrow piece of land, often times used for recreation, pedestrian, and bicycle traffic. Greenways can include community gardens and can be used to link community amenities (e.g., parks, shoreline). Greenways may include accessory structures and ancillary uses consistent with the purpose and intent of the greenway area.

MCC 2.80B.020 (emphasis added).

Zoning Definitions

Another relevant set of definitions are those set forth near the beginning of MCC Chapter 19 (Zoning). The definitions found there are used to interpret all of the County's zoning laws. Relevant definitions are set forth below:

"Open space" means a zoning lot or portion thereof *essentially free of structures or impervious surfaces* that serve the purpose of *visual relief and buffering* from building and structural mass.

"Park" means a tract of land designated and intended to be used for active *or passive* recreation.

"Active recreation" means leisure time activities, usually of a more formal nature and performed with others, *often requiring equipment and facilities*, and taking place at prescribed places, sites, or fields.

"Passive recreation" means leisure time activities other than active recreation, including walking, hiking and picnicking ***on open land recreation areas***.

"Open land recreation" means public or private recreational use or enjoyment, including, but not limited to, parks, picnic grounds, beaches, beach accesses, greenways and areas for hiking, fishing, hunting, camping, equestrian activities, and other scenic interests, on a parcel or area of land or water which may be improved ***but which contains no buildings*** and which is set aside, designated, or reserved for such purposes.

MCC § 19.04.040 (emphasis added).

Agriculture District

19.30A.010 Purpose and intent.

A. Purpose. The purpose of the agricultural district is to:

1. Implement chapter 205, Hawai'i Revised Statutes, and the goals and policies of the Maui County general plan and community plans;
2. Promote agricultural development;
3. Preserve and protect agricultural resources; and
4. Support the agricultural character and components of the County's economy and lifestyle.

B. Intent. It is the intent of this chapter to:

1. Reduce the land use conflicts arising from encroachment of nonagricultural uses into agricultural areas;
2. Mitigate rising property values of farm lands to make agricultural use more economically feasible;
3. Discourage developing or subdividing lands within the agricultural district for residential uses, thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development;
4. Discourage establishment of nonagricultural subdivisions;
5. Ensure that the rezoning of land from the agricultural district shall be open for public debate and in the overall public interest, as evidenced by conformance with the Maui County general plan and community plan land use designations and policies, State land use law, this chapter and good planning practices; and
6. Notify the public that lands within the agricultural district are used for agricultural purposes. Owners, residents, and other users of such property or neighboring properties may be subjected to inconvenience, discomfort, and the possibility of injury to property and health arising from normal and accepted agricultural practices and operations. Such normal and accepted agricultural practices and operations include but are not limited to noise, odors, dust, smoke, the operation of machinery of any kind, including aircraft, and the storage and disposal of manure. Owners, occupants, and users of such property or neighboring

properties shall be prepared to accept such inconveniences, discomfort, and possibility of injury from normal agricultural operations.

...

19.30A.050 Permitted uses.

The following uses and structures shall be permitted in the agricultural district provided they also comply with all other applicable laws:

A. Principal Uses.

1. Agriculture;
2. Agricultural land conservation;
3. Agricultural parks, pursuant to chapter 171, Hawai'i Revised Statutes;
4. Animal and livestock raising, including animal feed lots and sales yards;
5. Private agricultural parks as defined herein;
6. Minor utility facilities as defined in section 19.04.040, Maui County Code;
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance; and
8. Solar energy facilities, as defined in section 19.04.040, Maui County Code, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory Uses. Uses that are incidental or subordinate to, or customarily used in conjunction with a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area;
2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:
 - a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings;
 - b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system; or
 - c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Moloka'i and Lana'i, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050.B.2.a and 19.30A.050.B.2.b;

3. **One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;**
4. **Farmer's markets, for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than ten acres; the director of public works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;**
5. **Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;**
6. **Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation;**
7. **Energy systems, small-scale;**
8. **Small-scale animal-keeping;**
9. **Animal hospitals and animal board facilities; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;**
10. **Riding academies; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;**
11. **Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection 19.30A.060.H shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;**
12. **Except on Moloka'i, bed and breakfast homes permitted under chapter 19.64 of this code that are:**

- a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 schedule F filings; or
 - b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:
 - i. The lot was created prior to November 1, 2008.
 - ii. The lot is comprised of five acres or less; and
 - iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or
 - c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.
13. Parks for public use, not including golf courses and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds; and
14. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.

(Ord. No. 3824, § 2, 2011; Ord. No. 3611, § 3, 2008; Ord. 2749 § 3 (part), 1998)

19.30A.060 Special uses.

The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070 of this title, has been obtained; except that if a use described in this section also requires a special permit pursuant to chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the state special permit shall fulfill the requirements of this section:

- A. Additional farm dwellings beyond those permitted by subsection 19.30A.050.B.1;
- B. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050.B.2;
- C. Agricultural products stands that do not meet the standards of subsection 19.30A.050.B.3;
- D. Farmer's markets that do not meet the standards of subsection 19.30A.050.B.4;
- E. Public and quasi-public institutions that are necessary for agricultural practices;
- F. Major utility facilities as defined in section 19.04.040 of this title;
- G. Telecommunications and broadcasting antenna;
- H. Open land recreation uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.11, including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, roller blading, playing fields, accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes. The following uses or structures

shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses and golf driving ranges;

- I. Cemeteries, crematories, and mausoleums;
- J. Churches and religious institutions;
- K. Mining and resource extraction;
- L. Landfills;
- M. Solar energy facilities that are greater than fifteen acres; and
- N. Short-term rental homes, subject to the provisions of chapter 19.65 of this title; provided that, the applicant need not obtain a County special use permit pursuant to section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special use permit, pursuant to section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.

(Ord. No. 3941, § 10, 2012; Ord. No. 3824, § 3, 2011; Ord. 2749 § 3 (part), 1998)

Park Districts

The MCC includes a Chapter 19.615 for "Park Districts." This Chapter includes distinctly separate rules for (1) neighborhood, (2) community, (3) regional, and (4) golf course park districts." The preamble to Chapter 19.615 explains:

The general purpose and intent of the park district ordinances are to preserve and manage lands for passive or active recreational activities by a system of parks suited to the varying recreational needs of the county, to provide parks which are of differing sizes and uses, **and to implement the general plan and community plans of the county and the land use laws of the state.**

MCC § 19.615.010 (emphasis added).

The "Community Park District" and "Regional Park District" are set forth below.

19.615.030 PK-2 community park district.

- A. Purpose and Intent. The purpose and intent of the PK-2 community park district is to provide park areas designed to meet the passive and active recreational needs of a community comprised of several neighborhoods and to provide recreational activities and facilities which are more intensive uses than are permitted in the PK-1 neighborhood park district. This district shall be located adjacent to or in areas designated for residential use, shall be operated by a public or private non-profit organization, and shall not be operated for a commercial purpose. This district shall primarily be located in the state urban and rural districts.
- B. Permitted Uses. The following uses shall be permitted within the PK-2 community park district:
 - 1. Principal Uses.

- a. Campgrounds; provided, that no camping unit shall be located less than one thousand feet away from a dwelling unit; and provided further, that the only camping units permitted on the campground shall be tents and recreational vehicles,
 - b. Community centers,
 - c. Fishing,
 - d. Open land recreation,
 - e. Picnicking,
 - f. Playgrounds,
 - g. Playing courts of community scale but not including tennis centers,
 - h. Playing fields for outdoor community uses,
 - i. Swimming pools, and
 - j. Trail activities; except those for motorbikes or automobiles.
2. Accessory Uses and Structures. Accessory uses and structures which include, but which are not limited to, the following:
- a. Comfort stations,
 - b. Gymnasiums,
 - c. Historic buildings, structures or sites or areas of scenic interest,
 - d. Luau's, carnivals, bazaars and fairs which are special events and temporary in nature. For purposes of this section, "temporary" means no more than ten days in a one year period,
 - e. Maintenance and storage structures,
 - f. Off-street parking and loading,
 - g. Park furniture,
 - h. Pavilions,
 - i. Play and outdoor exercise equipment, and
 - j. Skating, including skateboard facilities.
- C. Minimum Development Standards. Except as otherwise provided in this title, the following shall be the minimum development standards which shall apply for uses and facilities located on any zoning lot in this district:
- 1. Minimum lot area, twenty-five acres;
 - 2. Minimum lot width, four hundred fifty feet;
 - 3. Minimum yards, twenty feet, and
 - 4. Maximum height, thirty-five feet; provided, that minor utility facilities, vent pipes, fans, chimneys, and energy-savings devices shall be permitted additional height if the item is mounted on the roof of a facility; except, that in no event shall this additional height exceed five feet above the governing height limit.

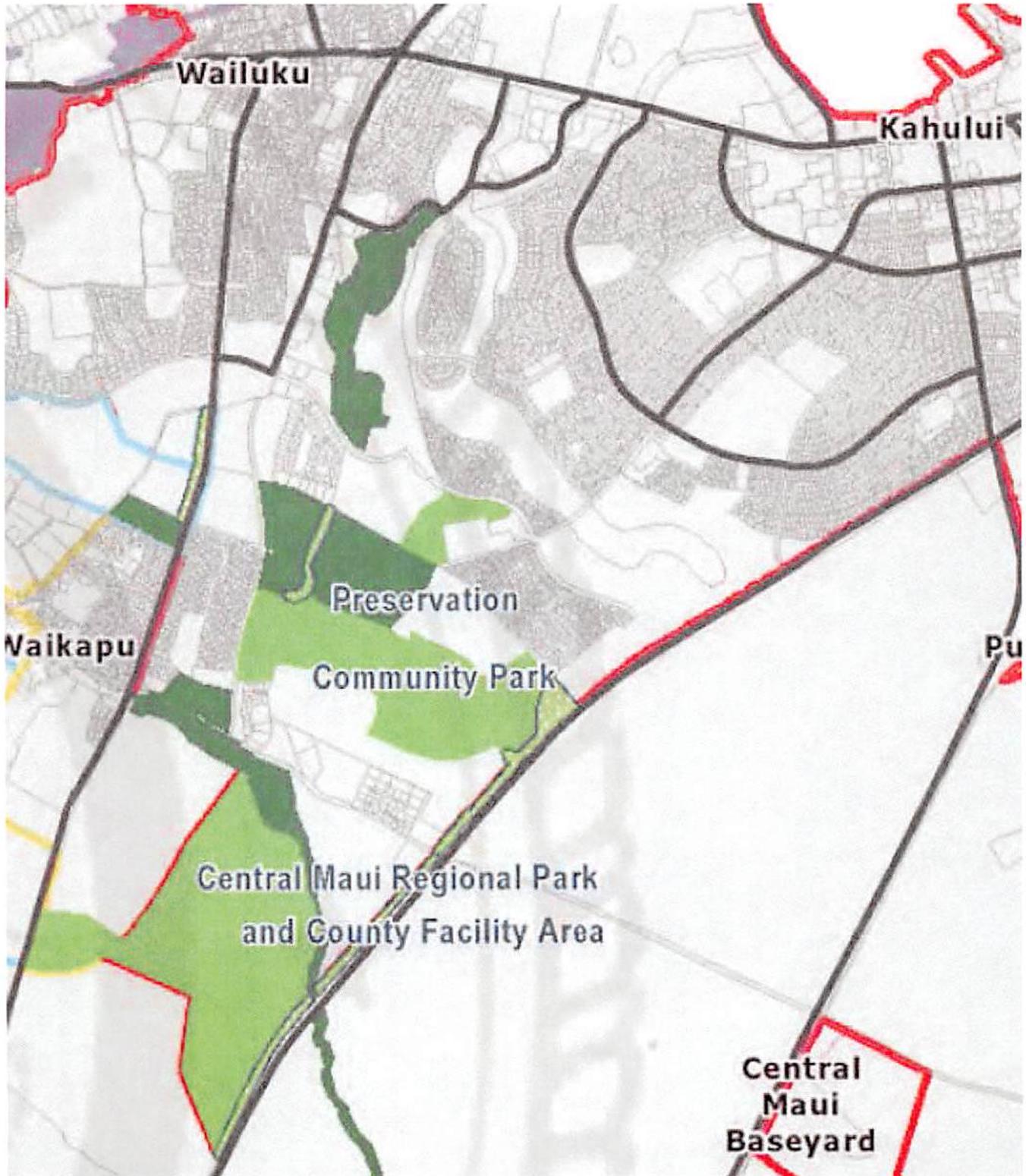
(Ord. 2031 § 5 (part), 1991)

19.615.040 PK-3 regional park district.

- A. Purpose and Intent. The purpose and intent of the PK-3 regional park district is to provide park areas designed for more intensive recreational and cultural facilities and uses than are permitted in the PK-1 neighborhood park district and the PK-2 regional park district. This district permits a limited number of uses for a commercial purpose which are designed to be used by the users of the park. This district shall only be located in the state urban and rural districts.
- B. Permitted Uses. The following uses shall be permitted within the PK-3 regional park district:
 - 1. Principal Uses.
 - a. Archery and gun ranges,
 - b. Athletic complexes for regional competitive activities including arenas, stadiums and tennis centers,
 - c. Automobile, go-carts and motorbike activities,
 - d. Botanical gardens,
 - e. Cultural and performing arts,
 - f. Campgrounds; provided, that no camping unit shall be located less than one thousand feet away from a dwelling unit,
 - g. Historic buildings, structures or sites or areas of scenic interest,
 - h. Gymnasiums,
 - i. Marinas,
 - j. Open land recreation and other passive recreational activities,
 - k. A private, for-profit park which is not owned or operated by a private or public nonprofit, eleemosynary, organization; provided, that only the uses identified as a principal, accessory, or special uses by the provisions of this chapter may be permitted in a private park,
 - l. Playgrounds and playfields,
 - m. Playing courts,
 - n. Riding stables,
 - o. Swimming pools,
 - p. Skating, including skateboard facilities,
 - q. Skeet and trap fields,
 - r. Trail activities, and
 - s. Zoos.
 - 2. Accessory Uses and Structures. Accessory uses and structures which include, but which are not limited to, the following:
 - a. One caretaker's dwelling unit,
 - b. Comfort stations,

- c. Limited commercial uses such as ticket sales, souvenir shop, snack bar or other eating facility which are designed and scaled to meet the needs of the members, guests or users of the park,
 - d. Luau's, carnivals, bazaars and fairs which are special events and temporary in nature. For purposes of this section, "temporary" means not more than ten days in a one-year period,
 - e. Maintenance and storage structures,
 - f. Off-street parking and loading,
 - g. Park furniture,
 - h. Pavilions, and
 - i. Play and outdoor exercise equipment.
- C. **Minimum Development Standards.** Except as otherwise provided in this title, the following shall be the minimum development standards which shall apply for uses and facilities located on any zoning lot in this district:
- 1. Minimum lot area, one hundred acres;
 - 2. Minimum yards, twenty feet; and
 - 3. Maximum height, seventy-five feet; provided, that minor utility facilities, vent pipes, fans, chimneys, and energy-savings devices shall be permitted additional height if the item is mounted on the roof of a facility; except, that in no event shall this additional height exceed five feet above the governing height limit.
- D. **Project Master Plan and Development Plan Required.** A project master plan and a development plan shall be required pursuant to article V of this title.

Maui Island Plan Protected Areas Diagram
(excerpt from Directed Growth Plan, Exhibit WC-1)



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 1, 2014

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENHANCED
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Tom Pierce, Esq.
P.O. Box 798
Makawao, Hawaii 96768

Email: tom@mauilandlaw.com

Dear Mr. Pierce:

Re: Cease and Desist Demand - Proposed Central Maui Sports Complex

We received your July 12, 2014 letter regarding the Proposed Central Maui Sports Complex. As you know, the State of Hawaii is committed to construction of the sports complex to provide a much needed recreational opportunity for Maui. As noted by Mayor Arakawa, there is a shortage of sports fields on Maui with dozens of leagues competing for fields. This park will help alleviate some of that shortage.

This park has been in the planning since at least 2011, when the Board of Land and Natural Resources approved, in concept, the acquisition of private lands in Waikapu for the purpose of creating the park. We have obtained all necessary approvals and we believe we have complied with all legal requirements for the park as planned. We will not be relocating the sports complex.

We would like to reiterate the commitment made by Lieutenant Governor Shan Tsutsui at the groundbreaking ceremony yesterday that, although we are moving forward, we are committed to trying to address some of your clients' concerns. We want to be a good neighbor to your clients and to continue to work with them to refine the final park design.

We welcome your clients to continue to work with us as we move forward in this project.

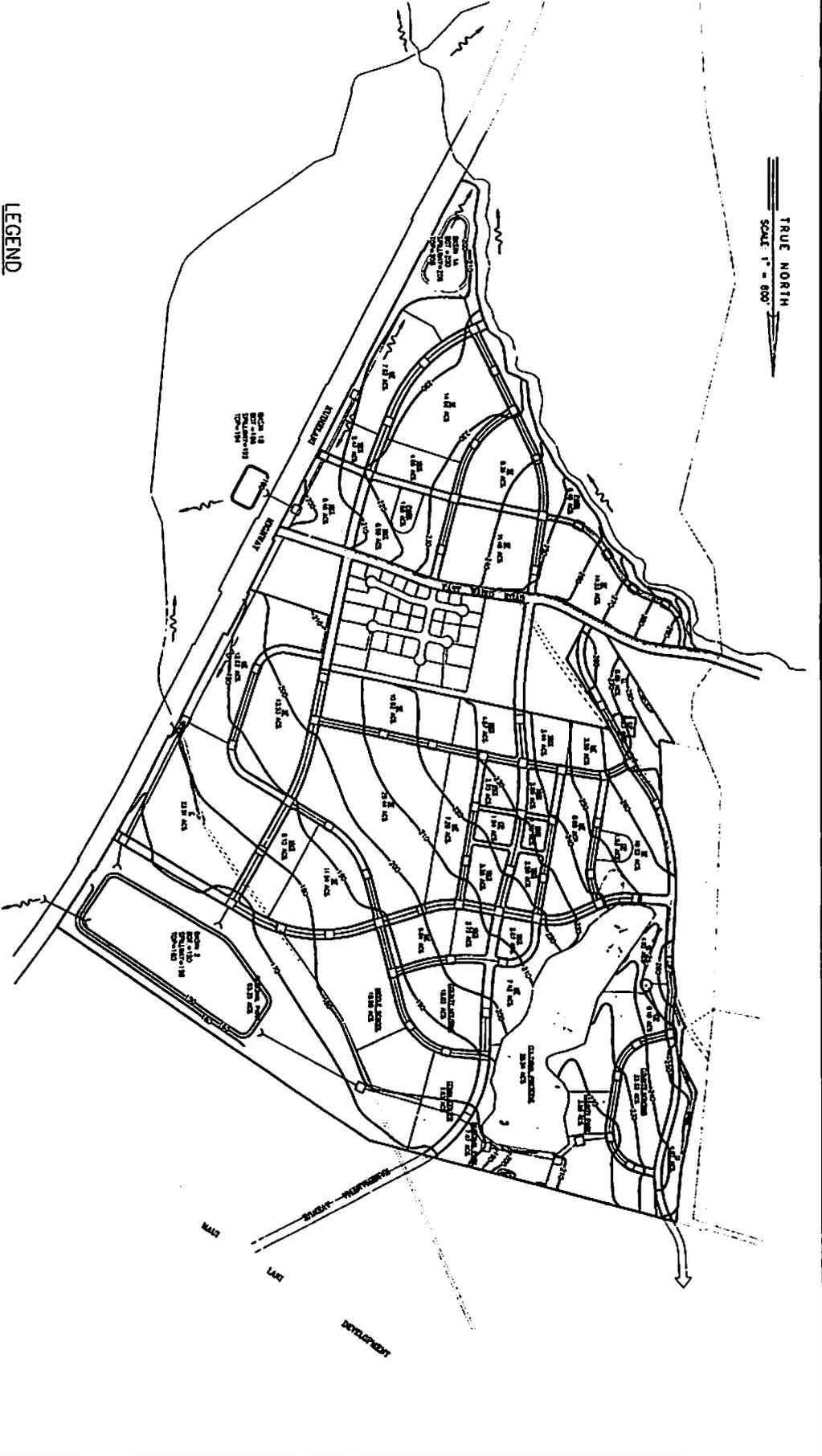
Sincerely,

William J. Aila, Jr.

c: William Spence, Planning Director, County of Maui
David Goode, Public Works Director, County of Maui
Grant Chun, V.P., Maui, A&B Properties, Inc.

EXHIBIT "B"

TRUE NORTH
SCALE: 1" = 500'



LEGEND
 STORM DRAIN SYSTEM



PRELIMINARY ENGINEERING AND DRAINAGE REPORT
WAALE COMMUNITY PROJECT
 WAIKAPU, MAUI

ATA AUSTIN TSUTSUMI & ASSOCIATES, INC.
 ENGINEERS & ARCHITECTS
 PRELIMINARY GRADING
 AND DRAINAGE PLAN

EXHIBIT
3

2/28/01 10:29:13 AM
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EXHIBIT "C"

EXHIBIT "E"

03/20/2011 10:28:45 AM

Exhibit "A"

A10-789 A & B PROPERTIES, INC.
LOCATION MAP
Tax Map Keys: 3-8-05: Portion Of 23 And 37 And
3-8-07: 71, Portion Of 101, And 104
Waikuku And Waikapu, Island Of Maui,
State Of Hawaii,
Scale 1: 24, 000

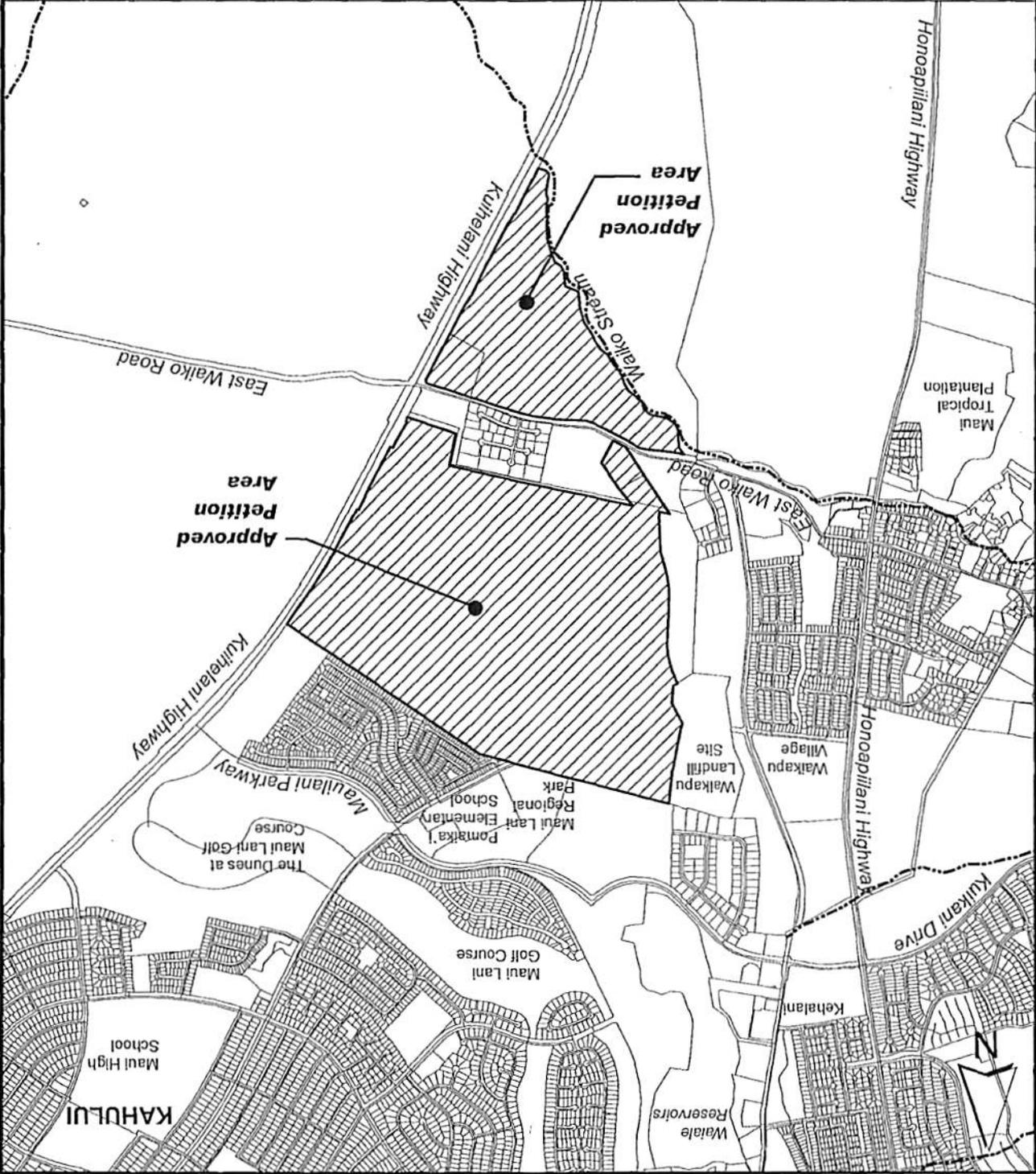
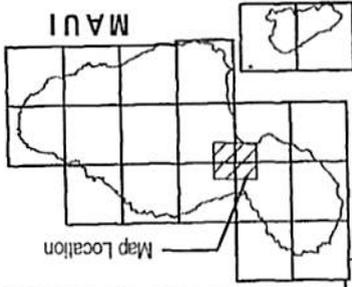


EXHIBIT "B"

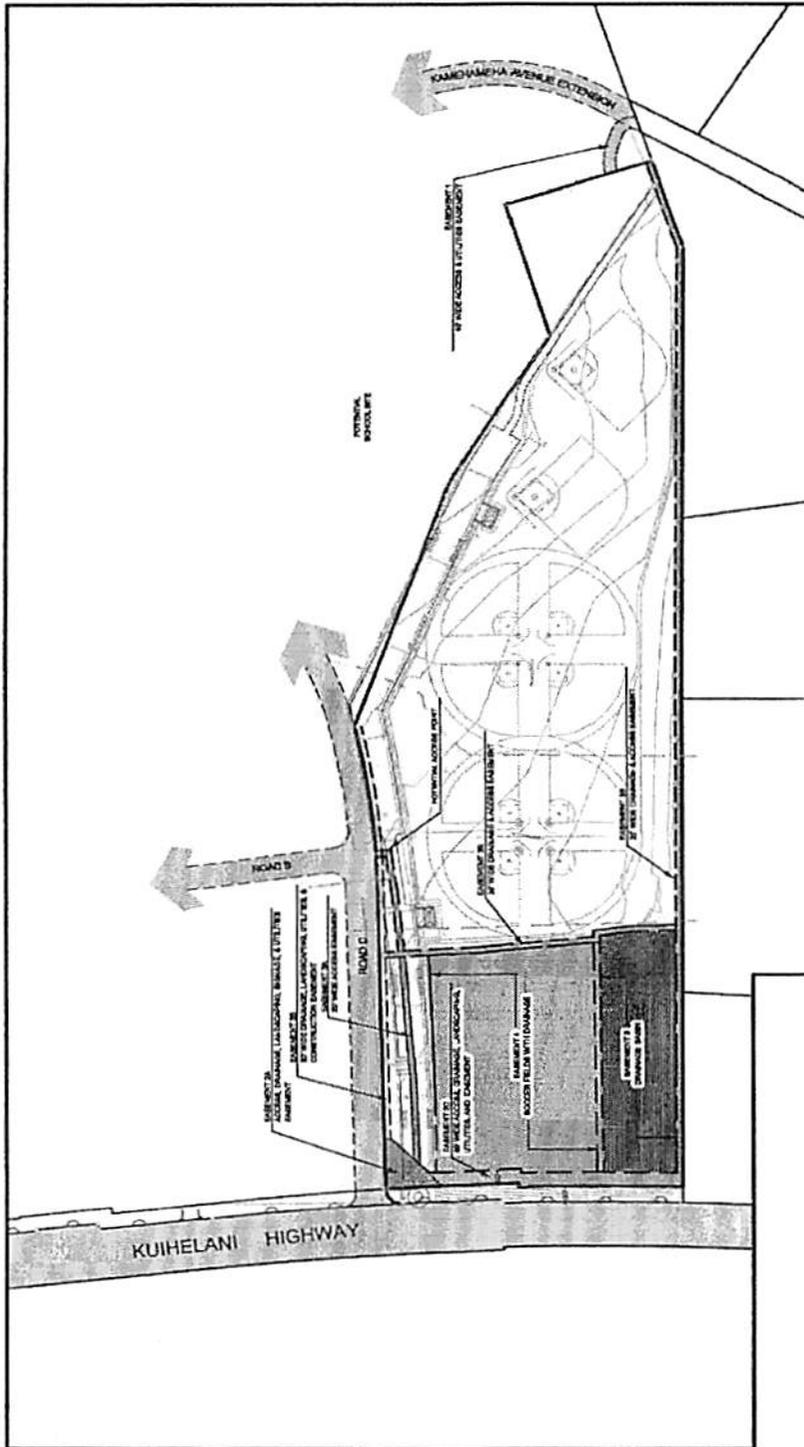
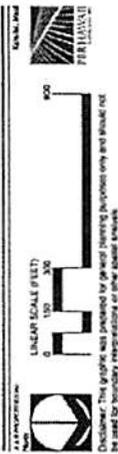


Exhibit C



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MAUI LANI NEIGHBORS, INC., a Hawai'i
Nonprofit Corporation;

Plaintiff,

vs.

STATE OF HAWAII; STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES; STATE OF HAWAII
BOARD OF LAND AND NATURAL
RESOURCES; WILLIAM AILA, JR. in his
official capacity as chair of the State of
Hawai'i Board of Land and Natural Resources;
COUNTY OF MAUI; COUNTY OF MAUI
PLANNING COMMISSION; COUNTY OF
MAUI DEPARTMENT OF PLANNING;
WILLIAM SPENCE in his official capacity as
County of Maui Planning Director; JOHN
DOES 1-10, JANE DOES 1-10, AND DOE
PARTNERSHIPS, CORPORATIONS,
GOVERNMENTAL UNITS OR OTHER
ENTITIES 1-10,

Defendants.

CIVIL NO. 14-1-0501 (2)
(Other Civil Action)

DECLARATION OF HARLEY ICHIRO
MANNER, Ph.D., IN SUPPORT OF FIRST
AMENDED VERIFIED COMPLAINT

**DECLARATION OF HARLEY ICHIRO MANNER, Ph.D., IN SUPPORT OF
FIRST AMENDED VERIFIED COMPLAINT**

I, Harley Ichiro Manner, Ph.D., state as follows:

1. I am over 18 years of age, have knowledge of the matters set forth in this Declaration, and, if called upon to testify, I could and would competently testify thereto.
2. Mary L. Spencer, Ph.D., and I reside at, and own, the home and property located at 12 Anamuli Street, Kahului, Hawai'i.

3. Our property is part of the “Na Hoku” development project, which is within the larger “Maui Lani” project.

4. I am a retired Professor Emeritus of Geography from the University of Guam.

5. I am also the vice president of Maui Lani Neighbors, Inc. (“MLN”), as well as a director on the board and a member. MLN is a Hawai`i nonprofit duly organized under the laws of the State of Hawai`i. MLN’s corporate purpose includes supporting, promoting and advocating for sustainable and appropriate community planning, and legal state and county zoning consistent therewith, for the Central Maui region of the Island of Maui.

6. MLN’s members consist of property owners within the Maui Lani master planned community, located in central Maui. At this time, MLN has over one hundred (100) members who represent over sixty (60) properties located within Maui Lani. MLN’s membership is growing as additional Maui Lani homeowners enroll.

7. One of the primary goals of MLN is to assure citizens’ concerns are rightfully heard during the community planning process as well as during the zoning process. This is a fundamental goal that promotes trust in the governmental system, and ensures that elected decision makers are able to make informed and balanced land use decisions that consider the best interest of all the citizens in Maui County.

8. I make this Declaration to verify facts set forth in the First Amended Verified Complaint (“Complaint”), to which this Declaration is attached. I adopt in this Declaration the defined terms set forth in the Complaint.

9. My ability to verify the facts in the Complaint is based in part on being a homeowner in Maui Lani, and having personal knowledge as a homeowner with respect to events that have been occurring in or around my neighborhood.

10. My ability to verify the facts in the Complaint is also based on being on the board of directors and the vice president of MLN, and having the responsibility to hear from other Maui Lani neighbors, as well as the responsibility to research and evaluate the issues and impacts related to the Sports Complex on in furtherance of MLN's nonprofit corporate purpose.

11. My ability to verify the facts in the Complaint is also based on my decades of education, knowledge and professional experience as an academic, with an emphasis in the field of geography. This academic and professional background includes being subject to, as well as conducting, peer review evaluation at the doctorate and professorial level. As a result of my background, I have the competence to read civic-oriented documents, chronology of events, and related matters, and confirm that certain stated facts related thereto are true and correct.

12. I have carefully reviewed the factual allegations in the Complaint, as further attested to herein.

13. I am generally knowledgeable of the facts surrounding the proposal by the State of Hawai'i Department of Land and Natural Resources ("DLNR") to construct the Central Maui Regional Sports Complex ("Sports Complex") on property immediately adjacent to Maui Lani's southern boundary ("Property") on the land that is being proposed for the "Wai'ale" residential project ("Wai'ale" project). Factual allegations ¶¶19-25, 37-57 in the Complaint are true and accurate statements regarding the Property and its relationship to Maui Lani and the Wai'ale project

14. I have also reviewed: (1) the Final Environmental Assessment titled "Central Maui Regional Park" (June 2013) ("FEA"); and (2) the Wai'ale Final Environmental Impact Statement, prepared by A&B Properties, Inc. ("A&B"), and accepted as adequate by the State of Hawai'i Board of Land and Natural Resources ("BNLR") on November 4, 2011 ("FEIS"), on

which some of the factual allegations of the Complaint are based. Factual allegations ¶¶ 70-79 are true and accurate statements regarding the FEIS. Factual allegations ¶¶96-110 are true and accurate statements regarding the FEA.

15. I have also reviewed the Maui Island Plan and the Wailuku-Kahului Community Plan, and I confirm that the summaries or reiterations set forth in the Complaint with respect to these two plans are true and accurate. Factual allegations ¶¶ 66-69, 89-92 are true and accurate statements regarding the Maui Island Plan.

16. I have also reviewed the Cease and Desist Letter dated July 12, 2014 (“C&D Letter”), which is attached as Exhibit “A” to the Complaint. The following exhibits, which are attached to the C&D Letter, are true and accurate copies and/or true and accurate depictions of what they purport to be:

- Exhibit 1, the Site Map from the FEA;
- Exhibit 2 is an accurate representation of the roads within Maui Lani likely to be used by users of the Sports Complex;
- Exhibit 3, an annotated tax map from the FEIS;
- Exhibit 4, Figure 2-1 from the FEIS;
- Exhibit 5, Figure O-1 from the FEIS;
- Exhibit 6, Figure 8-2 from the Maui Island Plan;
- Exhibit 7, an annotated Figure O-1 from the FEIS;
- Exhibit 8, selections from the Maui County Code; and
- Exhibit 9, Exhibit WC-1 from the Maui Island Plan.

17. The following exhibits, which are attached to the Complaint, are also true and correct copies and/or true and accurate depictions of what they purport to be:

- Exhibit “C”, which consists of Exhibits 3 and 10 of the preliminary engineering report in the FEIS;
- Exhibit “D” accurately depicts the proposed layout development scheme for Maui Lani, including the general location of internal development projects, including Traditions, Legends and Na Hoku, and also showing the general location of the Property)
- Exhibit “E” (map provided during LUC proceedings showing “Approved Petition Area”);

- Exhibit "F" map showing Easements 1, 2A, 2B, 2C, 3A, 3B, 4 and 5 granted in favor of the remainder of the Wai'ale Land, which map is attached to the Deed from A&B to DLNR of the Property and also to various grants of easement.

18. I am generally knowledgeable of the factual allegations in the Complaint regarding the subjects listed below. The factual allegations in the Complaint on these subjects contain true and accurate statements:

- The district boundary amendment that was approved by the Land Use Commission in 2012 (¶¶80-88 in the Complaint);
- The County of Maui's purchase of 209 acres from A&B for the express purpose of developing it as a regional park (¶¶93-95 in the Complaint);
- Governor Abercrombie's announcement of the "Sports Development Initiative" in October 2013 (¶¶103-110 in the Complaint);
- The final approval for a consolidation-resubdivision of Wai'ale land in Subdivision File Number 3.2226 (¶¶111-112 in the Complaint);
- DLNR's application to the Planning Commission for a special use permit, which was approved on March 25, 2014 (¶¶113-123 in the Complaint);
- DLNR's three impact reports regarding uses for the Sports Complex, which were first revealed after the FEA around April 2014 (¶¶124-126 in the Complaint); and
- The conveyance of the Property from A&B to DLNR, which occurred on or around June 26, 2014 (¶¶127-135 in the Complaint)

19. Between July 2014 and August 2014, MLN attempted to persuade the DLNR to stay construction of the Sports Complex. Factual allegations ¶¶ 136-139 in the Complaint are true and accurate statements of MLN's efforts.

I, Harley Ichiro Manner, Ph.D., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: September 9, 2014.


HARLEY ICHIRO MANNER, Ph.D.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MAUI LANI NEIGHBORS, INC., a Hawai'i
Nonprofit Corporation,

Plaintiff,

vs.

STATE OF HAWAII; STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES; STATE OF HAWAII BOARD
OF LAND AND NATURAL RESOURCES;
WILLIAM AILA, JR. in his official capacity
as chair of the State of Hawai'i Board of Land
and Natural Resources; COUNTY OF MAUI;
COUNTY OF MAUI PLANNING
COMMISSION; COUNTY OF MAUI
DEPARTMENT OF PLANNING; WILLIAM
SPENCE in his official capacity as County of
Maui Planning Director; JOHN DOES 1-10,
JANE DOES 1-10, AND DOE
PARTNERSHIPS, CORPORATIONS,
GOVERNMENTAL UNITS OR OTHER
ENTITIES 1-10,

Defendants.

CIVIL NO. 14-1-0501 (2)
(Other Civil Action)

DECLARATION OF TOM PIERCE

Tom Pierce, Esq. states as follows:

1. I am over 18 years of age, am licensed to practice law in the State of Hawai'i, represent Maui Lani Neighbors, Inc., in the above captioned matter, have knowledge of the matters set forth in this declaration, and, if called upon to testify, I could and would competently testify thereto. (The abbreviations set forth in the First Amended Verified Complaint, filed September 9, 2014, are adopted herein.)

2. On July 12, 2014, the C&D Letter was served on the State of Hawai'i and the County of Maui, as well as others. A true and correct copy of the C&D Letter is attached to the First Amended Verified Complaint as Exhibit "A."

3. After serving the C&D Letter, I communicated with Deputy Attorneys General William Wynhoff, Amanda Weston and Linda Chow on a number of occasions, and asked that DLNR stipulate to stay construction of the Sports Complex pending resolution of the legal issues. These requests were rejected.

4. The letter attached to the First Amended Verified Complaint as Exhibit "B" is a true and correct copy of a letter, dated August 1, 2014, from BLNR Chairperson William Aila to me, which I received from the State of Hawai'i.

I, Tom Pierce, Esq., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Makawao, Maui, Hawai'i, September 9, 2014.


TOM PIERCE, ESQ.

CERTIFICATE OF SERVICE

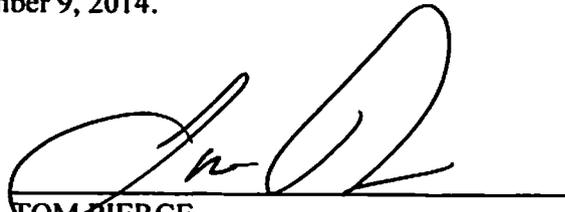
The undersigned hereby certifies that a true and correct copy of the foregoing document has been duly served upon the following via email and at the respective address by hand delivery on September 9, 2014:

Patrick K. Wong
Kristin Tarnstrom
Department of Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

and upon the following via email and United States Mail, postage prepaid, on September 9, 2014:

William J. Wynchhoff
Amanda J. Weston
Linda L. Chow
Department of the Attorney General
State of Hawaii
465 South King Street, Room 300
Honolulu, Hawaii 96813

DATED: Makawao, Maui, Hawai'i, September 9, 2014.

A handwritten signature in black ink, appearing to read 'Peter N. Martin', is written over a horizontal line.

TOM PIERCE
PETER N. MARTIN (of Counsel)
Attorneys for Plaintiff
MAUI LANI NEIGHBORS, INC.



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

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

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

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

6/21/12
Date

BY

Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

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

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

AND

CERTIFICATE OF SERVICE

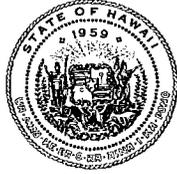


BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

In The Matter Of The Petition Of)	DOCKET NO. A10-789
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A&B PROPERTIES, INC.)	FINDINGS OF FACT,
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Waikapū, Island Of Maui, State Of)	
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Of 23 And 37 And 3-8-07: 71, Portion Of)	
101, And 104)	
_____)	

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



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A10-789
)	
A&B PROPERTIES, INC.)	FINDINGS OF FACT,
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Hawai`i, Tax Map Keys: 3-8-05: Portion)	
Of 23 And 37 And 3-8-07: 71, Portion Of)	
101, And 104)	
_____)	

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

A&B PROPERTIES, INC. ("Petitioner"), filed a Petition For Land Use District Boundary Amendment on August 25, 2010 ("Petition"), and a First Amendment To Petition For Land Use District Boundary Amendment on November 7, 2011 ("First Amendment") (as appropriate, the Petition and First Amendment are collectively referred to as the Petition), pursuant to Hawai`i Revised Statutes ("HRS") section 205-4 and Hawai`i Administrative Rules ("HAR") chapter 15-15, to amend the land use district boundary to reclassify approximately 545.229 acres of land, situated in Wailuku

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

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

FINDINGS OF FACT

PROCEDURAL MATTERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DESCRIPTION OF THE PETITION AREA

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

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

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

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

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

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

⁴ Petitioner is a wholly owned subsidiary of Alexander & Baldwin, Inc.

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

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

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

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

PROPOSAL FOR RECLASSIFICATION

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

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

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

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

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

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

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

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

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

STATE AND COUNTY DESIGNATIONS

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

48. The Petition Area is zoned Agricultural.

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

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

NEED FOR THE PROJECT

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

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

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

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

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

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

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

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

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

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

SOCIAL IMPACTS

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

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

ECONOMIC IMPACTS

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

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

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

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

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

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

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

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

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

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

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

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

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

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

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

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

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

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

urban growth. These uses are currently under short-term, month-to-month licenses. Petitioner will work with these tenants to seek alternative sites for relocation.

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

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

Flora and Fauna

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

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

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

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

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

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

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

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

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

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

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

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

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

Archaeological and Historical Resources

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cultural Resources

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

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

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

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

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

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

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

Groundwater Resources

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

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

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

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

Parks and Recreational Resources

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

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

Scenic Resources

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

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

ENVIRONMENTAL QUALITY

Noise

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

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

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

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

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

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

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

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

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

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

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

Air Quality

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

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

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

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

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

Water Quality

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

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

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

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Highway and Roadway Facilities

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

131. The TIAR examined traffic operations for three scenarios: (i) Existing traffic conditions describing how the study intersections were operating at the time of the traffic counts; (ii) Base Year traffic conditions describing how the study intersections would be expected to operate in the future with other known future developments near the Project but without the Project. Mitigative measures to improve base year traffic operating conditions were identified; and (iii) Future Year traffic conditions describing how the study intersections would operate when traffic generated

by the Project is added to the Base Year volumes. Improvements to reduce or eliminate adverse impacts resulting from traffic generated by the Project are recommended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Water Supply/Service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Wastewater Disposal

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

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

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

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

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

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

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

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

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

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

Drainage

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

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

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

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

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

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

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

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

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

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

Solid Waste Disposal

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

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

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

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

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

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

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

Schools

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

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

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

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

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

Police and Fire Protection

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

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

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

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

Civil Defense

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

Emergency/Medical Services

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

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

Electrical, Telephone, and Cable Service

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

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

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

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

Sustainability

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

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

COMMITMENT OF STATE FUNDS AND RESOURCES

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

CONFORMANCE WITH THE URBAN DISTRICT STANDARDS

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

Criterion No. 1. The Project includes "city-like" concentrations of people, structures, urban services and related land uses.

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

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

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

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

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

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

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

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

Section 226-5, Objective and policies for population. To achieve the population objective, it shall be the policy of this State to: a) Promote increased opportunities for Hawai`i's people to pursue their socio-economic aspirations throughout the islands; and b) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area.

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

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

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

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

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

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

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

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

housing. To achieve the housing objectives, it shall be the policy of this

State to: a) Effectively accommodate the housing needs of Hawai'i's

people; b) Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households; and c) Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.

Section 226-103, Economic priority guidelines. Priority guidelines for water use and development: a) Maintain and improve water conservation programs to reduce the overall water consumption rate; b) Encourage the improvement of irrigation technology and promote the use of nonpotable water for agricultural and landscaping purposes; c) Increase the support for research and development of economically feasible alternative water sources; and d) Explore alternative funding sources and approaches to support future water development programs and water system improvements.

Section 226-104, Population growth and land resources priority guidelines. Priority guidelines to effect desired statewide growth and distribution: a) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawai`i's people; b) Manage a growth rate for Hawai`i's

economy that will parallel future employment needs for Hawai`i's people; and c) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State. Priority guidelines for regional growth distribution and land resource utilization: a) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles; and b) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

Section 226-106, Affordable housing. Priority guidelines for the provision of affordable housing: a) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households; b) Create incentives for development which would increase home ownership and rental opportunities for Hawai`i's low- and moderate-income households, gap-group households, and residents with special needs; c) Encourage public and private sector cooperation in the development of rental housing alternatives; and d)

Give higher priority to the provision of quality housing that is affordable for Hawai'i's residents and less priority to development of housing intended primarily for individuals outside of Hawai'i.

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

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

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

accommodate urban growth. The Project will provide a range of housing types which will serve to meet the varied housing needs of the region. Additional housing choices will provide healthy competition and allow for a more balanced housing market. Petitioner will implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship consistent with the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the United States Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Star, and Green Communities into the design and construction of the Project. Petitioner will also provide information to home purchasers about energy conservation measures that may be undertaken by individual homeowners. To this end, the Project is in conformance with the above-noted objectives, policies, and priority guidelines of the Hawai'i State Plan.

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

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

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

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

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

State Transportation Functional Plan: The Project's roadway system will be developed in consultation with the DOT and the County of Maui Department of Public Works ("DPW") to insure consistency with the objectives of the State Transportation Functional Plan. Internal subdivision roads will be constructed to applicable County of Maui design standards.

State Historic Preservation Functional Plan: An AIS and a Data Recovery Plan and Preservation Plan for the Project have been reviewed and accepted by the DLNR, SHPD.

CONFORMANCE WITH THE COASTAL ZONE OBJECTIVES AND POLICIES

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

CONFORMANCE WITH THE COUNTYWIDE POLICY PLAN

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

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

CONFORMANCE WITH THE MAUI ISLAND PLAN

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

CONFORMANCE WITH THE WAILUKU-KAHULUI COMMUNITY PLAN

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

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein

improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HRS section 205 and the Commission rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 545.229 acres of land, situated in Wailuku and Waikapū, Island of Maui, State of Hawai`i, TMKs: 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101, and 104 to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS section 205-2 and part III of HRS chapter 205 entitled *Important Agricultural Lands*, and is consistent with the policies and criteria established pursuant to HRS sections 205-16, 205-17, and 205A-2.

2. Article XII, section 7, of the Hawai`i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State of Hawai`i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua`a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies

are obligated to protect the reasonable exercise of customarily and traditionally exercised Native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903 P.2d 1246, certiorari denied, 517 U.S. 1163, S.Ct. 1559, 134 L.Ed.2d 660 (1996).

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

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

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

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

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 545.229 acres of land, situated in Wailuku and Waikapū, Island of Maui, State of Hawai'i, TMKs: 3-8-05: portion of 23 and 37 and 3-8-07: 71, portion of 101, and 104, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

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

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

1. **Water.** Petitioner shall provide the necessary water source, storage, and transmission facilities and improvements to the satisfaction of the DWS to service the Petition Area.

2. **Water Conservation.** Petitioner shall implement water conservation and best management practices in the design and construction of the Petition Area.

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

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

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

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

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

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

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

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

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

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

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

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

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

satisfaction of the DEM and the DOH.

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

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

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

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

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

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

14. **Established Access Rights Protected.** Pursuant to Article XII, section 7, of the Hawai`i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

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

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

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

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

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

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

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

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

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

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

22. **Order to Show Cause.** If Petitioner fails to complete the proposed backbone infrastructure within ten years from the date of the Decision and Order, the

Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.

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

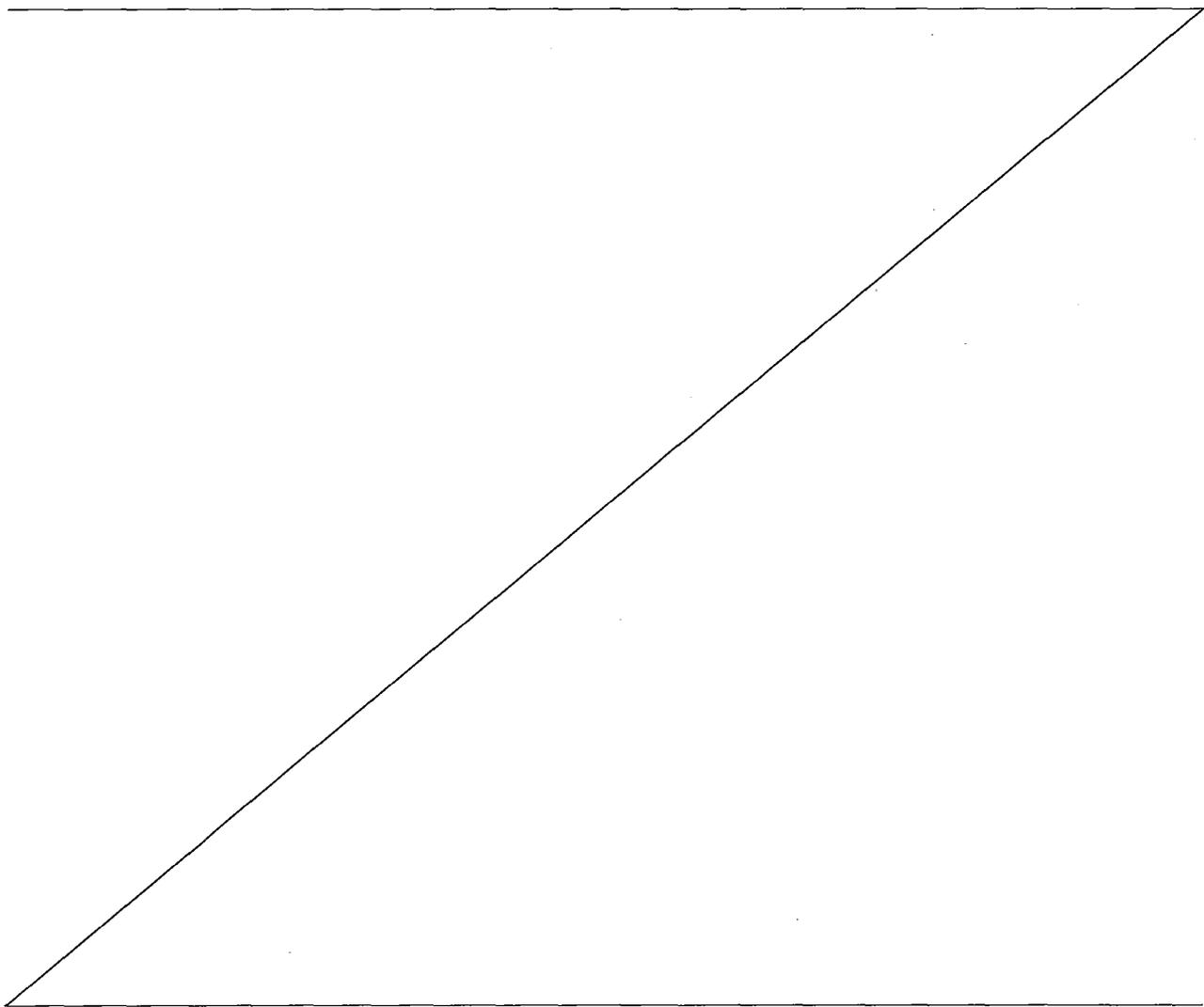
24. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed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

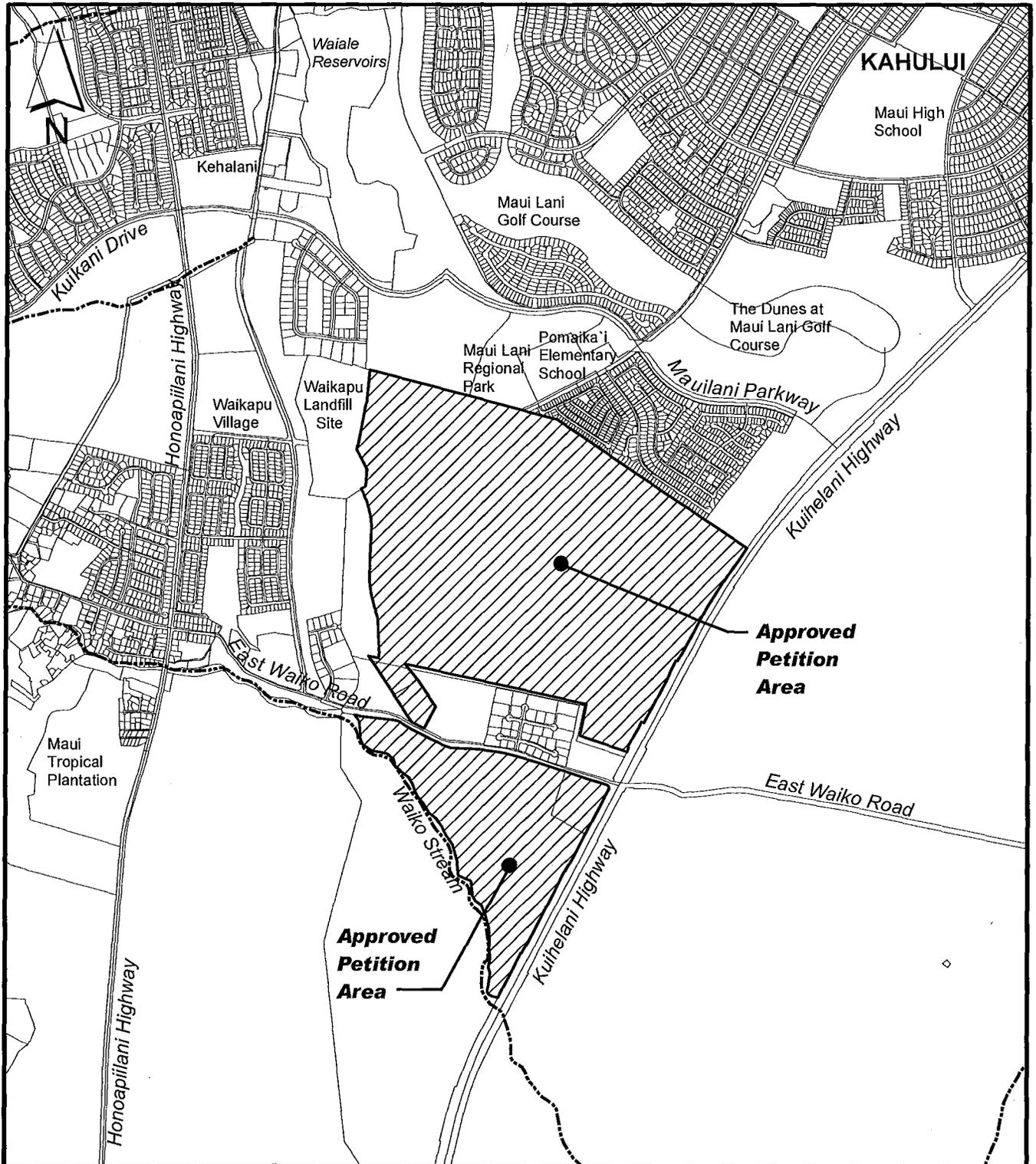
25. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

26. **Notice of Imposition of Conditions.** Within seven days of issuance of the Commission's Decision and Order for the subject reclassification,

Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai`i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

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

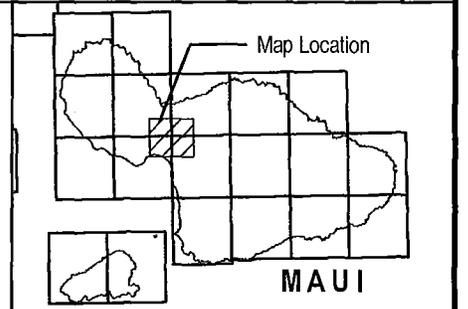




**A10-789 A & B PROPERTIES, INC.
LOCATION MAP**

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

Exhibit "A"



ADOPTION OF ORDER

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

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

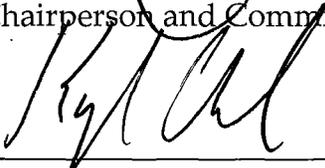
LAND USE COMMISSION

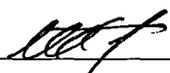
APPROVED AS TO FORM

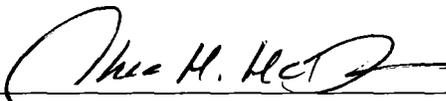

Deputy Attorney General

STATE OF HAWAII

By 
NORMAND LEZY
Chairperson and Commissioner

By 
KYLE CHOCK
Vice- Chairperson and Commissioner

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

By 
CHAD McDONALD
Commissioner

By 
RONALD HELLER
Commissioner

By (voted no)
JAYE NAPUA MAKUA
Commissioner

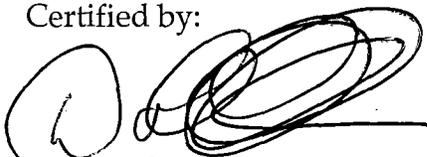
By (excused)
ERNEST MATSUMURA
Commissioner

Filed and effective on:

6/21/12

By 
LISA JUDGE
Commissioner

Certified by:


DANIEL ORODENKER
Executive Officer

By (excused)
THOMAS CONTRADES
Commissioner



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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

CERTIFICATE OF SERVICE



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

CERTIFICATE OF SERVICE

I hereby certify that a FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		
BRYAN YEE, ESQ. Deputy Attorney General Hale `Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813		X	

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

Honolulu, Hawai'i, June 21st 2012.



DANIEL ORODENKER
Executive Officer

DISPOSITION AGREEMENT

BETWEEN

ALEXANDER & BALDWIN, LLC

AND

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS

Dated: As of June 18, 2014
Re: Central Maui Regional Park Site
Kuihelani Highway at Waiale
Kahului, Maui, Hawaii

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EXHIBITS

- Exhibits A - Legal Description of the Land
- Exhibit B - Agricultural Exceptions
- Exhibit C - Map Showing Easements and Reservations
- Exhibit D - Description of Waterline Easement
- Exhibit E - Map of Push Piles

DISPOSITION AGREEMENT

THIS DISPOSITION AGREEMENT (this "Agreement") is made as of the date set forth immediately below (the "Basic Provisions"), by and between ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company, formerly known as Alexander & Baldwin, Inc. ("A&B"), having its address at 822 Bishop Street, Honolulu, Hawaii 96813, and STATE OF HAWAII, by and through its Board of Land and Natural Resources ("DLNR" or "Buyer"), having an office at the address set forth in the Basic Provisions.

BASIC PROVISIONS

1. Effective Date: June 18, 2014.
2. Name, Type of Entity and Address of "Grantee":

STATE OF HAWAII
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
3. Brief Description of Improvements (Section 1.1(b)):

Approximately 65.378 acres of vacant land, subject to any existing improvements and infrastructure.
4. Acquisition Price (Section 1.4): One Million Six Hundred Thirty Four Thousand Four Hundred Fifty and No/100 Dollars (\$1,634,450.00) [\$25,000 per acre].
5. Name and Address of Escrow Agent (Section 1.6):

Title Guaranty Escrow Services, Inc. (Michael Gamberdell)
235 Queen Street
Honolulu, Hawaii 96813
6. Date of Closing (Section 4.1): June 26, 2014.
7. Designated Employees (Section 4.2): Grant Chun and Dan Yasui
8. Broker (Section 8.1): None.
9. Notice Address of Buyer (Section 10.5):

1151 Punchbowl Street
Honolulu, Hawaii 96813
Attention: William J. Aila, Jr.
Chairperson
Facsimile: (808) 587-0311

with a copy to: Department of the Attorney General
Land Transportation Division
465 S. King Street, Room 300
Honolulu, Hawaii 96813
Facsimile: (808) 587-2999

WITNESSETH:

ARTICLE 1

DISPOSITION

1.1 **Disposition.** Subject to the terms and conditions hereinafter set forth, A&B agrees to convey and Buyer agrees to acquire the following:

(a) those certain tracts or parcels of land more particularly described on Exhibit A attached hereto and made a part hereof, together with all the rights and appurtenances pertaining to such property (the property described in clause (a) of this Section 1.1 being herein referred to collectively as the "Land" or the "Realty"); and

(b) those improvements, if any, described in Item 3 of the Basic Provisions ("Improvements").

1.2 **Property Defined.** The Land and Improvements are hereinafter sometimes also referred to collectively as the "Property".

1.3 **Permitted Exceptions.** The Property shall be conveyed subject to the matters which are, or are deemed to be, Permitted Exceptions pursuant to Article 2 hereof (herein referred to collectively as the "Permitted Exceptions").

1.4 **Acquisition Price.** A&B is to convey and Buyer is to acquire the Property for the amount set forth in the Basic Provisions (the "Acquisition Price"). A&B and Buyer agree that the Acquisition Price is the appraised fair market value of the Realty and that the Acquisition Price shall be allocated solely to the Realty.

1.5 **Payment of Acquisition Price.** The Acquisition Price, as increased or decreased by prorations and adjustments as herein provided, shall be payable in full at Closing in cash by wire transfer of immediately available federal funds to a bank account designated by A&B in writing to Buyer prior to the Closing

1.6 **Threat of Condemnation.** Buyer acknowledges that A&B has agreed to convey the Property to Buyer pursuant to the terms of this Agreement under the threat of condemnation.

ARTICLE 2

TITLE

2.1 **Easements and Reservations.** At Closing, the Property shall be conveyed together with and subject to the easements and reservations described below. As noted, some of the easements are contingent upon whether A&B develops the project district to the South of the Property (the "Project") or the road adjacent to the Project ("Road C" described below). Buyer acknowledges that it is yet undetermined whether the Project or road will be developed and that A&B has no obligation to construct the Project or road. The easement documentation shall require Buyer to allow A&B an opportunity to review and comment upon Buyer's plans.

(a) Access and Utility Easement in Favor of Buyer. The Property shall be conveyed together with an easement for access and utilities in favor of Buyer generally in the location shown as Easement 1 on Exhibit C attached hereto. The access and utility easement shall be permanent.

(b) Contingent Access Easement to Kuihelani Highway in favor of Buyer. If A&B develops the road shown as "Road C" on Exhibit C attached hereto, then A&B will allow Buyer access to such road from the Property at two separate points. Except as expressly stated below, Buyer shall be responsible to construct Buyer's access.

(i) The first access point will be at the anticipated intersection between Road C and Road "B" as shown on Exhibit C attached hereto. If the location of Road "B" changes after the first access point is constructed, A&B shall be responsible to relocate this access point. This first access point shall be an unrestricted intersection, allowing users of the Property to turn both right and left into and out of the Property onto Road C.

(ii) The second access point will be at a location selected by Buyer, with A&B's reasonable approval (it currently is anticipated that the second access point will be located west of the first access point). This second access point shall allow right in, right out access as a minimum and full movements if permitted by applicable governmental authority.

(iii) If a turning vehicle storage lane for the first access point ("Vehicle Storage Lane") is required, Buyer may locate such Vehicle Storage Lane within Easement 2B as shown on Exhibit C so long as A&B may still utilize Easement 2B for its intended purposes other than landscaping. Buyer and A&B shall use reasonable effort to agree upon the location of the Vehicle Storage Lane. To the extent commercially practicable, A&B and Buyer jointly shall subdivide the Vehicle Storage Lane from the Property and consolidate the Vehicle Storage Lane into the Road C parcel. Buyer shall be solely responsible for any reasonably required improvements to connect the driveway access and utilities to Road C, except as expressly stated above, but shall not be responsible for other offsite improvements that would be required for the Project. A&B shall relocate Buyer's driveway access in the event a Vehicle Storage Lane is required after Buyer's driveway access has been constructed.

(iv) Buyer acknowledges that A&B has set the final elevation of "Road C". If Buyer develops the Property, Buyer shall develop the Property in a manner consistent

with such elevations set by A&B. If A&B develops the Project, A&B shall develop the Project in a manner consistent with such elevations. Runoff from Road C shall be channeled into A&B's drainage basins and shall not be allowed to flow into any park located on the Property.

(c) **Contingent Wastewater Easements in favor of Buyer.** If A&B develops the Project and installs utility lines within the Project, A&B, shall size the wastewater lines to accommodate the demands necessary for both A&B and Buyer's use. A&B shall allow Buyer to obtain easements and the rights to use such wastewater lines.

(d) **Landscaping, Signage, Access, Drainage and Utilities Easement along both Kuihelani Highway and "Road C" in Favor of A&B.** The Property shall be conveyed subject to an easement in favor of A&B for installation and maintenance of landscaping, signage identifying A&B's Project, access, drainage and utilities generally in the location shown as Easement 2A on Exhibit C attached hereto.

(e) **Drainage, Landscaping, Construction and Utilities Easement along "Road C" in Favor of A&B.** The Property shall be conveyed subject to an easement in favor of A&B for installation and maintenance of drainage, landscaping, construction and utilities generally in the location shown as Easement 2B on Exhibit C attached hereto. The easement shall provide that Buyer must allow the easement area to remain in a condition that allows A&B to utilize the easement area for its designated purposes, which shall include, ensuring that the entire easement width is level with the future "Road C" sidewalk grade, except as otherwise provided herein. Runoff from Road C shall be channeled into A&B's drainage basins in order to prevent any sheet flow into any park located on the Property.

(f) **Drainage, Landscaping, Access and Utilities Easement along both Kuihelani Highway and "Road C" in Favor of A&B.** The Property shall be conveyed subject to an easement in favor of A&B for installation and maintenance of drainage, landscaping, access and utilities generally in the location shown as Easement 2C on Exhibit C attached hereto. The easement shall provide that Buyer must allow the easement area to remain in a condition that allows A&B to utilize the easement area for its designated purposes, which shall include ensuring that at least a fifteen (15) foot width of the entire easement area remains level for a future access road and underground drain line.

(g) **Access Easement in Favor of A&B.** The Property shall be conveyed subject to an easement in favor of A&B for access generally in the location shown as Easement 3A on Exhibit C attached hereto. Access shall be controlled by the Buyer except in the event of emergency threatening life or property.

(h) **Drainage and Access Easements in Favor of A&B.** The Property shall be conveyed subject to drainage and access easements in favor of A&B in the approximate location shown as Easement 3B on Exhibit C attached hereto. The easement shall provide that Buyer must allow the easement area to remain in a condition that allows A&B to utilize the easement area for its designated purposes, which shall include ensuring that at least a fifteen (15) foot width of the portion of the easement area remains level. The portion of Easement 3B along the northern boundary shall remain level with the current grade and elevation at the adjacent property line.

(i) Intentionally omitted.

(j) **Drainage Basin Easements in Favor of A&B.** The Property shall be conveyed subject to two adjacent drainage basin easements in favor of A&B to accommodate existing and proposed drainage (open ditches, outlet headwalls etc) from the Project; provided, however, Buyer may also use such basins for drainage of any park constructed on the Property. The currently anticipated location of the drainage basin easements are at the locations shown as Easement 4 and Easement 5 on Exhibit C attached hereto. Neither A&B nor Buyer shall be obligated to construct such drainage basins. Easement 5 shall be exclusively used for drainage purposes. Buyer may use Easement 4 for open grass field recreational purposes, such as soccer fields, compatible with use as a drainage basin, but Buyer may not construct any improvements inconsistent with use as a drainage basin. If Buyer wishes to develop Easement 4 prior to A&B's construction of any drainage basin on Easement 4, A&B and Buyer shall coordinate Buyer's construction on Easement 4 and, if A&B elects to have Buyer excavate more soil than Buyer otherwise would have excavated if A&B's drainage needs were not to be accommodated (the "Incremental Excavation Costs"), A&B shall pay for such Incremental Excavation Costs. A&B's failure to elect to have Buyer excavate additional soil at the time of Buyer's development of Easement 4 shall not preclude A&B from later development of the drainage basin on Easement 4, but A&B shall be solely responsible for expeditious replacement of all improvements constructed by Buyer, including but not limited to sprinkler systems, drainage systems and grass. If A&B constructs a drainage basin on Easement 5, A&B shall be responsible for construction of a fence and gates around Easement 5 to the extent deemed necessary by A&B for safety purposes. If either party constructs improvements prior to the other party, such party shall repair any damage caused to the improvements previously constructed by the other party. The easement documents shall provide that the configuration of the drainage basins in Easement 4 and Easement 5 may be changed by A&B and Buyer subject to reasonable approval by the other; provided, however that: (1) A&B shall have the right to insist that the combined capacity of the drainage basins to be located within Easement 4 and Easement 5 shall at all times required by A&B be designed and constructed to accommodate: (i) a runoff volume of 176 acre-feet; (ii) a contributing drainage area of 422.6 acres; (iii) a Peak Q of 1,526 cubic feet per second (cfs) based on a 24-hour storm using the NRCS method; and (iv) any drainage Buyer requires for drainage of the park on the Property; and (2) Buyer shall have the right to insist that Easement 4 shall provide a minimum grassed area of 9 acres sloped between 1% and 1.75% in all directions for use as a recreational area and provide pedestrian and equipment access to the recreational area from the baseball fields and parking lot. The size and capacity of the drainage basins are based solely on the specifications provided by A&B. If the capacity, design, or construction of the drainage basins are determined to be inadequate to accommodate the stormflow as required by the County of Maui, A&B shall modify the drainage basins at its expense, but with the cooperation of Buyer. The drainage basin easements shall include access thereto (including to the lowest part of any basin) and appurtenant overflow culverts to the extent deemed necessary by A&B's engineers. Buyer will be solely responsible to develop the Property in a manner that is compatible with the drainage basins. To the extent required by law or governmental permit, A&B shall provide an unexploded ordnance and archaeological monitor during construction of the drainage basins within Easements 4 and 5. During the construction of the improvements on the Property, A&B shall allow Buyer, until such time A&B develops the Project and drainage basins within Easements 4 and 5, to temporarily use the drainage basin area within Easements 4 and 5 to accommodate a smaller drainage basin solely to serve the stormwater runoff generated

by improvements developed on the Property. The temporary drainage basin may include an outlet headwall within the easement area. Upon construction of the drainage basin in Easement 5 by A&B, A&B shall connect Buyer's drainage to A&B's drainage. So long as there is no interference with use of the drainage basins by A&B, A&B shall allow the use of the drainage basins within Easements 4 and 5 to be used as a borrow pit and storage site for excess material needed for the development of improvements on the Property.

(k) **Effluent Use.** So long as use of tertiary water is not prohibited by applicable governmental authorities for use on the Property, Buyer shall accept tertiary water from the Project, if any, for irrigation of the Property or other uses by Buyer, to the extent delivered by A&B to the Property at a location reasonably specified by Buyer, at no cost to Buyer for the water. Buyer's acceptance of such tertiary water is contingent on A&B paying for any incremental cost that Buyer is required to incur to accept such water that Buyer otherwise would not have been required to pay if Buyer provided water for the Property from other sources. Buyer shall only be required to take the amount of water reasonably necessary for its operations, as determined by Buyer. Buyer shall provide A&B with any necessary easements or access rights to enable A&B to deliver such water.

(l) **Existing Water Line Easement in Favor of A&B.** The Property shall be conveyed subject to an easement for the existing water line in favor of Hawaiian Commercial & Sugar Company, a division of A&B. The metes and bounds of such easement are set forth in Exhibit D attached hereto.

(m) **Existing Water Line Easement in Favor of County of Maui.** The Property shall be conveyed subject to an easement for the existing water line in favor of the County of Maui.

(n) **Right of Entry to Construct Improvements.** The Property shall be conveyed subject to a temporary right of entry from time to time in favor of A&B and its employees, agents and contractors for the construction and maintenance of the Project, including but not limited to construction and maintenance of "Road C" and the easements described in this Section 2.1. A&B shall repair any damage to the Property caused by A&B or its employees, agents or contractors.

(o) **Utility Easements in Favor of Potential School Site.** The Property shall be conveyed subject to the reserved right of A&B or the successor owner of the potential school site shown on Exhibit C ("School Site") to grant utility easements over the Property as necessary for the construction and operation of a school on the school site; provided, however, that such easements shall not unreasonably interfere with the use of the Property for park and recreation purposes. A&B or its successor in interest, as applicable, shall be responsible to repair any damage to the Property caused by its installation of utilities within the utility easement.

(p) **Utility Easements in Favor of Project.** The Property shall be conveyed subject to the reserved right of A&B or the successor owner of the Project to grant utility easements over the Property as necessary for the construction and operation of a mixed use project; provided, however, that such easements shall not unreasonably interfere with the use of the Property for park and recreation purposes. A&B shall pay for any costs associated with the

utility easements, including the cost of installing utilities within the easement area, and any costs that Buyer is required to incur in connection with the installation of utilities within the easement area. A&B shall be responsible to repair any damage to the Property caused by the installation of utilities within the easement.

(q) **Forms of Easements and Reservations.** The forms of easement shall be mutually acceptable to A&B and Buyer and shall be in substantially the form transmitted by Lori Amano to Linda L. Chow on June 13, 2014. Without limiting the content of the easements, Buyer expressly acknowledges that A&B will reserve the right to assign the rights and responsibilities under some of the easements to an association of owners of the Project, or similar third party, whereupon A&B shall be released from liability thereunder. Buyer also acknowledges that pursuant to the easements, Buyer will keep A&B informed of Buyer's plans for development of the Property, will consider reasonable modifications to Buyer's development in order to accommodate the Project and will provide A&B with copies of as-built plans for any developments of the Property.

(r) **Temporary Use of Water for Construction of Property Improvements.** A&B shall provide Buyer temporary use of water from the Waiale Well Reservoir Site for the duration of the construction of the Property Improvements, subject to availability, payment by the Buyer for the use of the water, and approval by the MBPII Association.

2.2 Conveyance of Title. At Closing, the Property shall be conveyed subject to the matters described in Section 2.1 and the following matters, all of which shall be deemed to be "Permitted Exceptions":

(a) the lien of all ad valorem real property taxes and assessments not yet due and payable as of the date of Closing, subject to adjustment as herein provided;

(b) local, state and federal laws, ordinances or governmental regulations, including but not limited to, building and zoning laws, ordinances and regulations, now or hereafter in effect relating to the Property;

(c) items appearing of record or shown on a title report for the Property issued by Title Guaranty of Hawaii, Inc.;

(d) matters disclosed in the Declaration of Conditions required by the State of Hawaii Land Use Commission, recorded as Document No. A-45610753, including but not limited to an acknowledgment of the following agreements in favor of the State of Hawaii: (i) Buyer will assume complete risk of and forever release the State of Hawaii from all claims for damages and nuisances occurring on the Property and arising out of or related to highway traffic noise from Kuihelani Highway; (ii) Buyer waives any right to (1) require the State of Hawaii to take any action to eliminate or abate any highway traffic noise from Kuihelani Highway and (2) file any suit or claim against the State of Hawaii for injunction or abatement of any highway traffic noise from Kuihelani Highway and for any damages or other claims related to or arising therefrom; (iii) Buyer is aware of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of

aircraft operations; and (iv) Buyer will cooperate in any program to control any birds nesting or occupation and any insect, pest, or wildlife infestation; and

- (e) the agricultural exceptions as shown on Exhibit B.

ARTICLE 3

CLOSING

3.1 **Time and Place**. The consummation of the transaction contemplated hereby shall be held at the offices of the Escrow Agent (defined in the Basic Provisions). A&B and Buyer shall perform the obligations set forth in, respectively, Section 3.2 and Section 3.3, the performance of which obligations shall be concurrent conditions, such that Closing may occur at 8:01 a.m. on the Date of Closing.

3.2 **A&B's Obligations at Closing**. At Closing, A&B shall:

- (a) deliver to Buyer a duly executed warranty deed (the "Deed") in recordable form, reasonably satisfactory to A&B and Buyer conveying the Land and Improvements (if any) to Grantee (as defined above), subject to the disclaimers contained in Section 8.2 hereof and the Permitted Exceptions;

- (b) deliver to Buyer an affidavit duly executed by A&B stating that A&B is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations thereunder;

- (c) deliver to Buyer possession and occupancy of the Property, subject to the Permitted Exceptions;

- (d) deliver to Buyer a certification in the form required by Section 235-68 of the Hawaii Revised Statutes, duly executed by A&B ("HARPTA Certification");

- (e) deliver to Buyer a State of Hawaii conveyance tax certificate appropriately filled out and executed by A&B;

- (f) deliver a Hawaii ALTA policy of title insurance in the full amount of the Acquisition Price, in the form of the Pro Forma Policy approved by Buyer. The cost of such title insurance shall be paid for by A&B; and

3.3 **Buyer's Obligations at Closing**. At Closing, Buyer shall:

- (a) pay to A&B the full amount of the Acquisition Price, as increased or decreased by prorations and adjustments as herein provided, in immediately available wire transferred funds pursuant to Section 1.5 above, it being agreed that at Closing;

- (b) cause Grantee to join A&B in execution of any instruments described in Section 3.2 that require Buyer's signature;

(c) deliver such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

3.4 Credits and Prorations.

(a) The following shall be apportioned with respect to the Property as of 12:01 a.m. on the Date of Closing, as if Buyer were vested with title to the Property during the entire day upon which Closing occurs:

(i) taxes and assessments levied against the Property;

(ii) gas, electricity, water and other utility charges for which A&B is liable, if any, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing; and

(iii) any other expenses or other items pertaining to the Property which are customarily prorated between a buyer and seller in the area in which the Property is located.

(b) Notwithstanding anything contained in the foregoing provisions:

(i) Any taxes paid at or prior to Closing shall be prorated as of the Date of Closing. To the extent A&B shall have paid taxes with respect to any period after Closing and Buyer is exempt from such taxes, A&B shall have the right, through the County of Maui, to apply for and receive a refund with respect to such taxes.

(ii) A&B shall receive the entire advantage of any discounts for the prepayment by it of any taxes, water rates or sewer rents.

(iii) As to gas, electricity, water and other utility charges referred to in Section 3.4(a)(ii) above, A&B may on notice to Buyer elect to pay one or more of all of said items accrued to the date hereinabove fixed for apportionment directly to the person or entity entitled thereto, and to the extent A&B so elects, such item shall not be apportioned hereunder, and A&B's obligation to pay such item directly in such case shall survive the Closing.

(c) There currently is located on the Property various push piles described on Exhibit E attached hereto. It is anticipated that along with grading the Property in accordance with the park plans and approved permits and clearances, Buyer or the County of Maui will remove and dispose of any and all debris within and upon such existing push piles that is accepted at the Maui Demolition and Construction Landfill, the County's Central Maui Landfill and Hammerhead Metals and/or Reynolds Recycling. A&B agrees to credit Buyer the sum of \$150,000.00 at Closing to enable Buyer to accomplish the foregoing. Promptly upon completion of such work, Buyer shall cause to be returned to A&B any unused portion of such credit. In no event shall A&B have any liability for any amounts in excess of the credit that may be required to perform such work.

(d) The provisions of this Section 3.4 shall survive Closing.

3.5 **Closing Costs.** A&B shall pay (a) the fees of any counsel representing A&B in connection with this transaction; (b) any escrow fees charged by the Escrow Agent; (c) the fees for recording the Deed conveying the Property to Buyer, if any; (d) the conveyance tax; and (e) the cost of Buyer's ALTA title insurance policy in the amount of the Acquisition Price. Buyer shall pay the fees of any counsel representing Buyer in connection with this transaction.

3.6 **Conditions Precedent to Obligation of Buyer.** The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by Buyer in its sole discretion:

(a) A&B shall have delivered to Buyer (or the Escrow Agent in escrow) all of the items required to be delivered to Buyer pursuant to the terms of this Agreement, including but not limited to, those provided in Section 3.2.

(b) All of the representations and warranties of A&B contained in this Agreement shall be true and correct in all material respects as of the Date of Closing (with appropriate modifications permitted under this Agreement or not materially adverse to Buyer).

(c) A&B shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by A&B as of the date of Closing.

3.7 **Conditions Precedent to Obligation of A&B.** The obligation of A&B to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions, any or all of which may be waived by A&B in its sole discretion:

(a) A&B (or the Escrow Agent, in escrow) shall have received the Acquisition Price as adjusted pursuant to and payable in the manner provided for in this Agreement.

(b) Buyer shall have delivered to A&B (or the Escrow Agent, in escrow) all of the items required to be delivered to A&B pursuant to the terms of this Agreement, including but not limited to, those provided for in Section 3.3.

(c) All of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the Date of Closing.

(d) Buyer shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Buyer as of the Date of Closing.

ARTICLE 4

REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 **Representations and Warranties of A&B.** A&B hereby makes the following representations and warranties to Buyer as of the Effective Date:

(a) A&B has been duly organized and is validly existing under the laws of Hawaii. A&B has the full right and authority to enter into this Agreement and to transfer all of the Property to be conveyed by A&B pursuant hereto and to consummate or cause to be consummated the transactions contemplated herein to be made by A&B. All persons signing this Agreement on behalf of A&B are authorized to do so.

(b) To A&B's knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, governmental investigation or proceeding pending against the Property or the transaction contemplated by this Agreement, which, if adversely determined, could in any material way interfere with the consummation by A&B of the transaction contemplated by this Agreement.

(c) A&B has not and will not use the conveyance of the Property pursuant to this Agreement to satisfy any park dedication requirement.

4.2 **Knowledge Defined.** References to the "knowledge" of A&B shall refer only to the actual knowledge (as opposed to constructive, deemed or imputed knowledge) of the Designated Employees (as hereinafter defined) and shall not be construed, by imputation or otherwise, to refer to the knowledge of A&B, or any affiliate of A&B, to any property manager, or to any other officer, agent, manager, representative or employee of A&B or any affiliate thereof or to impose upon such Designated Employees any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. As used herein, the term "Designated Employees" shall refer to the individual(s) named in the Basic Provisions.

4.3 **Covenants of A&B.** A&B hereby covenants with Buyer as follows:

(a) From the Effective Date hereof until the Closing or earlier termination of this Agreement: A&B shall use reasonable efforts to operate and maintain the Property in a manner generally consistent with the manner in which A&B has operated and maintained the Property prior to the date hereof.

(b) A&B shall be solely responsible to satisfy Conditions 3, 4, 9, 11, 17, 18, 20, 22, 23 and 24 ("A&B Land Use Conditions") set forth in that certain Declaration of Conditions recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-45610753 ("Land Use Conditions"). A&B shall indemnify Buyer and any subsequent owner of the Property using the Property for park purposes from and against any loss suffered as a result of the failure of A&B to satisfy the A&B Land Use Conditions. A&B shall use commercially reasonable effort to induce Title Guaranty of Hawaii, Inc. to issue an endorsement to Buyer's title insurance policy insuring over the A&B Land Use Conditions. A&B will cooperate with Buyer's efforts post-Closing to remove the A&B Land Use Conditions as encumbrances to the Property; provided, however, Buyer may not seek such removal unless A&B has received assurance satisfactory to A&B that A&B's ability to develop the Project as previously approved will not be adversely affected.

4.4 **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to A&B:

(a) Buyer has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Buyer's obligations hereunder, and all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, taken. All persons signing this Agreement on behalf of Buyer are authorized to do so.

(b) There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Buyer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

4.5 Covenants of Buyer.

(a) Buyer hereby irrevocably waives any claim against A&B arising from the presence of Hazardous Substances in, on, under or contiguous to the Property; provided, however, that such waiver shall not release A&B from any liability to third parties that A&B may have under applicable law with respect to matters occurring prior to Closing; provided, further, that such waiver shall not preclude the State of Hawaii or the County of Maui from exercising any rights either may have as a governmental entity to enforce applicable environmental law. As used herein, the term "Hazardous Substances" means any toxic, noxious, or hazardous wastes or substances of any kind or form including, without limitation of the generality of the foregoing, asbestos, PCB's, and all substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 et seq., Hazardous Materials Transportation Act, 49 U.S.C. §1802, The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. and in the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. §2601 et seq., or in any other applicable environmental law and all substances regulated as "pollutants" or "contaminants" in any applicable environmental law.

(b) Buyer shall satisfy Conditions 1, 2, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 19 and 21 of the Land Use Conditions as such conditions relate to the Property only.

ARTICLE 5

DEFAULT

5.1 Default by Buyer. If Buyer defaults for any reason other than (a) A&B's default, or (b) the permitted termination of this Agreement by either A&B or Buyer pursuant to any express provision hereof, A&B shall be entitled to pursue all remedies available at law or in equity.

5.2 Default by A&B. If A&B defaults for any reason other than (a) Buyer's default, or (b) the permitted termination of this Agreement by either A&B or Buyer pursuant to any express provision hereof, Buyer shall be entitled to pursue all remedies available at law or in equity.

ARTICLE 6

RISK OF LOSS

6.1 **Minor Damage.** In the event of loss (including condemnation) or damage to the Property or any portion thereof which is not “major” (as hereinafter defined), this Agreement shall remain in full force and effect provided A&B performs any necessary repairs or, at A&B's option, assigns to Buyer all of A&B's right, title and interest to any claims and proceeds A&B may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question. In the event that A&B elects to perform repairs upon the Property, A&B shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer.

6.2 **Major Damage.** In the event of a “major” loss (including condemnation) or damage, either A&B or Buyer may terminate this Agreement by written notice to the other party. If neither A&B nor Buyer elects to terminate this Agreement within ten (10) days after A&B sends Buyer written notice of the occurrence of major loss or damage, then A&B and Buyer shall be deemed to have elected to proceed with Closing, in which event A&B shall, at A&B's option, either (a) perform any necessary repairs, or (b) assign to Buyer all of A&B's right, title and interest to any claims and proceeds A&B may have with respect to any casualty insurance policies or condemnation awards relating to the premises in question. In the event that A&B elects to perform repairs upon the Property, A&B shall use reasonable efforts to complete such repairs promptly and the date of Closing shall be extended a reasonable time in order to allow for the completion of such repairs. Upon Closing, full risk of loss with respect to the Property shall pass to Buyer.

6.3 **Definition of “Major” Loss or Damage.** For purposes of Sections 7.1 and 7.2, “major” loss or damage refers to the following: (i) loss or damage to the Property or any portion thereof such that the cost of repairing or restoring the premises in question to a condition substantially identical to that of the premises in question prior to the event of damage would be, in the opinion of an architect or engineer selected by A&B and reasonably approved by Buyer, equal to or greater than an amount equal to ten percent (10%) of the Acquisition Price, and (ii) any loss due to a condemnation which permanently and materially impairs the current use of the Property. If Buyer does not give notice to A&B of Buyer's reasons for disapproving an architect or engineer within five (5) business days after receipt of notice of the proposed architect or engineer, Buyer shall be deemed to have approved the architect or engineer selected by A&B.

6.4 **Vendor and Purchaser Risk Act.** There shall be no reduction in the Acquisition Price as a result of any loss or damage except as expressly set forth in Section 6.1 or Section 6.2. In the event of any conflict between the provisions of this Article and the provisions of the Vendor and Purchaser Risk Act, if any, enacted in the state in which the Property is located and/or any successor or similar law with regard to the subject matter thereof, the provisions of this Article shall govern and control in all respects.

ARTICLE 7

COMMISSIONS

7.1 **Brokerage Commissions.** Each party represents to the other that they have not retained and are not represented by a broker for this transaction. A & B Properties, Inc., an affiliate of A&B, is a licensed real estate broker in the State of Hawaii.

ARTICLE 8

DISCLAIMERS AND WAIVERS

8.1 **No Reliance on Documents.** A&B makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by A&B to Buyer in connection with the transaction contemplated hereby. Buyer acknowledges and agrees that all materials, data and information delivered by A&B to Buyer in connection with the transaction contemplated hereby are provided to Buyer as a convenience only and that any reliance on or use of such materials, data or information by Buyer shall be at the sole risk of Buyer. Without limiting the generality of the foregoing provisions, Buyer acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by A&B to Buyer shall be for general informational purposes only, (b) Buyer shall not have any right to rely on any such report delivered by A&B to Buyer, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Buyer with respect thereto, and (c) neither A&B, any affiliate of A&B nor the person or entity which prepared any such report delivered by A&B to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any such report.

8.2 **DISCLAIMERS.** It is understood and agreed that A&B is not making and has not at any time made any warranties or representations of any kind or character, expressed or implied, with respect to the property, including, but not limited to, any warranties or representations as to habitability, merchantability, fitness for a particular purpose, title (other than A&B 's warranty of title to be set forth in the Deed), zoning, tax consequences, latent or patent physical or environmental condition, utilities, operating history or projections, valuation, governmental approvals, the compliance of the property with governmental laws (including, without limitation, accessibility for handicapped persons), the truth, accuracy or completeness of the property documents or any the information provided by or on behalf of A&B to Buyer, or any other matter or thing regarding the Property. Buyer acknowledges and agrees that upon closing A&B shall sell and convey to Buyer and Buyer shall accept the property "as is, where is, with all faults". Without limiting the foregoing, Buyer expressly acknowledges the possibility that the Property contains unexploded ordnance and human remains. Buyer has not relied and will not rely on, and A&B is not liable for or bound by, any expressed or implied warranties, guaranties, statements, representations or information pertaining to the property or relating thereto made or furnished by A&B, the manager of the property, or any real estate broker or agent representing or purporting to represent A&B, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this agreement.

8.3 **Effect and Survival of Disclaimers.** A&B and Buyer agree that the provisions of this Article 8 shall survive Closing.

ARTICLE 9

MISCELLANEOUS

9.1 **Public Disclosure.** Prior to Closing, any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement will be made only in the form approved by Buyer and A&B and their respective counsel.

9.2 **Discharge of Obligations.** The acceptance of the Deed by Buyer shall be deemed to be a full performance and discharge of every representation and warranty made by A&B herein and every agreement and obligation on the part of A&B to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

9.3 **Assignment.** Buyer may not assign its rights under this Agreement to anyone without first obtaining A&B's written approval which may be given or withheld in A&B's sole discretion. No assignment shall release or otherwise relieve Buyer from any obligations hereunder.

9.4 **Notices.** Any notices pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (c) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by means described in clauses (a) or (b) above. Unless changed in accordance with the preceding sentence, the addressees for notices given pursuant to this Agreement shall be as follows:

If to A&B: Alexander & Baldwin, LLC
822 Bishop Street
Honolulu, Hawaii 96813
Attention: Paul Hallin
Facsimile: (808) 525-8447

with a copy to: Charles W. Loomis, Esq.
822 Bishop Street
Honolulu, Hawaii 96813
Facsimile: (808) 525-6678

If to Buyer: At the addresses set forth above.

9.5 **Intentionally Omitted.**

9.6 **Modifications.** This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

9.7 **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., H.S.T.

9.8 **Successors and Assigns.** The terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto, including but not limited to Grantee.

9.9 **Entire Agreement.** This Agreement, including the Schedule and Exhibits, contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

9.10 **Further Assurances.** Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Buyer shall, if requested by A&B, execute acknowledgments of receipt with respect to any materials delivered by A&B to Buyer with respect to the Property. The provisions of this Section 9.10 shall survive Closing.

9.11 **Counterparts.** This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

9.12 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

9.13 **Applicable Law.** This Agreement is performable in the State of Hawaii and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of Hawaii.

9.14 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of A&B and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall

have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

9.15 **Exhibits and Schedules.** The schedules or exhibits attached hereto and referenced above shall be deemed to be an integral part of this Agreement.

9.16 **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

9.17 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

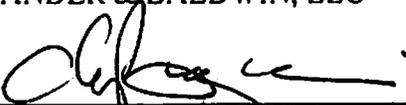
9.18 **Termination of Agreement.** It is understood and agreed that if either Buyer or A&B terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve A&B and Buyer from all obligations under this Agreement, except for such obligations as are specifically stated herein to survive the termination of this Agreement.

9.19 **No Recordation.** Neither this Agreement nor any memorandum of the terms hereof shall be recorded or otherwise placed of public record.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

A&B:

ALEXANDER & BALDWIN, LLC

By:  _____

Name: Christopher J. Benjamin

Title: President

By:  _____

Name: Charles W. Loomis

Title: Assistant Secretary

BUYER:

STATE OF HAWAII, by and through its Board of Land and Natural Resources

By: _____

Name: William J. Aila, Jr.

Title: Chairperson

APPROVED AS TO FORM

By: _____

Name: Linda L.W. Chow

Title: Deputy Attorney General

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

A&B:

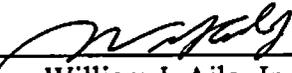
ALEXANDER & BALDWIN, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

BUYER:

STATE OF HAWAII, by and through its Board of Land
and Natural Resources

By:  _____
Name: William J. Aila, Jr.
Title: Chairperson

APPROVED AS TO FORM

By:  _____
Name: Linda L.W. Chow
Title: Deputy Attorney General

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

MAUI LANI SUBDIVISION

LOT 12-A-3

TAX MAP KEY: (2) 3-8-007:104

All of that certain parcel of land, being a portion of Lot 12-A of the Maui Lani Subdivision, being also portions of Grant 3152 to Henry Cornwell and Grant 3343 to Claus Spreckels situated at Waikapu and Wailuku Commons, Wailuku, Island and County of Maui, State of Hawaii

Beginning at the northwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 6,177.64 feet South and 2,707.87 feet East and running by azimuths measured clockwise from True South:

1. 284° 48' 20" 306.74 feet along Lots 155, 62, 61, 58 and 57 of Maui Lani Phase 7, Increment 4 Subdivision (F. P. 2473);

2. 304° 00' 3,214.71 feet along Lots 57 to 36, inclusive of the Maui Lani Phase 7, Increment 4 Subdivision (F. P. 2473) and Lots 137 to 133, inclusive and Lots 127 to 122, inclusive of the Maui Lani Phase 7, Increment 3 Subdivision (F. P. 2442) and Lots 67 to 48, inclusive of the Maui Lani Phase 7, Increment 2 Subdivision (F. P. 2433) and Lot 11-C-2 of the Maui Lani Development Subdivision;

3. Thence along the northwesterly side of Kuihelani Highway [F.A.S.P. No. S-0380 (4)] (being along Road widening Lot 12-A-5 of the Maui Lani Subdivision) on a curve to the left with a radius of 11,612.16 feet, the chord azimuth and distance being:
 34° 00' 53.15" 527.70 feet;

4. 122° 42' 46" 12.00 feet along same;
5. Thence along same on a curve to the left with a radius of 11,624.16 feet, the chord azimuth and distance being:
31° 39' 26" 428.28 feet;
6. Thence along Lot 12-A-1 of the Maui Lani Subdivision on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
121° 39' 45" 1.64 feet;
7. 122° 36' 1,065.80 feet along Lot 12-A-1 of the Maui Lani Subdivision;
8. Thence along same on a curve to the left with a radius of 2,380.87 feet, the chord azimuth and distance being:
116° 18' 522.53 feet;
9. 144° 04' 840.97 feet along Lot 12-A-1 of the Maui Lani Subdivision;
10. Thence along same on a curve to the right with a radius of 503.22 feet, the chord azimuth and distance being:
150° 30' 50" 113.01 feet;
11. 156° 57' 40" 526.93 feet along Lot 12-A-1 of the Maui Lani Subdivision;
12. 106° 11' 470.00 feet along same;
13. 196° 55' 490.95 feet along same to the point of beginning and containing an Area of 65.378 Acres.

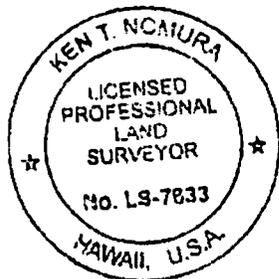
SUBJECT, HOWEVER to existing Easements 16 and 17 for water transmission line purposes in favor of the County of Maui per Grant of Easement recorded in Liber 14533, pages 181,192 and 203.

SUBJECT, ALSO to a restriction of vehicular access rights affecting Course Nos. 3, 4 and 5 of the above described parcel of land.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

January 7, 2013
REVISED: June 17, 2014

This work was prepared by me or under my supervision.



Ken T. Nomura 4/30/2016

Ken T. Nomura
Licensed Professional Land Surveyor
Certificate No. LS-7633
Expiration Date: 4/30/2016

EXHIBIT B

AGRICULTURAL EXCEPTIONS

The following provision shall be included in the warranty deed from A&B, as "Grantor" to Grantee, as "Grantee":

"The Grantee acknowledges that the Property is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of sugar cane and other agricultural products (such growing, harvesting and processing activities being herein collectively called the "Agricultural Activities"), which activities may from time to time bring upon the Property or result in smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "Agricultural By-Products"). The Grantee hereby assumes complete risk of and, except as expressly set forth below, forever releases the Grantor from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Property and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, except as expressly set forth below, the Grantee hereby, with full knowledge of its rights, forever: (i) waives any right to require the Grantor, and releases the Grantor from any obligation, to take any action to correct, modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products, and (ii) waives any right to file any suit or claim against the Grantor for injunction or abatement of nuisances except where the Grantor is in any violation of applicable statutes, ordinances and regulations or as a cross claim or third party claim where the Grantee is named as a defendant. Any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of the Grantor under this agreement or be the basis for a suit or other claim for injunction or abatement of nuisances, and the Grantee hereby forever waives any right to file any such suit or claim. As used in this section regarding Agricultural Activities, all references to the "Grantor" shall mean and include the Grantor and all parent, subsidiary, sister and other affiliated companies of the Grantor, in their respective capacities as the current owner of the Property, the owner of the lands on which the Agricultural Activities are or may be conducted, and the person conducting or who may conduct the Agricultural Activities, and all successors and assigns of the Grantor and its parent, subsidiary, sister and affiliated companies. Each of the foregoing covenants, agreements, acknowledgments, waivers and releases shall constitute covenants running with the land. Each such covenant, agreement, acknowledgment, waiver and release shall be binding upon, and all references to "Grantee" shall mean and include, the Grantee, its heirs, personal representatives, successors and assigns, and all persons now or hereafter acquiring any right, title or interest in or to the Property (or any portion thereof) or occupying all or any portion of the Property. By accepting any right, title or interest in the Property (or any portion thereof) or by occupying all or any portion of the Property, each such person automatically shall be deemed to have made and agreed to, and shall be bound by, observe and be subject to, each of the foregoing covenants, agreements, acknowledgments, waivers and releases. Notwithstanding the foregoing, nothing herein shall release Grantor from any violation of applicable statutes, ordinances and regulations nor prevent the State of Hawaii, the County of Maui or other governmental authority from enforcing applicable statutes, ordinance and regulations."

EXHIBIT C

Map Showing Easements and Reservations

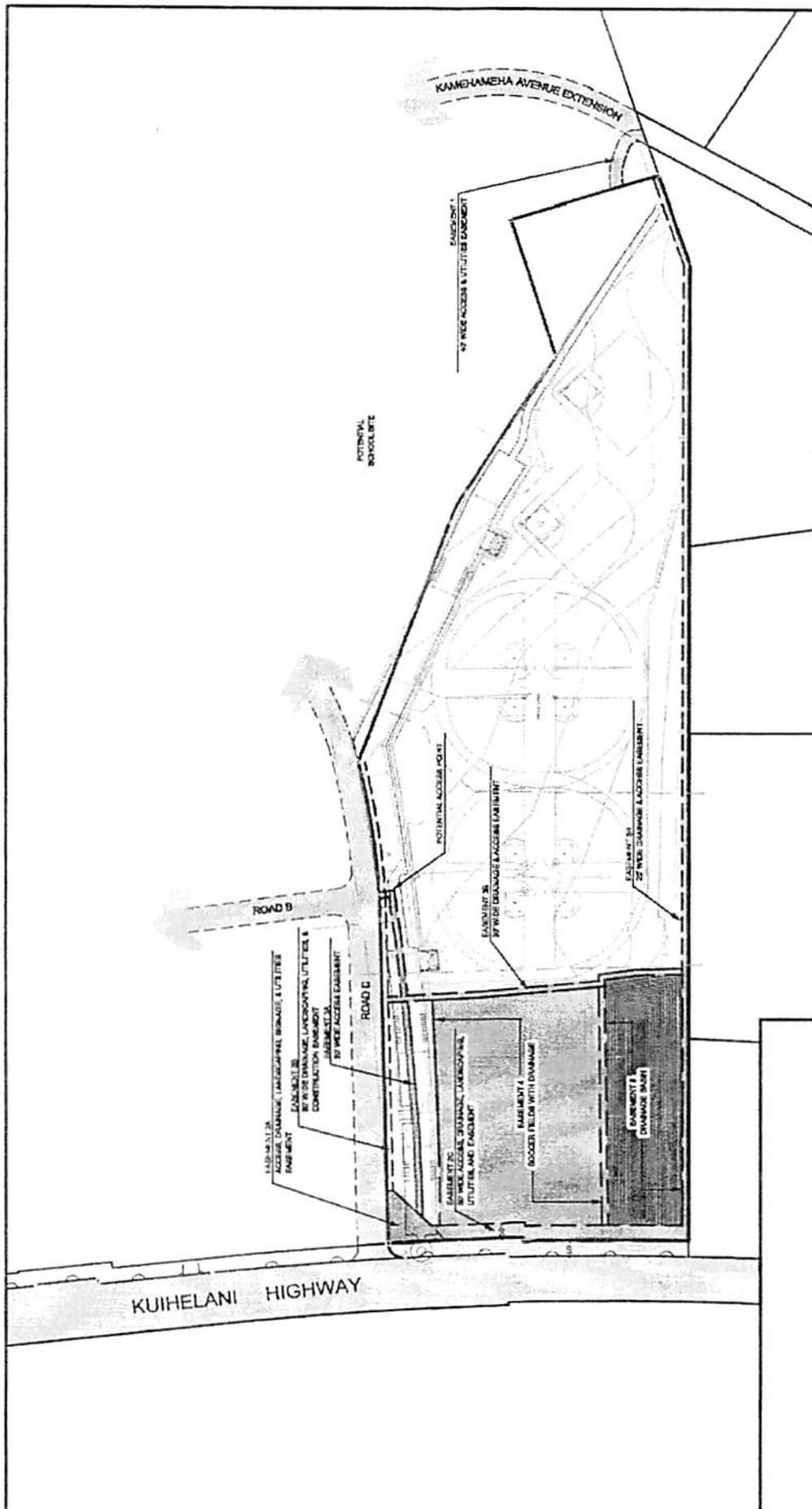


Exhibit C

PLANNING DEPARTMENT
 STATE OF HAWAII
 1555 KALANOAU AVENUE, SUITE 200
 HONOLULU, HI 96813
 TEL: 808-586-2500
 FAX: 808-586-2501
 WWW.PLAN.HAWAII.GOV

LINEAR SCALE (FEET)
 0 150 300 450 600 750 900

Disclaimer: This graphic was prepared for general planning purposes only and should not be used for boundary interpretations or other legal analysis.

- Easement 1
- Easement 2A
- Easement 2B
- Easement 2C
- Easement 3A
- Easement 3B
- Easement 4
- Easement 5

EXHIBIT D

Description of Waterline Easement

MAUI LANI SUBDIVISION

**EASEMENT W-2
AFFECTING
LOT 12-A-3**

TAX MAP KEY: (2) 3-8-007:104

All of that certain parcel of land, being an easement for waterline purposes over, under and across Lot 12-A-3 of the Maui Lani Subdivision, being also portions of Grant 3152 to Henry Cornwell and Grant 3343 to Claus Spreckels situated at Waikapu and Wailuku, Wailuku, Maui, Hawaii

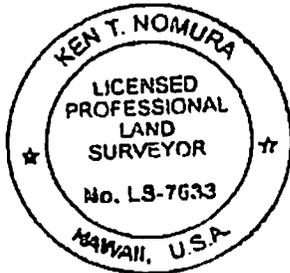
Beginning at a pipe at the southwesterly corner of this easement, said pipe being also the southwesterly corner of Lot 12-A-3 of the Maui Lani Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 8,042.55 feet South and 3,771.76 feet East and running by azimuths measured clockwise from True South:

1. 144° 04' 840.97 feet along Lot 12-A-1 of the Maui Lani Subdivision to a pipe;
2. Thence along same on a curve to the right with a radius of 503.22 feet, the chord azimuth and distance being:
150° 30' 50" 113.01 feet to a pipe;
3. 156° 57' 40" 526.93 feet along same to a pipe;
4. 156° 57' 40" 635.59 feet over and across Lot 12-A-3 of the Maui Lani Subdivision to a point;
5. 284° 48' 20" 63.31 feet along Lot 155 of the Maui Lani Phase 7 Increment 4 Subdivision (F. P. 2473) to a point;
6. 336° 57' 40" 1,123.68 feet over and across Lot 12-A-3 of the Maui Lani Subdivision to a point;

7. Thence over and across same on a curve to the left with a radius of 453.22 feet, the chord azimuth and distance being:
330° 30' 50" 101.78 feet to a point;
8. 324° 04' 918.07 feet over and across same to a point;
9. Thence along Lot 12-A-1 of the Maui Lani Subdivision on a curve to the left with a radius of 2,380.87 feet, the chord azimuth and distance being:
111° 06' 20.5" 91.89 feet to the point of beginning and containing an Area of 2.444 Acres.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

February 6, 2014



This work was prepared by me or under my supervision.

Ken T. Nomura 4/30/2014

Ken T. Nomura
Licensed Professional Land Surveyor
Certificate No. LS-7633
Expiration Date: 4/30/2014

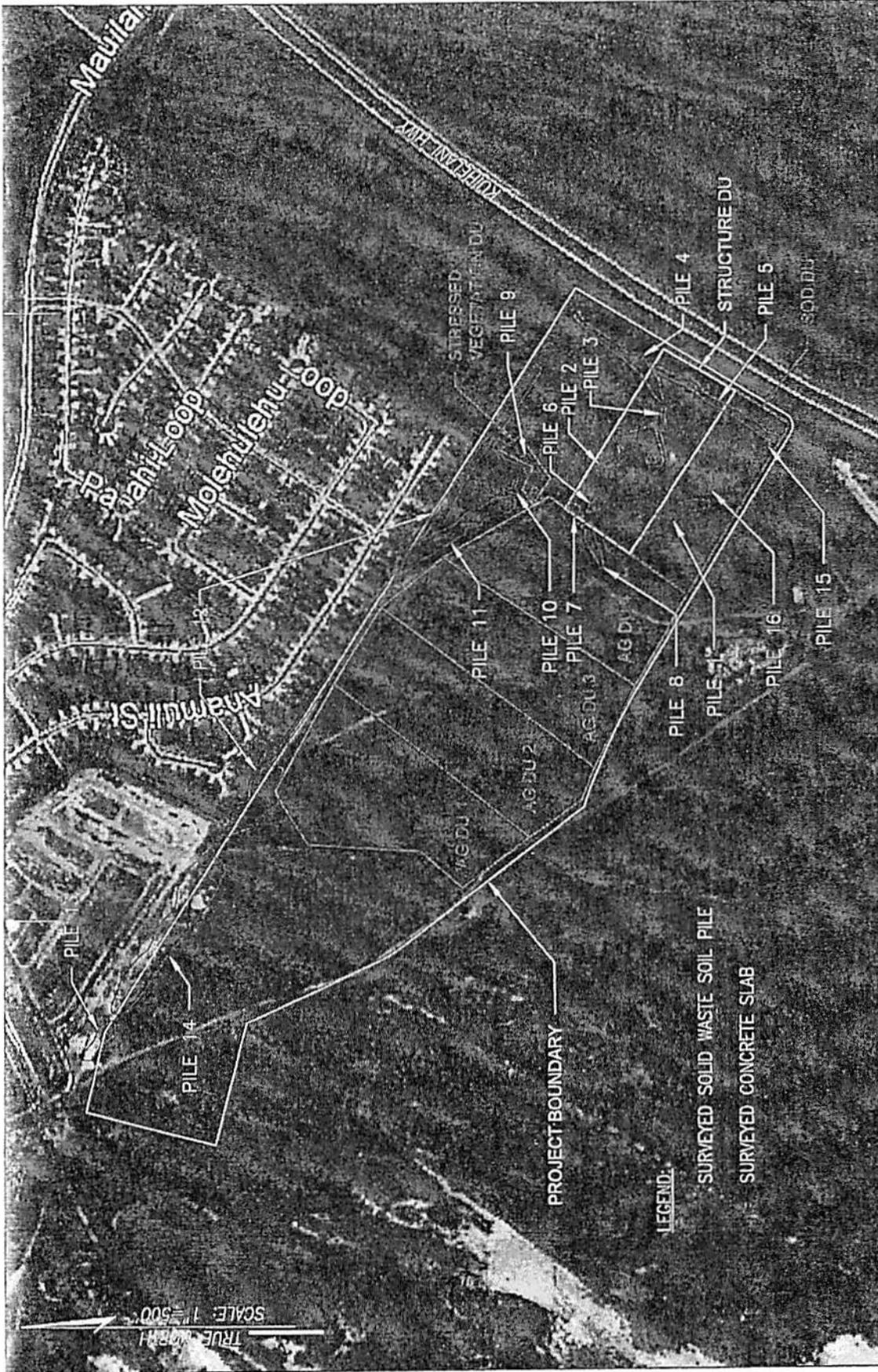
ME
12/6-p

EXHIBIT E
Map of Push Piles

4.3 MEC Site Reconnaissance and Solid Waste Pile Findings

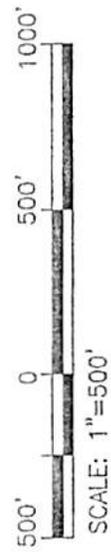
A visual survey for MEC was conducted on the property in conjunction with the MI soil sampling. No MEC were encountered in any of the DUs during MI soil sampling activities at the site. Shooting positions, grenade pits, small arms berms and/or other target areas were not identified during fieldwork activities. The Senior UXO Supervisor (SUXOS) Final Report detailing the MEC reconnaissance activities performed during the project is provided in Appendix F.

A total of 16 solid waste soil piles were identified, measured and surveyed throughout the project site following MI soil sampling. The dimensions and volume of each pile were measured and recorded in the field notebook, as well as a physical description of the pile and any debris that was visible. The footprint of each soil pile was surveyed using a differential GPS unit. No MEC were observed on the surface of any of the soil piles. Photographic documentation of each solid waste soil pile is included in Appendix E on the attached CD-ROM. Approximate dimensions, volumes, and physical descriptions of the 16 soil piles are summarized in Table 4-2. The surveyed locations and footprints of each soil pile within the project site are depicted in Figure 4-1.



	PROJECT TITLE: CENTRAL MAUI REGIONAL PARK PHASE II ENVIRONMENTAL SITE ASSESSMENT KAHULUI, MAUI, HAWAII	FIGURE NO.: 4-1
	DATE: DEC 2013	FIGURE TITLE: SURVEYED LOCATIONS OF SOLID WASTE SOIL PILES WITHIN PROJECT SITE

REFERENCE: GOOGLE EARTH
IMAGE, 2012



ND



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

June 26, 2014 8:01 AM

Doc No(s) A-52900488



/s/ NICKI ANN THOMPSON
REGISTRAR

1 8/10
B-32484182

keo

Conveyance Tax: \$4,903.40

Kh

Return by Mail () Pickup () To:

State of Hawaii
Board of Land and Natural Resources
1151 Punchbowl Street
Hon. HI 96813

TEI 2014-24876-S

TGE 14-044-206 (8)
M. Gamberden

Document contains 18 pages.

Tax Map Key No. (2) 3-8-007-104

**WARRANTY DEED WITH RESERVATION OF EASEMENTS,
COVENANTS, RESERVATIONS AND RESTRICTIONS**

THIS WARRANTY DEED WITH RESERVATION OF EASEMENTS, COVENANTS, RESERVATIONS AND RESTRICTIONS ("Deed") is made as of June 26, 2014 by **ALEXANDER & BALDWIN, LLC**, a Hawaii limited liability company, whose address is 822 Bishop Street, Honolulu, Hawaii 96813 ("**Grantor**") to **STATE OF HAWAII**, by and through its **BOARD OF LAND AND NATURAL RESOURCES**, with its address at 1151 Punchbowl Street, Honolulu, Hawaii 96813 (collectively "**Grantee**").

A. WARRANTY DEED.

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor does hereby grant, bargain, sell and convey, unto Grantee absolutely and in fee simple, forever, all of Grantor's right, title, and interest in and to:

ALL of that certain parcel of land situate and being at Waikapu and Wailuku Commons, District of Wailuku, Island and County of Maui, State of Hawaii, described more particularly in **Exhibit "A"** attached to and made a part of this Deed (the "**Property**"), subject, however, to the encumbrances set forth in **Exhibit "A"** attached hereto and made a part hereof;

AND the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto, together with all improvements, tenements, rights, easements, privileges and appurtenances to the same

belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto;

TOGETHER WITH all improvements, tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held and enjoyed in connection therewith;

EXCEPTING AND RESERVING, HOWEVER, UNTO GRANTOR, its successors and assigns, the right to designate, grant, convey and dedicate additional easements as more particularly described in Section B of this Deed;

SUBJECT, HOWEVER, to all of the reservations, encumbrances and covenants of Grantor and Grantee mentioned in this Deed.

TO HAVE AND TO HOLD the same to Grantee and its successors and assigns, in fee simple forever, subject to the reservations and the agreements of Grantee contained in this Deed.

Grantor does hereby covenant with Grantee that Grantor is the owner in fee simple of the Property and has good right to grant and convey fee simple title to the Property and that said Property is free and clear of all liens and encumbrances that may have been made or suffered by Grantor except as set forth in said Exhibit "A" hereto and that Grantor will WARRANT AND DEFEND the same unto Grantee against the lawful claims and demands of all persons claiming by, through or under Grantor, except as aforesaid.

B. RESERVATIONS.

Grantor reserves to itself, its successors and assigns, which shall run with the land:

1. Easements Over Property in Favor of School Site. Grantor reserves the right to designate, redesignate and relocate designated easements areas, and to grant to itself or the successor owner of the potential school site (the "**School Site**") as shown on Exhibit "B", attached hereto and made a part hereof, easements for utility purposes, including pole and wire lines and appurtenances, underground lines, pipes and conduits and appurtenances required in connection therewith situated on, in, under, over or across the Property in favor of the School Site for the construction and operation of a school; provided, however, that such reserved rights shall not unreasonably interfere with the use of the Property for park and recreation purposes. Grantor or its successor in interest shall be responsible to repair any damage to the Property caused by its installation of utilities within such utility easement.

2. Easements Over Property in Favor of the Project. Grantor reserves the right to designate, redesignate and relocate designated easement areas, and to grant to itself or the successor owner of the property designated by TMK No. (2) 3-8-007-101 (the "**Project**"), easements for utility purposes, including pole and wire lines and appurtenances, underground lines, pipes and conduits and appurtenances required in connection therewith situated on, in, under, over or across the Property in favor of the Project as necessary for the construction and operation of a mixed used project; provided, however, that the exercise of such reserved rights shall not unreasonably interfere with the use of the Property for park and recreation purposes. Grantor shall be responsible for all costs associated with the utility easements in favor of the Project,

including the cost of installing utilities within the easement area, and all costs that Grantee is required to incur in connection with the installation of utilities within the easement area. Grantor, or its successor in interest, shall repair any damage to the Property caused by Grantor or its employees, agents or contractors in the installation of utilities within the easement.

3. Exercise of Rights. The exercise of the rights reserved in Sections B.1. and B.2. shall be accomplished in a commercially reasonable manner and shall not unreasonably interfere with the Grantee's use of the Property for park and recreation purposes. With the prior written approval of Grantee, easement installations may be expanded or relocated if the expansion or relocation of the easement will not have a material, adverse impact on the use of the Property for park or recreation purposes provided, however, that the party performing the expansion or relocation shall pay all costs and expenses of such expansion or relocation, including reasonable attorneys' and consultant's fees of the party not performing the expansion or relocation. Grantor, or its successor in interest, shall repair any damage to the Property caused by Grantor or its employees, agents or contractors.

C. COVENANTS AND RESTRICTIONS.

1. Covenants. Grantee, for itself, its successors and assigns, hereby accepts the Property and acknowledges, covenants and agrees with and to Grantor, its successors and assigns, that the Property is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following covenants and restrictions, which covenants and restrictions are conditions to Grantor's conveyance of the Property to Grantee.

2. Declaration of Conditions. Grantee, for itself, its successors and assigns, further agrees that the Property is subject to all matters disclosed in that certain Declaration of Conditions, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-45810753, and Grantee acknowledges and agrees that (a) Grantee assumes the complete risk of and forever releases the State of Hawaii from all claims for damages and nuisances occurring on the Property and arising out of or related to highway traffic noise from Kuihelani Highway; (b) Grantee waives any right to (i) require the State of Hawaii to take any action to eliminate or abate any highway traffic noise from Kuihelani Highway and (ii) file any suit or claims against the State of Hawaii for injunction or abatement of any highway traffic noise from Kuihelani Highway and for any damages or other claims related to or arising therefrom; (c) Grantee is aware of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations; and (d) Grantee will cooperate in any program to control any birds nesting or occupation and any insect, pest, or wildlife infestation.

D. NEARBY AGRICULTURAL ACTIVITIES.

1. Grantee acknowledges that the Property is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for the growing, harvesting and processing of sugar cane and other agricultural products (such growing, harvesting and processing activities being herein collectively called the "**Agricultural Activities**"), which activities may from time to time bring upon the Property or result in smoke, dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances (collectively, the "**Agricultural By-Products**").

2. Grantee hereby assumes complete risk of and, except as expressly set forth below, forever releases Grantor from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the Property and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, except as expressly set forth below, Grantee hereby, with full knowledge of its rights, forever: (i) waives any right to require Grantor, and releases Grantor from any obligation, to take any action to correct, modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products, and (ii) waives any right to file any suit or claim against Grantor for injunction or abatement of nuisances except where Grantor is in any violation of applicable statutes, ordinances and regulations or as a cross claim or third party claim where Grantee is named as a defendant.

3. Any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty of Grantor under this agreement or be the basis for a suit or other claim for injunction or abatement of nuisances, and Grantee hereby forever waives any right to file any such suit or claim.

4. As used in this section regarding Agricultural Activities, all references to "Grantor" shall mean and include Grantor and all parent, subsidiary, sister and other affiliated companies of Grantor, in their respective capacities as the current owner of the Property, the owner of the lands on which the Agricultural Activities are or may be conducted, and the person conducting or who may conduct the Agricultural Activities, and all successors and assigns of Grantor and its parent, subsidiary, sister and affiliated companies.

5. Each of the foregoing covenants, agreements, acknowledgments, waivers and releases shall constitute covenants running with the land. Each such covenant, agreement, acknowledgment, waiver and release shall be binding upon, and all references to "Grantee" shall mean and include, Grantee, its successors and assigns, and all persons now or hereafter acquiring any right, title or interest in or to the Property (or any portion thereof) or occupying all or any portion of the Property. By accepting any right, title or interest in the Property (or any portion thereof) or by occupying all or any portion of the Property, each such person automatically shall be deemed to have made and agreed to, and shall be bound by, observe and be subject to, each of the foregoing covenants, agreements, acknowledgments, waivers and releases. Notwithstanding the foregoing, nothing herein shall release Grantor from any violation of applicable statutes, ordinances and regulations nor prevent the State of Hawaii, the County of Maui or other governmental authority from enforcing applicable statutes, ordinance and regulations.

E. DISCLAIMERS, WAIVERS AND RESTRICTIONS

1. Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THAT CERTAIN DISPOSITION AGREEMENT DATED EFFECTIVE AS OF JUNE 18, 2014 BETWEEN GRANTOR AND GRANTEE (THE "**DISPOSITION AGREEMENT**"), IT IS UNDERSTOOD AND AGREED THAT GRANTOR IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

TITLE (OTHER THAN GRANTOR'S WARRANTY OF TITLE SET FORTH IN THIS DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS (INCLUDING, WITHOUT LIMITATION, ACCESSIBILITY FOR HANDICAPPED PERSONS), THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF GRANTOR TO GRANTEE, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. GRANTEE ACKNOWLEDGES AND AGREES THAT BY THIS DEED GRANTOR SELLS AND CONVEYS TO AND GRANTEE ACCEPTS THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS". WITHOUT LIMITING THE FOREGOING, GRANTEE EXPRESSLY ACKNOWLEDGES THE POSSIBILITY THAT THE PROPERTY CONTAINS UNEXPLODED ORDNANCE AND HUMAN REMAINS. GRANTEE HAS NOT RELIED AND WILL NOT RELY ON, AND GRANTOR IS NOT LIABLE FOR OR BOUND BY, ANY IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY GRANTOR, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT GRANTOR, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

2. Limited Recourse. Notwithstanding anything to the contrary in this Deed it is expressly understood and agreed that the individuals executing this Deed have executed or will execute the same solely in their capacity as officers and not individually, and such officers shall have no individual liability.

F. MUTUAL COVENANTS

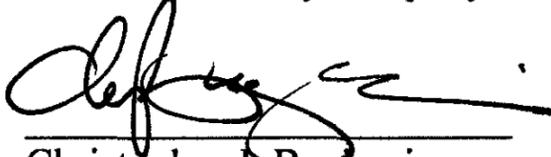
1. Grantor and Grantee. Except as otherwise provided in this Deed: the term "Grantor" as and when used in this Deed shall mean and include Grantor named above and Grantor's successors and assigns, and the term "Grantee" as and when used in this Deed shall mean and include the Grantee named above and Grantee's successors and assigns; where there is more than one Grantee, the use of the singular shall be construed to include the plural wherever the context shall so require and the obligations of Grantee shall be joint and several, and the use of any gender shall include all genders.

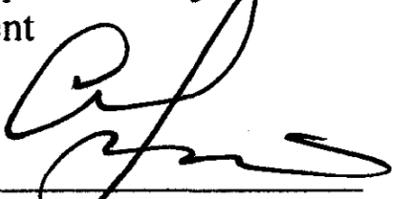
2. Counterparts. This Deed may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties, even though all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

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

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed as of the date first written above.

ALEXANDER & BALDWIN, LLC,
a Hawaii limited liability company

By: 
Name: Christopher J. Benjamin
Title: President

By: 
Name: Charles W. Loomis
Title: Assistant Secretary

Grantor

**STATE OF HAWAII, by and through its
BOARD OF LAND AND NATURAL
RESOURCES**

By: _____
Name: William J. Aila, Jr.
Title: Chairperson

Approved by the Board of Land and Natural
Resources at its meeting held on March 28,
2014.

**APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:**

By: _____
Name: Linda L.W. Chow
Title: Deputy Attorney General

Grantee

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed as of the date first written above.

ALEXANDER & BALDWIN, LLC,
a Hawaii limited liability company

By: _____
Name: Christopher J. Benjamin
Title: President

By: _____
Name: Charles W. Loomis
Title: Assistant Secretary

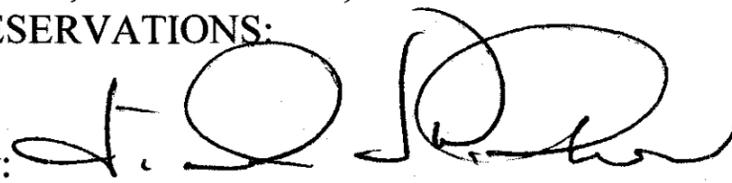
Grantor

**STATE OF HAWAII, by and through its
BOARD OF LAND AND NATURAL
RESOURCES**

By:  _____
Name: William J. Aila, Jr.
Title: Chairperson

Approved by the Board of Land and Natural
Resources at its meeting held on March 28,
2014.

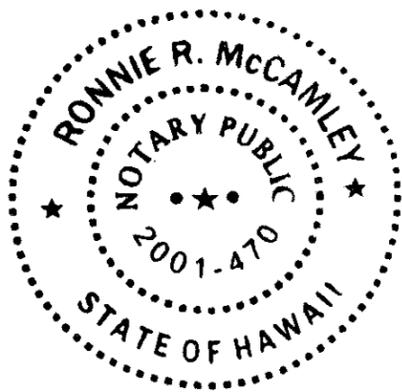
APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

By:  _____
Name: Linda L.W. Chow
Title: Deputy Attorney General

Grantee

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 19th of June, 2014, before me personally appeared CHRISTOPHER J. BENJAMIN, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



A handwritten signature in black ink, appearing to read "Ronnie R. McCamley".

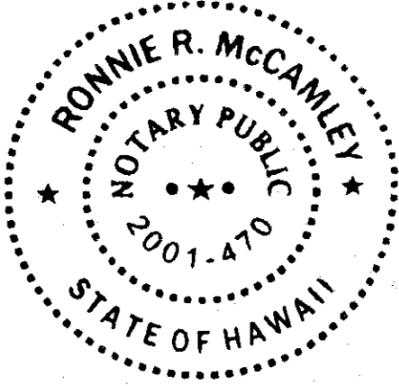
Notary Public, State of Hawaii

Printed Name: Ronnie R. McCamley

My commission expires: 10/28/2017

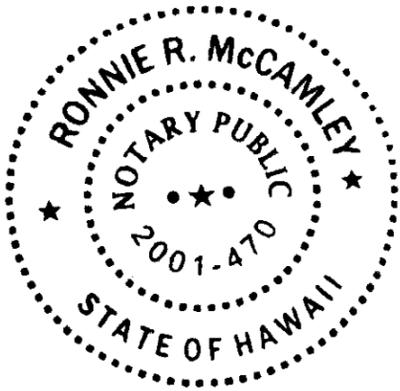
(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: Warranty Deed with Reservation of Easements, Covenants, Reservations and Restrictions	
Doc. Date: _____ or <input checked="" type="checkbox"/> Undated at time of notarization.	
No. of Pages: 18	Jurisdiction: First Circuit (in which notarial act is performed)
 Signature of Notary	6/19/2014 Date of Notarization and Certification Statement
Ronnie R. McCamley Printed Name of Notary	(Official Stamp or Seal)



STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 19th of June, 2014, before me personally appeared CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Notary Public, State of Hawaii

Printed Name: Ronnie R. McCamley

My commission expires: 10/28/2017

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: Warranty Deed with Reservation of Easements, Covenants, Reservations and Restrictions	
Doc. Date: _____	or <input checked="" type="checkbox"/> Undated at time of notarization.
No. of Pages: 18	Jurisdiction: First Circuit (in which notarial act is performed)
	6/19/2014
Signature of Notary	Date of Notarization and Certification Statement
<u>Ronnie R. McCamley</u>	(Official Stamp or Seal)
Printed Name of Notary	

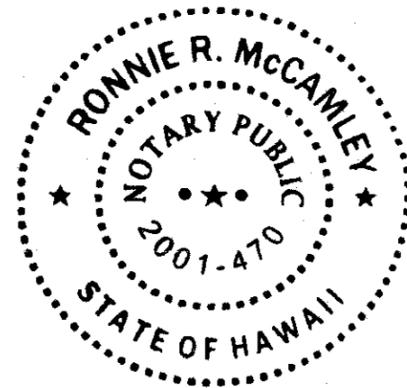


EXHIBIT "A"

MAUI LANI SUBDIVISION

LOT 12-A-3

TAX MAP KEY: (2) 3-8-007:104

All of that certain parcel of land, being a portion of Lot 12-A of the Maui Lani Subdivision, being also portions of Grant 3152 to Henry Cornwell and Grant 3343 to Claus Spreckels situated at Waikapu and Wailuku Commons, Wailuku, Island and County of Maui, State of Hawaii

Beginning at the northwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 6,177.64 feet South and 2,707.87 feet East and running by azimuths measured clockwise from True South:

1. 284° 48' 20" 306.74 feet along Lots 155, 62, 61, 58 and 57 of Maui Lani Phase 7, Increment 4 Subdivision (F. P. 2473);
2. 304° 00' 3,214.71 feet along Lots 57 to 36, inclusive of the Maui Lani Phase 7, Increment 4 Subdivision (F. P. 2473) and Lots 137 to 133, inclusive and Lots 127 to 122, inclusive of the Maui Lani Phase 7, Increment 3 Subdivision (F. P. 2442) and Lots 67 to 48, inclusive of the Maui Lani Phase 7, Increment 2 Subdivision (F. P. 2433) and Lot 11-C-2 of the Maui Lani Development Subdivision;
3. Thence along the northwesterly side of Kuihelani Highway [F.A.S.P. No. S-0380 (4)] (being along Road widening Lot 12-A-5 of the Maui Lani Subdivision) on a curve to the left with a radius of 11,612.16 feet, the chord azimuth and distance being:
34° 00' 53.15" 527.70 feet;

4. 122° 42' 46" 12.00 feet along same;
5. Thence along same on a curve to the left with a radius of 11,624.16 feet, the chord azimuth and distance being:
31° 39' 26" 428.28 feet;
6. Thence along Lot 12-A-1 of the Maui Lani Subdivision on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
121° 39' 45" 1.64 feet;
7. 122° 36' 1,065.80 feet along Lot 12-A-1 of the Maui Lani Subdivision;
8. Thence along same on a curve to the left with a radius of 2,380.87 feet, the chord azimuth and distance being:
116° 18' 522.53 feet;
9. 144° 04' 840.97 feet along Lot 12-A-1 of the Maui Lani Subdivision;
10. Thence along same on a curve to the right with a radius of 503.22 feet, the chord azimuth and distance being:
150° 30' 50" 113.01 feet;
11. 156° 57' 40" 526.93 feet along Lot 12-A-1 of the Maui Lani Subdivision;
12. 106° 11' 470.00 feet along same;
13. 196° 55' 490.95 feet along same to the point of beginning and containing an Area of 65.378 Acres.

SUBJECT, HOWEVER to existing Easements 16 and 17 for water transmission line purposes in favor of the County of Maui per Grant of Easement recorded in Liber 14533, pages 181,192 and 203.

SUBJECT, ALSO to a restriction of vehicular access rights affecting Course Nos. 3, 4 and 5 of the above described parcel of land.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

January 7, 2013
REVISED: June 17, 2014

This work was prepared by me or under my supervision.



 4/30/2016

Ken T. Nomura
Licensed Professional Land Surveyor
Certificate No. LS-7633
Expiration Date: 4/30/2016

Said above described parcel of land having been acquired by ALEXANDER & BALDWIN, INC., a Hawaii corporation by the following Deeds:

1. By DEED of HAWAIIAN COMMERCIAL AND SUGAR COMPANY, a California corporation, dated December 31, 1926, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 865 at Page 8; and
2. By DEED of ALEXANDER & BALDWIN, INC., a Hawaii corporation, dated March 30, 1989, recorded in the Bureau in Liber 23006 at Page 583.

SUBJECT, FURTHER, to:

1. Mineral and water rights of any nature in favor of the State of Hawaii.

2. GRANT

TO : COUNTY OF MAUI

DATED : December 11, 1979

RECORDED : Liber 14533 Page 181

GRANTING : an easement over Easement "16" being more particularly described therein

3. GRANT

TO : COUNTY OF MAUI

DATED : December 11, 1979

RECORDED : Liber 14533 Page 192

GRANTING : an easement over Easement "17" being more particularly described therein

4. CERTIFICATE dated June 2, 1983, recorded in the Bureau in Liber 17086 at Page 382 by A&B PROPERTIES, INC., a Hawaii corporation, re: reclassification of approximately 680 acres.

5. The terms and provisions contained in the following:

INSTRUMENT : SECOND 14.04.010(E) AGREEMENT RELATING TO FIRE PROTECTION

DATED : August 25, 1987

RECORDED : Liber 21387 Page 752

PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation, CERIZO BROTHERS, INC., a Hawaii corporation, and the

COUNTY OF MAUI and its DEPARTMENT OF WATER
SUPPLY

6. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT TO DEFER SUBDIVISION REQUIREMENTS
DATED : September 27, 1989
RECORDED : Liber 23854 Page 9
PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation, and the
DEPARTMENT OF WATER SUPPLY of the County of Maui

7. The terms and provisions contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT (AGRICULTURAL USE)
DATED : August 29, 1989
RECORDED : Liber 23899 Page 679
PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation, and the
COUNTY OF MAUI, through its Department of Public Works

8. The terms and provisions contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT (LARGE LOTS)
DATED : August 29, 1989
RECORDED : Liber 23899 Page 689
PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation, and the
COUNTY OF MAUI

9. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT RELATING TO FIRE PROTECTION
DATED : July 18, 1990
RECORDED : Document No. 90-139708
PARTIES : FRANK WEATHERFORD, doing business as MAUI SOD
FARM, and the DEPARTMENT OF WATER SUPPLY of the
County of Maui

10. The terms and provisions contained in the following:

INSTRUMENT : SUBDIVISION AGREEMENT (LARGE LOTS)
DATED : March 22, 1991

RECORDED : Document No. 91-051286
PARTIES : ALEXANDER & BALDWIN, INC., a Hawaii corporation and
MAUI LAND PARTNERS, a Hawaii general partnership and the
COUNTY OF MAUI

11. The terms and provisions contained in the following:

INSTRUMENT : NOTICE OF IMPOSITION OF CONDITIONS BY THE LAND
USE COMMISSION

DATED : June 26, 2012
RECORDED : Document No. A-45610752

12. The terms and provisions contained in the following:

INSTRUMENT : DECLARATION OF CONDITIONS

DATED : June 26, 2012
RECORDED : Document No. A-45610753

13. The terms and provisions contained in the following:

INSTRUMENT : AGREEMENT FOR ALLOCATION OF FUTURE
SUBDIVISION POTENTIAL

DATED : April 10, 2013
RECORDED : Document No. A-49860881
PARTIES : ALEXANDER & BALDWIN, LLC, "Subdivider", and the
COUNTY OF MAUI, "County"

14. GRANT OF LANDSCAPING, SIGNAGE, ACCESS, DRAINAGE, AND UTILITY
EASEMENTS

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability
company

DATED : June 26, 2014 Doc A-52900481
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement 2A being more particularly described
therein

15. GRANT OF DRAINAGE, LANDSCAPING, CONSTRUCTION AND UTILITY
EASEMENTS

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

DATED : June 26, 2014 Doc A - 52900482
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement 2B being more particularly described therein

16. GRANT OF DRAINAGE, LANDSCAPING, CONSTRUCTION, ACCESS AND UTILITY EASEMENTS

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

DATED : June 26, 2014 Doc A - 52900483
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement 2C being more particularly described therein

17. GRANT OF ACCESS EASEMENT

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

DATED : June 26, 2014 Doc A - 52900484
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement 3A being more particularly described therein

18. GRANT OF DRAINAGE AND ACCESS EASEMENTS

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

DATED : June 26, 2014 Doc A - 52900485
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement 3B being more particularly described therein

19. GRANT OF DRAINAGE BASIN AND ACCESS EASEMENTS

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

DATED : June 26, 2014 Doc A - 52900486
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement 4 and Easement 5, being more particularly described therein

20. GRANT OF WATER LINE EASEMENT

TO : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company

DATED : June 26, 2014 Doc A - 52900487
RECORDED : Document No. _____ June 26, 2014 8:01 AM
GRANTING : an easement over Easement W-2 being more particularly described therein

21. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

EXHIBIT "B"

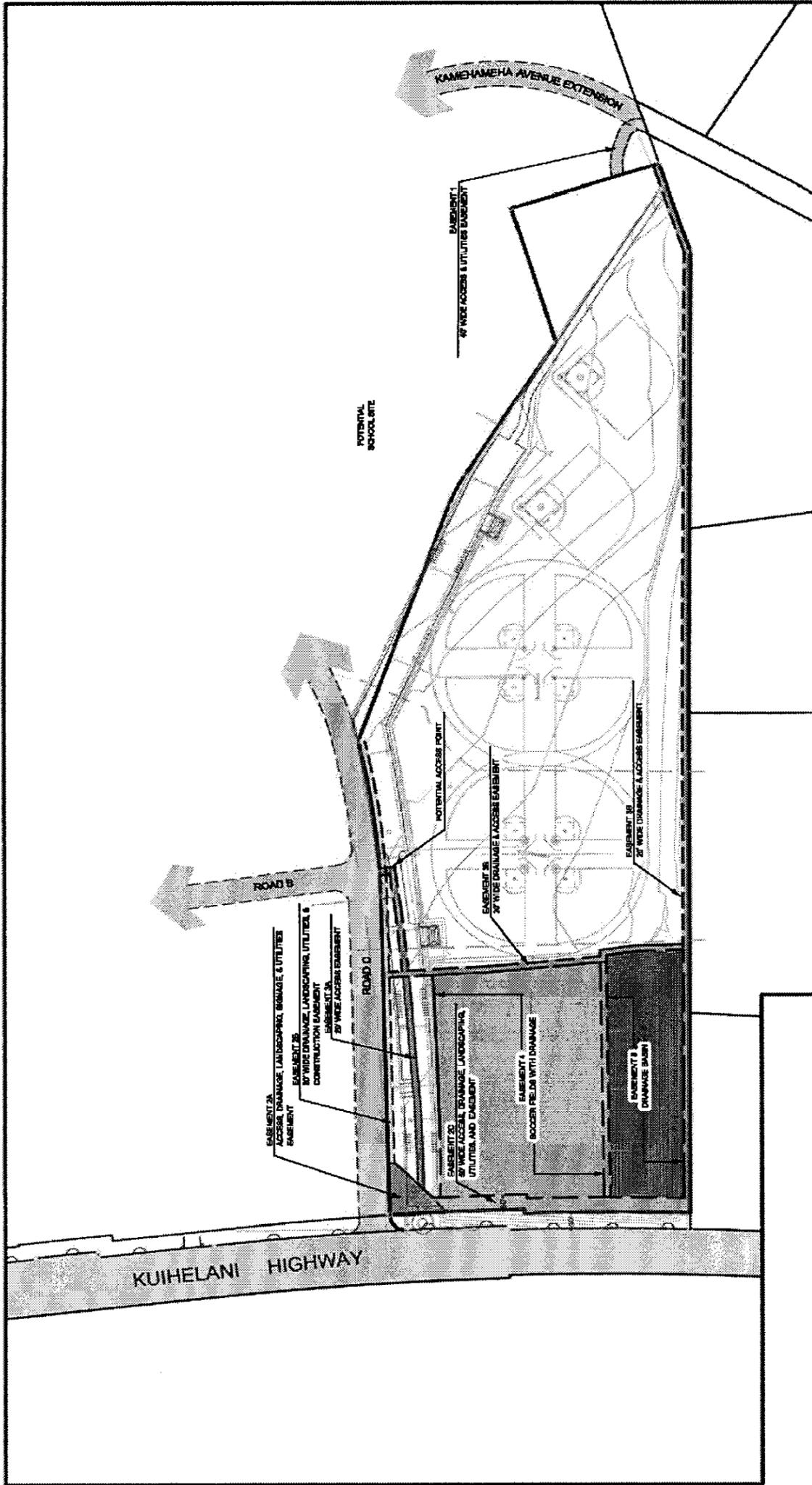
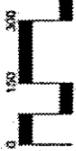


Exhibit C



LINEAR SCALE (FEET)

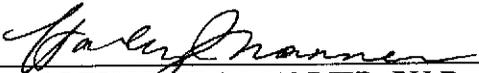


Disclaimer: This graphic was prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

NOTARIZED AUTHORIZATION

I, Harley Ichiro Manner, Ph.D., Vice President of Maui Lani Neighbors, Inc., hereby confirm that Tom Pierce, Attorney at Law, LLC, is authorized to represent Maui Lani Neighbors, Inc., with respect to matters before the State of Hawai'i Land Use Commission, including but not limited to the Petition for Declaratory Relief, relating to the property owned by the State of Hawai'i, by and through its BOARD OF LAND AND NATURAL RESOURCES, being Lot 12-A-3 of the Maui Lani Subdivision; Subd. File No: 3.2226; TMK No: (2) 3-8-007:104.

Dated: Kahului, Maui, Hawai'i, September 30, 2014.


HARLEY ICHIRO MANNER, PH.D.
MAUI LANI NEIGHBORS, INC.
Vice President

STATE OF HAWAII)
) SS:
COUNTY OF MAUI)

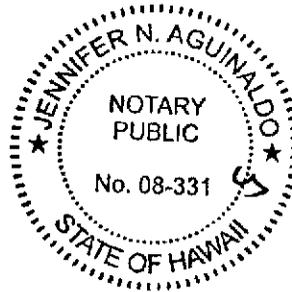
The foregoing document was acknowledged before me this 30th day of September, 2014, by HARLEY ICHIRO MANNER, Ph.D., personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the foregoing document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

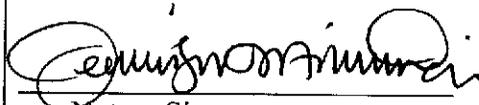
WITNESS my hand and official seal.


Notary Public, State of Hawai'i

Print Name: JENNIFER N. AGUINALDO

My Commission Expires: 08/10/2016
My commission expires: _____



Doc. Date: <u>SEP 30 2014</u>	No. of Pages: <u>2</u>
Notary Name: <u>JENNIFER N. AGUINALDO</u>	<u>2ND</u> Judicial Circuit
Doc. Descrip: <u>Notarized Authorization for Harley Ichiro Manner</u>	
 Notary Signature	<u>SEP 30 2014</u> Date
	Stamp or Seal
NOTARY PUBLIC CERTIFICATION	

