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LAND USE COMMISSION
STATE OF HAWAII
2012 NOV 14 A 10:12

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I**

In the Matter of the Petition of)	DOCKET NO. A12-795
)	
WEST MAUI LAND COMPANY, INC.)	OFFICE OF PLANNING'S COMMENTS
)	AND OBJECTIONS TO PETITIONER'S
)	AND COUNTY OF MAUI PLANNING
To Amend the Agricultural Land Use)	DEPARTMENT'S JOINT PROPOSED
District Boundary into the Urban Land Use)	FINDINGS OF FACT, CONCLUSIONS
District for Approximately 16.7 Acres of)	OF LAW, DECISION AND ORDER;
Land at Lahaina, Island of Maui, State of)	CERTIFICATE OF SERVICE
Hawai'i, Tax Map Key No: (2) 4-5-010: 005)	
)	

**OFFICE OF PLANNING'S COMMENTS AND OBJECTIONS TO
PETITIONER'S AND COUNTY OF MAUI PLANNING DEPARTMENT'S
JOINT PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER**

On October 29, 2012, Petitioner West Maui Land Company, Inc. ("Petitioner") and County of Maui Planning Department ("County") jointly filed *Petitioner's and County of Maui Planning Department's Proposed Findings of Fact, Conclusions of Law, Decision and Order* ("Petitioner's and County's Proposed Decision and Order").

The Office of Planning ("OP") submits the following comments and objections regarding substantive matters, as well as general comments on the organization of the Petitioner's and County's Proposed Decision and Order. Except as set forth below, the Office of Planning ("OP") has no comments on the remainder of the Petitioner's and County's Proposed Decision and Order.

I. FINDINGS OF FACT

1. Paragraph 59, Procedural Matters. Correct to reflect that the Land Use Commission (“Commission”) held hearings on the docket on September 6 and 7, 2012, and not September 5 and 6 as stated. Citations to transcript dates for this and other FOF also incorrectly cite September 5, 2012.

2. FOF 8-15, Description of the Petition Area. Statements in this section should be limited to an empirical description of the agricultural ratings and soils present at the Project site. Delete FOF 10 through 15 here and insert them with further amendments after FOF 227, where it is more appropriate for a discussion of the potential impacts on agricultural resources. In addition, amend FOF 8 and 10 to remove the interpretive statements in these paragraphs.

8. The Petition Area is listed as Other Important Agricultural Land[s] according to the Agricultural Lands of Importance to the State of Hawai'i (“ALISH”). ~~[This is the lowest classification of lands for agricultural uses, reflecting the soils and management challenges facing any person who wishes to conduct farming operations on the Petition Area. (Singleton WDT at p. 14;] (Petitioner Ex. 7)~~

...

10. The soils underlying the Petition Area are of the Pulehu-Ewa-[Jancis] Jaucas association. ~~[A general association of soils, while helpful in the management of large parcels, is not suitable for determining the management of a single property. (Singleton WDT at p. 5)]~~ The soils within the Petition Area are classified as WdB (very stony silty clay), EaA (silty clay loam), and rRK (rock land). Used primarily for sugar cane cultivation, soils with these classifications are also used for home sites and pasture. [Petition, p. 13]

3. FOF 16A. Combine FOF 18 and 22 into a new FOF to be inserted after FOF 16 to provide a clear description of the total number of units that may be developed as a result of the Project. Use the following language for FOF 16A and delete FOF 18 and 22.

16A. Lots within the Project will range in size from 5,000 to 12,000 square feet. Under County code, owners of lots that are 7,500 square feet or greater in area have the option of constructing an additional ohana unit on their lot. The total number of potential units at buildout of the Project is 99 dwelling units. [Tanaka WDT, pg. 4; Tr. 7/19/2012, 112 and 123; Pet. Exs. 7 and 23; OP Ex. 2]

4. FOF 17. Amend to include Petitioner's representation to provide a public path along the Kahoma Stream Flood Control Channel.

17. A 43,000 square foot grassed neighborhood park will be built in the center of the Project. Petitioner will work with the County to establish a public walking and biking path along the Kahoma Stream Flood Control Channel for additional recreational use. [Tr. 7/19/2012, 124; Tr. 9/6/2012, 64; Pet. Exs. 7 and 23; Pet. Ex. 7]

5. FOF 20 and FOF 20A. Amend FOF 20 to state that Petitioner has not determined the number of lot-only sales for the Project, which is information material to Project implementation.

20. The remaining 58 lots will be sold either as a lot only or as a house/lot package. Petitioner has not determined the number of lot-only sales that will be offered for the Project. [Bigelow WDT, p. 12; Tr. 7/19/2012, p. 113; Tr. 9/6/2012, pp. 49-50; Pet. Ex. 11]

6. FOF 21. Insert a table summarizing the number of housing units and estimated sales price ranges for targeted income groups anticipated for the Project to augment FOF 21.
7. FOF 26A. Insert the language of FOF 28 here as a new FOF 26A and delete FOF 28. This keeps information related to the Project's internal roadway together.
8. FOF 27A. Insert a new FOF for Petitioner's representation that all utilities will be installed underground.

27A. All utilities for the Project will be installed underground.
[Pet. Ex. 13]

9. FOF 29. Amend FOF 29 to cite the County Council resolution as the source for the stated Project implementation deadlines.

29. County Council Resolution No. 11-126 requires that the subdivision improvements must commence within three years and be completed within seven years of the adoption of the Resolution. Thus, [~~Construction~~] construction of the infrastructure in the Petition Area must be started by December 2, 2014 and must be completed by December 2, 2022. [Bigelow WDT, p. 12; Tr. 7/20/2012, p. 53; Pet. Ex. 11]

10. FOF 29A-29B. Insert new FOF related to timely implementation of the Project.

29A. Development of the Petition Area will be completed within ten years of Commission approval. [Pet. Ex. 7]

29B. Timely development of entitled projects and project infrastructure is essential for attaining orderly growth and development for neighboring communities and the surrounding region. [OP Ex. 2]

11. FOF 32B. Insert a new FOF regarding Petitioner's representation to implement mitigation measures contained in the Final Environmental Assessment prepared for the Project.

32B. Petitioner will implement the mitigation measures, their equivalents, or better mitigation measures in the development of the Project, as recommended by consultants and as contained in the Project's Final Environmental Assessment. [H. Bigelow, Tr. 9/6/2012, 56:16-25]

12. FOF 33-34 (similarly, FOF 46, 62, 74, 79, 83, and 94). FOF should be limited to statements of fact related to decision-making criteria. FOF stating OP's or another party's position regarding consistency with decision-making criteria are not relevant and should be deleted. The Commission makes this final determination.

13. FOF 35-45 and FOF 34A-34B. This section should be retitled and replaced with a section discussing the need for the Project to conform to the Commission's standard template for decision and orders. Insert new FOF regarding the need for affordable housing as follows. Alternatively, the new FOF could be inserted after FOF 64.

34A. There continues to be a substantial statewide need for housing that is affordable for low- and moderate-income households. According to the 2011 Hawaii Housing Planning Study prepared by SMS Research, nearly 2,900 housing units are projected to be needed on Maui from 2012 through 2016 for households earning up to 140 percent of the area median income. [OP Ex. 1, Attachment F]

34B. The study points out that pent-up demand may be higher for Maui due to larger price increases and a higher level of out-of-state ownership. [OP Ex. 1, Attachment F]

14. FOF 43. Amend to reflect that it is the Petitioner's agricultural consultant's conclusion that the Petition Area is an undesirable site for agriculture. The existence of constraining factors at a particular site does not rule out the suitability or feasibility of agricultural use

in all cases. The record lacks information to conclusively state that the site is unsuitable or undesirable for all agriculture generally.

43. Although the Petition Area is zoned and classified as agricultural, given the constraints placed on the property by the soils and the proximity to existing residential subdivisions, Petitioner's agricultural consultant believes the Petition Area is an undesirable site for ~~[agriculture]~~ agricultural use. [Singleton WDT, p. 15; Tr. 8/23/2012, pp. 162 and 192]

15. FOF 47 (similarly, FOF 254 and 268). These FOF are unnecessary and can be deleted. The proposed conclusions of law section contains a conclusion that the reclassification of the Petition Area is justified under Commission decision-making criteria for boundary amendments.
16. FOF 52-63. The primary purpose of the State Agricultural Functional Plan ("SFP") is to outline actions to enhance and expand agricultural production and the agricultural economy. Reclassification of the Petition Area does not contribute materially to the achievement of the Agricultural SFP objectives. Therefore, delete these FOF from this section, with the exception of FOF 53 and 57-60, which should be moved to the discussion of agricultural resources after FOF 227. The remaining FOF are either irrelevant or duplicative of other FOF.
17. FOF 65-72. These FOF would be more appropriate in a section discussing the need for the proposed Project.
18. FOF 84. This FOF overstates the impact of the Project on transportation systems in the West Maui area and should be deleted.
19. FOF 86-95. These FOF would be more appropriate if incorporated in the section discussing archaeological, historic, and cultural resources at FOF 177. Since the Project does not contribute materially to implementation of the State Historic Preservation Functional Plan, it is not necessary to include a section on Project consistency with the Historic Preservation SFP. The archaeological, historic, and cultural resource concerns raised in the docket can be discussed fully at FOF 177. Therefore, delete these FOF from this section entirely.

20. FOF 96-100. The State does not have a State Sustainability Plan. Therefore, amend FOF 96 to reference HRS § 226-108, Priority guidelines for sustainability. Insert new FOF 96B, retain FOF 97 and 98, and delete FOF 99 and 100.

96. The Hawai'i State [Sustainability] Plan [establishes sustainability as a] sets out priority[. (Tr. 7/19/2012, p. 132-133)] guidelines and principles for sustainability, as codified in HRS § 226-108, Sustainability, including:

- (1) Encouraging balanced economic, social, community, and environmental priorities; and
- (2) Encouraging planning that respects and promotes living within the natural resources and limits of the State.

96B. The Project proposes to develop an infill residential subdivision that provides affordable housing opportunities in proximity to employment and commercial centers. [Pet. Ex. 7; Pet. Ex. 13]

21. FOF 101A-101B. Insert a new FOF here—or alternatively, after FOF 145—that discusses the Project's consistency with HRS § 205A-2, Coastal Zone Management objectives and policies, which must be considered in the Commission's decision-making on the Petition.

101A. The Petition Area is within the State's Coastal Zone Management ("CZM") Area, which includes all lands of the State and the area extending seaward from the shoreline to the territorial limit. The Petition Area is not within the County's Special Management Area. [Pet. Ex. 7]

101B. The proposed Project will include mitigation measures to generally address the State Coastal Zone Management objectives and policies in HRS § 205A-2, including: (a) implementing best management practices and erosion control measures to control runoff during construction; and (b) development of an onsite stormwater and drainage system to ensure that the Project does not adversely affect downstream and adjoining properties and stream and coastal waters and ecosystems. [Petition, p. 37; OP Ex. 2]

22. FOF 120. Delete this FOF. It is duplicative of FOF 133 and out of place in this section.
23. FOF 143. Delete this FOF. The statement is redundant of information provided in FOF 141 and 142.
24. FOF 156-158. Move these FOF to the discussion of agricultural resources at FOF 227.
25. FOF 172 and 172A-172D. Delete and replace FOF 172 with the following.

172A. No mammal or bird species or habitats warranting protection were observed during the biological survey of the Petition Area. [Hobby WDT, p. 8; Pet. Ex. 7]

172B. Federally-listed threatened and endangered seabirds, the Newell's shearwater and the Hawaiian petrel, are known to fly over the Petition Area. [Pet. Ex. 7]

172C. The U.S. Fish and Wildlife Service recommended minimizing or down-shielding of external artificial lighting to reduce seabird mortality due to disorientation and downing. [Pet. Ex. 7]

172D. Petitioner will install down-shielded lights within the Project, during construction and for completed residences, to mitigate seabird mortality. [Pet. Ex. 7]

26. FOF 174-175. Delete these FOF and insert a new FOF that identifies the presence of coastal resources, the potential for impacts, and the measure proposed to avoid or minimize impacts on these resources. The lack of agency comments is not an affirmative statement that coastal resources, such as coral or limu, downstream and offshore from the Petition Area will not be impacted.

175A. The Kahoma Stream Flood Control Channel drains to coastal waters approximately 0.8 miles downgradient from the Petition Area. The offshore and marine waters in this area are an important recreational and community resource, and provide habitat for marine biota, including sensitive corals and humpback whales that winter in the waters of the Hawaiian Islands Humpback Whale National Marine Sanctuary. [OP Ex. 2]

27. FOF 176 (similarly, FOF 205, 226, 232, 241, 246, and 252). The statement that reclassification will not have an impact on, in this instance, the preservation or maintenance of important natural systems or habitats is overly broad. Amend this and the other FOF cited to replace the phrase or like phrase, "Reclassification of the Petition Area will not have an impact on..." with the phrase or like phrase, "If properly mitigated as proposed by Petitioner, the Project will not have a significant impact on..." as appropriate.
28. FOF 182 and FOF 197-200. Delete these FOF. As written, they do not contribute materially to the discussion of the Project's impact on archaeological, historic, and cultural resources.

29. FOF 188. This FOF is unclear and appears to be redundant. It should be amended to more clearly state the involvement and recommendations of the State Historic Preservation Division staff in the site investigation conducted in September 2012, based on Rory Frampton's testimony at the October 5, 2012 hearing.

30. FOF 209A. Insert a new FOF relating to maintenance of the onsite retention basin.

209A. The retention basin will be owned and maintained by the Project's homeowners association. [Pet. Ex. 7]

31. FOF 210-214D. Reorganize, delete, and amend these FOF, to include deletion of FOF 210 and insertion of similar language in a new FOF to follow FOF 214. A revised FOF 214D calls attention to the fact that effective mitigation of stormwater discharges to the Kahoma Stream channel will depend in part on proper maintenance of the proposed detention basins and related facilities.

~~[210.—The proposed drainage system will not increase off-site runoff nor cause an adverse impact to adjacent or downstream properties.. (Tanaka WDT, p. 6)]~~

211. The County ~~[of Maui]~~ will be adopting rules governing the water quality of stormwater runoff. [Tr. 9/6/2012, p. 53]

212. The drainage system of the Project ~~[was reviewed to determine whether the]~~ has sufficient capacity ~~[was adequate]~~ to meet the rules for post-construction stormwater quality proposed by the County. ~~[of Maui.]~~ [Tr. 9/6/2012, p. 53]

~~[213.—The Project drainage system is adequate to meet the requirements under the proposed rules. (Tr. 9/6/2012, p. 53)]~~

214. The Project drainage system will ~~[be reviewed for compliance]~~ need to comply with stormwater runoff and water quality rules when construction permits are sought. [Tr. 8/23/2012, pp. 197-198]

214A. Petitioner will be required to obtain a National Pollutant Discharge Elimination System permit from the State Department of Health for stormwater discharge associated with construction activity. [Pet. Ex. 7]

214B. Petitioner will employ best management practices to ensure that fugitive dust and soil erosion are avoided, minimized, or mitigated during Project construction. [Pet. Ex. 7]

214C. Low impact development ("LID") design and practices, including rain barrels, rain gardens, pervious surfaces, and grassed swales, have been developed to manage and filter stormwater runoff onsite by increasing infiltration and storage of runoff onsite. [OP Ex. 2]

214D. If properly designed, constructed, and maintained, the proposed drainage system and construction activities should not

increase off-site runoff nor cause an adverse impact to adjacent or downstream properties or surface and coastal resources and water quality. [Tanaka WDT, p. 6; OP Ex. 2]

32. FOF 221A. Insert a new FOF regarding the Project's exemption from the County's show-me-the-water policy.

221A. The Project is exempt from the County's 'Show-me-the-Water' policy. Ordinance No. 3818 (2011) amending County Code § 14.12.030 exempts residential projects with 100 percent affordable units located in the Department of Water Supply's West Maui water system from having to provide a long-term reliable supply of water in order to obtain subdivision approval. [Pet. Ex. 7]

33. FOF 227A-227G, Agricultural Resources. Insert FOF 8 through 15 here as FOF 227A-227G to supplement the discussion of agricultural resources. Consultant interpretations and witness opinions are not sufficient statements of fact. Thus, the FOF below have been amended where necessary to reflect a statement of interpretation or opinion.

227A. The Petition Area is listed as 'Other Important Agricultural Land' under the ALISH system. This classification reflects the soils and management challenges facing any person who wishes to conduct farming operations on the Petition Area. [Singleton WDT at p. 14; Petitioner Ex. 7]

227B. The soils underlying the Petition Area are of the Pulehu-Ewa-Jaucas general association. The soils within the Petition Area are classified as WdB (very stony, silty clay), EaA (silty clay loam) and rRk (rock land). [Petition, p. 13]

227C. According to Petitioner's agricultural consultant, the general association of soils, while helpful in the management of large parcels, is not suitable for determining the management of a single property. A soils series classification is more helpful in determining the management of a single property. [Singleton WDT at pp. 5-6]

227D. The Petition Area is dominated by the Wahikuli very stony silty clay soil series (WdB), which is generally shallow and stony. [Singleton WDT at p. 6]

227E. The soils in the Petition Area have a higher degree of stoniness than the average description for the WdB soils series, with depth of soils ranging from 1.5 to 8 feet beneath the surface. (Singleton WDT at p. 6).

227F. The County Planning Director does not believe the Petition Area would be a candidate for designation as important agricultural land because it is not a large contiguous tract of land, it is

sandwiched in an urban area, it has a lot of rocks in the soil, and it is not a good place to engage in commercial farming. [W. Spence, Tr. 7/20/12, pp. 133-134]

227G. Petitioner's agricultural consultant testified that the Petition Area is very unlikely to be used for agriculture because of the limited crop selection allowed by the soils, the proximity of the Petition Area to residential neighborhoods, the difficulty in obtaining uniform water infrastructure to the crops, and the financial risk in engaging in agriculture on the Petition Area. [Tr. 8/23/12, pp. 160-169 and 192-193]

34. FOF 239A. Insert a new FOF for Petitioner's representation regarding roadway improvements needed to provide access from Keawe Street.

239A. Petitioner will make improvements to the existing cane haul road from the Project site to Keawe Street. The roadway improvements will be completed prior to occupancy of units and dedicated to the County as part of the Kuhua Street extension project. [Pet. Ex. 7; Frampton WDT, p. 15; H. Bigelow, Tr. 9/6/2012, 60: 15-19]

35. FOF 240A-240G. Insert a new FOF regarding impact on school facilities and the adequacy of existing civil defense warning siren coverage.

240A. Public schools in the Project area—two elementary schools, one middle school, and one high school—are operating near or over capacity. [OP Ex. 3]

240B. The State Department of Education ("DOE") and the Petitioner have executed a School Impact Fee Agreement ("Agreement") to satisfy both the land and construction components of the DOE school impact fee requirements, which are required because the proposed Project is located within the West Maui School Impact Fee District. [OP Ex. 4]

240C. The West Maui School Impact Fee was adopted by the Board of Education on November 18, 2010, pursuant to HRS §§ 302A-1601-1612, which requires a fee payment for all new dwellings within the Impact Fee District. [OP Ex. 4]

240D. Petitioner has agreed to pay a total of \$392,904 to DOE for the 68 house lots being sold, to be paid in increments of \$5,778 out of escrow upon the closing and recordation of each lot within the project. The amount of the fee shall be adjusted as needed so that it is equal to the West Maui School Impact Fee in effect at the time of payment. [OP Ex. 4]

240E. In addition, the Agreement provides that individual lot owners who build an ohana dwelling on their house lot will be required to pay the prevailing multi-family West Maui School Impact Fee prior to

the issuance of any building permits for the second dwelling unit. [OP Ex. 4]

240F. Potential buyers will be given notice of the school impact fee for any ohana units. The notice will be included in deed restrictions for affected lots. [H. Bigelow, Tr. 9/6/2012, 51: 8-10]

240G. The Petition Area falls within the coverage arcs of existing State outdoor warning sirens, so no additional sirens are needed at this time. [OP Ex. 1]

36. FOF 253. Delete; it is redundant of FOF 252.
37. FOF 260. Delete; it is redundant of FOF 258.
38. FOF 263. The facts contained in this FOF have already been stated in prior FOF. Delete this FOF: it is argumentative and cumulative. The proposed conclusions of law section contains a conclusion that the reclassification of the Petition Area is justified under Commission decision-making criteria for boundary amendments.
39. FOF 254A-254D. Insert new FOF regarding the State's interest in sustainable energy use and development practices.

254A. The State's Hawai'i Clean Energy Initiative has set a goal of achieving 70 percent clean energy by 2030, with 30 percent coming from efficiency measures and 40 percent from locally generated renewable sources. In addition, Act 181, Session Laws of Hawai'i ("SLH") 2011 established priority guidelines for sustainability in the Hawai'i State Plan, codified as HRS § 226-108. [OP Ex. 2]

254B. Petitioner's Kahoma Residential Subdivision Sustainability Plan, uses the State Department of Health's ("DOH") "Healthy Community Design Smart Growth Checklist" to highlight the Project's sustainable development features, primarily citing the Project's locational and site design elements. [Pet. Ex. 13]

254C. Petitioner will incorporate green building features currently required under State and County laws and ordinances, such as solar water heaters and low flow water fixtures. Developer-constructed homes will be designed and built to enable the installation of photovoltaic energy systems, that is, these homes will be 'PV-ready'. [Pet. Ex. 13; R. Frampton, Tr. 7/19/2012, 151:3-153:5]

254D. Other energy efficiency measures being considered for the developer-built homes include Energy Star appliances, energy efficient lighting, higher rated insulation in the ceiling and walls, dual pane or tinted windows, and the installation of fans to avoid air conditioning. [H. Bigelow, Tr. 9/6/2012, 58: 12-59: 22]

II. CONCLUSIONS OF LAW

40. Conclusions of Law (“COL”) 3. The word, “decedents,” should be replaced with the word, “descendants.”
41. COL 4 and 5. Citations to case law should be inserted at the end of each paragraph.
42. COL 8A-8B. Insert new citations to State law promoting affordable housing, as found in HRS §§ 226-19 and 226-106.

8A. HRS section 226-19, the Hawai’i State Plan, Objectives and policies for socio-cultural advancement—housing, provides, in relevant part:

“(a) Planning for the State’s socio-cultural advancement with regard to housing shall be directed toward the achievement of the following objectives:

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

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

8B. HRS section 226-106, the Hawai’i State Plan, Priority guidelines for the provision of affordable housing, provides, in relevant part:

“(1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.”

43. COL 9. Delete this COL. The proposed COL 1 adequately states the conclusion that the Petition meets the Commission’s decision-making criteria.

III. DECISION AND ORDER

44. Condition 1, Education Contribution Agreement. Delete the proposed condition. It does not reflect the entirety of the DOE agreement. Petitioner testified they did not have a

disagreement with the proposed conditions in OP's testimony. Therefore, use Condition 2 provided in OP's testimony in lieu of Petitioner's proposed language. See H. Bigelow, Tr. 9/6/2012, 87: 1-87: 9 and OP Ex. 2.

1. Education Contribution Agreement. Petitioner shall contribute to the development, funding, and/or construction of school facilities in compliance with the *School Impact Fee Agreement for Kahoma Residential Project*, dated February 9, 2012, entered into by Kahoma Residential LLC and the DOE. Petitioner shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the West Maui School Impact Fee in accordance with the *School Impact Fee Agreement*. Such notice shall be recorded and shall run with the land.

45. Condition 5, Affordable Housing. Amend the proposed condition to cite Maui County Council Resolution No. 11-126, and to specifically state the Petitioner's obligation to design and construct the Project in accordance with the resolution. Amend the proposed condition as follows.

5. Affordable Housing. Petitioner shall design and construct the Project and provide affordable housing opportunities in ~~[accordance with the certification of the Project as a]~~ substantial conformance with Maui County Council Resolution No. 11-126, dated December 2, 2011, approving the Project as an HRS section 201H-38 affordable housing project, and the affordable housing agreement or any other agreement entered into by Petitioner and the County pursuant to said resolution.

46. Condition 6, Established Access Rights Protected. Replace the word, "continuously," with "customarily." This makes the language consistent with the language in Article XII, Section 7 of the Hawai'i State Constitution.
47. Condition 8, Drainage. Petitioner testified they did not have a disagreement with the proposed conditions in OP's testimony; therefore, insert Condition 3 provided in OP's testimony in lieu of Petitioner's proposed language. See H. Bigelow, Tr. 9/6/2012, 87: 1-87: 9 and OP Ex. 2. OP's proposed condition includes an obligation to ensure that the stormwater improvements, including the detention basin, be maintained as designed and constructed so that long-term performance and protectiveness of the system is ensured. It also encourages incorporation of low impact development practices to

promote onsite stormwater management and treatment. OP's proposed condition is copied below.

8. Stormwater Management and Drainage. Petitioner shall design and construct stormwater and drainage system improvements in compliance with applicable federal, State, and County laws and rules, and maintain the improvements, or cause to be maintained, as designed. To the extent feasible, Petitioner shall mitigate nonpoint source pollution by incorporating low impact development practices for on-site stormwater capture and reuse into the Petition Area's site design and landscaping to reduce runoff and prevent pollution of affected State highway facilities, downstream properties, receiving gulches and streams, and estuaries that connect with coastal waters.

48. Condition 9, Best Management Practices. Insert the phrase, "and rules," after "State DOH guidelines." This ensures that best management practices for dust control and soil erosion also conform to applicable State rules.
49. New Condition 10A, Infrastructure Deadline. While Petitioner's proposed Condition 10 requires compliance with certain performance requirements imposed by Maui County Council Resolution No. 11-126, insert a condition for Project performance similar to those imposed by the Commission in recent years to provide accountability to the Commission. OP's proposed condition from OP testimony (OP Ex. 2) is copied below.

10A. Infrastructure Deadline. Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and stormwater/drainage improvements, within ten years from the date of the Decision and Order approving the Petition.

50. Additional standard Commission conditions. Insert other standard Commission conditions related to notice of change of ownership and notice of imposition of conditions.

IV. COMMENTS RELATED TO ORGANIZATION OF PROPOSED DECISION AND ORDER

51. The Petitioner and County's Proposed Decision and Order does not follow the Commission's standard outline for Findings of Fact, Conclusions of Law, and Decision and Order. As a result, findings of fact in the Proposed Decision and Order are often repeated in subsequent sections and standard sections are missing. Reorganization of the Proposed Decision and Order to conform to the standard outline would help to improve the final document and future interpretation thereof.

DATED: Honolulu, Hawai'i, this 14th day of November, 2012.

OFFICE OF PLANNING
STATE OF HAWAII



JESSE K. SOUKI
Director

Docket No. A12-795

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawai'i, this 14th day of November, 2012.



JESSE K. SOUKI
Director
Office of Planning