

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A-94-706
)	
KAONOULU RANCH	)	PIILANI PROMENADE SOUTH, LLC
	)	AND PIILANI PROMENADE NORTH,
To Amend the Agricultural Land Use District	)	LLC'S MOTION FOR ORDER
Boundary into the Urban Land Use District	)	AMENDING THE FINDINGS OF FACT,
for approximately 88 acres at Kaonoulu,	)	CONCLUSIONS OF LAW, AND
Makawao-Wailuku, Maui, Hawai'i	)	DECISION AND ORDER DATED
	)	FEBRUARY 10, 1995; VERIFICATION;
	)	AFFIDAVIT OF JONATHAN H.
	)	STEINER; EXHIBITS "A" – "O";
	)	"CERTIFICATE OF SERVICE
)	

PIILANI PROMENADE SOUTH, LLC'S AND PIILANI PROMENADE NORTH, LLC'S
MOTION FOR ORDER AMENDING THE FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER DATED FEBRUARY 10, 1995

VERIFICATION

AFFIDAVIT OF JONATHAN H. STEINER

EXHIBITS "A" – "O"

CERTIFICATE OF SERVICE

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PIILANI PROMENADE SOUTH, LLC AND PIILANI PROMENADE NORTH, LLC
MOTION FOR ORDER AMENDING THE FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER DATED FEBRUARY 10, 1995

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

Petitioners, Piilani Promenade South, LLC (“PPS”) and Piilani Promenade North, LLC (“PPN”) (PPS and PPN are sometimes hereinafter referred to collectively as, “Piilani”), by and through their undersigned attorneys, respectfully moves the Land Use Commission of the State of Hawaii (“Commission”) pursuant to §15-15-70 and §15-15-94 of the Commission’s Rules for an Order Amending the Finding of Fact, Conclusions of Law, and Decision and Order dated February 10, 1995, file in In the Matter of the Petition of Kaonoulu Ranch, Docket No. A94-706 (the “1995 Decision and Order”) in the following respects:

- (1) Recognizing Piilani’s standing to seek and obtain the relief requested herein;
- (2) Issuing a new docket number for that portion of the property which is subject to the 1995 Decision and Order identified as Tax Map Key Numbers (2) 3-9-001:016 and 170-174, comprising approximately 74 acres of land (collectively, the “Piilani Parcels”);
- (3) Releasing the Piilani Parcels from the conditions of the 1995 Decision and Order; and
- (4) Issuing new Findings of Fact, Conclusions of Law, and Decision and Order for the Piilani Parcels that are specifically applicable to Piilani’s proposed project, as set forth in greater detail herein (the “Piilani Project”).

In support of this Motion for Order Amending the Findings of Fact, Conclusions of Law, and Decision and Order dated February 10, 1995 (alternatively, the “Motion to Amend” and “Motion”), Piilani states and presents the following:

I. BACKGROUND

On July 6, 1994, Kaonoulu Ranch filed a Petition for Land Use District Boundary Amendment (the “Petition”) with the Commission in In the Matter of the Petition of Kaonoulu Ranch, Docket No. A94-706. At that time, the original petitioner, Kaonoulu Ranch (“Original Petitioner”), was the fee simple owner of approximately 88 acres of land located at Kaonoulu, Makawao-Wailuku, which at that time was identified as a portion of Tax Map Key Nos. 2-2-02:15, and 3-9-01:16 (hereinafter, the “Original Petition Property”). In the Petition, the Original Petitioner sought an amendment of the land use district boundary to effect reclassification from the Agricultural District to the Urban District.

In the Petition, the Original Petitioner proposed to develop on the Original Petition Property, a 123-lot commercial and light industrial subdivision known as the Kaonoulu Industrial Park. See 1995 Decision and Order at 6, Finding of Fact (“FOF”) 21. The Original Petitioner also proposed that improved lots would be sold in fee simple or leased on a long term basis, with lot sizes ranging from 14,000 to 54,000 square feet. Id. At that time, the Original Petitioner anticipated that the lots would be available for sale in 1996, and that all the lots could be marketed by the year 2000, assuming that necessary land use approvals and entitlements were obtained within customary processing times. Id. at FOF 23. A conceptual map showing the proposed Kaonoulu Industrial Park was attached as an exhibit to the Original Petition.

Following hearings on November 1, 1994, and February 2, 1995, and various submissions in regards to the Original Petition, on February 10, 1995, the Commission issued the

1995 Decision and Order, reclassifying the Original Petition Property from Agricultural to Urban, subject to 20 Conditions.

In 1998, the Original Petitioner applied to the County of Maui for a change in the zoning of the Original Petition Property from Agricultural to M-1 Light Industrial, as required by Condition 1 of the 1995 Decision and Order. In 1999, County of Maui Ordinance No. 2772 was passed, granting the change in zoning application. After obtaining the change in the zoning of the Original Petition Property to M-1 light industrial, the Original Petitioner applied for and obtained from the County of Maui final approval for a large lot subdivision for the 88 acre Original Petition Property in 2001, and subsequently a large lot subdivision consisting of four (4) lots, for which preliminary approval was granted in 2003.

In 2005, the Original Petition Property was sold by the Original Petitioner to Maui Industrial Partners, LLC, which worked with various consultants and State and County agencies, to obtain approval of a further large lot subdivision of the Original Petition Property. On August 14, 2009, the County of Maui approved the subdivision of the Original Petition Property into seven (7) lots, six (6) of which are affected by this Motion.

On August 20, 2009, Maui Industrial Partners, LLC sold one parcel of the Original Petition Property identified by Tax Map Key No. (2)3-9-001:169, comprising approximately 13 acres and located on the northeast corner of the Original Petition Property, to Honua`ula Partners, LLC (the "Honua`ula Parcel"). Honua`ula Partners, LLC is the current owner of the Honua`ula Parcel. Honua`ula Partners, LLC is not related or in any way connected to Piilani, and does not share any common ownership, members, shareholders, or control with Piilani.

On September 10, 2010, Maui Industrial Partners, LLC sold the Piilani Parcels to PPS and PPN, the current owners of the Piilani Parcels. Piilani, through Eclipse Development

Company, LLC, originally planned to develop a shopping complex known as “Piilani Promenade” on the Piilani Parcels. On April 11, 2012 and April 18, 2012, Maui County issued to Piilani two grading permits, placing Piilani in a position to begin construction of on-site and off-site infrastructure for the Piilani Parcels. However, on May 23, 2012, Maui Tomorrow Foundation, Inc., South Maui Citizens for Responsible Growth, and Daniel Kanahele (collectively, “Intervenors”) filed a Motion for a Hearing, Issuance of Order to Show Cause, and Other Relief with the Commission, which was granted on September 10, 2012 (the “Order to Show Cause”). On September 11, 2012, the Commission entered a Prehearing Order, wherein it is stated that the Commission would first hold hearings to consider whether Piilani and Honua`ula had violated the 1995 Decision and Order (“Phase I”). If it were determined in Phase I that a violation occurred, thereafter the Commission would hold hearings to determine whether the appropriate remedy for such violation is to revert the land use designation of the Original Petition Property to Agricultural use or to a different designation (“Phase II”).

On November 1, 2, 15 and 16, 2012, the Commission heard evidence and arguments in Phase I of the Order to Show Cause proceeding. At a meeting on February 7, 2013, a majority of the members of the Commission determined by oral vote that Piilani’s proposed use of the Piilani Parcels and Honua`ula’s proposed use of the Honua`ula Parcel would violate Conditions 5 and 15 of the 1995 Decision and Order, and that Condition 17 had also been violated. No written order regarding the foregoing has been entered.

On April 18, 2013, Piilani filed a Motion to Stay Phase II of the Order to Show Cause Proceeding. Piilani represented in said Motion that Piilani intended to file a motion to amend the 1995 Decision and Order to allow Piilani to develop a project different from that originally presented to the Commission when the 1995 Decision and Order was issued. Piilani requested

that the Commission stay Phase II to allow the Commission to consider this Motion to Amend. On June 27, 2013, the Commission granted the Motion to Stay Phase II of the Order to Show Cause Proceeding, and ordered that Phase II would be stayed on the condition that Piilani file this Motion to Amend before December 31, 2013, and that no construction on the Property occur during the stay.

Piilani files this Motion to obtain an order from the Commission: (1) recognizing Piilani's standing to seek and obtain the relief requested herein; (2) issuing a new docket number for the Piilani Parcels; (3) releasing the Piilani Parcels from the conditions of the 1995 Decision and Order; and (4) issuing new Findings of Fact, Conclusions of Law, and a Decision and Order as to the Piilani Parcels applicable only to the Piilani Project. In brief, Piilani plans to develop a mix of Light Industrial and Business/Commercial uses with 226 apartment units on the Piilani Parcels. The Piilani Project would also include the installation of significant infrastructure and offsite improvements, as described in greater detail below.

II. CHAPTER 343, HAWAII REVISED STATUTES

On September 10, 2013, the Commission entered an Order determining that the proposed Piilani Project may have a significant impact upon the environment that warrants the preparation of an Environmental Impact Statement, and agreeing that the Commission would be the accepting authority pursuant to Hawaii Revised Statutes ("HRS") Chapter 343 of that Environmental Impact Statement ("EIS"). The Piilani Project is subject to the environmental review process pursuant to HRS §343-5(a)(1), and Hawaii Administrative Rules ("HAR") §11-200-6(b)(1)(A) because it proposes to use State land for roadway widening purposes. Following the entry of said Order, on September 23, 2013, the Piilani Promenade Environmental Impact

Statement Preparation Notice (“EISPN”) was published by the Office of Environmental Quality Control. A copy of the EISPN is attached hereto as Exhibit “A.”

As of the date of this filing, the EIS has not been completed. Piilani anticipates that a draft EIS (the “Draft EIS”) will be ready for submission to the Commission by the end of February 2014. Piilani will then request that the Commission accept and transfer the Draft EIS to the Office of Environmental Quality Control (“OEQC”) for publication. A forty-five (45) day period for public comment follows publication. Piilani will modify the Draft EIS to address or respond to any and all public comments, as needed. Thereafter, a Final EIS will be submitted to the Commission for acceptance (the “Final EIS”). It is anticipated that submission of the Final EIS will take place in mid-to-late summer of 2014.

Because the Final EIS has not been completed, some of the information necessary to this Motion to Amend and to properly evaluate the relief requested herein is not yet available. Therefore, Piilani respectfully submits that it will supplement this Motion to Amend as such information becomes available, and at the latest following acceptance by the Commission of the Final EIS. In addition, because there is not yet a Final EIS accepted in this matter, all reports attached hereto are potentially subject to revision and updating throughout the Draft and Final EIS process. Any changes to any report supporting this Motion will be brought to the attention of the Commission prior to the hearing on this Motion.

III. CONFORMANCE WITH STATE LAND USE STANDARDS

Although Piilani is not seeking a reclassification or amendment of the State Land Use District Boundaries, Petitioner is proposing a use that the Commission has determined is different from that which was represented to the Commission by the Original Petitioner to obtain

the 1995 Decision and Order.¹ The following addresses the requirements set forth in HAR §15-15-50(c), and are presented in support of this Motion.

A. PETITIONER AND REPRESENTATIVE

Petitioner PPS – i.e., Piilani Promenade South, LLC -- and Petitioner PPN – i.e., Piilani Promenade North, LLC -- are both Hawaii Limited Liability Companies. PPS and PPN are wholly owned subsidiaries of an entity managed by Sarofim Realty Advisors (“SRA”). SRA is a registered investment advisor founded in 1982. Sarofim provides real estate investment management services to a select number of long-term clients. Clients include a diverse and distinguished list of endowments, foundations and other institutions, including some of the nation’s largest pension funds. Investment management services include entitlements, development, construction and asset management. Sarofim is the owner and currently the developer of the Piilani Project.

Piilani is represented locally by Charles Jencks of Second & Peck Real Estate, LLC. Correspondence and communications in connection with this Motion is to be addressed to Jonathan H. Steiner, McCorriston Miller Mukai MacKinnon, LLP, P.O. Box 2800, Honolulu, Hawaii 96803-2800.

B. DESCRIPTION OF THE SUBJECT PROPERTY

The Piilani Parcels are located in Kihei, *mauka* of the intersection of Kaonoulu Road and Piilani Highway, in the Kaonoulu ahupua’a, Wailuku and Makawao District, on the Island of Maui. The Piilani Parcels are adjacent to the Kihei Commercial Center to the North,

¹ In the event this Motion is denied and Phase II of the pending-but-stayed Order to Show Cause proceeding continues, Piilani reserved the right to continue to assert, as it did in Phase I, that both the formerly proposed Piilani Promenade Project and the new Proposed Piilani Project being proposed herein are consistent with the representations made to the Commission that

Kulanihakoi Gulch to the south, Piilani Highway to the West, and Kaonoulu Ranch lands to the East extending up to Kula. The Piilani Parcels consist of 74.871 acres, and are identified by TMK Nos. (2) 3-9-001:016, 170 to and including 174. TMK Parcels 16, 170 and 171 are developable parcels. TMK Parcel 172 is a roadway lot for the future Kaonoulu Street (first segment of the future Kihei Upcountry Highway). TMK Parcels 173 and 174 are road widening lots along Piilani Highway. Parcels 148 and 122, which are part of the current Makai shoulder of the Piilani Highway and are controlled by the State of Hawaii, will also be improved.

C. PRESENT USE OF THE SUBJECT PROPERTY AND CONFORMITY TO URBAN DISTRICT STANDARDS PROPERTY

The Piilani Parcels are currently vacant. They were formerly used for cattle grazing purposes. Vegetation is minimal, consisting of predominantly buffelgrass and kiawe. The Piilani Project is consistent with the standards for urban districts as set forth in HAR §15-15-18. The Piilani Project will have “city-like” concentrations of people, structures, streets and urban level of services. The Piilani Project is proximately located to centers of trade and employment, accessible to basic services, has satisfactory topography, is reasonably free from environmental effects, and is contiguous with existing urban areas.

D. PETITIONER’S PROPERTY INTEREST IN THE SUBJECT PROPERTY

PPS and PPN are the owners of the fee simple interest in the Piilani Parcels. PPS is the owner of Lots identified as TMK (2) 3-9-001:170, 171, 172, 173, and 174. PPN is the owner of the Lot identified as TMK (2) 3-9-001:016.

formed the basis of the 1995 Decision and Order. Nothing set forth herein shall be construed as or deemed to be an admission otherwise.

E. DESCRIPTION OF PROPOSED USE

The proposed Piilani Project involves developing a mix of retail, office and commercial space, light industrial uses, and approximately 226 apartments, as well as a Maui Electric Company (“MECO”) substation on TMK Parcels 16, 170, and 171. A network of vehicular roadways, bicycle and pedestrian pathways would establish connectivity throughout the Piilani Project and provide opportunities for connection with adjoining properties along Piilani Highway. In addition, the Piilani Project would include construction of a portion of the future Kihei Upcountry Highway (TMK Parcel 172), and two road widening lots (TMK Parcels 173 and 174). See Environmental Impact Statement Preparation Notice (“EISPN”), attached hereto as Exhibit “A,” at 6.

A Conceptual Site Plan for the Piilani Project is attached hereto as Exhibit “B.” It should be noted that this map presents a *conceptual* representation of the proposed layout and scheme of the Piilani Project. The final placement of roadways, precise location of structures and other features on the conceptual map may be changed based upon market conditions or other factors.

On the North side of the Piilani Project is TMK Parcel 16, which consists of 30.132 acres. TMK Parcel 16 is proposed for a mix of uses, including Light Industrial, Business, Multi-Family, and Public/Quasi Public (The “use” terms contained herein, including but not limited to Light Industrial, Business, Business Commercial, Multi-Family, and Public/Quasi Public, are the same as the terms used in and the description of such set forth in the Maui County Zoning Ordinance, Maui County Code Chapter 19). See Exhibit A, EISPN at 6.

The Northeast portion of TMK Parcel 16 is proposed for the Multi-Family component, which would consist of approximately 226 residential units and necessary support infrastructure,

including, but not limited to, off-street parking, sewer, water, roadways and sidewalks.² Id. See also Market Study, Economic Impact Analysis, and Public Fiscal Assessment of the Proposed Piilani Promenade (“Market Study”), attached hereto as Exhibit “C,” at 6-7. The Piilani Project would comply with the Maui County Residential Workforce Housing Ordinance by providing affordable rental units on-site at the Piilani Parcels.

The proposed MECO substation would be located near the Piilani Project boundary northeast of the Multi-Family component.

To the west of the Multi-Family component, adjacent to and fronting Piilani Highway, would be a combined Business Commercial and Light Industrial component consisting of approximately 58,000 square feet on the northerly portion thereof, and a Business Commercial component consisting of approximately 100,000 square feet on the southerly portion thereof.³ See Exhibit “C,” Market Study at 6-7. These components also would include necessary support infrastructure, such as, but not limited to, roads, parking, sewers, and pedestrian and bicycle pathways. See Exhibit “A,” EISPN, at 6.

On the South side of Piilani Project are TMK Parcels 170 and 171, totaling approximately 38 acres. This area would consist of Business and Commercial uses, including, but not limited to, retail, restaurants, and office space, amounting to approximately 430,000 square feet of business/commercial space.⁴ See Exhibit “B.” This portion of the Piilani Project would also provide vehicular access, parking, and bicycle and pedestrian connectivity within the

² The current Conceptual Plan anticipates the development of 226 residential units. However, the exact number of units constructed may change slightly based on market conditions and construction plans.

³ As with the number of residential units, the precise square footage of the Business/Commercial/Light Industrial and the Business Commercial components of the Piilani Project are based on current plans, but remain conceptual and subject to change, and may increase or decrease depending on market conditions.

Piilani Project, as well as to properties to the North of the Piilani Project, and other necessary infrastructure. See Exhibit “A” at 6 - 7.

Bisecting the Piilani Project is TMK Parcel 172, which would be the new East Kaonoulu Street and the first segment of the future Kihei Upcountry Highway. East Kaonoulu Street would be constructed as a four (4) lane divided roadway providing access to the Piilani Project from Piilani Highway. The design for East Kaonoulu Street includes designated bicycle lanes and pedestrian walkways separated from the street. See Exhibit “D,” Preliminary Engineering Report, at 5-1 – 5-3 & Figures 5.1 through 5.4. See also Exhibit “E,” Traffic Impact Analysis Report (“TIAR”).

TMK Parcels 173 and 174 are road-widening lots adjacent to and fronting Piilani Highway and would be the site for the new intersection at Kaonoulu Street and Piilani Highway. The road-widening parcels total 1.783 acres. Two other offsite parcels, Parcels 148 and 122, would also be improved. See Exhibit “A,” EISPN, at 7.

In addition to on-site improvements, the Piilani Project would include off-site infrastructure work, including construction of a 1.0 million gallon, above-ground storage tank for drinking water, with water transmission lines *mauka* of the Piilani Parcels. The water tank would be located on a 1.154 acre parcel of land identified by TMK (2) 2-2-02: portion of 077, which is owned by Kaonoulu Ranch, and would be dedicated to the County of Maui upon completion. A water well and storage tank for landscape irrigation also would be constructed *mauka* of the Piilani Parcels. This off-site well and storage tank would require an easement of approximately 0.135 acres located on land owned by Honua`ula Partners LLC and identified by TMK (2) 3-9-01: portion of 169. Additional off-site easements for utility and future connectivity

⁴ The number of square feet is conceptual and may change.

to Ohukai Road, north of the Piilani Project site, and also for drinking water transmission lines that would be required on land identified by TMKs (2) 2-2-02: portion of 016 and (2) 2-2-02: portion of 082, owned by Haleakala Ranch and Kaonoulu Ranch, respectively. Id. at 7.

F. STATEMENT OF THE PROJECTED NUMBER OF LOTS, LOT SIZE, NUMBER OF UNITS, DENSITIES, SELLING PRICE, INTENDED MARKET, AND DEVELOPMENT TIMETABLES

Piilani is planning to commence construction of the on- and off-site infrastructure construction for the Piilani Project as soon as possible, after a decision on this Motion to Amend which would allow the Piilani Project to proceed. Depending on the issuance of any such decision and the issuance of necessary permits and approvals, on and offsite infrastructure is estimated to continue through 2016, with vertical construction of the apartment complex and the initial phase of business commercial and light industrial improvements started in 2016 and available for occupancy in 2017-2018. These estimates could change based on timing when such permits and approvals are issued and market conditions. See Market Study, Exhibit “C” at 8.

The Business Commercial Component, with approximately 100,000 square feet on the Northeastern portion of the Piilani Parcels, and approximately 430,000 square feet on the Southern portion of the Piilani Parcels, is the focal point of the Piilani Project, and is envisioned to be comprised of general retail, anchor/large retail outlets, neighborhood retail tenants, restaurants, service providers and business office uses. The approximately 58,000 square feet of the Business/Light Industrial component in the Northeastern corner of the Piilani Project is envisioned to be comprised of general industrial, warehouse, buildings materials and supply, service providers, and business/office uses. All of the foregoing square footages and percentages are estimates based on the current conceptual plan. However, the precise tenant make up and

square footages involved may change based on various factors such as market and construction conditions. See Exhibit “C,” Market Study at 7.

The proposed approximately 226 unit rental apartment complex component would be separated from the Business-Commercial component by an extensive open space buffer. The rental apartment complex is anticipated to provide proximate housing for some of the on-site workforce, and currently is envisioned to be comprised of one-, two- and three-bedroom units.

Id.

G. FINANCIAL STATEMENTS AND FINANCING

Piilani purchased the Piilani Parcels in fee simple, using all cash, with no loan or other financing encumbering the Piilani Parcels. As required by a condition of the approval of the subdivision of the Piilani Parcels, Piilani posted an all cash bond in the amount of \$22,058,826 to insure completion of the infrastructure improvements required for the Piilani Project. PPN’s and PPS’s commitment to the Piilani Project and financial capacity to complete the Piilani Project is evidenced by these investments. If the Commission grants the Motion to Amend, Piilani will review multiple alternatives available to finance construction of improvements, utilizing additional self-financing and/ or a construction loan. Piilani reserves the right to finance infrastructure improvements through a variety of sources, including, but not limited to, private investment sources and banking institutions.

H. DESCRIPTION OF THE SUBJECT PROPERTY AND SURROUNDING AREAS

The Piilani Parcels are situated on the western slopes of Haleakala volcano. They consist of sparsely vegetated vacant land with gulch terrain historically used for cattle grazing and ranching. Surrounding land use consists of the following:

- fallow agricultural land and a residential home site to the west;
- the Kihei Commercial Center, a Shell gas station and the Monsanto Seed Farm, each located to the north;
- undeveloped cattle ranch land to the east and south;
- Kulanihakoi Gulch to the south; and
- Piilani Highway to the west.

Residential homes are located beyond Piilani Highway to the west and north of Ohukai Road.

1. USE OF THE PROPERTY OVER THE PAST TWO YEARS

The Piilani Parcels are undeveloped, vacant, and have not been used for the past two years. See Environmental Site Assessment; Phase I Investigation – Piilani Promenade LLC (“ESA”), attached hereto as Exhibit “F,” at 15.

2. PRESENT USE OF THE PROPERTY

The Piilani Parcels currently are vacant. A portion of the northeast corner of TMK (2) 3-9-001:016 is being used as a base yard for Piilani. See Exhibit “F,” ESA at 15.

3. SOIL CLASSIFICATION

The Haleakala Volcanics have been divided into three series. The oldest are the Honomanu Volcanic Series, which is the primitive shield composed of Pahoehoe and Aa flows of tholeiite, tholeiitic olivine basalt, and oceanite. Above sea level, later lavas have almost entirely buried this volcanic series. The Kula Volcanic Series overlies the Honomanu Volcanics and is composed predominantly of hawaiite with lesser amounts of alkalic olivine basalt and ankaramite. Near the summit of Haleakala volcano, the Kula Series is at least 750 meters thick and near the shore only 15 to 60 meters thick. After a long period of erosion, renewal activity included the flows and cones of the Hana Volcanic Series, which are composed of the same rock

type as the Kula Series, but alkalic olivine basalts and basaltic hawaiites are predominant over the more siliceous types.

According to the U.S. Department of Agriculture, the following soil series underlies the Piilani Parcels:

- Waiakoa extremely stony clay loam, 3 to 25% slopes with some natural erosion (WID2). The Waiakoa series consists of well-drained soils on uplands on the island of Maui. These soils developed in material weathered from basic igneous rock. The upper part of the profile is influenced by volcanic ash. These soils are gently sloping to moderately steep. The (WID2) soil type is eroded and stones cover 3 to 15% of the surface. In most areas about 50 percent of the surface layer has been removed by erosion. Runoff is medium and the erosion hazard is severe. This soil is used for pasture and wildlife habitat.
- The southwestern portion of the Piilani Parcels may contain Alae sandy loam, 3 to 7 percent slopes (AaB). Alae Series soil consists of excessively drained soils on alluvial fans on the island of Maui. These soils developed in volcanic ash and recent alluvium derived from basic igneous rock. Runoff is slow and the erosion hazard is slight. This soil is usually used for sugarcane and pasture.

Other common, surface geologic phenomena that are typically investigated in an environmental site assessment are faults, landslides, rock falls, earthquake zones and volcanic eruptions. In 1992, the USGS re-evaluated the seismic hazards for the State of Hawaii, and Maui County was classified as Zone 2B. This indicates that in any given year within a 50-year period (average building life span) there is a 10% chance that 1/5 the force of gravity (ground acceleration) during an earthquake will be exceeded. After examination of the relevant data, it has been

determined by Malama Environmental in its ESA that the aforementioned geologic phenomena (faults, landslides, rock falls, earthquake zones and volcanic eruptions) are not a factor with respect to the Piilani Parcels. See Exhibit “F”, ESA at 18-19.

4. AGRICULTURAL LAND OF IMPORTANCE TO THE STATE OF HAWAII (ALISH)

The three (3) classes of State Agricultural Land of Importance to the State of Hawaii (“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 include those that have not been rated as “Prime” or “Unique” but are still considered important agricultural lands. The ALISH system classifies the majority of the Piilani Parcels are “Unclassified”. Three (3) acres of the Piilani Parcels, located at the southwest corner are classified as “Prime”.

5. PRODUCTIVITY RATING

In 1967 The University of Hawaii, Land Study Bureau (LSB) developed the Overall Productivity Rating, which classifies soils according to five (5) levels, ranging from “A”, representing the class of highest productivity soils, to “E”, representing the lowest. The lands underlying the Piilani Parcels are classified as “E”, or very poorly suited for agricultural production.

6. FLOOD AND DRAINAGE CONDITIONS

The Piilani Parcels are located within Zone X of the Federal Emergency Management Agency's Flood Insurance Rate Maps, indicating that it lies outside of the 500-year floodplain. See Preliminary Engineering Report, attached hereto as Exhibit "D" at 2-2.

Offsite Storm Flows: Storm runoff from the 471 acres of undeveloped land east and mauka of the Piilani Parcels is conveyed by Drainageway "A" to the eastern boundary of the Piilani Parcels, where it continues to flow across the Piilani Parcels in an east-west direction to an existing 102-inch twin barrel culvert crossing Piilani Highway, where it then converges with the main stem of the Kulanihakoi Gulch before reaching the Pacific Ocean. Runoff from the Ohukai Subdivision located to the north east of the Piilani Parcels discharges from the subdivisions drainage outlet southward until it converges with Drainageway "A". See Exhibit "D" at 2-2 through 2-3.

Onsite Storm Flows: The Piilani Parcels generate approximately 85 cfs of surface runoff during a 50-year 1-hour storm. This runoff flows west until intercepted by either the Kulanihakoi Gulch, Drainageway "A", or existing concrete drainage ditches along Piilani Highway near the northwest corner of the Piilani Parcels, all of which drain to the main stem of the Kulanihakoi Gulch before reaching the Pacific Ocean. See Id. at 2-3.

7. TOPOGRAPHY OF THE SUBJECT PROPERTY

The Piilani Parcels are located near the western shores of East Maui on the west slope of Haleakala Volcano. The physiographic type features of the subject site is described as Kula Slightly Dissected Upland. The topography varies, but generally slopes from east to west. The elevations range from 25 feet at the southwestern corner near Piilani Highway to 17 feet in the northwest corner, and rises to 137 feet along Ohukai Road and 230 feet at the far eastern

border. See Exhibit “F,” ESA at 18. The Piilani Parcels are bisected from northeast-to-southwest by a natural drainageway, which converges with the main stem of the Kulanihakoi Gulch below Piilani Highway. See Exhibit “D,” Preliminary Engineering Report at 2-1.

I. ASSESSMENT OF THE IMPACT OF THE PROPOSED USE OR DEVELOPMENT

1. ENVIRONMENT

Implementation of the Piilani Project would require grading for roads and buildings upon development. To the extent possible, improvements would conform to the contours of the land, further limiting the need for extensive grading of the Piilani Parcels. The adjacent Kulanihakoi gulch would not be impacted since storm runoff will be directed towards onsite retention basins strategically located throughout the Piilani Parcels and would minimize the possibility of non-point source pollution from entering the marine environment.

Permanent Best Management Practices are measures that are part of the Piilani Project and would remain in place after construction of the Piilani Project is completed. Permanent measures are intended to reduce storm water pollution generated from the development of the Piilani Project. The use of detention basins and permanent grassing and landscaping of exposed areas would be implemented to provide a level of storm water filtration and pollution control.

2. AGRICULTURE

There has been no agricultural activity on the Piilani Parcels since they were last used for cattle grazing around the early 1900s. The Piilani Parcels have remained fallow since then, and the Piilani Project will have no significant adverse impact on agricultural activity. Reclassification of the Original Petition Property in 1995, including the Piilani Parcels, to the

State Urban district, effectively removed the Piilani Parcels from the inventory of agricultural lands.

3. RECREATIONAL

The Piilani Project would include a two (2) acre public park adjacent to the proposed approximately 226 apartments. Additionally, bike paths, and sidewalks facilitating a future connection to the adjacent future Kihei High School would be developed. The development of the Piilani Project would positively impact recreational resources in the area by providing additional public park space, and internal bike and pedestrian paths.

4. CULTURAL

Hana Pono LLC prepared a Cultural Impact Assessment (“CIA”) for the Piilani Project to identify historical and current cultural uses of the Piilani Parcels, and to assess the impact of the proposed action on the cultural resources, practices, and beliefs. Cultural practices are typically customs relating to subsistence, commerce, residency, agriculture, recreation, religion, spirituality, and collection of cultural resources, which may be carried out by Hawaiian practitioners or practitioners from other ethnic groups.

The Piilani Parcels are located in the Kula Moku and the Waiohuli and Kaonoulu ahupua’a.

Interviews with two (2) individuals (kapuna/makua) knowledgeable about the lands of the Kaonoulu ahupua’a by Hana Pono LLC are part of the basis for the CIA. The oral history interviews were conducted in order to collect information on possible pre-historic and historic cultural resources associated with the Piilani Parcels, as well as traditional cultural practices

The CIA reports that the Piilani Project would have no significant effects to cultural resources, beliefs, or practices. From a cultural practices and beliefs perspective, the Piilani Parcels bear no apparent signs of cultural practices or gatherings currently taking place. The oral history interviews did not reveal any known gathering places on the Piilani Parcels or any access concerns as a result of the Piilani Project. Therefore, it can be concluded that development of the Piilani Parcels will not impact cultural resources on the property or within its immediate vicinity. See Cultural Impact Assessment, attached hereto as Exhibit "G."

5. HISTORIC

An Archeological Inventory Survey was prepared in 1994 for the Original Petition. The necessary fieldwork was conducted October 1993 through January 1994. During the survey, 21 sites were discovered, tested and described. Of the 21 sites, 20 received State Inventory of Historic Places (SIHP) numbers from 50-10-3727 to 50-10-3746. Based on the Archaeological Inventory Survey and recovery results, the State Historic Preservation Division (SHPD) determined that no further work is recommended for SIHP Sites 3727 to 3745. Site 3746 is a petroglyph of a man carved onto a boulder. In a September 1, 1994 letter, the SHPD accepted the final archaeological inventory Survey report. SHPD also recommended that a detailed preservation plan be submitted to determine the effects of the development on the petroglyph. However, a month prior to the issuance of such a recommendation, in August 1994, the petroglyph was relocated to Kaonoulu Ranch Headquarters because of concerns for the safety and security of the petroglyph as attributable to ranching activities and the potential of brush fires in the area of the Piilani Parcels. Since the petroglyph was relocated prior to the knowledge that a preservation plan was required, an after-the-fact preservation plan was submitted to SHPD in October 1994.

SHPD accepted the after-the-fact preservation plan in October 1994 and provisions for long-term preservation of the petroglyph were coordinated with SHPD. In a letter dated March 12, 1998, SHPD set forth SHPD's approval of the revised preservation plan for the petroglyph. No further archeological work

was recommended for the Piilani Parcels. See Archeological Inventory Survey (“AIS”), attached hereto as Exhibit “H,” at Abstract.

The SHPD has recommended to the Archaeologist for the Piilani Parcels that the updated AIS report and monitoring plan be revised include the entire 74.871 acres of the Piilani Parcels as well as the "off-site" area mauka of the Piilani Parcels where the 1.0 million gallon water tank, water transmission lines, 44-foot wide access and utility easement, and water well and storage tank for landscape irrigation would be located. Piilani is having an updated AIS report prepared, which will be included as part of the EIS.

6. SCENIC

The proposed site plan for the Piilani Project features a park, open spaces, landscape trees, and elevated viewpoints above the Piilani Highway. Portions of the Piilani Project would be visible from Piilani Highway and East Kaonoulu Street. Impacts to views of the Pacific Ocean from Kula would not be affected. Impacts to views of Haleakala from Piilani Highway would be minimized through the uses of building setbacks from the highway right of way. The buildings and landscape planting would be strategically located in order to minimize the building mass as viewed from Piilani Highway and the Kaonoulu street extension. The parking areas, and designated open spaces located between clusters of buildings would provide visual corridors throughout the site. Attractive landscape planting and site planning will ensure a quality project that enhances the existing urban design character of the adjacent Kihei area.

7. FLORA

A July 2013 Botanical and Fauna Survey was completed for the Piilani Project by Robert W. Hobdy. The survey noted that for the past 150 years, the area in which the Piilani Parcels are located has been grazed by livestock, resulting in the gradual loss of native plant species, replaced with hardy pasture grasses and weeds. In addition, introduced axis deer and

fires over the years have eliminated additional species of native plants. As noted in the study, “few plant species occur on the property and those that do tend to dominate. Few of these are native.” See Botanical and Fauna Surveys (“B&F Surveys”), attached hereto as Exhibit “I,” at 3.

The Botanical Surveys found a total of ten (10) species of plants, two of which were native Hawaiian, ‘ilima and ‘uhaloa. Both are endemic, but both are widespread and of common occurrence in Hawaii. See id at 4. No Federally listed Endangered or Threatened native plants were encountered, and no special habitats or rare plant communities were seen on the Piilani Parcels. The study found that buffelgrass was the only abundant species found on the Piilani Parcels.

The study recommended that special care be taken to use accepted contouring and terracing techniques during clearing work to avoid significant runoff, and that native dryland plants known to occur in this area be incorporated into the landscape design of the Piilani Project. Id at 5.

8. FAUNA

The fauna study in the B&F Surveys noted four non-native mammal species in the area of the Piilani Parcels: axis deer, domestic cats and dogs, as well as signs of cattle, rats, mice and mongoose. A special effort was made to look for the Hawaiian hoary bat, but none were detected. See Exhibit “I” at 8. Birdlife was found to be sparse, consisting of only non-native birds. One flock of Nene geese were seen flying south above the area in which the Piilani Parcels are located, but did not come from the Piilani Parcels, and the study noted that the area contains no habitats or resources to attract them. The habitat is unsuitable for Hawaii’s native forest birds. Id. at 9. Similarly, insect life was sparse in the area in which the Piilani Parcels are located, with just six species observed. Two, the globe skimmer and the green darner, while

native species, are common throughout Hawaii and also found in other parts of the world. No Blackburn's sphinx moths were observed, nor were any native or non-native host plants seen on the Piilani Parcels. Id. at 10. The study identified no anticipated issues with respect to wildlife species.

9. GROUNDWATER

Drinking water for the Piilani Project would come from the public Central Maui Water System. Water is pumped from existing groundwater wells located in upper Waiehu and North Waihee which draw groundwater from the Iao and Waihee Aquifers.

Piilani has an agreement with the County of Maui, Department of Water Supply ("DWS") to construct a 1.0 million gallon water storage tank as part of the Piilani Project to serve the future public needs of the Piilani Project and South Maui. The Piilani Parcels currently have three 3-inch DWS-issued domestic water meters available, whose combined 1050 gpm flow capacity exceeds the roughly 600 gpm of flow capacity currently estimated to be needed by the Piilani Project to complete the build out of its proposed development plan. Consequently, no additional potable water sources beyond the issued County water meters should be needed to implement the Piilani Project development plan. See Exhibit "D," Preliminary Engineering Report at 3-4 – 3-5.

An irrigation well permit was obtained from the State Water Resource Commission for a well which was constructed for the Piilani Project in 2011.⁵ The well has been proven capable of producing 216,000 gallons of non-potable water per day and a permanent 150 gpm pump has since been installed, however no distribution infrastructure has been constructed to utilize the water. When permanent electrical power is available, the well would be used to

⁵ The irrigation well is located on the Honua'ula Parcel, but will provide non-potable water for both the Piilani Project and Honua'ula's anticipated affordable housing project.

irrigate landscaping on the Piilani Project and would provide a connection point to utilize reclaimed water from the County's R-1 system in the future. See id. at 3-1 to 3-5, & Figures 3-1 & 3-2.

J. AVAILABILITY OR ADEQUACY OF PUBLIC SERVICES AND FACILITIES

1. SCHOOLS

The Piilani Parcels are located within the State Department of Education's ("DOE") Maui Complex, which is composed of five public elementary schools, two middle schools, and one high school. Additionally, Kihei Charter School provides K through 12 education in Kihei.

Currently, the State DOE is planning to build a new high school for grades 9-12 in Kihei on approximately 77 acres mauka of Piilani Highway between Kulanihakoi and Waipuilani Gulches, immediately south of the Piilani Parcels. Phase I is slated to open in 2016 with a design capacity of 930 students, staff and visitors and Phase II is planned to open in 2025 with a design capacity of 1,941.

The Piilani Project will generate a small school population. The DOE uses student generation rates ("SGR") for school impact districts to determine impact fee amounts. The SGR is the average number of students expected to attend DOE schools when the Piilani Project is "mature". The approximately 226 Apartments comprising one component of the Piilani Project are estimated to generate 60 - 70 additional students. See Exhibit "C," Market Study at 47. The current public schools and the new Kihei High School have adequate capacity to serve the future students of the proposed project.

2. PARKS AND RECREATION

There are approximately 10.51 acres of sub-regional park land per 1,000 residents in the Kihei-Makena area.⁶ Sub-regional parks include mini-, neighborhood, and district/community parks. Most parks within the South Maui area are located along the coast, and are mainly beach parks with recreational facilities. Phase I of the South Maui Community Park was completed and opened in 2011, significantly adding to Kihei's inventory of regional park acreage.

The Piilani Project would include a two-acre park site adjacent to the multi-family development. The Piilani Project has been designed with internal bike paths and sidewalks facilitating a connection to the adjacent future Kihei High School. In addition, the Piilani Project would comply with the requirements for Parks and Playgrounds, pursuant to Maui County Code Section 18.16.320. As such, the Piilani Project is anticipated to positively impact recreational facilities by adding to the inventory of public park space in south Maui.

3. WASTEWATER SYSTEMS

The Piilani Parcels currently are not connected to any sewer system; however, the sewer system operated by the County of Maui is located nearby, to the west of the Piilani Parcels across Piilani Highway. Wastewater collected by the County's Kihei sewerage sewer system is conveyed by a series of existing gravity lines, pump stations and force mains along Kihei Road, which transports the collected wastewater to the County of Maui's Kihei Wastewater Reclamation Facility for processing and disposal. The Piilani Project is estimated to generate approximately 114,000 gallons of wastewater per day. The Piilani Project would connect to the existing County sewerage system at a point west of the Piilani Parcels at the intersection of

⁶ Chris Hart & Partners, Inc. April 2011. *Level-of-Service Analysis and Alternative Financing Study*. Prepared for County of Maui Long-Range Planning Division.

Kenolio and Kaiola Streets makai of Piilani Highway where the County's sewer system has sufficient capacity to accept the wastewater generated by the Piilani Project. An approximately 2,600 ft. long gravity sewer mainline consisting of 8- and 10-inch diameter pipe would extend eastward along Kaonoulu Street and across Piilani Highway from this connection point to the Piilani Parcels.

The Maui County Dept. of Environmental Management, Wastewater Reclamation Division reports that the County's Kihei Wastewater Reclamation Facility has approximately 4.6 million-gallons-per-day ("mgd") of its 8.0 mgd treatment capacity still available based on measured average daily flows. Consequently, there should be ample treatment capacity available to accommodate the approximately 114,000 gallon (0.1 mgd) daily wastewater flow estimated to be generated by the Piilani Project. See Exhibit "D," Preliminary Engineering Report at 4-1 through 4-3 & Figure 4.1.

4. SOLID WASTE DISPOSAL

The Piilani Project would consist of industrial, commercial and multi-family uses. Therefore, Piilani is required to contract with a private refuse company to handle solid waste generated at the Piilani Parcels. In 2009, the Integrated Solid Waste Management Plan for Maui County was updated and projected that the Central Maui Landfill will have adequate capacity to accommodate residential and commercial waste through the year 2026.

5. DRAINAGE

Storm runoff from undeveloped land east (mauka) of the Piilani Parcels is conveyed by Drainageway "A" to the eastern boundary of the Piilani Parcels. Once across the eastern boundary, Drainageway "A" continues across the Piilani Parcels, an east-west direction to an existing 102-inch twin barrel culvert crossing at Piilani Highway. Once across and Makai

of Piilani Highway, Drainageway “A” converges with the main stem of Kulanihakoi Gulch before reaching the Pacific Ocean.

Offsite runoff would be allowed to pass through the Piilani Parcels and will not be affected by the development of the Piilani Parcels. Offsite surface runoff conveyed in Drainageways “A” and “B” will be routed to a new diversion ditch constructed along the Piilani Project’s eastern boundary, then down along East Kaonoulu Street in a large underground drainline which will convey the runoff to the existing 102-inch culvert crossing at Piilani Highway.

Underground detention chambers and an open detention pond planned for the Piilani Parcels with a combined storage capacity of 7.5 acre-feet would limit downstream storm water discharges to a peak flow rates that do not exceed pre-development levels, in compliance with Maui County’s Drainage Rules.

The proposed drainage system will not require increasing the size of the culverts crossing at Piilani Highway or altering Kulanihakoi gulch. See Exhibit “D,” Preliminary Engineering Report at 2-1 through 2-7 & Figures 2-1 through 2-4.

6. WATER

The Piilani Parcels are located within Maui County Department of Water Supply's Central Maui Water System service area. Drinking water for the Piilani Project would come from existing groundwater wells located in upper Waiehu and North Waihee which draw groundwater from the Iao and Waihee Aquifers.

The Piilani Project would consume an average of approximately 252,000 gallons of water per day (“gpd”) at build-out, including approximately 171,000 gpd of potable water for domestic uses and 81,000 gpd of non-potable water for irrigation. The Piilani Parcels currently

have three 3-inch Dept. of Water Supply-issued domestic water meters available, whose combined 1050 gpm flow capacity exceeds the roughly 600 gpm of flow capacity expected to be needed by the Piilani Project to complete the build out of its proposed development plan. Consequently, no additional potable water sources in addition to the County water meters should be needed to implement the Piilani Project development plan. See Exhibit “D,” Preliminary Engineering Report at 3-4 – 3-5. An irrigation well permit was obtained from the State Water Resource Commission for a well which was constructed for the Piilani Project in 2011. The well has been proven capable of producing 216,000 gallons of non-potable water per day and a permanent 150 gpm pump has since been installed, however no distribution infrastructure has been constructed to utilize the water. When permanent electrical power is available the well would be used to irrigate landscaping and would provide a connection point to utilize reclaimed water from the County’s R-1 system in the future. See Exhibit “D,” Preliminary Engineering Report at 3-1 to 3-5.

7. TRANSPORTATION SYSTEMS

a. Existing Roads. The primary streets and roadways serving the Piilani Parcels are Piilani Highway, South Kihei Road and Kaonoulu Street. Piilani Highway is a four-lane, undivided highway with a north-south orientation connecting Mokulele Highway to the north with Wailea Resort to the south. The posted speed limit is 40 miles per hour south of Ohukai Road and 45 miles per hour north of Ohukai Road. Ohukai Road is a basically a two-lane, two-way street, but widens to provide two approach lanes as it approaches Piilani Highway. The posted speed limit is 20 miles per hour. Both the eastbound and westbound approaches provide a through and left turn lane and a separate right turn lane. The eastbound and westbound are split, which means that left turns are permitted rather than protected. Kaonoulu Street

currently connects Piilani Highway with South Kihei Road, and is a two-lane, two-way street with separate left turn lanes at intersections. The posted speed limit is 20 miles per hour. The intersection with Piilani Highway is currently an unsignalized, T-intersection. Kaiwahine Street is a two-lane, two-way residential collector street north of Ohukai Road. The posted speed limit is 20 miles per hour. Residential parking is allowed along both sides of the street. Uwapo Road is an extension of Kaiwahine Street west of Piilani Highway to South Kihei Road. Uwapo Road is a two-lane, two-way roadway. There is no development along the north side and there are multi-family residential units along the south side. No parking is allowed along either side. The assumed speed limit is 20 miles per hour.

b. Vehicular Access to Piilani Project. Vehicular access to and egress from the Piilani Project will be provided by extending Kaonoulu Street mauka of Piilani Highway. In the future, Kaonoulu Street will be extended to Haleakala Highway at Haliimaile Road, providing a connection between Kihei and Upcountry. Access to the north and south portions of Piilani Project is provided on East Kaonoulu Street, through four different driveways entrances.

c. Summary of Impacts on Transportation. A Traffic Impact Assessment Report (TIAR) was prepared in 2013. A copy of the TIAR is attached hereto as Exhibit "E." The TIAR concluded that the existing roadways, combined with the mitigation measures and proposed intersection and roadway improvements being proposed as part of the Piilani Project, would accommodate traffic generated by the Piilani Project. Intersections are projected to operate at an acceptable level during the AM and PM peak hours as defined by the Institute of Transportation Engineers. See Exhibit "E," TIAR at 57, Table 20.

The primary access from Piilani Highway to the Piilani Project would be the major, fully-signalized intersection of Kaonoulu Street and Piilani Highway. Roadway lots to be dedicated to the State of Hawaii for roadway improvements along Piilani Highway and East Kaonoulu Street (the future Kihei Upcountry Highway) comprise approximately eight (8) acres of the Subject Property. The TIAR and the development plans for the Piilani Project include signalization at the intersection of Piilani Highway and East Kaonoulu Street. Id. at 50. The roadway improvements planned by Piilani to mitigate impacts include adding two double left-turn lanes into East Kaonoulu Street, as well as widening West Kaonoulu Street to include acceleration and deceleration lanes. Id. at 50, 56 (Table 19) & 66 (Figure 23). In order to accommodate traffic traveling southbound on Piilani Highway and turning left onto East Kaonoulu Street, Piilani proposes to design two left turn lanes with storage for 50 vehicles, which is anticipated to be enough left turn storage to accommodate both the Piilani Project, the future Honua'ula Affordable Housing Project proposed for the Honua'ula Parcel, and anticipated traffic to the Kihei Upcountry Highway. Id. a 65.

In order to accommodate traffic traveling northbound on Piilani Highway and turning into and out of East Kaonoulu Street, Piilani has designed acceleration and deceleration lanes. Id. at 40 (Figure 12), 50, & at 66 (Figure 23). Further traffic mitigation for cars travelling along Piilani Highway is provided by the placement of the ingress and egress points on East Kaonoulu Street to the Piilani Project. Access to the north and south portions of the Piilani Project from East Kaonoulu Street is provided through four different driveways on East Kaonoulu Street, labeled A through D, which were designed and revised based on consultations with SDOT. Id. at 38 & at 66 (Figure 23).

Construction activities may generate short term traffic impacts to motorists in the immediate vicinity of the construction site. As such, mitigation measures would be implemented to minimize the impacts of construction related traffic. When appropriate, construction personnel would be required to direct and facilitate traffic during construction activities.

8. PUBLIC UTILITIES

There are no existing MECO power sources in the immediate vicinity of the Piilani Project. The closest existing MECO power source is an overhead 69 kV and 12 kV pole line running through the existing subdivision just makai of Piilani Highway. The 69 kV is part of MECO's transmission loop for the Island of Maui, and is the nearest source of large power. The 12 kV pole lines provide distribution power to existing commercial and residential developments in the area. However, MECO has advised that the existing 12 kV system does not have sufficient spare capacity to accommodate the estimated 6,250 kVA of load required by the current Piilani Project development plan, therefore MECO is planning a new substation in the northwest corner of the Piilani Parcels. MECO would be providing provisional power to feed the proposed permanent loads for the Piilani Parcels temporarily until the new Kaonoulu Substation comes on line. See Exhibit "J, letter from MECO dated September 22, 2011.

The new substation would be fed by an overhead 69 kV line extension across Piilani Highway, which would be tapped into MECO's transmission loop pole line below the Highway. Public Utilities Commission review and approval are required for MECO's new substation. The substation will contain two (2) MECO transformers to step down the voltage from 69 kV to 12 kV for local distribution. A new 12 kV concrete-encased underground ductline and manholes would be provided to extend power from the substation, along the north boundary of the Piilani Project's residential site, and to a major ductline along Kaonoulu Street extension.

Stubouts for 12 kV distribution would be provided at each bulk-lot for future on-site distribution. All distribution would be underground, including wiring along Kaonoulu Street for MECO's street lighting system. Telephone and CATV System Hawaiian Telcom and Oceanic Time Warner Cable also do not have any existing telecommunications facilities in the immediate vicinity of the proposed development. The closest source of telephone and CATV service is MECO's 69 kV pole line, which runs below Piilani Highway. It is proposed to build an underground ductline extension from the existing 69 kV pole line, across Piilani Highway, and underground along Kaonoulu Street extension. Conduit stubouts will be provided for each bulk-lot for future on-site distribution. Hawaiian Telcom and Oceanic Time Warner Cable will provide the fiber optic cables in the ductlines on an as-needed basis. No Hawaiian Telcom or Oceanic Time Warner Cable central offices or electronic equipment pads are anticipated. However, small cross connects and CATV node pads may be required along Kaonoulu Street. As with MECO, all distribution would be underground. See Exhibit "D," Preliminary Engineering Report at 6-1 – 6-2, & Figure 6-1.

9. POLICE PROTECTION

The Piilani Parcels are located within the Maui Police Department's Kihei Patrol District 6 (Ma'alaea, Kihei, Wailea, Makena). This patrol district is served by the Kihei Station, located approximately 2.5 miles from the Piilani Parcels at the Kihei Town Center. Two small police offices are also located at Wailea Point between Kamaole Beach Parks II and III and at the old Kihei Community Center.

The almost-completed Kihei District Police Station is located at the intersection of Piilani Highway and Ke Alii Alanui Road, approximately 1.5 miles south of the Piilani Parcels. This full service police station has been built to accommodate the future needs of South

Maui and will replace the current station at Kihei Town Center. The Piilani Project would be serviced by the new police station, and therefore is not anticipated to significantly impact police protection.

10. FIRE PROTECTION

There are two fire stations servicing South Maui: Wailea Fire Station and Kihei Fire Station. The Kihei Fire Station is located near Kalama Park on South Kihei Road, about 1.5 miles from Piilani Parcels, sufficiently proximate to provide adequate fire service to the Piilani Parcels.

The Piilani Project would require a fire protection system capable of delivering a fire flow of 3,000 gallons-per-minute (gpm) from a storage reservoir with at least a 360,000 gallon storage capacity to meet Maui County Fire Department and Department of Water Supply requirements for fire suppression. These requirements would be met or exceeded by the construction of the 1.0 million gallon capacity water storage tank and 16-inch distribution main, which together would be capable of delivering the required volume of water. See Exhibit "D," Preliminary Engineering Report at 3-5.

11. IMPACT OF DEVELOPMENT ON OTHER PUBLIC AGENCIES

The proposed Piilani Project is not anticipated to impact other public agencies not listed above.

K. LOCATION OF THE PROPOSED USE OR DEVELOPMENT IN RELATION TO ADJACENT LAND USE DISTRICTS AND ANY CENTERS OF TRADING AND EMPLOYMENT

The Piilani Parcels are located in Kihei, a center of trading and employment for South Maui. The Piilani Parcels are adjacent to existing Urban areas and an existing Light Industrial subdivision in the State Urban District to the North. The Light Industrial Uses to the

north include a gasoline filling station, a Commercial Light Industrial complex and a self-storage facility.

On the *mauka* or eastern side of the Piilani Parcels is a commercial nursery and ranch land extending to Kula. Kulanihakoi Gulch and the future Kihei High School are located south of the Piilani Parcels. On the *makai* side of the Piilani Parcels is Piilani Highway. Further *makai* is the Kaonoulu Estates residential subdivision, the Maui Lu Resort and South Kihei Road.

The following is a description of zoning, community plan designations, and existing land uses adjacent to the Piilani Parcels:

- North:** Community Plan: Light Industrial, Rural, Single Family
State Land Use: Urban
Zoning: Light Industrial, Rural, Agricultural
- Existing Uses:** Gasoline Station, Light Industrial, Single Family residences
- South:** Community Plan: Public/Quasi-Pubic; Agriculture
State Land Use: Agriculture
Zoning: Agriculture
- Existing Uses:** Kulanihakoi Gulch, Future Kihei High School site
- East:** Community Plan: Agriculture
State Land Use: Agriculture
Zoning: Agriculture
- Existing Uses:** commercial nursery and Kaonoulu Ranch Lands
- West:** Community Plan: Single-Family
State Land Use: Urban

Zoning: A-1 Apartment, R-1 & R-2 Residential

Existing Uses: Kaonoulu Estates Single-Family Residential subdivision

L. ECONOMIC IMPACTS OF THE PROPOSED DEVELOPMENT

The proposed Piilani Project would be a mixed use project containing commercial, industrial and residential components serving the Kihei-Makena area. The Kihei-Makena area has expanded dramatically in the past three decades, and is currently dependent upon the commercial sector in the Kahului-Wailuku districts. It is anticipated that the Kihei-Makena corridor will evolve into a more primary trade area with significantly less dependence upon businesses in Wailuku and Kahului. See Market Study, Exhibit “C,” at 14. The Piilani Project would provide both commercial and light industrial space to meet this growing need. It will provide convenient retail and light industrial employment and consumer opportunities for both residents and visitors of the Kihei-Makena community. In addition, the residential component will provide needed rental housing to serve the workforce of business and commercial components of the Piilani Project, as well as contributing to alleviating the current scarcity of rental and residential units in the area. Id. at 17-18.

1. EMPLOYMENT

The subject development is anticipated to bring in approximately \$200 million of new capital investment into Maui County's real estate market during its build-out over a 12 to 15 year period (from 2015 to circa 2028-30), generate approximately \$2.3 billion in total on-site economic activity during the construction and initial operations period (17 years, 2015 to 2031), and approximately \$349 million in annual economic activity on a stabilized basis thereafter. See Exhibit “C,” Market Study at 20.

The construction of the Commercial/Light Industrial component of the Piilani Project will directly create an estimated 878 "worker-years" of employment in the trades and associated businesses during build-out, averaging an estimated 52 worker years annually, with an estimated \$66.5 million in wages (averaging \$3.9 million per year). Secondary/off-site employment resulting from subject construction is estimated to total another 220 worker-years of employment with wages of approximately \$8.9 million. Id.⁷

The on-going operations and maintenance of the Business Commercial, Light Industrial and Apartment components of the Piilani Project would directly provide an estimated 8,816 worker-years and approximately \$274.4 million in total wages over the 15-year period from opening of the first businesses until full build-out and stabilization are achieved (2017 to 2031). Associated secondary/off-site employment during the time-frame will total and estimated 2,778 worker-years with wages of approximately \$112.2 million. After "stabilization" the mixed-use community will support approximately 1,210 permanent jobs on-site with an annual payroll of approximately \$36.6 million, and an additional estimated 303 secondary/off-site positions with approximately \$12 million in yearly wages off-site. Id.

An estimated 97 percent of the gross operating revenues within the Commercial/Light Industrial component of the Piilani Project, approximately 97 percent, would be a result of outside patrons patronizing Piilani Project tenants (the remaining 3.0 percent would be from consumption and rents paid by the residents of the approximately 226 on-site rental apartments planned for the Piilani Project). The base economic impact on Maui would total at

⁷ A "worker year" is equal to 2,080 hours per year of labor/employment, based on 52 weeks at 40 hours. It is equivalent to what a "full-time equivalent" employee would standardly work, not including vacation, holidays and sick days. A worker year may be comprised of many persons working in different tasks for lesser amounts of time each (for example, on a construction site).

least \$2.6 billion during build-out and approximately \$352 million annually upon stabilization. Id. at 20-21.

At build-out the resident population of the Piilani Project would be approximately 607 persons, with an estimated 60 to 70 children of school-age who would be attending public schools. See Exhibit “C,” Market Report at 21. The cumulative resident household income during the 17-year build-out and absorption modeling period would total an estimated \$241 million, and will stabilize at approximately \$17.2 million annually thereafter. Discretionary expenditures into Maui businesses by the Piilani Project population would be approximately \$120 million during build-out and average an estimated \$8.6 million per year on a stabilized basis. Id.

The total State economic impact from construction of the Piilani Project would reach approximately \$450 million, there would be approximately 2,933 total worker-years of jobs created, and the total increase in earnings statewide would be approximately \$134 million. Id.

2. POTENTIAL IMPACT TO AGRICULTURAL PRODUCTION IN THE VICINITY OF THE SUBJECT PROPERTY, AND IN THE COUNTY AND STATE

The Piilani Project would have little or no adverse impact on agricultural production. The Piilani Parcels are within the State Agricultural district, and is zoned Light Industrial (LI). Surrounding lands that have been developed or are planned for development have been for urban uses as housing, retail, and a proposed school. No significant agricultural production is taking place in the vicinity of the Piilani Parcels.

M. IF A RESIDENTIAL DEVELOPMENT IS PROPOSED, A DESCRIPTION OF THE MANNER IN WHICH THE PETITIONER ADDRESSED THE HOUSING NEEDS OF LOW INCOME, LOW-MODERATE INCOME, AND GAP GROUPS

The Piilani Project includes a residential component, consisting of approximately 226 residential units. The Piilani Project would be designed and constructed to meet all of the requirements of Chapter 2.96, the Residential Workforce Housing Policy of the Maui County Code. Prior to obtaining the necessary subdivision or building permits for the residential component of the Piilani Project, Piilani would enter into an appropriate workforce housing agreement with the Maui Department of Housing and Human Concerns, as required in Chapter 2.96. Under the current provisions of Chapter 2.96, Piilani would be required to have 25% of the units meet the affordable workforce housing requirements.

N. NEED FOR THE PROPOSED DEVELOPMENT

The Piilani Project responds to the current and anticipated need for additional commercial, light industrial, and residential uses within the Kihei-Makena corridor. Kihei is one of Hawaii's fastest growing suburban towns and is emerging as a focal point for future, modern commercial and industrial uses on Maui. There is currently a very limited existing supply of vacant commercial development in the area. Vacancy for commercial space in the Kihei-Makena area is currently estimated at less than 2.0 percent, less than the State average, and rents in the area are at or above island-wide averages. It is estimated that there will be a significant demand for leasable commercial space to meet expected market needs. The Piilani Parcels are uniquely situated along Piilani Highway, at the Makai end of what is the planned Kihei-Upcountry Highway, to meet these needs. See Exhibit "C," Market Study at 15-17.

In addition, the rental housing market in the Kihei-Makena area has been chronically under-supplied, with low vacancies even during recessionary periods. The currently

available supply of rental units is virtually non-existent. The demand for new residential units in the Kihei-Makena corridor is expected to increase.

From a market perspective, the Piilani Parcels are in a superior location for the type of mixed-use development proposed at the Piilani Parcels in regards to highway frontage, exposure, intercept potentials, access, topography, shape, size, and interior view potentials. The Piilani Project would be complementary with existing adjacent uses, and provide quality business opportunities for a diverse range of retail, restaurant, service/office and light industrial space owners and users. The rental apartment would be a complimentary component, offering housing opportunities for the commercial/light industrial component workforce of the Piilani Project and others in the community. See Exhibit “C,” Market Study at 18.

O. AN ASSESSMENT OF CONFORMITY OF THE PROPOSED USE TO APPLICABLE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN, CHAPTER 226, HRS, AND APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLAN POLICIES

The Piilani Project is consistent with the goals, objectives and policies of the Hawaii State Planning Act, HRS Chapter 226 (“HSP”) and applicable priority guidelines and functional plans. The three themes underlying the HSP are: (1) individual and family self-sufficiency; (2) social and economic mobility; and (3) community or social well-being. See HRS § 226-3. The HSP provides a number of State goals, and specific objectives and policies to achieve those goals. The State’s goals include a strong, viable, stable and diverse economy, the development of physical environments that are aesthetically pleasing, clean and beneficial to the well-being of the residents and the physical, social and economic well-being of the people of Hawaii. A point-by-point analysis of the Piilani Project’s conformity with the numerous objectives, policies, priority guidelines, and functional plans of the HSP will be provided in the Environmental Impact Statement that Piilani is preparing and will be submitted to the

Commission prior to any decision regarding this Motion to Amend. After the Environmental Statement has been completed, or at another appropriate time based on information available, Piilani will supplement this Motion to Amend to address these issues in greater detail.

P. AN ASSESSMENT OF THE CONFORMITY OF THE PROPOSED USES TO OBJECTIVES AND POLICIES OF THE COASTAL ZONE MANAGEMENT PROGRAM, CHAPTER 205A, HRS

The Federal Coastal Zone Management Act of 1972 was adopted in response to competing development and preservation interests in U.S. coastal areas. Population growth and development in coastal areas were impacting marine resources, open space, view sheds, wildlife, and other important ecological, cultural, and historic resources. In response to this concern, Congress created a framework for managing and regulating the coastal zone and appropriated funds for State-run coastal zone management programs. The State's acceptance of the Federal funds necessitated compliance with Federal Coastal Zone Management Program standards.

The boundaries of Hawaii's coastal zone management program are defined by coastal waters and adjacent, coastlands that are strongly influenced by each other. Coastal areas which require special consideration due to their unique values or characteristics are called Special Management Areas ("SMA") and must be designated by a management plan. Any development within these areas is subject to a special assessment process. This protocol provides a means to preserve, protect, and when possible, restore the natural resources of the coastal zone by controlling development with shoreline areas in order to avoid the permanent loss of valuable resources.

As required by State law, maps showing the limits of the SMA have been prepared by each County. In the Kihei-Makena Community Plan region, the *makai* edge of the Piilani Highway right-of-way ('ROW') serves as the SMA boundary for this part of the island.

The onsite improvements for the proposed project and the vast majority of the offsite improvements for the project would involve limited work within the SMA. This limited scope of work within the SMA would consist of the following offsite improvements:

- Installation of a gravity sewer mainline (within the Kaonoulu Street ROW) between Piilani Highway and the intersection of Kaonoulu and Alulike Streets.
- Installation of a water distribution mainline (within the Kaonoulu Street ROW) between Piilani Highway and the intersection of Kaonoulu Street and Kenolio Road.

An SMA Assessment application will be prepared and submitted to the Maui Planning Department for review prior to the construction of these offsite improvements.

The following section discusses the relationship of the Piilani Project to the objectives and policies of the Hawaii Coastal Zone Management Program pursuant to Chapter 205A, HRS.

1. Recreational Resources

Objective: Provide coastal recreational resources accessible to the public.

Policies:

- (A) Improve coordination and funding of coastal recreation planning and management; and
- (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
 - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
 - (ii) Requiring placement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or require reasonable monetary compensation to the state for recreation when replacement is not feasible or desirable;
 - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

- (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
- (v) Ensuring public recreational use of county, state, and federally owned or controlled shoreline lands and waters having standards and conservation of natural resources;
- (vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
- (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing;
- (viii) Encourage reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of Section 46-6, HRS.

Analysis: The Piilani Parcels are a half-mile from the shoreline and therefore do not abut the shoreline. The Piilani Project is not expected to adversely affect coastal recreational resources nor will it impact public shoreline access and activities.

2. Historical/Cultural Resources

Objective: Protect, preserve and, where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies:

- (a) Identify and analyze significant archeological resources;
- (b) Maximize information retention through preservation of remains and artifacts or salvage operations; and
- (c) Support state goals for protection, restoration, interpretation, and display of historic structures.

Analysis: An updated Archaeological Inventory Survey (AIS) is being prepared for the Piilani Project. Upon completion, the AIS will be submitted to the SHPD for review and approval. The findings, conclusions, and recommendations of the AIS will be included in the Draft EIS.

3. Scenic and Open Space Resources

Objective: Protect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

- (a) Identify valued scenic resources in the coastal zone management area;
- (b) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
- (c) Preserve, maintain, and where desirable, improve and restore shoreline open space and scenic resources; and
- (d) Encourage those developments that are not coastal dependent to locate in inland areas.

Analysis: The visual character of the Piilani Parcels would be modified by the Piilani Project. Landscaping, park, and open space areas associated with the Piilani Project would help integrate the Piilani Project with its surroundings. All development of the Piilani Parcels would be required to comply with design guidelines and covenants, conditions, and restrictions for the Piilani Project

4. Coastal Ecosystems

Objective: Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

- (a) Improve the technical basis for natural resource management;
- (b) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
- (c) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
- (d) Promote water quantity and quality planning and management practices, which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate State water quality standards.

Analysis: The Piilani Project is anticipated to not have an adverse effect upon the region's coastal ecosystem. With the use of Best Management Practices and appropriate mitigation measures during and after construction, no adverse impacts to near shore waters from non-point sources of pollution are expected.

5. Economic Uses

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

- (a) Concentrate coastal dependent development in appropriate areas;
- (b) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area;
- (c) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such development and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) Use of presently designated locations is not feasible;
 - (ii) Adverse environmental impacts are minimized; and
 - (iii) The development is important to the State's economy.

Analysis: The Piilani Parcels are located in an area that includes existing and planned urban land uses, including Kihei Mauka, a planned growth area in North Kihei which is included in the Maui Island Plan. This planned growth area is *mauka* of Piilani Highway and north of Waipuilani Gulch. It lies to the east of the Piilani Parcels and is adjacent to the future Kihei High School and the Maui Research and Technology Park. As envisioned by the Maui Island Plan, Kihei Mauka will encompass more than 583 acres and consist of a mixture of land uses, housing types, lot sizes, open space, parks, and other public facilities to create an interconnected network of walkable communities that collectively form a new, self-sufficient town. Its proximity to large employment centers within the community plan region provides an ideal location for this new town.

6. Coastal Hazards

Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.

Policies:

- (a) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and non-point source pollution hazards;
- (b) Control development in areas subject to storm wave, tsunami, flood, erosion, subsidence, and point and non-point pollution hazards;
- (c) Ensure that developments comply with requirements of the Federal Flood Insurance Program;
- (d) Prevent coastal flooding from inland projects; and
- (e) Develop a coastal point and non-point source pollution control program.

Analysis: The Piilani Parcels are located in Zone “X”, areas determined to be outside the 0.2 percent annual chance flood plain. The Piilani Parcels are not subject to tsunami

evacuation as shown by the tsunami evacuation maps prepared by the Maui County Civil Defense Agency.

7. Managing Development

Objective: Improve the development review process, communication, and public participation in the management of coastal resources hazards.

Policies:

- (a) Use, implement, and enforce existing laws effectively to the maximum extent possible in managing present and future coastal zone development;
- (b) Facilitate timely processing of applications for development permits and resolve overlapping of conflicting permit requirements; and
- (c) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning process and review process.

Analysis: In conjunction with providing opportunities for development review, communication, and public participation, letters requesting comments on the Piilani Project were sent to various government agencies, organizations, and interested parties. Letters received in response to the EISPN will be included in the Draft EIS that will be submitted to the Commission for approval. The Commission is serving as the approving agency for the environmental review process.

8. Public Participation

Objective: Stimulate public awareness, education, and participation in coastal management.

Policies:

- (a) Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program.

- (b) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities; and
- (c) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

Analysis: An Environmental Impact Statement Preparation Notice (“EISPN”) was published in the September 23, 2013 edition of the Environmental Notice. As part of the Hawaii environmental review process, letters describing the proposed project and requesting comments on the project were sent to various government agencies, organizations, and interested parties. Letters received in response to the EISPN will be included in the Draft EIS that will be submitted to the Commission for approval. Further public participation will be achieved through public review of the Draft EIS and the further ability to submit comments.

9. Beach Protection

Objective: Protect beaches for public use and recreation.

Policies:

- (a) Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;
- (b) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
- (c) Minimize the construction of public erosion-protection structures seaward of the shoreline.

Analysis: The Piilani Parcels are approximately 0.5 mile from the ocean. As such, no adverse impacts to public beach use and recreation are expected to occur.

10. Marine Resources

Objective: Implement the State's ocean resources management plan.

Policies:

- (a) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
- (b) Assure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
- (c) Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;
- (d) Assert and articulate the interest of the state as a partner with federal agencies in the sound management of the ocean resources within the United States exclusive economic zone;
- (e) Promote research, study, and understanding of ocean processes, marine life, and other ocean development activities relate to and impact upon the ocean and coastal resources; and
- (f) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

Analysis: The Piilani Parcels are not located along the shoreline and the Piilani Project does not involve the direct use or development of marine resources. However, an assessment of marine water chemistry was prepared by Marine Research Consultants, Inc. to understand the existing physical, chemical and biological conditions of the marine environment. See Baseline Marine Assessment, attached hereto as Exhibit "K," at page 1.⁸ Measurements were taken to measure salinity within three zones or transects. Results of the assessment revealed that there was indeed a detectable input of groundwater at the shoreline; however, the groundwater indicators or signals consistently extended only to a

⁸ The Baseline Assessment of Marine Water Chemistry and Marine Biotic Communities, completed in November 2011, is in the process of being revised. An updated copy will be submitted along with the Draft EIS.

distance of approximately 30 meters offshore. Id. at page 5. All of these considerations indicated that the Piilani Project would not have any significant negative or likely even measureable, effect on water quality or marine biota in the coastal ocean offshore. Id. In addition, by incorporating site-specific erosion and sedimentation control measures during and after construction, adverse impacts to near shore waters from runoff and pollution are not expected. From this perspective, the Piilani Project is not expected to have an adverse impact on coastal or marine resources.

Q. AN ASSESSMENT OF CONFORMITY OF THE RECLASSIFICATION TO THE APPLICABLE COUNTY GENERAL PLANS, DEVELOPMENT OR COMMUNITY PLANS, ZONING DESIGNATIONS AND POLICIES, AND PROPOSED AMENDMENTS REQUIRED

1. County of Maui General Plan

The General Plan of the County of Maui refers to a hierarchy of planning documents that together set forth future growth and policy direction in the County. The General Plan is comprised of the following documents: 1) Countywide Policy Plan; 2) Maui Island Plan; and 3) nine community plans.

The Countywide Policy Plan: The Countywide Policy Plan (“CPP”) was adopted in March 2010 and is a broad policy document that identifies a vision for the future of Maui County. It establishes a set of guiding principles and provides comprehensive goals, objectives, policies and implementing actions that portray the desired direction of the County’s future. The Countywide Policy Plan provides the policy framework for the development of the Maui Island Plan and nine Community Plans.

The Piilani Project supports the following CPP goals, found in Section IV of the CPP:

Improve Education (CPP Goal C at 52-54): The Piilani Project includes approximately 226 apartments which will require a contribution to the Department of Education

to plan and construct future public schools. The Piilani Project would satisfy Goal C, Objective 2, Policy k (“Design school and park facilities in proximity to residential areas”) and Implementing Action a (“Develop safe walking and bicycling programs for school children”) by providing housing within walking distance of the adjacent future Kihei High School.

Expand Housing Opportunities for Residents (CPP Goal E at 57-59): The Piilani Project supports Goal E, Objective 1 to “reduce the affordable housing deficit for residents” and Policy a (“Ensure that an adequate and permanent supply of affordable housing, both new and existing units, is made available for purchase or rental to our resident and/or workforce population, with special emphasis on providing housing for low- to moderate-income families, and ensure that all affordable housing remains affordable in perpetuity”) by providing approximately 226 rental apartments including workforce housing as required by Maui County. See Countywide Policy Plan 2010 page 57. The Piilani Project is a mixed use development and will “develop workforce housing in close proximity to job centers and transit facilities” therefore supporting Goal E, Objective 2, Policy f. See Countywide Policy Plan 2010 page 58. Finally the proposed project supports Goal E, Objective 3 (“Increase and maintain the affordable housing inventory”) by providing affordable rental workforce housing as part of the proposed project. See Countywide Policy Plan 2010 page 58

Strengthen the Local Economy (CPP Goal F at 60-63): The Piilani Project supports Goal F, Objective 1 (“Promote and economic climate that will encourage diversification of the County’s economic base and a sustainable rate of economic growth”) and Objective 4 (“Expand economic sectors that increase living-wage job choices and are compatible with community values”). As previously discussed, after "stabilization" the mixed-use community would support approximately 1,210 permanent jobs on-site with an annual payroll of an estimated \$36.6

million, and an additional estimated 303 secondary/off-site positions with approximately \$12.2 million in yearly wages off-site.

The large majority of the gross operating revenues within the project, 97 percent, would be a result of outside patrons patronizing the Piilani Project tenants (the remaining 3.0 percent will be from consumption and rents paid by the residents of the approximately 226 on-site rental apartments). The base economic impact on Maui will total at least an estimated \$2.6 billion during build-out and estimated \$352.3 million annually upon stabilization.

Improve Parks and Public Facilities (CPP Goal G at 64-65): The Piilani Project would include a flat, rectangular 2-acre public park adjacent to the approximately 226 apartment units to be dedicated to the County of Maui, which supports Goal G and its Objectives to improve parks by providing additional public park space.

Diversify Transportation Options (CPP Goal H at 66-69): The Piilani Project site design supports Goal H, Objective 1, Policy c, by providing roundabouts in the roadway layout. Additionally the project supports Goal H, Objective 2 (“Reduce the reliance on the automobile and fossil fuels by encouraging walking, bicycling, and other energy efficient and safe alternative modes of transportation”) by providing housing units within walking distance of proposed employment centers within the project. The Piilani Project would incorporate separated bike paths and sidewalks along the future UpCountry Highway. Internal roadways would have sidewalks on both sides fostering a safer pedestrian and bicycling environment. In addition, the Piilani Project would increase the opportunities for public transportation by including multiple locations for future Maui Bus stops. The Piilani Project also supports Goal H, Objective 5, Policies a, b & h. The overall site plan has been designed to promote pedestrian and bicyclist safety and efficient vehicular movement. The Piilani Project would contribute its pro rata share

of local and regional infrastructure costs by constructing a portion of the future Upcountry Highway and improving the intersection of Piilani Highway at Kaonoulu Street. The Piilani Project would include dedicating an easement that will eventually provide vehicular connectivity to Ohukai Road just north of the Project. The Project would accommodate for appropriate landscaping in all public rights-of-way.

Improve Physical Infrastructure (CPP Goal I at 70—73): The Piilani Project would support Goal I, Objective 1 (“Improve water systems to assure access to sustainable, clean, reliable, and affordable sources of water”) by providing a 1.0 million gallon water storage tank with associated infrastructure to be dedicated to the County of Maui. As previously mentioned the project will include roadway infrastructure improvements and will connect to the County sewer system, injection wells will not be used. The Piilani Project is an urban infill project located within the Urban Growth Boundary of the Maui Island Plan; therefore the Project supports Goal I, Objective 4, Policies a (“Capitalize on existing infrastructure capacity as a priority over infrastructure expansion”) and d (“Promote land use patterns that can be provided with infrastructure and public facilities in a cost-effective manner”), and Objective 5, Policies b, f & g (see County-Wide Policy Plan page 73). The Piilani Project would contribute the pro rata share of the costs of local and regional infrastructure. The Piilani Project is located outside the tsunami-inundation zone, and all infrastructure will be built concurrent with or prior to development.

Promote Sustainable Land Use and Growth Management (CPP Goal J at 74-77): The Piilani Project is located within the Maui Island Plan urban growth boundary therefore the Piilani Project supports Goal J, Objective 1 “Improve land use management and implement a directed-growth strategy” See County-Wide Policy Plan page 74, The Piilani Project supports

Goal J, Objective 4, Policy d by incorporating pedestrian and bicycle safety into the site plan.
See County-Wide Policy Plan page 76.

The Maui Island Plan: The Maui Island Plan was adopted in December 2012 and functions as a regional plan and addresses the policies and issued that are not confined to just one community plan area, including regional systems such as transportation, utilities and growth management, for the Island of Maui. Together, the Island and Community Plans develop strategies with respect to population density, land use maps, land use regulations, transportation systems, public and community facility locations, water and sewage systems, visitor destinations, urban design and other matters related to development. The Maui Island Plan is used to guide the growth and development of Maui County. As indicated by the Plan's Directed Growth Maps, the Piilani Project is located within the limits of the proposed Urban Growth Boundary for Kihei.

The following portions of Chapters 4 and 7 of the Maui Island Plan that are applicable to the development of the Piilani Project:

Chapter 4. Economy, The Piilani Project supports Objective 4.1.1 ("A more diversified economy,") and Objective 4.1.3 ("Improve the island's business climate.") See Maui Island Plan at 4-19 and 4-20. As discussed, *infra*, after "stabilization" the mixed-use community will support approximately 1,210 permanent jobs on-site with an annual payroll of about \$36.6 million, and an additional estimated 303 secondary/off-site positions with approximately \$12.2 million in yearly wages off-site.

The large majority of the gross operating revenues within the Piilani Project (97 percent) will be a result of outside patrons visiting the Piilani Project's tenants (the remaining 3.0 percent will be from consumption and rents paid by the residents of the approximately 226 on-site rental

apartments). The base economic impact on Maui will total at least an estimated \$2.6 billion during build-out and approximately \$352.3 million annually upon stabilization. Id.

Chapter 7. Land Uses, The Piilani Project would support the Goal: “Maui will have livable human scale urban communities, an efficient and sustainable land use pattern, and sufficient housing and services for Maui residents”. See Maui Island Plan at 7-24. The Piilani Project would provide a mixed use urban community with affordable housing within walking distance of adjacent businesses and services. The Piilani Project also would support Objective 7.3.1 (“Facilitate and support a more compact, efficient, human-scale urban development pattern”) by providing a compact pedestrian focused mixed use development rather than a large single use. The Piilani Project also would support Objective 7.3.2 (“Facilitate more self-sufficient and sustainable communities”) and Policies 7.32.f and h. See Maui Island Plan 7-25. The Piilani Project would be supportive because the mixed use design allows for residents to work within walking distance of employment, goods and services.

2. Kihei-Makena Community Plan

The Kihei-Makena Community Plan (“KMCP”) is a strategic planning document to guide government action and decision making. While the KMCP identifies goals and objectives to provide for optimum planning effectiveness and benefit to the residents of the KMCP region, it is implemented “through various processes, including zoning, capital improvement projects, and the County budgeting process.” See KMCP at 3 & at Exhibit A (showing implementation of the KMCP through “zoning, CIP, budgeting”). Following the list of “Objectives and Policies” in the KMCP, the implementing action includes to “[r]eview, amend and adopt, as appropriate, zoning ordinances and maps to carry out the intent of the land use categories identified in the plan.”

The Piilani Parcels are designated as Light Industrial (LI) in the KMCP. Light Industrial is defined in the KMCP as “warehousing, light assembly, service and craft-type industrial operations.” The County of Maui interprets the KMCP’s designation of Light Industrial consistent with the corresponding Light Industrial zoning designation, which is the M-1 zoning designation applicable to the Piilani Parcels. Thus, the County has always interpreted that, as with the zoning, the community plan designations such as LI are a tiered or Euclidian system that allows for business uses in addition to light industrial uses.

In keeping with implementation of the KMCP, the County of Maui granted M-1 zoning for the Piilani Parcels. Enforcement and interpretation of the Kihei-Makena Community Plan and the zoning code of the County of Maui is the obligation and duty of the County of Maui, and is beyond the jurisdiction of the Commission. See HRS § 205-5 & 205-12; Lanai Co., Inc. v. Land Use Comm’n, 105 Hawai‘i 296, 318-19, 97 P.3d 372, 394-95 (2004); Kuleana Ku'ikahi, LLC v. State, Land Use Com'n, Slip Copy, 2012 WL 1510188, *3 -*4 (Hawai‘i App. April 27, 2012).

The Piilani Project would contribute to the achievement of a number of the goals and policies of the KMCP. One of the intended effects of the KMCP is the provision of much needed public facilities and infrastructure. See KMCP at 15. As noted in the KMCP, due to significant growth in the Kihei-Makena region, the public facility and infrastructure improvements have lagged behind development in the region. One requirement of the KMCP is that “it shall be required that adequate facilities and infrastructure be built with future development.” Id. See also id. at 16 – 17 (objective and policy c). As part of the Piilani Project, and part of obtaining final subdivision approval, Piilani posted a bond of over \$20 million to support future infrastructure improvements, including, but not limited to, (1)

dedication of land for, and the construction of, the extension of East Kaonoulu Street, which is planned to be the first segment of the long-awaited Kihei Upcountry Maui Highway; (2) dedicating land for, and the construction of improvements to improvements at, the intersection of Piilani Highway and East Kaonoulu Street; (3) construction of a 1.0 million-gallon domestic water tank, which would be connected to the Central Maui Water System, then dedicated to the County of Maui to serve North Kihei; and (4) dedication of a one and-a-half acre parcel for a MECo substation. This infrastructure development and dedication would further this goal of the KMCP.

Another objective of the KMCP is to establish a “distribution of land uses which provides housing, jobs, shopping, open space, and recreational areas in close proximity to each other in order to enhance Kihei’s neighborhoods and to minimize dependence on automobiles.” Id. at 17 (objective and policy f). The Piilani Project, which presents a mixed-use project, would further that goal, by providing apartments, restaurants, and retail all within the same planned community. It also provides an alternative for residents for shopping and other services for which they currently have to travel to Kahului to obtain. The Piilani Project would also promote the KMCP objective of encouraging the establishment of multi-family land use designations which provide affordable housing opportunities for areas in close proximity to infrastructure systems and other urban services. Id. at 17 (objective and policy g).

Objective and policy k on page 18 of the KMCP provides that one goal is to “[p]rovide for limited expansion of light industrial services in the area south of Ohukai and mauka of Piilani Highway,” and goes on to state that “[t]hese areas should limit retail business or commercial activities to the extent that they are accessory or provide service to the predominate light industrial use.” The Piilani Parcels are located in the area designated in this provision. The

retail and business activities in the proposed Piilani Project would not necessarily be considered “accessory” to other light industrial uses. However, the neighboring developments that also are currently within this area similarly are not limited to uses accessory to light industrial uses. The objectives and policies of the KMCP are guides that must remain flexible and are implemented through zoning. The County of Maui, which is responsible for interpretation, enforcement, and implementation of the KMCP as well as zoning, considered but rejected possible limitations on the amount of commercial or retail that would be allowed on the Piilani Parcels when they adopted M-1 zoning for the area. See Exhibit L at 9 – 10; Exhibit “M,” and Exhibit “N.”

3. Zoning Designations

In 1999, the Piilani Parcels were rezoned from agricultural to M-1 zoning. The M-1 zoning light industrial zoning district allows, as of right, all of the commercial uses contained in the Maui County business districts, B-1, B-2 and B-3. This specifically includes the light industrial, commercial, and apartment uses proposed for the Piilani Project. Thus, the proposed Piilani Project is in conformity with the current zoning designation.

R. A STATEMENT ADDRESSING HAWAIIAN CUSTOMARY AND TRADITIONAL RIGHTS UNDER ARTICLE XII, SECTION 7 OF THE HAWAII STATE CONSTITUTION

Piilani is aware of and is sensitive to the existence and practice of native Hawaiian customary and traditional rights that are protected under Article XII, Section 7 of the Hawai‘i State Constitution. The Cultural Assessment dated November, 2013 (“Cultural Assessment”), prepared by Hana Pono, LLC, for the Piilani Parcels determined that there are no cultural

practices or resources in the Piilani Project area.⁹ See Exhibit “G,” Cultural Assessment at 3. In addition, the Cultural Assessment observed as follows:

The Project area has been severely disturbed from its original and unaltered state for many decades, by the effects of grazing cattle and the construction of ranch roads, county roads and the construction of the Pi'ilani Highway. Any resources or practices occurring traditionally in the area are now non-existent and would have been obliterated.

Id. at 7. Accordingly, the Piilani Project is not expected to have any effect upon the exercise of Hawaiian customary and traditional rights under Article XII, Section 7, of the Hawai'i State Constitution.

S. WRITTEN COMMENTS RECEIVED

Written comments received in connection with the EISPN and the EIS will be addressed in the Final EIS, which is anticipated to be submitted to the Commission in early Summer 2014.

IV. RELIEF REQUESTED

Petitioners seeks an Order: (1) recognizing Piilani's standing to seek and obtain the relief requested herein; (2) issuing a new docket number for the Piilani Parcels; (3) amending the 1995 Decision and Order to release the Piilani Parcels from the conditions of the 1995 Decision and Order; and (4) issuing new Findings of Fact, Conclusions of Law, and Decision and Order for the Piilani Parcels for the purpose of establishing appropriate findings of fact, conclusions of law and conditions that are specifically applicable to Piilani's proposed Piilani Project.

A. STANDING

Piilani is the fee simple owner of the Piilani Parcels. Piilani requests that the Commission recognize Piilani as having the requisite standing to seek and obtain the relief requested herein.

⁹ The Cultural Assessment may be updated, in which case an updated report will be submitted

B. NEW SUB-DOCKET NUMBER

Piilani requests that the Commission create a new sub-docket number, DOCKET NO. A94-706(a), that applies solely to the Piilani Parcels. Piilani further requests that the Piilani Parcels be referred to in Docket No. A94-706(a) as the “Piilani Parcels.”

C. REQUESTED MODIFICATION OR DELETION OF CONDITIONS

Piilani requests that the Piilani Parcels be released from conditions in the 1995 Decision and Order and that new Findings of Fact, Conclusions of Law and Decision and Order be issued with respect to the Piilani Parcels under a new docket number. The intent of this request is to establish a separate set of conditions that will apply specifically to the Piilani Parcels, the drafting of which conditions will start with the existing conditions in the 1995 Decision and Order and thereafter modify or delete certain conditions to reflect the changed project description specific to the Piilani Project.

The following is a review and analysis of the conditions that would be included in the new Findings of Fact, Conclusions of Law and Decision and Order and would apply only to the Piilani Parcels:

1. 1995 Condition 1:

“The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the county of Maui.”

Request for Modification or Deletion of Condition 1:

Piilani requests that Condition 1 be deleted.

Following the issuance of the 1995 Decision and Order, in 1998, the Original Petitioner applied to the County of Maui for a change in zoning from

with the Draft EIS.

Agricultural to M-1 Light Industrial, and the Original Petition Property was rezoned to M-1 Light Industrial in 1999 without any limitation on uses. M-1 Light Industrial Zoning permits all of the proposed uses in the Piilani Project. In addition, as anticipated at the time the Original Petition was presented, the County of Maui adopted the current KMCP in 1998 by Ordinance 2641, effective March 6, 1998. The adoption of the KMCP changed the designation from Project District 3, allowing a mixture of single family and multi-family uses, to the current designation of Light Industrial (LI). As noted *supra*, it is the County of Maui's position that the current designation of "Light Industrial" in the Kihei-Makena Community Plan permits all of the proposed uses in the Piilani Project. Therefore, because this condition has been met, and because the uses proposed in the Piilani Project all are allowed within the LI designation as implemented by the M-1 zoning, no community plan amendment is necessary.

2. 1995 Condition 2:

Petitioner shall cooperate with the State Department of Health and the County of Maui Department of Public Works and Waste Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

Request for Modification or Deletion:

Piilani requests that the name of the agency "County of Maui Department Environmental Management" be substituted for the name "County of Maui Department of Public Works and Waste Management" to reflect the change of

County of Maui governmental agencies responsible for solid waste and waste water within the County of Maui.

3. 1995 Condition 3:

Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Waste Management.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 3.

4. 1995 Condition 4:

Petitioner shall fund and construct adequate civil defense measures as determined by the State and County Civil Defense Agencies.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 4.

5. 1995 Condition 5:

Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Piilani Highway and Kaonoulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e., landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall

provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

Request for Modification or Deletion:

Piilani requests that the following language be deleted from Condition 5:

“Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.” According to testimony of Ken Tatsuguchi of the State Department of Transportation (“SDOT”) at the Order to Show Cause hearing, as well as the testimony of Piilani’s expert Phillip Rowell at the Order to Show Cause hearing, a frontage road adjacent to Piilani Highway would result in the Piilani Highway and Kaonoulu Street intersection being in close proximity to the frontage road causing traffic operation and safety issues. A frontage road would create a new intersection with East Kaonoulu Street less than a desirable distance east of Piilani Highway, making coordination of signals difficult and likely leading to traffic backups onto Piilani Highway and interference with traffic flow. It was the SDOT’s opinion that a frontage road parallel to Piilani Highway at the Kihei Upcountry Highway intersection would not be feasible. Appropriate local accesses from the Piilani Parcels to the State Highway System will be addressed in the TIAR without the necessity of frontage

roads. Therefore, Piilani requests the deletion of the requirement of a frontage road, which according to the experts at the SDOT is not feasible or desirable.

6. 1995 Condition 6:

Petitioner shall fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 6.

7. 1995 Condition 7:

Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 7.

8. 1995 Condition 8:

Petitioner shall fund the design and construction of its pro-rata share of drainage improvements required as a result of the development of the Property, including oil water separators and other filters as appropriate, and other best management practices as necessary to minimize non-point source pollution into Kulanihakoi Gulch, in coordination with appropriate state and county agencies, such as the following:

- a. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil,

gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, where roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.

b. All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.

c. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titles, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project. Piilani does not seek any further modification or deletion of Condition 4.

9. 1995 Condition 9:

Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation District. The significance of these finds shall be determined and approved by the Division, and an acceptable mitigation plan shall be approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceedings in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 9.

10. 1995 Condition 10:

A long term preservation plan for the petroglyph stone (Site 50-10-3746) that was removed from the project area shall be reviewed and approved by the State Historic Preservation Division. Long term preservation measures shall be implemented within 60 days after final approval of the preservation plan.

Request for Modification or Deletion:

Piilani request that this condition be deleted because it has already been satisfied. As stated in the Fifth Annual Report (submitted on February 11, 2000), the Petitioner prepared a long term preservation plan which has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii, a copy of which was transmitted to the Land Use

Commission. See Exhibit “O,” Letter from the State Historic Preservation Division, dated June 2, 1998.

11. 1995 Condition 11:

Petitioner shall contribute its pro-rata share to a near shore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 11.

12. 1995 Condition 12:

Petitioner shall implement effective soil erosion and dust control methods during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 12.

13. 1995 Condition 13:

Petitioner shall create a buffer zone between lands designated as SF (Single-Family) by the County’s Kihei-Makena Community Plan and industrial uses on the Property to mitigate impacts between future residential activities and the proposed industrial development.

Request for Modification or Deletion:

Piilani requests that Condition 13 be deleted, because the KMCP does not have any lands designated Single-Family (SF) that are adjacent to the Piilani Parcels, and therefore this condition is not necessary.

14. 1995 Condition 14:

In the event Petitioner sells its interest in the Project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.

15. 1995 Condition 15:

Petitioner shall develop the Property in substantial compliance with the representatives made to the Commission. Failure to so develop the Property may result in reversion of the Property to its former classification, or change to a more appropriate classification.

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.

16. 1995 Condition 16:

Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily after the ownership interests in the Property, prior to development of the Property.

Request for Modification or Deletion:

Piilani requests that the term “Property” be deleted and replaced with “Piilani Parcels” to indicate the applicability of this condition solely to the Piilani Project.

17. 1995 Condition 17:

Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner’s progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 17.

18. 1995 Condition 18:

Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 18.

19. 1995 Condition 19:

Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property; and (b) shall file a copy of such recorded statement with the Commission.

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.

20. 1995 Condition 20:

The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

Request for Modification or Deletion:

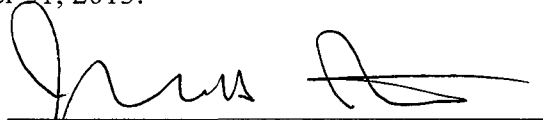
Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.

V. CONCLUSION

Based on the foregoing, Piilani respectfully requests that the Commission grant this Motion after hearing which Piilani hereby requests pursuant to HAR § 15-15-70(i). Because this Motion will be supplemented by information which will be provided in the EIS, Piilani

respectfully requests that such a hearing not be set immediately, but be set after Piilani's EIS is accepted by the Commission, which is anticipated to occur in late summer 2014.

Dated: Honolulu, Hawai'i, December 31, 2013.

A handwritten signature in black ink, appearing to read 'Clifford J. Miller', written over a horizontal line.

CLIFFORD J. MILLER
PETER J. HAMASAKI
JONATHAN H. STEINER

Attorneys for Piilani PPS, LLC and
Piilani Promenade North, LLC

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

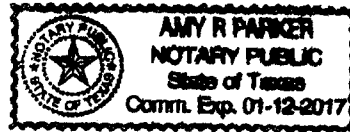
DATED: December, 26, 2013.


SIMON J. HONEYBONE

This 2 page(s) Verification of Simon J. Honeybone dated December 26, 2013, was subscribed and sworn to before me this 26th day of December, 2013 by Simon J. Honeybone

Amy R Parker
Name:
Notary Public, State of Texas

My commission expires: 1/12/2017



4. Attached hereto as Exhibit A is a true and correct copy of the Environmental Impact Statement Preparation Notice for Piilani Promenade, prepared by Chris Hart & Partners, Inc., dated August 15, 2013, which was published by the Office of Environmental Quality Control on September 23, 2013.

5. Attached hereto as Exhibit B is a true and correct copy of a Conceptual Site Plan for the proposed Piilani Project that is the subject of the Motion to Amend to which this Declaration is attached.

6. Attached hereto as Exhibit C is a true and correct copy of the Market Study, Economic Impact Analysis, and Public Fiscal Assessment of the Proposed Piilani Promenade, prepared by The Hallstrom Group, Inc., dated November 2013.

7. Attached hereto as Exhibit D is true and correct copy of the Preliminary Engineering Report, prepared by Warren S. Unemori Engineering, Inc., dated December 17, 2013.

8. Attached hereto as Exhibit E is a true and correct copy of the Traffic Impact Analysis Report for Piilani Promenade, prepared by Phillip Roswell and Associates, dated December 23, 2013.

9. Attached hereto as Exhibit F is a true and correct copy of the Environmental Site Assessment, Phase I Investigation – Piilani Promenade LLC, prepared by Malama Environmental, dated December 17, 2013.

10. Attached hereto as Exhibit G is a true and correct copy of the Cultural Assessment for the Proposed Kihei Promenade Light-Industrial Project, prepared by Hana Pono, LLC, dated November 2013.

11. Attached hereto as Exhibit H is a true and correct copy of the Archaeological Inventory Survey and Botanical Survey Report Kaonoulu Light Industrial Project Laonoulu Ahupua'a, Wailuku and Makawao Districts, Maui Island, prepared by Xamanek Researchers, revised July 1994.

12. Attached hereto as Exhibit I is a true and correct copy of the Botanical and Fauna Surveys, Pi'ilani Promenade Project, prepared by Robert W. Hobdy, dated July 2013.

13. Attached hereto as Exhibit J is a true and correct copy of a letter to Glenn Karamatsu of ECS, Inc. from Wendy Shimizu, Customer Designer of Maui Electric Company, Ltd., dated September 22, 2011.

14. Attached hereto as Exhibit K is a true and correct copy of the Baseline Assessment of Marine Water Chemistry and Marine Biotic Communities, prepared by Marine Research Consultants, Inc., dated November 2011.

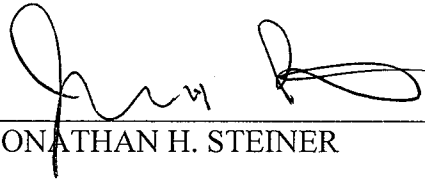
15. Attached hereto as Exhibit L is a true and correct copy of the Department of Planning, County of Maui's Testimony, submitted in this matter in regards to the Order to Show Cause Hearing, Dated October 11, 2012.

16. Attached hereto as Exhibit M is a true and correct copy of the Maui Planning Department's Recommendation for the Maui Planning Commission Meeting on August 25, 1998 in Docket No. CIZ 980013, In the Matter of the Application of Mr. Henry Rice, Kaonoulu Ranch Company, Ltd., to Obtain a Change in Zoning.

17. Attached hereto as Exhibit N is a true and correct copy of Ordinance No. 2772, Bill No. 27, and the attachments and exhibits thereto.

18. Attached hereto as Exhibit O is a true and correct copy of a letter to David Blane, Department of Planning, County of Maui, from Don Hibbard, Administrator, State Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii dated June 2, 1998.

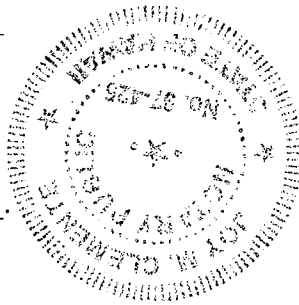
Further Affiant sayeth naught.

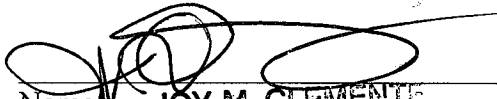


JONATHAN H. STEINER

^{Q/MP}
This 3 page Affidavit

dated DEC 30 2013, was
subscribed and sworn to before me
on DEC 30 2013, in the First
Circuit of the State of Hawaii, by
Jonathan H. Steiner





Name: **JOY M. CLEMENTE**
Notary Public, State of Hawaii

My commission expires: **AUG - 7 2017**