

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
MAUI R&T PARTNERS, LLC)
)
To Amend the Land Use District)
Boundary of certain lands situated at)
Kihei, Island of Maui, State of Hawai'i,)
consisting of 253.05 acres from the)
Agricultural District to the Urban)
District, Tax Map Key Nos.)
(2) 2-2-024:016 and 017, and)
(2) 2-2-002:084 (por.))
_____)

DOCKET NO. A10-787
PETITIONER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION AND
ORDER FOR A STATE LAND USE
DISTRICT BOUNDARY AMENDMENT

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LAND USE COMMISSION
STATE OF HAWAII

**PETITIONER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER
FOR A STATE LAND USE DISTRICT BOUNDARY AMENDMENT**

AND

CERTIFICATE OF SERVICE

2013 AUG 30 P 2:21
LAND USE COMMISSION
STATE OF HAWAII

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**PETITIONER'S PROPOSED FINDINGS OF FACT,
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Comes now, Petitioner MAUI R&T PARTNERS, LLC ("Petitioner"), by and through its attorneys, MATSUBARA - KOTAKE, and hereby submits Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment ("Petitioner's Proposed Decision and Order").

Petitioner's Proposed Decision and Order is as follows:

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER FOR A STATE
LAND USE DISTRICT BOUNDARY AMENDMENT**

Petitioner MAUI R&T PARTNERS, LLC ("Petitioner"), filed a Petition for Land Use District Boundary Amendment on June 23, 2010 (the Petition as so amended is

referred to as "Petition"), pursuant to Hawai'i Revised Statutes ("HRS") Section 205-4, and Hawai'i Administrative Rules ("HAR") Chapter 15-15, to amend the land use district boundary to reclassify approximately 253.05 acres of land, situated in Kihei, Island of Maui, State of Hawai'i, Tax Map Key Nos. (2) 2-2-24: 16 and 17 and (2) 2-2-02: Por. 84 ("Petition Area"), from the State Land Use Agricultural District to the State Land Use Urban District. The reclassification is necessary to allow for the development of the Maui Research & Technology Park Master Plan Update ("Project").

The Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

I. PROCEDURAL MATTERS

1. On June 23, 2010, the Commission received Petitioner's Petition for Land Use District Boundary Amendment ("Petition"), Exhibits "1" through "9" of the Petition, including an Environmental Impact Statement Preparation Notice identified as Exhibit "6".

2. On July 15, 2010, the Commission held its meeting to determine whether it would be the accepting authority under HRS chapter 343 and whether the action may have a significant impact.

3. On July 27, 2010, the Commission issued its order determining that, (1), that the Land Use Commission agrees to be the accepting authority pursuant to chapter 343, Hawaii Revised Statutes; and (2) that the proposed action may have a significant effect upon the environment to warrant the preparation of an environmental impact statement.

4. On March 5, 2013, the Commission received the proposed final environmental impact statement ("FEIS") for the Project.

5. On April 4, 2013, the Commission held its meeting to determine whether to accept the FEIS.

6. On April 19, 2013, the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order Accepting A Final Environmental Impact Statement for the Project.

7. On May 8, 2013, the Commission received Petitioner's First Amendment to Petition for Land Use District Boundary Amendment, Verification and Exhibits "10" through "16".

8. On May 8, 2013, the Commission received Petitioner's Second Affidavit of Service of Petition for District Boundary Amendment filed June 23, 2010.

9. On May 16, 2013, the Commission received Petitioner's Errata to the First Amendment to Petition for District Boundary Amendment filed on May 8, 2013.

10. On May 20, 2013, the Commission received Petitioner's Affidavit of Service.

11. On May 20, 2013, the Executive Officer of the Commission deemed the Petition a proper filing and accepted it for processing as of May 20, 2013.

12. On June 17, 2013, the Commission received the County of Maui's ("County") Position Statement.

13. On June 19, 2013, the Commission received Petitioner's Motion for Order Amending the Amended Findings of Fact, Conclusions of Law and Decision and Order filed February 25, 1986 in LUC Docket No. A84-585.

14. On June 19, 2013, the Commission received Petitioner's Motion to Consolidate Hearing which requested that the hearing and evidentiary record for both LUC Docket Nos. A10-787 and A84-585 be consolidated.

15. On June 21, 2013, the Notice of Hearing was filed, mailed and published in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Maui Today, The Maui News and Kauai Publishing Company dba The Garden Island in compliance with HAR § 15-15-51.

16. On June 26, 2013, the Commission received the Office of Planning's ("OP") Statement of Position.

17. On July 1, 2013, the Commission received Petitioner's Affidavit of Service Regarding Notice of Hearing and Exhibits A through D.

18. On July 8, 2013, the Commission received Petitioner's List of List of Witnesses, List of Exhibits and Exhibits 23 through 29.

19. On July 8, 2013, the Commission received the County's List of Witnesses, List of Exhibits and Exhibits 1 through 6.

20. On July 8, 2013, the Commission received OP's List of Witnesses, List of Exhibits and Exhibits 1, 3, 4, 7 and 8.

21. On July 17, 2013, the Commission received Petitioner's First Amended List of Witnesses, List of Exhibits and Exhibits 30 through 48.

22. On July 17, 2013, the Commission received County's List of Witnesses - Amendment #1, List of Exhibits - Amendment #1 and Exhibits 7, 8, 9 and 10.

23. On July 17, 2013, the Commission received OP's First Amended List of Exhibits, Amended List of Witnesses and Exhibit 5.

24. On July 25, 2013, the Commission conducted its site visit of the Petition Area.

25. On July 25, 2013, the Commission heard arguments on Petitioner's Motion to Consolidate Hearings and approved the motion by a vote tally of 7 ayes, 0 nays and 2 excused.

26. The Commission held evidentiary hearings in this docket on July 25, 2013 and July 26, 2013 in Kihei, Maui, Hawai'i and August 8, 2013 in Kahului, Maui, Hawai'i.

27. On August 8, 2013, the Commission closed the evidentiary portion of the proceedings.

II. FINDINGS OF FACT

A. Description of the Petition Area

28. The proposed Project area of 403.082 acres is comprised of the petition areas of two different LUC dockets: A84-585 and A10-787. [Pet. Ex. 12, 20 and 21]

29. The petition area of LUC Docket No. A84-585 includes 150.032 acres of State Urban Land Use District lands and approximately 150 additional acres of incrementally approved lands that remain in the State Agricultural Land Use District. [Pet. Ex. 20]

30. The 150.032 acres of State Urban Land Use District lands includes the existing and operational technology park. [Pet. Ex. 11, page 2; Pet. Ex. 20]

31. The Petition Area of LUC Docket No. A10-787 is comprised of 253.05 acres of land in the State Agricultural Land Use District and is located in Kihei, island of Maui, Hawai'i (further references to the "Petition Area" refer to the 253.05 acres of land).

32. The Petition Area is located in central Kihei, in South Maui, and is situated mauka of Pi'ilani Highway and is accessed by Lipoa Parkway. [Pet. Ex. 11, page 31]

33. The Project is surrounded by undeveloped agricultural lands of the Haleakala and Kaonoulu Ranches to the north, east, and south. Further to the south of

the site is the Monsanto farm facility and the Kihei Wastewater Treatment Facility. The Eleair Golf Course and gated community are located to the west of the site mauka of Pi'ilani Highway. [Pet. Ex. 11, page 99]

34. Seaward, across Pi'ilani Highway, is Kihei Town, which includes single and multi-family subdivisions, the Kihei Community Center, Pi'ilani Shopping Village, South Maui Community Park, industrial and public and quasi-public developments. [Pet. Ex. 11, page 99]

35. Elevations across the Project range from approximately 270 feet above Mean Sea Level ("MSL") along the easterly boundary to approximately 160 feet MSL along the westerly boundary and approximately 73 feet MSL at the Lipoa Parkway and Pi'ilani Highway intersection. The average slope is 3.2%. [Pet. Ex. 11, page 102]

36. The Petition Area is comprised of TMK (2) 2-2-24: 16 and 17 and (2) 2-2-02: Por. 84. TMK (2) 2-2-24: 16 and 17 are owned by Petitioner. TMK (2) 2-2-02: Por. 84 is owned by Haleakala Ranch. Haleakala Ranch has provided its written authorization to reclassify the Petition Area from the State Agricultural Land Use District to the State Urban Land Use District for the development of the Project. [Pet. Ex.1; Pet. Ex. 2]

37. The Petition Area is within the State Agricultural Land Use District and is comprised of three lots. At the center of the three lots is approximately 150.032 acres of State Urban Land Use District lands which contain the existing Maui Research &

Technology Park. The remaining borders of the three lots are adjacent to lands in the State Agricultural Land Use District. [Pet. Ex. 11, Fig. 24]

38. The Petition Area is currently undeveloped and fallow. [Pet. Ex. 11, page 48]

39. According to the Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA), most of the property is designated Zone X, which denotes areas outside of flood plains. [Pet. Ex. 11, page 107]

B. Proposal for Reclassification

1. The Existing Technology Park

40. The existing Maui Research & Technology Park obtained full entitlement in the 1980's and the first building opened in the early 1990's. Today the park consists of five buildings comprising approximately 180,000 square feet of Class A office, laboratory and data center space, generates an estimated \$100-\$150 million a year in revenue. The total cost of the park, including the buildings and associated infrastructure represents an estimated \$60 million investment. [Pet Ex. 11, page 1, 2 and 39]

41. Approximately 400 people currently work in the Maui Research & Technology Park at over 20 companies in a variety of sectors including optics, directed energy, data fusion, space surveillance/situational awareness, software development

and professional services. Approximately twenty five percent of the park's workforce was born in Hawaii. [Pet. Ex. 11, page 2]

42. Approximately ten percent of the existing park's 150.032 acres of land has been developed. [Pet. Ex. 11H, page 1]

43. The limitations of the existing Maui Research & Technology Park which have limited its growth include the current two acre minimum lot size and the inability to accommodate mixed use development. [Pet. Ex. 11, page 2]

2. **The Proposed Master Plan Update**

a. **Mission and Strategies**

44. The proposed Project is to implement the Maui Research & Technology Park Master Plan Update which will address the park's limitations by (1) creating a location which people are drawn to by having a diversification of land uses and creating an attractive and welcoming public realm, and (2) diversifying the offering of employment opportunities by pursuing three strategies to achieve a mixed-use community focused around a regional knowledge based industry employment base. [Pet. Ex. 11, page 3; Pet. Ex. 30]

45. Research into the growth of businesses in other tech centers have shown the value of a mixture of uses and activities. The addition of housing, retail, civic and open spaces to the Project will add amenities for business attraction and retention. [Pet. Ex. 30]

46. The three strategies to diversify the offering of employment opportunity include having a variety of business spaces, a variety of lot sizes, and to be more inclusive in attracting high quality jobs. [Pet. Ex. 30]

47. The first strategy is to provide a wide variety of spaces, especially small, inexpensive, flexible spaces which will allow entrepreneurs to begin and grow businesses. [Pet. Ex. 30]

48. The second strategy is to provide a variety of parcel sizes. The flexible lot sizes are intended to continue to attract already established businesses, and to also attract small startup business needing smaller lots and large campus type users needing larger lots. [Pet. Ex. 11, page 2; Pet. Ex. 30]

49. The third strategy is to be more inclusive to attract high skill, high paying jobs by moving from “high technology” to a broader category of “knowledge industries” to gain more flexibility in attracting many different knowledge based businesses. [Pet. Ex. 30]

b. Permitted Uses and Prohibitions

50. The proposed Project is described in detail in the draft Chapter 19.33A which will be proposed as an amendment to the Maui County Code to serve as the governing zoning ordinance for the Project; and the Development Code which will be proposed as the Design Guidelines mandated in Chapter 19.33A. The proposed

permitted uses within the Project are described in the draft Chapter 19.33A. [Pet. Ex. 11O, page 7-12; Pet. Ex. 11Q, pages 60-63]

51. The draft Chapter 19.33A, through the Development Code, contains development caps that limit the amount of retail businesses and dwelling units. [Pet. Ex. 11O, page 26; Pet. Ex. 11Q, page 66]

52. The maximum total retail general merchandising for the entire Project is limited to 100,000 square feet. This development cap does not include hotels, eating and drinking establishments and home-based businesses. [Pet. Ex. 11O; Pet. Ex. 11Q]

53. The maximum total dwelling units for the entire Project is limited to 1,250 dwelling units. [Pet. Ex. 11O, page 26; Pet. Ex. 11Q, page 66]

54. The draft Chapter 19.33A contains six districts: Employment, Campus, Mixed Use, Residential, Civic and Open Space. [Pet. Ex. 11O]

55. The location of the six districts is shown in the Controlling Plan within the draft Chapter 19.33A. [Pet. Ex. 11O, page 6]

56. The purpose of the Employment district is to allow for a broad mix of knowledge industry uses and incidental supportive uses and provide for a range of lot and building sizes. "Knowledge industry" means industries characterized by highly skilled workers in professional, scientific and technical services. Examples of "knowledge industry" includes accounting, advertising, architectural, engineering, biotechnology, computer sciences, consulting services, disaster mitigation, education,

electro-optic research, electronics, energy research and development, environmental assessment, information technology data center, manufacturing, multimedia and art, legal, pharmaceutical, biological, photographic, research, technological product marketing, telecommunications and veterinary services. [Pet. Ex. 11O, pages 4 and 7]

57. Permitted uses in the Employment district are identified in the draft Chapter 19.33A, and include knowledge industry employment and incidental supportive retail, service and civic uses, such as recreational facilities, day care, police and fire stations. Live/work businesses on flex space lots and housing associated with educational institute constitute the only residential uses. [Pet. Ex. 11O, page 7]

58. "Flex space" is defined as unfinished flexible building space suitable for combined residential, commercial and light industrial uses. [Pet. Ex. 11O, page 2]

59. General merchandising in the Employment district is limited to maximum store sizes of 10,000 square feet. [Pet. Ex. 11O, page 8]

60. The purpose of the Campus district is to accommodate users requiring large contiguous parcels of developable land. The Campus district allows for the same uses and lot types as allowed in the Employment district. The permitted uses in the Campus district are identified in the draft Chapter 19.33A. [Pet. Ex. 11O, page 9]

61. The Mixed-Use district is a flexible area containing space for incubating new businesses as well as supporting retail, civic uses, schools, open space, and residential uses. Neighborhood serving retail uses, flex space, live/work, multi-family

buildings with ground floor retail, and a range of multi-family and single family residences provide for a mix of activity and 24-hour usage of the Project. The Mixed-Use district is characterized by small blocks, buildings built on front property lines, and ample pedestrian amenities and open space, and the district is within walking distance of the surrounding Residential and Employment districts. [Pet. Ex. 11O, page 9]

62. The permitted uses within the Mixed-Use district are identified in the draft Chapter 19.33A and include uses similar to the Employment district as well as gasoline retailing, housing for low and moderate income families operated by governmental or nonprofit organizations, and housing for the aged operated by governmental or nonprofit organizations. [Pet. Ex. 11O, pages 9 and 10]

63. General merchandising in the Mixed-Use district is limited to maximum store sizes of 20,000 square feet. [Pet. Ex. 11O, page 10]

64. The Residential district accommodates the largest concentration of residential uses in the Project and provides for a mix of housing types. While the Residential district is primarily residential in character, a mix of small neighborhood-serving retail uses, live/work, and institutional/civic uses, such as churches, libraries, recreational facilities and day care centers are permitted. [Pet. Ex. 11O, page 11]

65. The permitted uses within the Residential district are identified in the draft Chapter 19.33A and include single family, two-family, duplex and multi-family dwellings, eating and drinking establishments but excluding fast food restaurants and

nightclubs, green houses, home occupations, general merchandising, and recreation.

[Pet. Ex. 11O, page 11]

66. General merchandising in the Residential district is limited to maximum store sizes of 5,000 square feet. [Pet. Ex. 11O, page 11]

67. The Civic district is intended to allow for a concentration of institutional and civic uses within the Project. [Pet. Ex. 11O, page 12]

68. The permitted uses within the Civic district are identified in the draft Chapter 19.33A and include assembly areas, community gardens, fire and police stations, medical center, government buildings, offices for non-profit charitable organizations, private or public parking lots and recreation. [Pet. Ex. 11O, page 12]

69. The Open Space/Park district is intended to provide areas for active and passive recreation, site drainage and water retention and natural vegetation. [Pet. Ex. 11O, page 13]

70. The permitted uses within the Open Space/Park district are identified in the draft Chapter 19.33A and include accessory buildings including pavilions, restrooms, play and outdoor exercise equipment, utility buildings; agriculture including community gardens, orchards and nurseries; drainage ways and retention basins, public parking lots, recreation, natural vegetation and open land. [Pet. Ex. 11O, page 13]

c. **Housing and Development Timetable**

71. Projected dwelling units and pricing includes, in conceptual terms, approximately 250 multi-family units (20 percent of the total 1,250 units) with current market prices ranging from \$280,000 to \$400,000; approximately 250 townhouse units (20 percent of the total) with current market prices ranging from \$400,000 to \$650,000; approximately 175 houselot parcels (14 percent of the total) with current market prices ranging from \$225,000 to \$450,000; and approximately 575 finished houses (46 percent of total) with current market prices ranging from \$640,000 to \$1,000,000. [Pet. Ex. 11S]

72. The Project will comply with Maui County affordable housing requirements. [Pet. Ex. 11S]

73. The Project is expected to be substantially completed within twenty years from Commission approval, and the backbone infrastructure for the Project is expected to be completed within thirteen years from Commission approval. [Pet. Ex. 11P; Testimony of Darren Unemori on July 26, 2013, page 103, line 17 through page 104, line 8 (“D. Unemori, 7/26/13, 103:17 - 104:8”)]

C. **Petitioner’s Financial Capability to Undertake the Project**

74. The financial statements of Petitioner as of December 31, 2012, reflect total assets of \$32,309,470, total liabilities of \$14,481,288, and total partner's equity of \$17,828,182. [Pet. Ex. 14]

D. Need for the Proposed Development

75. The Halstrom Group prepared the Market Study, Economic Impact Analysis, and Public Fiscal Assessment of the Proposed Maui Research & Technology Park Master Plan Update dated May 2012 to address the Project's market assessment and economic impacts. [Pet. Ex. 11H; Pet. Ex. 42; T. Holliday, 7/26/13, 86:20 - 87:2]

76. The demand for warehouse, manufacturing, office, business park and research and development floor space on Maui, what is traditionally referred to as "light industrial", will total from 5.3 million to 6.7 million square feet through 2035, an increase of 49 to 63 percent from current levels and equating to 466 to 599 gross acres. [Pet. Ex. 11H, page 10; Pet. Ex. 42; T. Holliday, 7/26/13, 88:4 - 88:7]

77. The Project is expected to capture from 1.1 million to 1.5 million square feet of the projected demand for light industrial space over the next 20 years. [Pet. Ex. 11H, page 10; Pet. Ex. 42; T. Holliday, 7/26/13, 88:7 - 88:13]

78. The demand for new residential units in the Kihei-Makena Corridor will be from 7,760 to 12,009 units over the next 24 years through year 2035. The number of existing unsold and planned resident housing units within the regional "Directed Growth Boundary", excluding the Project, totals 6,634 units. This indicates that there will be a shortfall in the sector of 1,126 to 5,375 new residential units, with a mid-point under-supply of 3,251 units. There will be sufficient unmet demand to absorb the 1,250 units of the Project. [Pet. Ex. 11H, page 7; Pet. Ex. 42; T. Holliday, 7/26/13, 88:19 - 89:4]

79. The proposed 750 single-family homes and lots will require approximately 14 years to be absorbed, and the 500 multi-family units will be absorbed in approximately 13 years. [Pet. Ex. 11H, page 8; Pet. Ex. 42; T. Holliday, 7/26/13, 89:5 - 89:7]

80. The regional demand for commercial development in Kihei-Makena is projected to be 907,000 to 1,506,000 square feet by 2035. [Pet. Ex. 11H, page 8; Pet. Ex. 42]

81. The Project is expected to generate internal demand for approximately 175,000 square feet of commercial space, and the remaining 350,000 square feet of the Project's commercial space is expected to be absorbed by the regional demand. [Pet. Ex. 11H, page 8; Pet. Ex. 42]

E. Economic Impacts

82. The Project is expected to generate approximately \$1.39 billion in capital investment into the Maui economy. The construction of the Project and ongoing operations and maintenance of the residences, on-site commercial and industrial, business and community facilities will provide an estimated 63,507 worker years of employment and \$2.7 billion in total wages over the 19 year build out period. After full build-out the Project will support approximately 5,878 permanent jobs on-site with an annual payroll of about \$217 million, and an additional 1,469 workers with \$68.6 million in yearly wages off-site. [Pet. Ex. 11H, page 12; Pet. Ex. 42]

83. During the Project's construction and absorption period, a total of \$6.2 billion in taxable revenues are projected, averaging \$324.7 million per year. After full build-out, approximately \$557 million annually in business activity will be occurring in the Project. [Pet. Ex. 11H, page 12; Pet. Ex. 42]

84. The County of Maui is projected to realize Real Property and Transient Accommodation taxes and other secondary receipts and impact fees of \$141.3 million during construction of the Project and \$28.5 million annually after full build out. The net benefit to the County is expected to be in excess of \$25.3 million during construction and \$21.5 million annually after full build out. [Pet. Ex. 11H, page 14; Pet. Ex. 42]

85. The State of Hawai'i is projected to receive Gross Excise, Income, Transient Accommodation taxes, secondary revenues, and impact fees of \$752.5 million during construction of the Project and \$84.4 million annually after full build out. The net benefit to the State is expected to be in excess of \$466.3 million during construction of the Project and \$57.3 million annually after full build out. [Pet. Ex. 11H, page 14; Pet. Ex. 42]

F. Social Impacts

86. At full build out, the total resident population of the Project is expected to be 2,756 persons. The Project is also expected to support up to 5,878 employees. The increase in resident population represents approximately 26 percent of the projected

population growth within Kihei-Makena from 2010 to 2030. [Pet. Ex. 11, page 134; Pet. Ex. 11H]

G. Impacts Upon Resources of the Area

1. Agricultural Resources

87. Decision Analysts Hawai'i, Inc. prepared the Maui Research & Technology Park Master Plan Update: Impacts on Agriculture dated May 2011 to address the Project's impacts on agriculture. [Pet. Ex. 11]

88. According to the Natural Resources Conservation Service ("NRCS") the Project includes soil type WID2: Waiakoa extremely stony silty clay loam, 7 to 15% slopes. For this soil type, runoff is medium, erosion hazard is severe, with about 50% of the surface layer having been removed by erosion in most areas, and stones cover 3 to 15% of the surface. WID2 is used for pasture and wildlife habitat. [Pet. Ex. 11], page 3]

89. WID2 has a soil rating of VIIs which indicates that the soils have very severe limitations that make them unsuitable for cultivation and restrict their use largely to pasture or range, woodland or wildlife habitat. The sub-classification "s" indicates that the soils have an unfavorable texture, or are extremely rocky or stoney. [Pet Ex. 11], page 3]

90. The University of Hawai'i, Land Study Bureau ("LSB") developed the Overall Productivity Rating, which classified soils according to five levels, with "A" representing the class of highest productivity soils and "E" representing the lowest.

These letters are followed by numbers which further classify the soil types by conveying such information as texture, drainage and stoniness. All of the soils in the Project area are rated "E" or very poor by the LSB. [Pet. Ex. 11], page 4]

91. In 1977, the State Department of Agriculture developed a classification system to identify Agricultural Lands of Importance to the State of Hawai'i (ALISH). The classification system is based primarily, though not exclusively, upon the soil characteristics of the lands. The three classes of ALISH lands are: "Prime", "Unique", and "Other", with all remaining lands termed "Unclassified". When utilized with modern farming methods, "Prime" agricultural lands have a soil quality, growing season, and moisture supply necessary to produce sustained crop yields economically. "Unique" agricultural lands possess a combination of soil quality, growing season, and moisture supply to produce sustained high yields of a specific crop. "Other" agricultural lands (of "importance to the State of Hawai'i") include those that have not been rated as "Prime" or "Unique". The Project area has been classified as "Unclassified" by the ALISH classification system indicating that the area has poor soils for growing crops. [Pet. Ex. 11], page 3]

92. The Project area has high solar radiation, but the poor soils, low soil ratings, and lack of irrigation water indicate that the Project area is poorly suited for growing commercial field crops. [Pet. Ex. 11], page 5; Pet. Ex. 36]

93. The Project would eliminate approximately 102 acres of grazing land from Haleakala Ranch's cattle operations, or about 0.44% of the 23,000 acres of their total grazing land. The Ranch anticipates that this reduction will not have a significant impact on its cattle operations. [Pet. Ex. 36]

2. Fauna and Flora

94. Robert W. Hobby prepared the Botanical and Fauna Surveys for the Maui Research and Technology Park Proposed Urban Zoning Expansion Project dated October 2008 to address the Project's impacts on fauna and flora. [Pet. Ex. 11C-1; Pet. Ex. 43]

95. The Project site was originally populated with dry native forests and scrubland species. These have diminished over the past 150 years as the area has been used for cattle grazing, introduced Axis deer and fires. [Pet. Ex. 11C-1; Pet. Ex. 43]

96. A walk-through botanical survey was conducted on the Project site. The site is now dominated by two non-native species: *kiaawe* trees and buffelgrass. A total of fourteen species were noted during the site surveys, of which two were native to the Hawai'ian Islands: *`ilima* and *`uhaloa*. Both of these species were rarely seen on the Project area, and are widespread and common in Hawai'i in general. [Pet. Ex. 11C-1; Pet. Ex. 43]

97. No Federally listed Endangered or Threatened native plants (USFWS, 1999) were encountered during the course of the survey nor were any species that are

candidate for such status seen. No special habitats or rare plant communities were seen on the Project area. There is little of botanical concern and the proposed land uses are not expected to have a significant negative impact on the botanical resources in this part of Maui. [Pet. Ex. 11C-1; Pet. Ex. 43]

98. A faunal walk-through survey was conducted in conjunction with the botanical survey. Three mammalian species were noted in the surveys: cattle, Axis deer and feral cats. Fourteen non-native bird species were recorded as well. The surveys found no evidence of the Hawai'ian hoary bat (*Lasiurus cinereus emotus*) or the Blackburn's sphinx moth (*Manduca blackburn*), both of which are on the Federal List of Endangered Species. No Federally Endangered or Threatened Species were encountered during the course of the survey and no special habitats were identified. The Project should have no significant impact on the faunal resources in this part of Maui. [Pet. Ex. 11C-1; Pet. Ex. 43]

99. SWCA performed additional botanical survey of the Project area in 2011. An additional nine plant species, all non-native, were identified. The Obscure Morning Glory (*Ipomoea obscura*), a possible host plant for the adult Blackburn's sphinx moth was found to be rare; however, no species confirmed as larval host plants for the Blackburn's sphinx moth were found within the property. [Pet. Ex. C-2-6; Pet. Ex. 44]

100. SWCA performed additional faunal survey of the Project area in 2011. No additional species of wildlife were observed. No listed or candidate endangered species of animals were observed within the property. [Pet. Ex. C-2-6; Pet. Ex. 45]

3. Archaeological and Historical Resources

101. Scientific Consultant Services, Inc. prepared the Archaeological Inventory Survey of Multiple Land Parcels Located within the Maui Research and Technology Park dated September 2008 to provide an archaeological investigation of the Project area. [Pet. Ex. 11D; Pet. Ex. 46; M. Dega, 8/8/13, 29:19 - 29:22]

102. The Project site is in an area of Kihei described as the “Barren Zone”. The Barren Zone is an intermediary zone that provides access between beach areas and upland forests. Based on general archaeological and historical research, the Barren Zone was not subject to permanent or extensive population due to the lack of productive natural resources. As such, architectural structures associated with permanent habitation sites or ceremonial sites are not often present in the area while temporary habitation and temporary use sites may be present in the Barren Zone. [Pet. Ex. 11D, page 10; Pet. Ex. 46]

103. A total of five historic sites found, three on Parcel 17 and two on the portion of Parcel 84: 1) Site 50-50-10-6239, an historic modified outcropping; 2) Site 50-50-10-6240, an historic modified outcropping; 3) Site 50-50-10-6241, a traditional or historic boundary wall; 4) Site 50-50-10-6587, an L-shaped military training feature; and

5) Site 50-50-10-6588, three mounds which are traditional location markers. [Pet. Ex. 11D, page 16; Pet. Ex. 46; M. Dega, 8/8/13, 30:4 - 31:2]

104. Significance Criteria established for the State and National Register of Historic Places are used to evaluate historic sites. [Pet. Ex. 46]

105. A site fits into "Criterion A" if the site is associated with events that have a significant contribution to the broad patterns of our history. [Pet. Ex. 46]

106. A site fits into "Criterion B" if the site is associated with the lives of persons significant to our past. [Pet. Ex. 46]

107. A site fits into "Criterion C" if the site embodies the distinctive characteristics of a type, period, or method of construction; or represents the work of a master; or possesses high artistic value; or represents a significant and distinguishable entity whose components may lack individual construction. [Pet. Ex. 46]

108. A site fits into "Criterion D" if the site has yielded or has the potential to yield information important in prehistory or history.

109. A site fits into "Criterion E" if the site has an important traditional cultural value to the native Hawai`ian people or to another ethnic group of the state due to associations with traditional cultural practices once carried out, or still carried out, at the property due to associations with traditional beliefs, events, or oral accounts. Criterion E applies only to the State of Hawai`i. [Pet. Ex. 46]

110. All five sites found on the property have been assessed as significant under only Criterion D. An archaeological site is significant under Criterion D but should sufficient information be collected from the site during archaeological investigations, the site does not require any further mitigation. [Pet Ex. 11D; Pet. Ex. 46; M. Dega, 8/8/13, 30:2 - 30:9]

111. Petitioner should informally preserve Site 6241 if given the opportunity and provide an orange protective fence to be placed along-side the Site 6241 wall on the northern ridgeline boundary of Parcel 17 to protect two undocumented rock shelters occurring off the site below in Waipuilani Gulch. [Pet Ex. 11D; Pet. Ex. 46; M. Dega, 8/8/13, 30:10 - 30:25]

4. Cultural Resources

112. Hana Pono, LLC prepared the Cultural Impact Assessment for the Proposed Maui Research and Technology Park Master Plan Update dated December 2006 and revised December 2011 to assess the cultural impacts of the Project. [Pet. Ex. 11E; Pet. Ex. 37]

113. The Project site is located in the Kula Moku and the Waiohuli and Keokea Ahupua`a, Wailuku (Kula) District. This area is located in the Barren Zone. The existing gulches did not start from the top of Haleakala, and therefore the drainage way was shallow compared to other gulches, indicating limited water flow through the Waiohuli and Wailuku/Kula District. Since the lack of water did not attract large

groups of residents to build communities like those found in other areas of Maui, pre-contact activity was limited. The Project site has been used for cattle grazing for the last 150 years. [Pet. Ex. 11E; Pet. Ex. 37]

114. There are no visible cultural resources on the Project site. From a cultural practices perspective, the Project site bears no apparent signs of cultural practices or gatherings currently taking place. The oral history interviews did not reveal any known gathering places on the Project site or any access concerns as a result of the proposed Project. The development of the Project will not impact cultural resources on the property or within its immediate vicinity as mandated by Article XII, Section 7, of the Hawai'i State Constitution. [Pet. Ex. 11E; Pet. Ex. 37]

115. To assure the cultural integrity of the project, a qualified cultural specialist should participate in various cultural related activities, including the development and implementation of cultural orientation for construction personnel, advice concerning inadvertent finds and related protocol, and any other cultural concerns during the length of Project construction. [Pet. Ex. 11E; Pet. Ex. 37]

5. Groundwater Resources

116. Tom Nance Water Resource Engineering prepared the Assessment of the Potential Impact on Groundwater Resources of the Proposed Expansion of the Maui Research and Technology Park dated March 2012. [Pet. Ex. 11I; Pet. Ex. 41]

117. The existing tech park obtains its water from the Maui County Department of Water Supply ("DWS"). Based on DWS water use rate design criteria, the proposed Project would require approximately 0.80 million gallons per day ("MGD") of potable supply 0.37 MGD of non-potable supply for landscape irrigation. [Pet. Ex. 11I; Pet. Ex. 41]

118. Although County water service is the preferred source, DWS can only commit to supplying a portion of the Project. As an alternative to the potable supply by DWS, Petitioner has proposed a privately owned and operated system. The Project's required non-potable supply would be provided by R-1 treated wastewater supplemented by brackish groundwater. [Pet. Ex. 11I; Pet. Ex. 41; T. Nance, 7/26/13, 25:18 - 26:3]

119. Groundwater beneath the Project site occurs as a brackish basal lens overlying saline groundwater at depth. For regulatory purposes, this groundwater body has been named the Kamaole Aquifer by the State Commission on Water Resource Management ("CWRM") which has set its sustainable yield at 11 MGD. In a 2007 report, the U.S. Geological Survey estimated that the aquifer's total recharge is 37 MGD, equivalent to an average of about 3.4 MGD per coastline mile of the aquifer. Present pumpage in the aquifer is about five MGD. [Pet. Ex. 11I; Pet. Ex. 41]

120. In order to utilize the groundwater from the Kamaole Aquifer for potable water use, Petitioner would need to desalinate the water using a reverse osmosis

("RO") process. Two alternatives for brackish well development to feed the RO treatment plant are being considered. One alternative is an array of five wells at 580 feet elevation, and the other is an array of five wells within the Project site. [Pet. Ex. 11I, page 5; Pet. Ex. 41; T. Nance, 7/26/13, 26:4 - 26:22]

121. RO is a treatment process that uses high pressure filtration to strip the salts out, producing a permeate stream which is the product water with the salts removed, and a concentrate stream with the salts being pulled out of the product and put into the concentrate. [T. Nance, 7/26/13, 27:9 - 27:16]

122. The RO process has been in use in Hawai'i for over the past ten years at the Kona Village, Hualalai Resort and Kukui Mall. [T. Nance, 7/26/13, 31:19 - 32:13]

123. The first alternative, the brackish wells at 580 feet elevation will have chloride levels on the order of 350 to 400 milligrams per liter ("mg/l"). [Pet. Ex. 11I, page 5]

124. In comparison, seawater has chloride levels of 18,000 to 19,000 mg/l. [T. Nance, 7/26/13, 39:4 - 39:7]

125. The 580 feet elevation wells are expected to produce RO product recovery at about two-thirds of the brackish supply. The remaining third would be the RO concentrate which would not be hypersaline or even seawater salinity but it would be too salty for irrigation use and would be disposed of in downgradient disposal wells

where the receiving groundwater was of the same salinity as the concentrate being disposed. [Pet. Ex. 11I, page 5; T. Nance, 7/26/13, 28:1 - 28:15]

126. The second alternative, the onsite brackish wells, have chloride levels of 500 to 600 mg/l, resulting in a lower 60 percent RO product recovery rate. [Pet. Ex. 11I, page 5; T. Nance, 7/26/13, 28:16 - 28:23]

127. The electrical energy required to push the feed water through the RO filters is proportional to the salinity of the feed water source and to some extent the temperature of that source. In comparison to the saltier feed water in the current Lanai project, the electrical requirement for the Project's RO treatment plant is not the kind of huge electrical requirement that a much saltier feed water source would require. [T. Nance, 7/26/13, 32:4 - 34:8]

128. Current available technology also includes a pressure recovery system that utilizes the pressure of the concentrate. The concentrate retains about 90 percent of the pressure that was pushed on the feed water source. The pressure recovery system takes the pressure out of the concentrate's stream and assists in pressurizing the feed water source. That has brought the operating costs down tremendously. [T. Nance, 7/26/13, 34:9 - 34:18]

129. The operating cost for the RO treatment plant is estimated to be approximately \$5 per thousand gallons. [T. Nance, 7/26/13, 35:4 - 35:16]

130. County water rates range between \$2 and \$5 per thousand gallons. [D. Taylor, 7/26/13, 17:10 - 17:21]

131. The estimated cost to design and construct the RO treatment plant is \$7.2 million. [T. Nance, 7/26/13, 36:2 - 36:5]

132. Petitioner is committed to constructing and operating the RO treatment plant if County water is not available. [T. Nance, 7/26/13, 26:13 - 26:17, 36:64 - 36:12]

133. Computed decreases to the groundwater flowrate are 13.6 percent for the 580 feet elevation wells and 17.3 percent for the onsite wells alternative. Discounting the return of the RO concentrate to a depth below the usable portion of the basal lens, the net drafts of groundwater from the usable portion of the basal lens would be 20 to 28 percent respectively. Salinity of downgradient wells would likely increase on the order of 10 percent. [Pet. Ex. 11I; Pet. Ex. 41]

134. The estimated increase in nitrogen for both RO supply alternatives is from 0.8 to 0.9 percent. For phosphorous, the estimated increase is .03 to .04 percent. None of these increases would be significant. [Pet. Ex. 11I; Pet. Ex. 41]

6. Visual Resources

135. The Project is located on the southern slope of Haleakala above Kihei Town. The Project is screened by the existing golf course when viewed from Piilani Highway, and by two gulches when viewed from either north or south. Open space is integrated throughout the Project and, together with the proposed street layout, creates

and frames view corridors throughout the Project to the Pacific Ocean and to Haleakala. Visual resources should not be significantly impacted by the Project. [Pet. Ex. 11, page 122]

H. Environmental Quality

1. Noise

136. Y. Ebisu & Associates prepared the Acoustic Study for the Maui Research and Technology Park dated April 2012 to assess the noise levels in the area of the Project and the Project's noise impacts. [Pet. Ex. 11L; Pet. Ex. 34]

137. The existing background ambient noise levels within the project site are relatively low at the mauka (east) end and moderate on the makai (west) end of the site. Traffic along Piilani Highway controls the background noise levels at the makai end of the project site, and diminishes to inaudible levels at the mauka end of the project site. [Pet. Ex. 11L; Pet. Ex. 34]

138. Significant increases in traffic noise levels at noise sensitive properties are not expected to occur as a result of the project traffic following build-out by CY 2024 and 2034. The project site is planned such that noise sensitive residential uses of the project are situated at very large setback distances from Piilani Highway, where existing and future traffic noise levels are predicted to be less than 61 DNL. The large buffer distances to the highway will allow for the use of naturally ventilated buildings on the project site. [Pet. Ex. 11L; Pet. Ex. 34; Y. Ebisu, 7/25/13, 132:8 - 132:25]

139. Unavoidable, but temporary, noise impacts may occur during construction of the proposed Project, particularly during the excavation and earth moving activities on the project site. Mitigation measures to reduce construction noise include the use of quiet equipment and compliance with State Department of Health construction noise regulations. [Pet. Ex. 11L; Pet. Ex. 34]

140. The revised Traffic Impact Analysis Report (TIAR) dated February 2013 for the Project does include additional roadway intersections and additional future scenarios, but the expected future traffic volumes with or without the project have not changed significantly and it is unlikely that the acoustic quality results and conclusions would change significantly. [Pet. Ex. 11L; Pet. Ex. 34; Y. Ebisu, 7/25/13, 132:8 - 132:25]

2. Air Quality

141. B.D. Neal & Associates prepared the Air Quality Study for the Maui Research and Technology Park dated May 2012 to assess the air quality in the area of the Project and to assess the Project's impact on air quality. [Pet. Ex. 11K; Pet. Ex. 11K-1; Pet. Ex. 35]

142. The present air quality of the project area is believed to be relatively good. Air quality monitoring data from the Department of Health for the Project area suggest that concentrations are generally well within state and national air quality standards. [Pet. Ex. 11K; Pet. Ex. 11K-1; Pet. Ex. 35]

143. Short-term impacts from fugitive dust and exhaust emissions construction equipment may affect air quality during the period of construction. Mitigation measures including a dust control plan must be implemented to ensure compliance with state regulations. Exhaust emissions can be mitigated by moving construction equipment and workers to and from the project site during off-peak traffic hours. [Pet. Ex. 11K; Pet. Ex. 11K-1; Pet. Ex. 35]

144. With or without the Project, carbon monoxide concentrations in the project area during the next 20 years will likely decrease (improve) somewhat compared to existing concentrations. Implementing mitigation measures for traffic-related air quality impacts is probably unnecessary and unwarranted. [Pet. Ex. 11K; Pet. Ex. 11K-1; Pet. Ex. 35]

145. The revised Traffic Impact Analysis Report (TIAR) dated February 2013 for the Project includes additional roadway intersections and additional future scenarios, however the expected future traffic volumes with or without the project have not changed significantly. We would expect that carbon monoxide concentrations along roadways in the project area will remain well within state and federal ambient air quality standards with or without the project at least through the year 2034. [Pet. Ex. 11K; Pet. Ex. 11K-1; Pet. Ex. 35]

I. Adequacy of Public Services and Facilities

1. Highway and Roadway Facilities

146. Parsons Brinckerhoff prepared the Traffic Impact Analysis dated February 2013 (“TIAR”) for the Project to assess the adequacy of highway and roadway facilities and assess the Project’s traffic impacts. [Pet. Ex. 11G; Pet. Ex. 40]

147. The existing roadway system in the area of the Project includes Piilani Highway which provides primary regional and sub-regional access to the TIAR study area. Within the study area, Lipoa Parkway/Lipoa Street provides east-west traffic circulation, and Piilani Highway, South Kihei Road, and Liloa Drive provide north-south traffic circulation. Between Mokulele Highway to the north and Kilohana Drive to the south, Piilani Highway is a four-lane major principal arterial roadway. Lipoa Parkway provides access to the Project. In addition, there are two other points along Piilani Highway where access from the Project is permitted, but a roadway connection has not yet been made. The first permitted-access point is located near the northern end of the Project area, roughly opposite the East Waipuiani Road/Piilani Highway intersection, and the second permitted-access is located at the southerly end of the Project in the vicinity of the old Welakahao Road intersection with Piilani Highway. [Pet. Ex. 11G, page 5; Pet. Ex. 40]

148. Overall the study area intersections operate well under existing conditions with two exceptions: (1) Piilani Highway/Piikea Avenue during the AM peak hour

where the northbound Piilani left turn is projected to operate at LOS E and during the PM peak hour where the eastbound Piikea left turn is projected to operate at LOS E, and (2) Piilani Highway unsignalized intersections where eastbound left turns to Piilani Highway at unsignalized intersections are projected to operate at LOS E-F although refuge lanes are provided to reduce the delay. [Pet. Ex. 11G, page 9; Pet. Ex. 40]

149. The TIAR analyzed the Project in two phases through 2034. Phase 1 was analyzed through 2024 and Phase 2 was analyzed through 2034. For each phase, four scenarios were analyzed at the request of the Department of Transportation, State of Hawai'i. [Pet. Ex. 40; H. Li, 7/26/13, 54:3 - 54:8]

150. The four scenarios include: Scenario 1 – No Build. The No Build scenario represents the background conditions without the Project development scenario. Only existing roadways and those roadways committed by other developments, the State, and the County are included; Scenario 2 – Build. The Build scenario adds the Project development generated trips to the No Build scenario. The assumed roadway network is the same as in the No Build scenario; Scenario 3 – Build with the Project's Roadway Improvements. This scenario represents the Build scenario with additional transportation improvements committed by Petitioner; and Scenario 4 – Build with the Project and Regional Roadway Improvements. The final scenario represents the Build with the Project with the transportation improvements committed by the Petitioner and

with other needed regional transportation improvements in the respective analysis years of 2024 and 2034. [Pet. Ex. 40; H. Li, 7/26/13, 54:9 - 55:2]

151. Scenario 1 in year 2024 includes the background traffic volumes without the Project and were derived using existing traffic along with trip generation obtained from the Maui Travel Demand Forecasting Model and the traffic impact analysis reports from other future developments including Kihei High School, Piilani Promenade, Downtown Kihei, Maui Lu Resort, Kenolio 6, Kaiwahine Village, A&B N. Kihei Residential, Honua'ula, Wailea Resort and Makena Resort. The roadway impacts and roadway improvements committed to by the other developments are included in Scenario 1 in year 2024. [Pet. Ex. 11G, page 17; Pet. Ex. 40]

152. Scenario 2 in year 2024 includes Scenario 1 in year 2024 with the Project but with no roadway improvements. The internal capture rate of 15% was applied to residential and office land uses, and the internal capture rate of 32% was applied to local school, community shopping and business hotel land uses for Scenario 2 in year 2024. [Pet. Ex. 11G, page 23; Pet. Ex. 40; H. Li, 7/26/13, 54:13 - 54:16]

153. Scenario 3 in year 2024 includes Scenario 2 in year 2024 with additional transportation improvements committed by Petitioner including improvements at the intersections of Piilani Highway/Hookena Street, Piilani Highway/Piikea Avenue and Piilani Highway/Lipoa Parkway. [Pet. Ex. 11G, page 31; Pet. Ex. 40; H. Li, 7/26/13, 54:17 - 54:19]

154. Scenario 4 in year 2024 includes Scenario 3 in year 2024 with regional roadway improvements. This scenario includes the Liloa Drive extension between Kaonoulu Street and Kanani Road, also known as the North South Collector Road or the Makai Collector Road. [Pet. Ex. 11G, page 39; Pet. Ex. 40; H. Li, 7/26/13, 54:20 - 54:24]

155. Liloa Drive from Waipuilani Road to Lokelani School is already built. To complete the Makai Collector Road, additional segments from Kaonoulu Street to Waipuilani Road and from Lokelani School to Kanani Road will need to be completed to Liloa Drive. [Pet. Ex. 40]

156. The County of Maui anticipates approval of approximately \$1.8 million in 2016 for design of the Makai Collector Road, and approval of \$12 million to \$15 million in 2018 for the construction of the Makai Collector Road. [N. Yagin, 7/26/13, 139:14 - 140:8]

157. Construction of the Makai Collector Road would require two years to complete construction. [N. Yagin, 7/26/13, 140:9 - 140:11]

158. The Makai Collector Road is identified in the Maui Island Plan and referred to as the Kihei North-South Collector Road. [Pet. Ex. 40]

159. The Makai Collector Road is not included in the Hawaii State DOT's current Statewide Transportation Improvement Program ("STIP") because the STIP is a three-year program. The current STIP encompasses FY 2014 to 2016. The Makai

Collector Road is not included in the current STIP because the Makai Collector Road's timeframe is beyond the current STIP. [Pet. Ex. 40]

160. The construction of the Makai Collector Road will relieve congestion on Piilani Highway. The Makai Collector Road is projected to improve the traffic operation on Piilani Highway to an acceptable LOS except at Kaonoulu Street during PM peak hour. Without the Makai Collector Road, traffic operation on Piilani Highway would fail with or without MRTP. Along with the Makai Collector Road, the roadway improvements committed to by Petitioner are also essential to overall traffic operations on Piilani Highway, especially at the intersections with Piikea Avenue and Lipoa Parkway. [Pet. Ex. 11G, page 48; Pet. Ex. 40]

161. Scenario 1 in year 2034 is without the Project and includes background traffic volumes derived using existing traffic along with trip generation obtained from the Maui Travel Demand Forecasting Model. The future Year 2034 background traffic assumes the presence of the developments described in the 2024 background conditions. Only existing roads and regional roadways identified in the STIP are included. The roadway network assumptions are the same as the 2024 Scenario 4. [Pet. Ex. 11G, page 50; Pet. Ex. 40]

162. Scenario 2 in year 2034 includes Scenario 1 in year 2034 with the Project at full build-out including the Project's generated trips. The assumed roadway network is the same as in Scenario 1 in year 2034. An internal trip capture analysis based on

consultation with HDOT suggested the internal capture rates of 24% to 30% for year 2034. [Pet. Ex. 11G, page 56; Pet. Ex. 40]

163. Scenario 3 in year 2034 includes Scenario 2 in year 2034 with additional transportation improvements committed to by Petitioner. Additional improvements included and assumed to be the responsibility of the Petitioner include improvements at Piilani Highway/Old Welakahao Road, or at an alternative connection point to Piilani Highway south of the Project. [Pet. Ex. 11G, page 63; Pet. Ex. 40]

164. Scenario 4 in year 2034 includes Scenario 3 in year 2034 with regional roadway improvements in Maui's Long-Range Transportation Plan and Maui Island Plan including the (1) Makai Collector Road extending Liloa Drive as a two-lane roadway between Kaonoulu Street and Kanani Road, (2) Kihei Upcountry Road as a four-lane roadway connecting Upcountry Maui to Kihei at Kaonoulu Street, and (3) the Mauka Collector Road as a two-lane roadway between Mokulele Highway and Piilani Highway at a point somewhere south of the Project. [Pet. Ex. 11G, page 71; Pet. Ex. 40]

165. The Kihei Upcountry Road must be included in Scenario 4 in year 2034 because it is included in Maui's Long-Range Transportation Plan and Maui Island Plan, but the Kihei Upcountry Road does not affect the Project and is not required to mitigate the impacts of the Project. [Pet. Ex. 40]

166. The Mauka Collector Road is not included in the current STIP, as it is not anticipated to be necessary for many years. [Pet. Ex. 40]

167. The Mauka Collector Road is within the Maui Island Plan. The Maui Island Plan contemplates a future north south roadway in several sections with potential alignments. The directed growth chapter description of the Maui Research and Technology Park, states “the build-out of MRTP should be coordinated with the development of the neighboring Kihei Mauka planned growth area to ensure efficient intra- and inter-regional transportation connectivity for both motorized and non-motorized transportation”. Similar directions are included in the project descriptions of Kihei Mauka and the North Kihei residential planned growth areas to the north of the Project. The applicant has initiated discussions with other landowners about providing a continuous in-tract Mauka Collector roadway as directed by the Maui Island Plan. [Pet. Ex. 11G, page 72; Pet. Ex. 40]

168. The Mauka Collector Road would diverge from Piilani Highway at a point south of the Project. It would proceed through the Project and continue north, eventually providing direct access to Mokulele Highway. The TIAR analyzed the Mauka Collector as a two-lane facility with an additional two-lane roadway in-tract and assumed that the Mauka Collector would not be used exclusively by the Project , but would divert regional background traffic from Piilani Highway. [Pet. Ex. 11G, page 72; Pet. Ex. 40]

169. The County of Maui will be conducting a study of south Maui in general to identify areas of concern like South Kihei Road, the north-south collector and north

south regional traffic circulation to identify what is needed within the town. [N. Yagin, 7/26/13, 140:12 - 141:3]

170. The study may require two to three years to complete. [N. Yagin, 7/26/13, 141:10 - 141:18]

171. The study will set a better idea for the alignment of the Mauka Collector and consider having one four-lane road or two two-lane roads. [N. Yagin, 7/26/13, 141:19 - 142:20]

172. An in-tract Mauka Collector road utilizing the future Ninau Street within the Project, with roundabouts and curves, can perform as a collector road and can be designed that way because the way people choose their roads is behavior driven where some people like a nice scenic route and other people just like going in a straight line. [N. Yagin, 7/26/13, 144:4 - 145:1]

173. A curvy collector road attenuates speed and can still function as a collector road. [N. Yagin, 7/26/13, 145:2 - 145:8]

174. Regional roadway improvements go beyond the Project and are subject to fair share contributions and usually involve the participation of the state, county and the various landowners over whom the highway passes over and who benefits from the regional improvement. [C. Shibuya, 7/26/13, 150:18 - 150:24; C. Shibuya, 8/8/13, 21:19 - 22:15]

175. Petitioner will be required to submit revised TIAR's to DOT and DPW in the future. DOT acceptance of the revised TIAR and the execution of a Memorandum of Agreement outlining the agreement between DOT and MRTP should occur no sooner than final subdivision approval of lots intended for above ground construction, excluding roads, utilities and infrastructure. This will allow the Project to mature to the point of having the requisite details and specifications needed to provide DOT with an acceptable revised TIAR. [Pet. Ex. 40]

176. The TIAR will need sufficient details to be acceptable and form the base for the Memorandum of Agreement. [C. Shibuya, 8/8/13, 20:10 - 20:16]

177. The timing of the future revised TIAR's should be based upon DOT's need for updated traffic information and analysis. An arbitrary deadline of updating TIAR's every 5 years or some other set interval would be inefficient and potentially detrimental if a revised TIAR is needed prior to an arbitrary fixed deadline. [Pet. Ex. 40]

2. Schools

178. The Project is located within the State Department of Education's ("DOE") Maui Complex which is composed of the following schools: Kahului Elementary, Kihei Elementary, Lihikai Elementary, Kamalii Elementary, Pomaikai Elementary, Lokelani Intermediate, Maui Waena Intermediate, and Maui High. [Pet. Ex. 11, page 144]

179. In 2007, the Hawai'i Legislature enacted Act 245 as Section 302A, HRS, "School Impact Fees". Based upon this legislation, the Department of Education has enacted impact fees for residential developments that occur within identified school impact districts. The Project is within the boundaries of the Central Maui Impact District and is within the Makawao Cost Area of that district. Projects within the district and cost area pay a construction fee and either a fee-in-lieu of land or a land donation, at the DOE's discretion. Petitioner will contact the DOE to enter into an impact fee agreement. [Pet. Ex. 11, page 146]

180. The Project is being designed to accommodate a public and/or private elementary or intermediate school within the Village Center. The site will include sufficient land area for buildings, playgrounds, and play fields. [Pet. Ex. 11, page 147]

3. Parks and Recreational Facilities

181. There are approximately 10.51 acres of sub-regional park land per 1,000 residents in the Kihei-Makena area. County public parks and community centers in the region include South Maui Community Park, Phase I; Charley Young Park; Cove Park; Hale Piilani Park; Haycraft Park; Kalama Park; Kalepolepo Park; Kamaole Beach Park (I, II, III); Kenolio Recreation Complex; Keonekai Park; Kihei Aquatic Center; Kihei Beach Reserve/Waipuilani Park; Kihei Community Center; Kilohana Park; Mai Poina Park/Maipoina OE IAU Beach Park; Piikea Park; and Poolenalena Park/Chang's Beach. [Pet. Ex. 11, page 141]

182. Project on-site parks will include mini and neighborhood parks, and open space, totaling 88.7 acres. [Pet. Ex. 11, page 142]

183. The Petitioner will comply with the County's Code requirements for parks and playgrounds. [Pet. Ex. 11, page 142]

4. Water Service

184. The Project is located within Maui County Department of Water Supply's Central Maui Water System service area. Potable Drinking water for the 18 existing lots within the Project currently comes from existing wells located in upper Waiehu and North Waihee which draw groundwater from the Iao and Waihee Aquifers. The existing irrigation systems for the landscaped common areas and developed parcels in the Project now utilize R-1 quality effluent from the Kihei Wastewater Reclamation Facility (KWWRF) by drawing it from the existing County 10-inch R-1 waterline which runs along the easterly (mauka) boundary of the Project. [Pet. Ex. 39]

185. Drinking and non-drinking water demand projections were based on land area and unit estimates using consumption rates adopted from the Maui County Department of Water Supply's *Water System Standards*. A 60% potable/40% non-potable demand ratio -- the ratio recommended by the Honolulu Board of Water Supply for dual systems -- was also selectively applied in certain instances to break total demand down into drinking and non-drinking water demand components. Total average daily water demand for the Project expansion not supplied by DWS is 1.17 million gallons per

day (MGD). Average daily demand for both phases for drinking water and non-drinking water is 798,065 gallons per day (GPD) and 373,329 GPD, respectively. [Pet. Ex. 39]

186. Potential drinking water sources are discussed *supra* and include the County's public water system and a reverse osmosis treatment plant. Non drinking water would be obtained from existing R-1 quality effluent and brackish wells. [Pet. Ex. 39]

187. New water storage tanks, pumps and delivery systems will be required for both drinking water and non drinking water sources. [Pet. Ex. 11, page 284 - 286]

5. Solid Waste Disposal

188. Weekly, residential solid-waste collection in the area is provided by the County of Maui, Department of Environmental Management (DEM), Solid Waste Division. [Pet. Ex. 11, page 147]

189. The Central Maui Landfill, which is located in the Wailuku-Kahului Community Plan region, receives residential solid waste from the area. Green waste is collected by Eko Compost, which is located at the Central Maui Landfill. Construction and demolition (C&D) waste is accepted at the privately operated C&D Landfill in Ma`alaea. [Pet. Ex. 11, page 147]

190. Plastic, glass, metal, cardboard, and newspaper can be recycled when left at various drop-boxes throughout the County. Green waste recycling is provided by

several private organizations. Since 2000, approximately 30 percent of the solid waste generated annually in Maui County is diverted by means of recycling, reuse, and composting. The County is targeting a 50 percent waste diversion rate by 2030. [Pet. Ex. 11, page 148]

191. In the Public Facilities Assessment Update County of Maui (2007), R.M. Towill Corporation projected that the Central Maui Landfill will have adequate capacity to accommodate residential and commercial waste through the year 2025. The County's DEM, Solid Waste Division anticipates that additional phases of the Central Maui Landfill will be developed as needed to accommodate future waste. [Pet. Ex. 11, page 148]

192. The County's DEM, Solid Waste Division estimates that residential households on Maui generate approximately 2.3 tons of solid waste per household per year. Commercial units on Maui generate approximately 1.58 tons of solid waste per employee per year. Solid waste generation includes all the waste produced in a residence or business, including that which is reused or recycled as well as that which is disposed of in landfills. Using the above rates, after full build-out and occupancy of all residential units and commercial units at the project site, total waste generated is estimated to be approximately 10,775 tons per year. Using the County's waste diversion rate of 30 percent, total waste from the project site is estimated to be approximately 7,543 tons per year. Achieving the County's waste diversion rate of 50

percent by 2030 would reduce the Project's waste to 5,388 tons per year. [Pet. Ex. 11, page 149]

193. The Project will support the County's recycling, reuse, and composting activities. The County of Maui Integrated Solid Waste Management Plan (2009) provides strategies for diverting solid waste from landfills to reduce landfill dependency, save landfill capacity and improve operational efficiency. The Project will implement these strategies by providing options for recycling, such as collection systems and bin space, within the Park, and promoting sound recycling practices among residents and businesses. [Pet. Ex. 11, page 149]

6. Wastewater Disposal

194. The existing lots in the Maui Research and Technology Park ("MRTP") are served by a privately owned and maintained wastewater system which collects and conveys their wastewater to the Kihei Wastewater Reclamation Facility ("KWWRF") for processing. Wastewater flow projections for the Project were developed using land use, land area and unit count data multiplied by corresponding demand rates adopted from the Maui County Wastewater Reclamation Division. The Project is estimated to generate a peak wastewater flow of 2.31 MGD. Wastewater improvements needed for the Project will consist of new gravity sewer mains located primarily within planned roadways to collect wastewater from the developed lots and convey it a new or existing sewer pump station that will then convey the wastewater by force main to the KWWRF

for treatment. The expanded wastewater system will be connected to the existing MRTP system and continue to be privately owned and maintained. [Pet. Ex. 39]

195. Improvements to increase the capacity of the existing MRTP wastewater pumping system will be required to accommodate the larger design peak wastewater flows generated by the Project. Capacity improvements and modifications to the existing force main connection at the headworks of the KWWRF may also be required by the County of Maui to accommodate the increased wastewater flow into the facility. Treatment capacity at the KWWRF is expected to remain sufficient to accommodate development of the MRTP over time. [Pet. Ex. 39]

7. Drainage

196. The Project area is flanked by two major drainageways: Waipuilani Gulch to the north, and Keokea Gulch to the south. Storm runoff from the undeveloped lands mauka (east) of the project site flows across the MRTP project area in an east-to-west direction. Runoff leaving the Project area continues westward, flowing across the Elleair Golf Course to Piilani Highway, where existing culverts pass the runoff under the highway. Surface runoff from the undeveloped Project site drains in a westward direction, flowing into one of the minor drainageways crossing the Project and commingling with the offsite-generated storm runoff before exiting the Project area toward the Elleair Golf Course. Total peak pre-development onsite runoff, based on a

50-year recurrence interval, 1-hour duration storm is 379 cubic feet per second (cfs).

[Pet. Ex. 39; D. Unemori, 7/26/13, 98:5 - 98:11]

197. Offsite runoff will be allowed to pass through the Project site and continue to drain across the Elleair Golf Course and toward the existing culvert crossings at Piilani Highway without further mitigation as permitted under Maui County Drainage Rules. Development is expected to increase the peak flow rate of runoff generated by the Project area. Peak post-development onsite runoff, based on a 50-year recurrence interval, 1-hour duration storm is estimated to be 904 cfs, an increase of 525 cfs from pre-development onsite runoff. [Pet. Ex. 39]

198. Storm runoff generated within the Project will typically be intercepted by drain inlets located along roadways and in building site parking lots, then conveyed by underground drainline to a stormwater detention facility which will reduce the peak discharge rate to pre-development levels before the runoff is allowed to continue downstream. Drainage detention basins designed to mitigate the peak runoff from roadways and residential areas will be distributed among the internal drainage areas within the Project; these basins will be sized to a 50-year recurrence interval, 1-hour duration storm in conformance with Maui County Drainage Rules. Each commercial and institutional lot will be required to mitigate its own increase in peak runoff due to development and limited to a downstream stormwater discharge whose peak rate is no greater than its pre-development level. Drainage Reserve Areas have been incorporated

into the MRTP Master Plan to accommodate the safe passage of offsite storm runoff through the Project area. The alignment of drainage channels which convey storm runoff through these Reserve Areas will generally follow the natural flow path of the existing drainageways as they cross the project site. MRTP stormwater management plan emphasizes the use of vegetated surface drainage facilities to treat and infiltrate stormwater in order to control water pollution, reduce peak flows and runoff volumes, and promote groundwater recharge. Roadway and parking lot drainage systems will be designed to infiltrate pavement-generated stormwater onsite to the maximum extent feasible before discharging flows into the underground storm drain system. Pavement runoff will be passed through vegetated drainage facilities located in medians, bulb-outs, curb extensions, tree planters, and landscape strips to the greatest practical extent before entering the underground storm drain system. [Pet. Ex. 39; D. Unemori, 7/26/13, 99:6 - 101:17]

8. Police and Fire Protection

199. The Maui Police Department is headquartered at the Wailuku Police Station on Mahalani Street. The Project falls within the Maui Police Department's Kihei Patrol District 6 (Ma'alaea, Kihei, Wailea, Makena). This police district is served by the Kihei Station, located approximately 2.5 miles from the Project at the Kihei Town Center. Two small offices are also located at Wailea Point between Kama'ole Beach Parks II and III and at the old Kihei Community Center. [Pet. Ex. 11, page 143]

200. According to the Maui Police Department, currently the Kihei Police District is commanded by one Police Captain, who is assisted by one Police Lieutenant and one Civilian Clerk. Staffing for the Kihei District Station includes seven Police Sergeants who supervise 30 Police Officer positions, three Community Police Officer positions, and two Visitor Oriented Police Officer positions and one School Resource Officer position. There are also six Public Safety Aides (civilian employees). Planned for the near future is the new Kihei District Police Station at the intersection of Piilani Highway and Ke Alii Alanui Road, approximately 1.5 miles south of the Project. This full service police station will replace the current station at Kihei Town Center. [Pet. Ex. 11, page 143]

201. 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 the Project, sufficiently proximate to provide adequate fire service to the site. [Pet. Ex. 11, page 143]

9. Emergency/Medical Services

202. The Maui Memorial Hospital, located in Kahului, is the only major medical facility on the island of Maui. Acute, general, and emergency care services are provided by the 194-bed facility. Non-emergency health care is provided by clinics and offices throughout Wailuku-Kahului, such as Kaiser Permanente, which operates facilities in Wailuku and Maui Lani. [Pet. Ex. 9, p. 131]

10. Electricity and Utilities

203. Maui Electric Company's (MECO) Maalaea Power Plant serves the Kihei-Wailea region from the Kihei and Wailea Substations. The Kihei Substation serves the Project area. When fully built out, the electrical demand for the Master Plan update is forecast to be 38,750 kilowatts. Based on the anticipated demand, MECO anticipates a new substation be required in the first phase of the Project—along with associated electrical infrastructure, equipment and related easements. [Pet. Ex. 39]

204. Current plans for the Project include adequate land for locating a new substation. Additionally, the Project proposes to underground existing overhead power lines that run north south along the mauka boundary of the southern portion of the Project. These lines will be placed underground as the Project is built out from the existing employment core towards the south. [Pet. Ex. 39]

205. Currently, Hawaiian Telcom, Time Warner Telecommunications, and Wavecom Solutions have underground systems in place at MRTP, but additional underground infrastructure may need to be installed to accommodate the proposed residential and commercial addition. Sandwich Isles Communications is currently sharing conduit and other infrastructure with another provider, but is planning to have a separate dedicated system in MRTP in the future. Oceanic Time Warner Cable has one node servicing all of the residential lots in the area and another node servicing all the commercial lots. They feel that everything that is being proposed to be built on the

Project can be serviced with current nodes, which should be adequate. However, in the event that additional nodes are needed, Oceanic Time Warner Cable will initiate their installations. [Pet. Ex. 39]

11. Sustainability

206. A Sustainability Plan was prepared for the Project. [Pet. Ex. 11N]

207. The Sustainability Plan groups the major concerns of urban design for the Project into four categories: conservation and restoration of the environment; economic and social diversity and balance; human and pedestrian scale in the public and private realms; and connections and interdependence between the neighborhood, town and region. [Pet. Ex. 11N; Pet. Ex. 30]

208. Conservation and restoration seeks to design the Project based on the existing topography and other natural features, and is therefore less damaging to construct and preserves natural systems. The Project will incorporate a compact designed roadway network with bicycle and pedestrian pathways to reduce automobile use. The Project will use recycled water when applicable including fire control, landscaping and toilets. It is estimated that 170 million gallons of water per year could be diverted away from injection wells. Approximately 300 kilowatts of photovoltaic power is used at the Project with another 200 kilowatts planned. The Petitioner will encourage the use of as much renewable energy and distribution generation as the

utility will allow. The use of drought tolerant native plants will be encouraged. . [Pet. Ex. 11N; Pet. Ex. 30]

209. Diversity and balance seeks to provide a diversity of uses. The Project will provide residential opportunities within walking distance of commercial development to reduce commuting distances and make walking and bicycling more convenient. Residential neighborhoods will offer a diversity of housing types within a short walk of the mixed use center, and the Project's increased balance of employment and residential will help alleviate problems of commuting to work. [Pet. Ex. 11N; Pet. Ex. 30]

210. Human and pedestrian scale seek to provide a variety of activities and land uses available within a reasonable walking and bicycling distance and creates an area scaled to people, not automobiles. The plan proposes streets with bike lanes and sidewalks for slow automobile traffic and nearby buildings, creating a kind of outdoor room for which will be comfortable, safe and inviting for pedestrians. Pedestrian safety measures include street parking, narrow streets, traffic calming measures, and sidewalks throughout the Project to promote less reliance on the automobile. [Pet. Ex. 11N; Pet. Ex. 30]

211. Connections and interdependence seek accessibility and connectivity. The Project will be accessible from Piilani Highway via the existing Lipoa Parkway. The Project includes an internal roadway network that will connect the Project to Piilani

Highway and to surrounding developments as necessary. The Project will also include sidewalks and bicycle pathways to improve the efficiency and effectiveness of the transit system. As the Project gains employment and population, transit service will become more viable as well as more essential. [Pet. Ex. 11N; Pet. Ex. 30]

J. Commitment of State Funds and Resources

212. State funds and resources are not needed for the Project. [Pet. Ex. 11, page 139]

K. State Land Use Designation

213. The Petition Area is presently classified in the State Agricultural Land Use District. [Pet. Ex. 11, page 292]

L. Conformance with Urban District Standards

214. The proposed reclassification of the Petition Area is in general conformance to HAR § 15-15-18, standards for determining “U” Urban District Boundaries as follows:

§ 15-15-18(1): The Project includes “city-like” concentrations of people, structures, urban services and related land uses. At build-out the Project would have 1,250 residential units, school(s), mixed uses in a higher-density core area, commercial, light industrial, neighborhood retail, community centers, and a network of parks and trails. [Pet. Ex. 32]

§ 15-15-18(2)(A): The Project is adjacent to an existing center of trading and employment, specifically the MRTP, which is home to such prominent employers as Akimeka, Boeing, The Pacific Disaster Center, and the U.S. Air Force who currently employ approximately 400 people in a variety of high technology and supporting industries. The Project is also located within close proximity to one of three commercial nodes located in central Kihei. The Piilani Shopping Center, Azeka Shopping Center, and Lokelani Intermediate School, along with numerous professional and business services are all located a short distance from the Project and generate substantial employment. [Pet. Ex. 32]

§ 15-15-18(2)(B): Basic public services and facilities, such as transportation systems, sewer, water, drainage, public utility hook-ups, parks, schools, police and fire are or will be available to serve the Project. Petitioner will finance or construct off-site wastewater and drainage improvements required for the Project and participate in fair-share contributions for public school and regional transportation facilities. [Pet. Ex. 32]

§ 15-15-18(2)(C): The Project addresses a total of approximately 411 acres. With the requested District Boundary Amendment the Project will have sufficient urban lands to accommodate the land uses contemplated in the Project. Having sufficient land area is necessary to reduce costs and delays associated with land use redistricting that would otherwise be borne by prospective investors. [Pet. Ex. 32]

§ 15-15-18(3): The Project is readily developable, with satisfactory topography and drainage, and is not subject to tsunami, unstable soil conditions or other adverse environmental effects which would render it unsuitable or inappropriate for the proposed development. [Pet. Ex. 32]

§ 15-15-18(4): The Project is immediately adjacent to lands designated "Urban", including land that is already part of the MRTTP. The Project is within the Maui Island Plan's Urban Growth Boundary and is also designated by the Kihei-Makena Community Plan for urban use. In addition, the future Kihei High School is proposed on lands adjacent to the Project's northwestern boundary. Just west of the Project, across Piilani Highway, are commercial, civic, and residential developments within central Kihei. [Pet. Ex. 32]

§ 15-15-18(5): Given the "Project District 6" designation of the MRTTP by the Kihei-Makena Community Plan and the placement of the Project area within the Urban Growth Boundary by the Maui Island Plan, the Project is in an appropriate location for new urban concentration and growth. Both of these plans envision the Project as a large employment center, and with existing infrastructure and public facilities in close proximity, balancing employment with housing and services. [Pet. Ex. 32]

§ 15-15-18(6): The Petition Area conforms to or will conform to the standards in paragraphs § 15-15-18(1) through § 15-15-18(5).

§ 15-15-18(7): The Project will not contribute to scattered spot urban development. The Project is adjacent to and includes the existing urban uses in the MRTTP and other residential and commercial subdivisions in the area. The Project will not necessitate unreasonable public investment in infrastructure facilities or public services. The Petitioner will be engaging in infrastructure improvements to mitigate any potential impacts of the Project. [Pet. Ex. 32]

§ 15-15-18(8): The Petition Area is characterized by an average slope of four (4) percent. [Pet. Ex. 32]

M. Conformance with the Goals, Objectives, and Policies of the Hawai'i State Plan

215. Chapter 226, HRS, also known as the Hawai'i State Plan, is a long-range comprehensive plan which serves as a guide for the future long-term development of the State by identifying goals, objectives, policies, and priorities, as well as implementation mechanisms. State objectives and policies relevant to the proposed Project are as follows:

HRS § 226-5, Objectives and Policies for Population: The Project is expected to create high paying jobs for residents, which will in turn have a positive impact on the rest of the Maui economy. The result will be an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires, which will promote increased opportunities for Hawaii.

HRS § 226-6, Objectives and Policies for the Economy in General: As discussed, *supra*, the Project is anticipated to generate approximately \$1.36 billion of direct capital investment into the Maui economy and will provide an estimated 70,700 “worker years” of employment and \$2.7 billion in total wages over a 20 year period. This will result in expenditures that will have a positive direct, indirect and induced impact on the County of Maui economy. During the operations phase, the Project will significantly increase the level of capital investment in the region which will create employment opportunities and create an economic stimulus for the region. The Project will provide direct employment opportunities for Maui residents and contribute to the diversification and growth of the Island’s and State’s economies. After “stabilization” is estimated that the Project will support 5,556 jobs with an annual payroll of about \$203.6 million.

HRS § 226-9, Objectives and Policies for the Economy - Federal Expenditures: The MRTTP is currently home to the U.S. Air Force and has several defense related businesses that pursue research and development and provide various high-tech related services to the Department of Defense. The implementation of the Project will promote further government uses. These uses will not only promote Hawaii’s support of national defense, but will also encourage additional federal expenditures in the State.

HRS § 226-10, Objectives and Policies for the Economy - Potential Growth Activities: The Project will continue to attract new businesses and industries including,

but not limited to, renewable energy-related industries, research and development, telecommunications and information industries and government programs.

HRS § 226-10.5, Objectives and Policies for the Economy - Information Industry: Information technology would complement the existing and desired future use of the property.

HRS § 226-11, Objectives and Policies for the Physical Environment - Land Based, Shore Line, and Marine Resources: During build-out and during the operation phase best management practices will be implemented to mitigate non-point source pollution to Maui's coastal resources as well as to mitigate fugitive dust impacts. From a site planning perspective, the Project design layout carefully considered the natural topography of the site and incorporated unique natural areas into parks and open spaces throughout the Project. Proposed buildings were incorporated into the natural topography of the property and building layout is oriented to preserve view planes towards the Pacific Ocean.

HRS § 226-12, Objectives and Policies for the Physical Environment - Scenic, Natural Beauty, and Historic Resources: The Project will not impact cultural resources on the property or within its immediate vicinity. The Project will not impinge upon any significant public view corridors and the Project will not have significant impacts on views toward the ocean or Haleakala.

HRS § 226-13, Objectives and Policies for the Physical Environment - Land, Air, and Water Quality: During build-out and during the operation phase best management practices will be implemented to mitigate non-point source pollution to Maui's coastal resources as well as to mitigate fugitive dust impacts. The master plan design layout carefully considered the natural topography of the site and incorporated unique natural areas into parks and open spaces throughout the MRTP. It is anticipated that the Project will not violate Federal or State air quality standards. The Project will not increase the possibility of natural hazards such as flooding, tsunami inundation, hurricanes and earthquakes. The Project will be constructed in compliance with County, State and Federal standards.

HRS § 226-15, Objectives and Policies for Facility Systems - Solid and Liquid Waste: The Project is connected to the Kihei Wastewater Reclamation Facility (WWRF) which provides treated water to the Project for use as irrigation water. The WWRF was designed to accommodate future population growth in South Maui and has a surplus of treated R-1 effluent that would be used by the Project. The Project will develop strategies for reducing solid waste delivered to the land fill by providing options for recycling and promoting recycling practices among residents and businesses.

HRS § 226-16, Objectives and Policies for Facility Systems - Water: The Project would utilize water supplied by the County Department of Water Supply (DWS) and

reclaimed non-drinking water from the KWWRF. Also, if necessary the Petitioner will develop and treat brackish well water to meet its drinking water demand and any non-drinking water demand that cannot be supplied by the KWWRF. The Petitioner is committed to water conservation strategies to reduce consumption, conserve resources and minimize water demands, and it will implement water conservation recommendations of the County of Maui Department of Water Supply.

HRS § 226-17, Objectives and Policies for Facility Systems - Transportation:

The Project will establish a settlement pattern that is significantly more compact and mixed-use in character and is thereby less significantly less dependent upon motorized transportation as compared to the existing layout. The Project also makes a considerable investment into a unified system of pedestrian and bicycle infrastructure that will connect the residential, mixed-use and employment areas together into a unified whole.

HRS § 226-18, Objectives and Policies for Facility Systems - Energy: The Petitioner will encourage the use of energy efficient technology throughout the Project, specifically, in lighting, air-conditioning, and building materials. Solar hot water heaters will be utilized throughout the residential portion of the development and installation of Photovoltaic Energy Systems will be encouraged in all areas of the Project. Additionally, the MRTP currently has an ongoing solar energy demonstration project and actively promotes research and development in a variety of technologies.

HRS § 226-19, Objectives and Policies for Socio-Cultural Advancement -

Housing: The Project will offer a mix of single and multi-family housing types to address the diverse housing needs of Maui residents. The Project will include affordable housing units in compliance with Chapter 2.96, MCC Residential Workforce Housing Policy. Workforce homes will be subject to the requirements of Chapter 2.96, MCC to ensure that affordable homes are available for full time Maui residents. [Pet. Ex. 11]

N. Relationship with Applicable Priority Guidelines and Functional Plans

216. The State Priority Guidelines and Functional Plans define priorities and actions for implementation of the Hawai'i State Plan through the identification of needs, problems and issues, and recommendations on policies and priority actions which address the identified areas of concern. The proposed reclassification request is consistent with the following Priority Guidelines and Functional Plans:

HRS § 226-103, Economic Priority Guideline: The Project is expected to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy.

HRS § 226-104, Population Growth and Land Resource Priority Guideline: The Project is expected to be consistent with desired population growth and distribution and land use resource utilization.

HRS § 226-106, Affordable Housing Priority Guideline: The Project will comply with the County's workforce housing policy.

State Employment Functional Plan: The Project expects to increase the number of high paying jobs on Maui.

State Energy Functional Plan: The Project's Design Guidelines will encourage the use of energy efficient technology throughout the development.

State Housing Functional Plan: The Project will help to alleviate the public demand for market and affordable housing units on Maui.

State Transportation Functional Plan: The Project will provide a variety of traffic related improvements that will address the traffic impacts related to the Project and to support economic development. [Pet. Ex. 11]

O. Conformance with the Coastal Zone Management Program

217. The Project is consistent with the applicable objectives of the Coastal Zone Management ("CZM") Program. In particular, it is consistent with preserving historic/cultural resources, scenic and open space resources, providing improvements important to the state's economy, improving the development process, and stimulating public participation. [Pet. Ex. 11]

P. Conformance with the Maui Countywide Policy Plan

218. As stated in the Maui County Charter, as amended in 2002: "The General Plan shall indicate desired population and physical development patterns for each

island and region within the county; shall address the unique problems and needs of each island and region; shall explain the opportunities and the social, economic, and environmental consequences related to potential developments; and shall set forth the desired sequence, patterns, and characteristics of future developments. The general plan shall identify objectives to be achieved, and priorities, policies, and implementing actions to be pursued 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.” [County Ex. 7]

219. The County of Maui 2030 General Plan Countywide Policy Plan, adopted by the Maui County Council on March 19, 2010, is the first component of the decennial General Plan update. The Countywide Policy Plan replaces the General Plan as adopted in 1990 and amended in 2002. The Countywide Policy Plan acts as an overarching values statement and umbrella policy document for the Maui Island Plan and the nine Community Plans that provides broad goals, objectives, policies, and implementing actions that portray the desired direction of the County's future. The plan includes:

1. A vision statement and core values for the County to the year 2030
2. An explanation of the plan-making process
3. A description and background information regarding Maui County today
4. Identification of guiding principles
5. A list of countywide goals, objectives, policies, and implementing actions related to the following core themes:

- A. Protect the Natural Environment
- B. Preserve Local Cultures and Traditions
- C. Improve Education
- D. Strengthen Social and Healthcare Services
- E. Expand Housing Opportunities for Residents
- F. Strengthen the Local Economy
- G. Improve Parks and Public Facilities
- H. Diversify Transportation Options
- I. Improve Physical Infrastructure
- J. Promote Sustainable Land Use and Growth Management
- K. Strive for Good Governance

The proposed Project is in keeping with the Countywide Policy Plan goals, objectives and policies. Details and analysis of the proposed MRTP Master Plan Update and its applicability to the Maui Countywide Policy Plan may be found in the EIS on pages 367 to 414. [County Ex. 7]

220. The Maui Island Plan, The Maui Island Plan (“MIP”) was adopted by the County Council as Ordinance No. 4004 on December 21, 2012, and became effective with the Mayor’s signature on December 28, 2012. The Introduction to the Maui Island Plan starts with “The Purpose of the Maui Island Plan”, stating that:

The Maui Island Plan accomplishes the following:

- Assesses existing conditions, trends, and issues specific to the island of Maui;
- Provides policy direction for the use and development of land, extension and improvement of transportation services and infrastructure, development of community facilities, expansion of the island’s economic base, provision of housing, and protection of natural and cultural resources;
- Establishes policies to manage change and to direct decisions about future land use and development; and

- Provides the foundation to set capital improvement priorities, revise zoning ordinances, and develop other implementation tools.

The MIP is guided by the following Vision Statement and Core Values:

Maui Island Vision

Ua mau ke ea o ka 'aina i ka pono
Maui Island will be environmentally, economically, and culturally sustainable with clean, safe, and livable communities and small towns that will protect and perpetuate a pono lifestyle for the future.

Core Values

To achieve our island's vision, we will be guided by the following values:

- A. Adopt responsible stewardship principles by applying sound natural resource management practices;
- B. Respect and protect our heritage, traditions, and multi-cultural resources;
- C. Plan and build communities that include a diversity of housing;
- D. Retain and enhance the unique identity and sense of place;
- E. Preserve rural and agricultural lands and encourage sustainable agriculture;
- F. Secure necessary infrastructure concurrently with future development;
- G. Support efforts that contribute to a sustainable and diverse economy for Maui;
- H. Create a political climate that seeks and responds to citizen input;
- I. Respect and acknowledge the dignity of those who live on Maui;
- J. Establish a sustainable transportation system that includes multiple modes, including walking, biking, and mass transit, as well as automobile-based modes; and
- K. Recognize and be sensitive to land ownership issues and work towards resolution.

The proposed project is in keeping with the MIP goals, objectives and policies and importantly is located within the Urban Growth Boundary in the Kihei-Makena

region. Details and analysis of the proposed MRTP Master Plan Update and its applicability to the Maui Island Plan may be found in the EIS on pages 414 to 429.

[County Ex. 7]

221. It should be noted that the Property lies within the Urban Growth Boundary, as well as within the overall boundaries of the “Kihei-Makena Planned Growth Areas”. The MIP describes that growth area as follows:

“The MRTP was the vision of a core group of community leaders in the early 1980s who sought to diversify the economic and employment base on Maui beyond tourism and agriculture. Today, the MRTP is home to a diverse range of companies and government projects that together employ approximately 400 persons in high-technology and related industries. The MRTP is envisioned to continue to be a major employment generator for Maui. The Park’s mission of job creation and diversification of the island's economy remains one of vital importance.”

Furthermore, the MIP goes on to developing the Planned Growth Area Rationale for this area as follows:

“Since the opening of the MRTP, experts in the field of economic development have gained a better understanding of innovation clusters and the needs of knowledge workers and businesses. Technology businesses thrive in areas of diversity and activity. A diversity of businesses and workers, and the availability of a variety of commercial and industrial spaces, enhance the viability and success of individual businesses. The intent of the MRTP planned growth area is to create opportunities for a broader range of desirable knowledge-based and emerging industries, which will provide high-skilled and well-paying jobs for Maui residents.

As the MRTP develops, it should utilize the principles of new urbanism, smart growth, and the Association of University Research Park’s “Power of Place” study to create a community of

innovation. This includes providing diverse housing options within close proximity of the MRTP's employment, and integrating neighborhood-serving retail, civic, and commercial uses in a manner that encourages bicycling, walking, and public transport. The growth area may also include exhibit halls and meeting space to support the development of the research and technology sector, and to serve the broader needs of South and Central Maui. Build-out of the MRTP should be coordinated with the development of the neighboring Kihei Mauka planned growth area to ensure efficient intra- and inter-regional transportation connectivity for both motorized and non-motorized transportation. The MRTP should also develop pedestrian and bicycle linkages between the future Kihel High School and the core commercial and civic uses within Central Kihei." [County Ex. 7]

Q. Conformance to Kihei-Makena Community Plan

222. According to the Kihei-Makena Community Plan the Property is currently identified as combination of PD-6 (Project District 6), Public/Quasi Public, and Agriculture land uses. The majority of the existing MRTP is designated Project District 6 (R&T Park) in the Community Plan adopted by Ordinance No. 2641 on March 6, 1998. A Community Plan Amendment will be sought from the County of Maui to bring the entire expanded Park site into the new "Maui Research and Technology Park District" designation.

Categories under which this Project has been reviewed in regard to the Community Plan include: Land Use, Environment, Cultural Resources, Economic Activity, Housing and Urban Design, Physical and Social Infrastructure, Transportation, Water Distribution, Liquid and Solid Waste, Drainage, Energy and Public Utilities, Recreation, Health and Public Safety, Education, Government, and

Indigenous Architecture. In addition Land Use Standards and Project District Standards have been reviewed. Details and analysis of the proposed MRTP Master Plan Update and its applicability to the Kihei-Makena Community Plan may be found in the EIS on pages 429 to 462. [County Ex. 7]

R. County Zoning

223. The Project will require a Change in Zoning from Agricultural to the new district called “Maui Research and Technology Park District.” In addition, changes will also be sought to the language of Maui County Code MCC Title 19.33, to allow for a more diversified development that comports with the Master Plan Update. The following criteria have been met in regards to the proposed Change in Zoning and details and analysis of the proposed MRTP Master Plan Update and its applicability to County Zoning may be found in the EIS on pages 462 to 465. In addition, the proposed Change in Zoning meets the following guidelines:

- The proposed request meets the intent of the General Plan and the objectives and policies of the newly adopted Maui Island Plan.
- The proposed request meets the intent and purposed of the district being requested.
- The application, if granted, would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage, and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences, and improvements.
- The application, if granted, would not adversely impact the social, cultural, economic, environmental and ecological character and quality of the surrounding area. [County Ex. 7]

224. The change in zoning and Community Plan Amendment for the Project are being concurrently processed with the Land Use Commission's District Boundary Amendment and are subject to approval by the Maui County Council. The county entitlements will be held in abeyance until approval of the District Boundary Amendment. [J. Maydan, 7/25/13, 144:18 - 144:24]

S. **Incremental Districting**

225. HAR § 15-15-50(c)(19) provides that a petition for district boundary amendment must include an incremental plan if the development cannot be substantially completed within ten years after the date of commission approval. [Pet. Ex. 11P]

226. Petitioner prepared an Incremental Plan pursuant to HAR § 15-15-50(c)(19) due to the Project's twenty year development schedule. [Pet. Ex. 11P]

227. Petitioner, however, has requested that the entire Petition Area be reclassified and that the Project not be incrementally redistricted. [J. Beutler, 7/25/13, 91:1 - 91:18]

228. Incremental districting is not appropriate for this Project because the different parts of the Project work together, and because it's impossible to predict future market conditions it's important for the Project to react to opportunities where buyers are prepared to enter the Project. [J. Beutler, 7/25/13, 91:1 - 91:18]

229. The large campus employment center is located in Increment Two. [Pet. Ex. 11P]

230. All of the components of the Project are necessary. The Project's proposed form-based zoning needs all of the components together for it to work including small lots, large lots and a variety of housing. It's like a painting that you need all the pieces together to make a complete picture. [W. Spence, 7/26/13, 125:5 - 125:15]

231. In any new mixed-use community one of the hardest things to establish is an employment base for the development. The Project site has a very good head start in that it already has a nucleus employment base of operation in the existing technology park. Expansion is logical at its outer boundaries, which is how the Project has been pursued and, therefore, incremental districting is not warranted for this Project. [R. Funakoshi, 8/8/13, 42:19 - 43:3]

232. Both the OP and the County do not feel that incremental districting is appropriate and instead support reclassification of the entire Petition Area subject to conditions. [OP Ex. 2; County Ex. 7]

III. RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

IV. CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205 and the Commission Rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS § 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 253.05 acres of land, situated in Kihei, Island of Maui, State of Hawai'i, Tax Map Key Nos. (2) 2-2-24: 16 and 17 and (2) 2-2-02: Por. 84 to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS § 205-2 and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17, and 205A-2.

2. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by *ahupua`a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are

obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa`akai O Ka`Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

4. Article XI, Section 1, of the Hawai'i State Constitution requires the State to conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

5. Article XI, Section 3, of the Hawai'i State Constitution requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

6. The Petition Area is not designated as Important Agricultural Land under Part III of HRS Chapter 205.

7. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people.

8. Article XI, Section 1, of the Hawai'i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and require reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain. *Kauai Springs v. Planning Comm. of the County of Kauai*, ICA No. 29440, April 30, 2013.

9. The Commission concludes that it has observed and complied with its duties arising from Article XI, Section 1; Article XI, Section 3; Article XI, Section 7; and Article XII, Section 7 of the Hawai'i State Constitution.

V. DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 253.05 acres of land, situated in Kihei, Island of Maui, State of Hawai'i, Tax Map Key Nos. (2) 2-2-24: 16 and 17 and (2) 2-2-02: Por. 84, and shown approximately on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

IT IS FURTHER ORDERED that the reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District shall be subject to the following conditions:

1. **Water Source.** That the Petitioner shall provide the necessary water source, storage and transmission facilities and improvements to the satisfaction of the County of Maui's Department of Water Supply and/or State Department of Health as applicable to service the petition areas.

2. **Water Conservation.** That the Petitioner shall implement water conservation and best management practices in the design and construction of the petition area. Petitioner shall implement water conservation measures including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping.

3. **Storm Water Management and Drainage.** That the Petitioner shall construct drainage improvements to accommodate the development of the petition area in accordance with the requirements of the County of Maui's Department of Public Works. Petitioner shall design, construct and maintain stormwater and drainage system improvements in compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement Best Management Practices and incorporate Low Impact Development ("LID") practices for onsite stormwater

capture and reuse into Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.

4. **Highway and Roadway Improvements.** That the Petitioner shall fund, construct, and implement roadway improvements to accommodate the development of the petition area in accordance with the requirements of the County of Maui's Department of Public Works.

That the Petitioner shall fund, construct, and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in a Memorandum of Agreement ("MOA") agreed to and executed by the DOT and the Petitioner. Petitioners shall submit to the DOT an updated TIAR, and Petitioner shall obtain acceptance of the Project's TIAR from the DOT and shall execute the MOA prior to final subdivision approval of lots intended for above ground construction for the Petition Area in Docket A10-787, and excluding construction of roads, utilities, and other infrastructure by Petitioner. The MOA shall include, but not be limited to, the following terms and conditions: (i) the accepted TIAR shall be incorporated in the MOA by reference; (ii) Petitioner's responsibilities for funding, construction, and implementation of improvements and mitigation; (iii) a schedule of agreed to improvements and a schedule for future TIAR updates or revisions to be accepted by DOT; (iv) development of the Project shall be consistent

with the executed MOA and TIAR; and (v) any fees or in-kind contribution that is roughly proportional to any indirect or secondary impacts caused by the Project.

That the Petitioner shall construct the portion of the Mauka Collector within the MRTTP boundary either during construction of Phase 2 or prior to Year 2034 concurrent with the development of the Kihei Mauka planned growth area as outlined in the Maui Island Plan and shall coordinate these efforts with the Department of Transportation.

5. **Environment and Health.** That the Petitioner shall comply with the requirements of the County Department of Environmental Management and/or State Department of Health as applicable.

6. **County Parks.** That the Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.

7. **Housing.** That the Petitioner shall comply with all housing requirements to the satisfaction of the Department of Housing and Human Concerns.

8. **Archaeological and Historic Preservation.** Archaeological features identified in the Waipuilani Gulch shall be protected from any construction related activities. A report of monitoring activities shall be submitted to SHPD upon completion of fieldwork.

9. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified

during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

10. **Endangered Species.** That the Petitioner shall develop mitigation measures to address any potential impacts on endangered species in the Petition area, if any, and shall as necessary consult with the DLNR, DOFAW, and USFWS to develop such mitigation measures.

11. **Flora and Fauna.** Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.

12. **Adjacent Agricultural Lands.** For all land in the Petition Area or any portion thereof that is adjacent to land the State Land Use Agricultural District, Petitioner shall comply with the following:

- A. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management principles on adjacent or contiguous lands in the State Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in HRS section 165-2; and

- B. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Agricultural District are protected under HRS chapter 165, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

13. **Native Hawaiian Access Rights.** Pursuant to Article XII, Section 7 of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

14. **Civil Defense.** Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location identified by the State Civil Defense agency. To the extent feasible, the Petitioner should incorporate hardening measures for safe rooms within planned residential facilities, and the hardening of community facilities so as to withstand high wind and seismic events.

15. **Schools.** Petitioner shall enter into an impact fee agreement with the Department of Education prior to county subdivision approval.

16. **Infrastructure Deadline.** The Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements,

and stormwater/drainage and other utility system improvements, within fifteen (15) years from the date of the Decision and Order approving the Petition.

17. **Compliance with Representations.** The Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the Findings of Fact, Conclusions of Law, and Decision and Order. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

18. **Order to Show Cause.** If Petitioner fails to complete the proposed backbone infrastructure within fifteen (15) years from the date of the Decision and Order, the Commission may issue and serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use Agricultural District classification, or be changed to a more appropriate classification.

19. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, at any time prior to completion of development of the Petition Area.

20. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the County, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's

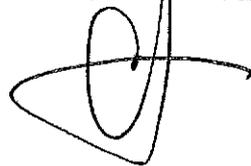
progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

21. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

22. **Notice of Imposition of Conditions.** Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.

23. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR § 15-15-92.

DATED: Honolulu, Hawai'i, September 3, 2013.



Of Counsel:
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A Law Corporation

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WYETH M. MATSUBARA
Attorneys for Petitioner
MAUI R&T PARTNERS, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A10-787
)	
MAUI R&T PARTNERS, LLC)	CERTIFICATE OF SERVICE
)	
To Amend the Land Use District)	
Boundary of certain lands situated at)	
Kihei, Island of Maui, State of Hawai'i,)	
consisting of 253.05 acres from the)	
Agricultural District to the Urban)	
District, Tax Map Key Nos.)	
(2) 2-2-024:016 and 017, and)	
(2) 2-2-002:084 (por.))	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following by depositing the same in the AS INDICATED BELOW on September 3, 2013:

JESSE SOUKI, Director	(HAND DELIVERY)
Office of Planning, State of Hawai'i	
235 Beretania Street, 6 th Floor	
Honolulu, Hawai'i 96813	

BRIAN C. YEE, ESQ.	(HAND DELIVERY)
Deputy Attorney General	
Department of the Attorney General	
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Honolulu, Hawai'i 96813	

WILLIAM SPENCE, Director
Maui County Planning Department
County of Maui, State of Hawai'i
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**(CERTIFIED MAIL, RETURN
RECEIPT REQUESTED)**

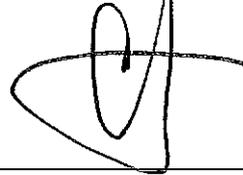
Planning Commission
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**(CERTIFIED MAIL, RETURN
RECEIPT REQUESTED)**

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**(CERTIFIED MAIL, RETURN
RECEIPT REQUESTED)**

DATED: Honolulu, Hawai'i, September 3, 2013.



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