

BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

2013 APR -5 P 3:17

LAND USE COMMISSION
STATE OF HAWAII

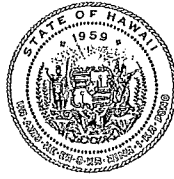
In The Matter Of The Petition Of)	DOCKET NO. A12-795
)	
WEST MAUI LAND COMPANY, INC, a)	FINDINGS OF FACT,
Hawai`i Corporation, and KAHOMA)	CONCLUSIONS OF LAW, AND
RESIDENTIAL LLC, a Hawai`i Limited)	DECISION AND ORDER; AND
Liability Company)	CERTIFICATE OF SERVICE
)	
To Amend The Agricultural Land Use)	
District Boundaries Into The Urban Land)	
Use District For Approximately 16.7 Acres)	
of Land at Lāhainā, Island of Maui, State of)	
Hawai`i, Tax Map Key No.: (2) 4-5-10:005)	
)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER;
AND
CERTIFICATE OF SERVICE

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawai`i

4/5/13 _____ by


for Executive Officer



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

West Maui Land Company, Inc. and land owner, Kahoma Residential LLC (collectively “Petitioner”), filed a Petition for District Boundary Amendment (“Petition”) on April 4, 2012, pursuant to Chapter 205, Hawai`i Revised Statutes (“HRS”) and Chapter 15-15, Hawai`i Administrative Rules (“HAR”), to amend the State Land Use District Boundary to reclassify approximately 16.7 acres of land situated at Lāhainā, Maui, State of Hawai`i, identified as Tax Map Key No. (2) 4-5-10:005, from the State Land Use Agricultural District to the State Land Use Urban District to allow for the development of the Kahoma Residential Subdivision Affordable Housing Project (“Project”).

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

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On April 4, 2012, Petitioner filed a Petition for Land Use District Boundary Amendment, Exhibits 1-15, Affidavit of Mailing and Certificate of Service.
2. On April 5, 2012, the Petitioner filed notice with the Commission that it was not pursuing a Chapter 201-H, HRS, Petition for Land Use Boundary Amendment and instead intended its Petition to be processed under Chapter 205, HRS.
3. On April 11, 2012, the Petitioner filed a large scale map of the property made the subject of this matter.
4. On April 16, 2012, the Petitioner filed an Affidavit of Service of Petition for Land Use District Boundary Amendment and Affidavit of Sending Notification of Petition Filing.
5. On April 17, 2012, the Executive Officer of the Commission notified Petitioner by letter that the Petition was deemed a proper filing and accepted it for processing as of April 16, 2012.
6. On April 23, 2012, Routh Bolomet ("Bolomet") filed a Notice of Intent to Intervene.

7. On April 27, 2012, Michele Lincoln ("Lincoln") filed a Notice of Intent to Intervene.
8. On May 1, 2012, Lincoln filed a new Notice of Intent to Intervene.
9. On May 4, 2012, Bolomet filed an addendum to the April 23, 2012 Notice of Intent to Intervene.
10. On May 14, 2012, a notice of hearing was published in the Honolulu Star Advertiser, the Maui News, West Maui Today, the Garden Island, and the Hawai'i Tribune Herald.
11. On May 16, 2012, the State Office of Planning filed its Position Statement on the Petition.
12. On May 17, 2012, the Maui County Planning Department filed its Position Statement on the Petition.
13. On May 23, 2012, the Commission mailed a Pre-Hearing notice to parties and potential interveners Bolomet and Lincoln, setting a pre-hearing conference meeting for June 6, 2012.
14. On May 25, 2012, the Commission received a copy of written correspondence to James Geiger, Esq., counsel for Petitioner, from Bolomet.
15. On May 29, 2012, Bolomet filed an Addendum to the April 23, 2012 Notice of Intent to Intervene.
16. On May 29, 2012, Lincoln filed a Petition to Intervene.
17. On May 30, 2012, the State Office of Planning filed statements of no opposition to the interventions of Lincoln and Bolomet.
18. On May 30, 2012, Bolomet filed a Motion to Waive Intervener's \$50 Filing Fee.

19. On May 30, 2012, the Commission mailed the notice and agenda for its June 6-8, 2012, meeting to the Parties, potential interveners, and the Statewide, Maui, and O`ahu mailing lists.
20. On June 4, 2012, the Maui County Planning Department filed statements of no objection to the interventions of Lincoln and Bolomet, a List of Witnesses, a List of Witnesses, and County of Maui Exhibits 1 to 5 including testimony.
21. On June 4, 2012, Petitioner filed statements of opposition to the interventions of Lincoln and Bolomet, a List of Witnesses, and a List of Exhibits.
22. On June 6, 2012, the Commission held hearings in Kahului, Maui. The Commission received oral and/or written testimony from the following individuals: Victoria Kaluna-Palafox; Mikihala Roy; and Kaniloa Kaumanu.
23. On June 6, 2012, the Commission Chair acted on Bolomet's Motion to Waive Filing Fee for Intervention and determined that the fee should be waived because Bolomet was unemployed.
24. On June 6, 2012, the Commission, following motion and discussion, granted Bolomet's Intervention.
25. On June 6, 2012, the Commission, following motion and discussion, granted Lincoln's Intervention on the criteria of impact on natural systems or habitat, maintenance of agricultural resources, provision of housing and commitment of state funds and resources. At that time, Lincoln submitted her resume to the Commission and other parties.

26. On June 6, 2012, a Pre-Hearing conference was held in Kahului, Maui, and conducted by Commission staff to identify the issues and positions of the parties, arrange for the exchange of proposed exhibits and names of witnesses, establish deadlines for the submission of Position Statements by the Interveners, the submission of Exhibit Lists, Witness Lists and Exhibits by all parties, the submission of Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by all parties, and the submission of written direct testimony for all expert witnesses, and such other matters to expedite the orderly conduct and disposition of the hearings. All parties in the proceeding, including Bolomet and Lincoln, were in attendance.
27. On June 6, 2012, Petitioner filed and served on the parties Exhibit 15A which was a corrected copy of Exhibit 15A.
28. On June 15, 2012, the Commission's Pre-Hearing Order was issued and mailed to all parties requiring: (a) Interveners to file Position Statements by June 19, 2012; (b) requiring all parties to file Exhibit List, Witness Lists and copies of Exhibits by June 19, 2012; (c) requiring all parties to file Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by June 29, 2012; and, (d) requiring all parties to file the written direct testimony of all expert witnesses by July 2, 2012.
29. On June 19, 2012, Petitioner filed a Witness List, an Exhibit List, and Petitioner's Exhibits 15A through 25.
30. On June 19, 2012, OP filed a Witness List, an Exhibit List, and OP Exhibits 3 through 5.

31. On June 19, 2012, Intervener Lincoln filed a Position Statement, a Witness List, an Exhibit List, Lincoln Exhibits 1 through 7, and Lincoln Video Exhibits 1 and 2.
32. On June 19, 2012, Intervener Bolomet filed a Position Statement, a Witness List, an Exhibit List, and Bolomet Exhibits 1 through 17.
33. On June 22, 2012, the Order Granting Routh Bolomet's Petition to Intervene and Motion to Waive Intervener's \$50 Filing Fee was issued.
34. On June 22, 2012, the Order Granting Michele Lincoln's Petition to Intervene was issued.
35. On June 22, 2012, the Commission received a copy of correspondence from Petitioner to Intervener Bolomet regarding filings to the Commission.
36. On June 25, 2012, Lincoln filed amended video exhibits consisting of Lincoln Video Exhibits 1 through 4.
37. On June 25, 2012, Bolomet filed a Response to James Geiger Letter dated 6/12/12, Motion for Extension, a Witness Substitution List, an Exhibit List, and Bolomet Exhibits 1 through 5, 5a, 5b, 6-8, 8a, and 9 through 17.
38. On June 27, 2012, Petitioner filed an Affidavit of Publication for Notice of Hearing.
39. On June 29, 2012, Petitioner filed a Memorandum in Opposition to Routh Bolomet's Motion for An Extension to Enter Exhibits, a Rebuttal Exhibit List, a Rebuttal Witness List, Petitioner Exhibits 26 through 36, and Written Direct Testimonies of Charles Biegel, P.E., Robert W. Hobdy, Anthony Riecke-Gonzales, Keith K. Niiya, P.E., Paul Singleton, Ph.D., Kimokeo Kapahulehua, David J. Perzinski, Michael F.

Dega, Ph.D., Sherri Dodson, Leonard Nakoa, III, Josh Guth, Dylan Payne, Kirk T. Tanaka, P.E., Heidi T. Bigelow, and Rory Frampton.

40. On June 29, 2012, Bolomet filed Amendments to Witness and Exhibit Lists, Rebuttal Witness List, Rebuttal Exhibit List and Exhibits (unidentified).
41. On June 29, 2012, Lincoln filed Intervener's Rebuttal Statement, Rebuttal Exhibit, and Witness Testimonies and Profiles.
42. On July 2, 2012, the County filed a Rebuttal Testimony; an Exhibit List - Amendment #1, and Exhibits 6-8; Exhibit List – Amendment#2; and Testimony of: Rowena Dagdag-Andaya, Jo Ann Ridao, David Taylor; Resume for David Taylor, and 2011 Supplemental Traffic Report by Austin Tsutsumi & Associates.
43. On July 2, 2012, Lincoln filed Intervener's Amended Exhibit List and Intervener's Written Testimony.
44. On July 2, 2012, Bolomet filed a Response to James Geiger June 28, 2012, letter; Amendments to June 29, 2012 filing; and testimonies of Routh Bolomet, Aran Cardiz, Wilmont Kahiaalii and Robin Knox; and Formal Resume for Robin Knox.
45. On July 2, 2012, OP filed Testimony in Support of Petition with Conditions.
46. On July 3, 2012, Bolomet filed an Amendment to Robin Knox's Testimony; and June 29, 2012 Index.
47. On July 10, 2012, Petitioner filed a Motion to Exclude the testimony of Intervener Routh Bolomet's witnesses on international law and title, a Memorandum in Support of Motion, and Petitioner's Request for Hearing; a Motion to Exclude Intervener Routh Bolomet's exhibits 1-13 and exhibits 15-17, Declaration of James Geiger,

Exhibits A-D, and a Request for Hearing; and a Motion to Exclude expert testimony from witnesses for whom no written direct testimony was provided, Memorandum in Support of Motion, and Petitioner's Request for Hearing.

48. On July 11, 2012, the Commission mailed the notice and agenda for its July 19-20, 2012, meeting to the Parties, potential interveners, and the Statewide and Maui mailing lists.
49. On July 17, 2012, State Office of Planning filed Joinders to Petitioner's Motions to Exclude Witnesses on International Law and Title and to Exclude Intervener Routh Bolomet's Exhibits 1 to 13 and 15 to 17, and a Statement of No Opposition on Petitioner's Motion to Exclude Expert Testimony for Which No Written Direct Testimony Was Provided.
50. On July 17, 2012, Bolomet filed a Motion to Deny Petitioner's Request to Exclude Routh Bolomet's Witnesses and Exhibits, and to not grant leniency due to ADA and Pro Se status as protected under federal law.
51. On July 18, 2012, County of Maui Planning Department filed a Joinder in Petitioner's Motion to Exclude Intervener Bolomet's Witnesses on International Law and Title; a Joinder in Petitioner's Motion to Exclude Intervener Routh Bolomet's Exhibits 1-13 and 15-17; and No Opposition to Petitioner's Motion to Exclude Expert Testimony from Witness for Which No Written Direct Testimony Was Provided.
52. On July 19, 2012, the Commission received written correspondence from James and Terresina Patterson; Su Campos; Shirley Enebrand; Steven Geller; Brie Protzeller;

Noel Agmata, Jr. and Sr.; Cory Segi; Lynn and Mo Jacobs; Cindy Romera; and Kahu Mikihala Roy.

53. On July 19-20, 2012, the Commission held hearings in Kahului, Maui. The Commission received oral and/or written testimony from the following individuals: Mike Gerry; Bobby Pahia; Johanna Kaumanu; and Elena Walker
54. On July 19, 2012, Bolomet filed, at the Commission's meeting on Maui, a Motion to Present Evidence of Lineal Descendency to Awardee. The Commission heard discussion and argument on the Motion; and, the Chair denied the motion indicating the Commission was not the proper jurisdictional body to make determinations as to title, and that Petitioner had presented sufficient prima facie evidence regarding adequacy of its title.
55. On July 19, 2012, during its hearing, the Commission heard discussion and argument on Bolomet's Motion to Extend Time for filing of her exhibits and expert witness testimonies. The Chair granted Bolomet until August 1, 2012, to submit all documents to the Commission. The Chair also granted Petitioner, OP, and the County until August 10, 2012, to rebut any submittals by Bolomet.
56. On July 19, 2012, the Commission heard discussion and argument on Petitioner's Motion to Exclude Intervener Bolomet's Witnesses on International Law and Title. The Chair determined that the witnesses related to the issues of farming, water, native Hawaiian culture, traditions and practices would be allowed and that the following specific witnesses on international law and title would be denied (David Keanu Sai, Dexter Kaiama, Aran Ardaiz, Leon Siu, James Geiger, and David Louie).

57. On July 19, 2012, the Commission heard discussion and argument on Petitioner's Motion to Exclude Intervener Bolomet's Exhibits 1-13 and 15-17. The Chair ruled that Bolomet Exhibits 1-9, 11, and 13 would be excluded as they dealt with title issues; Bolomet Exhibit 10 was voluntarily withdrawn; and Bolomet Exhibits 12, 14, 15, and 17 were allowed. Chair reminded Bolomet that the deadline for complete submittal of these documents was August 1, 2012, and that the relevance of each exhibit would need to be established prior to their admittance into evidence.
58. On July 19, 2012, the Commission admitted into the record Petitioner's Exhibits 1-14, 15a-34, and 36.
59. On July 19, 2012, the Commission admitted into the record County's Exhibits 1-13.
60. On July 19, 2012, the Commission admitted into the record OP's Exhibits 1-5.
61. On July 19, 2012, the Commission admitted into the record Lincoln's Exhibits 1 (except for page 11) -13, and excluding Exhibit 14.
62. On July 19, 2012, the Commission commenced the evidentiary hearing for this docket in Kahului, Maui, pursuant to the Notice of Hearing published in the *Honolulu Star-Advertiser*, *the Maui News*, *West Maui Today*, *the Garden Island*, and *the Hawai'i Tribune Herald*, on May 14, 2012. The following witness presented their testimony on behalf of Petitioner: Rory Frampton.
63. On July 20, 2012, the Commission received written correspondence from Elaine Aotaki.
64. On July 20, 2012, the Commission held its continued evidentiary hearing on this docket, during which the following witnesses presented their testimonies on behalf of

the Petitioner: Rory Frampton; Dillon Payne; Sherri Dodson; Kimoeko Kapahulehua; and Joshua Guth. The following witness presented testimony on behalf of the County: William Spence.

65. On July 25, 2012, the Commission mailed the notice and agenda for its August 2, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
66. On July 27, 2012, the Commission received correspondence from Richard Roshon.
67. On July 30, 2012, Lincoln filed a letter regarding the Commission's planned site visit of Petition Area. The Commission forwarded a courtesy copy to all parties.
68. On August 1, 2012, Bolomet filed Amended Testimony of Michael K. Lee and exhibits, testimony of Clare Apana, and Cultural Practitioner Testimony and exhibits (not included).
69. On August 1, 2012, the Commission issued an Order Granting Intervener Bolomet's Motion for Extension to file written direct expert testimony by August 1, 2012.
70. On August 1, 2012, the Commission issued an Order Granting in Part Petitioner's Motion to Exclude Intervener Bolomet's Witnesses on International Law and Title, Petitioner's Motion to Exclude Intervener Bolomet's Exhibits 1 to 13 and 15 to 17, and Petitioner's Motion to Exclude Expert Testimony from Witnesses for Which No Written Direct Testimony Was Provided.
71. The Commission conducted a site inspection of the Property on August 2, 2012.
72. On August 6, 2012, the Commission mailed to all Parties, an Errata Notice to LUC Order dated 8/1/2012 Granting in Part Petitioner's Motions.

73. On August 10, 2012, Petitioner filed Rebuttal Testimony of Rory Frampton and Exhibits 37-38.
74. On August 15, 2012, the Commission mailed the notice and agenda for its August 23-24, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
75. On August 16, 2012, the Commission received correspondence from Jessica Baker.
76. On August 21, 2012, the Commission received correspondence from William Greenleaf.
77. On August 23, 2012, Bolomet filed Michael Lee's Rebuttal to Rory Frampton's Rebuttal Testimony dated August 9, 2012. In addition, the Commission received correspondence from Clare Apana.
78. On August 27, 2012, the Commission received correspondence from Vincent Mina.
79. On August 28, 2012, the Commission received correspondence from the Catugal family, Ronald Balagso, Annette Martin, and Beatrice Blanta.
80. On August 29, 2012, the Commission mailed the notice and agenda for its September 6-7, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
81. On August 30, 2012, the Commission received correspondence from Mark Balisco.
82. On August 31, 2012, Petitioner filed its Rebuttal Exhibit List and Exhibit 39.
83. On September, 2012, the Commission received correspondence from Gloria Ball and Clare Apana.
84. On September 6, 2012, the Commission continued the hearing on the Petition in Kahului, Maui, and heard oral and/or received written public testimony from the following individuals: Lucienne De Naie and Clare Apana. The Commission entered

into the record Petitioner's Rebuttal Exhibit List and Exhibit 39. The following witnesses presented testimonies on behalf of Petitioner: Heidi Bigelow. The following witnesses presented testimonies on behalf of the County: David Taylor and Jo Ann Ridao.

85. On September 7, 2012, Bolomet filed a Motion to Disallow Michael Dega's Incomplete Archaeological Assessment and Exhibits 1-3a, and 4 through 6.
86. On September 7, 2012, Bolomet filed the following: written correspondence from Clare Apana, Daniel Kanahale, Kaniloa Lani Kamaunu; copy of an e-mail from Stephen Gingerich, Ph.D.; papers referenced to Michael Lee and marked as exhibits 1-6; advertisement of Pule Kala and Kapu Kapu Ceremony for the Pu'uone of Wailuku and Waikapū, Traditional Hawaiian Ceremonies with Kahu Mike Lee in March 3-4, 2012.
87. On September 7, 2012, Lincoln filed Revised Testimony of Elle Cochran Exhibit 15 (to be substituted for Exhibit 9).
88. On September 7, 2012, the County filed Bio for Rowena Dagdag-Andaya (Exhibit 14).
89. On September 7, 2012, Petitioner filed Petitioner's Rebuttal Exhibit List and Exhibit 40.
90. On September 7, 2012, the Commission continued the hearing on the Petition in Kahului, Maui. The following witnesses presented testimonies on behalf of the County: Jo Ann Ridao and Rowena Dagdag-Andaya. The following witness presented testimony on behalf of OP: Rodney Funakoshi. The following witnesses

presented testimony on behalf of Intervener Lincoln: Jane Imai, Herman Naeole, Cynthia Catugal, and Michele Lincoln.

91. On September 11, 2012, the Commission's Certified Mail Return Receipt Requested sent to Intervener Bolomet was returned without signature.
92. On September 14, 2012, the Commission received correspondence from Cindy Blair.
93. On September 18, 2012, the Commission received notice from the U.S. Postal Service that Intervener Bolomet's post office box was closed and unable to forward.
94. On September 18, 2012, Petitioner filed a Memorandum in Opposition to Intervener's Motion to Disallow Michael Dega's Incomplete Archaeological Report, Appendices 1 and 2, Declaration of Jim Geiger, Exhibit 1, and Declaration of Ian Bassford.
95. On September 21, 2012, Petitioner filed Declaration of Michael Dega.
96. On September 24, 2012, OP filed a Memorandum in Opposition to Intervener Routh Bolomet's Motion to Disallow Michael Dega's Incomplete Archaeological Assessment.
97. On September 26, 2012, the Commission mailed the notice and agenda for its October 4-5, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
98. On September 27, 2012, the County of Maui filed a Joinder in Petitioner's Memorandum in Opposition to Intervener's Motion to Disallow Michael Dega's Incomplete Archaeological Report.
99. On October 4, 2012, the Commission continued the hearing on the Petition in Kahului, Maui, and heard oral and/or received written public testimony from the following individuals: Clare Apana. The following witness presented testimony on

behalf of Intervener Lincoln: Michele Lincoln. The following witnesses presented testimonies on behalf of Intervener Bolomet: Robin Knox and Michael Lee.

100. On October 4, 2012, the Commission heard discussion and argument on Bolomet's Motion to Disallow Michael Dega's Incomplete Archaeological Assessment. The Vice-Chair denied Intervener Bolomet's request to strike Petitioner's exhibits; indicating that Bolomet would retain the ability to argue the credibility of Mr. Dega's testimony during final argument.
101. On October 4, 2012, Petitioner filed Petitioner's Rebuttal Exhibit List and Exhibit 41. In addition, Intervener Bolomet filed an Amendment to Robin Knox Testimony, an Amendment to Michael K. Lee Testimony, and a Letter to Theresa Donham.
102. On October 5, 2012, the Commission continued the hearing on the Petition in Kahului, Maui. The following witness presented testimony on behalf of Intervener Bolomet: Michael Lee. The following witness presented rebuttal testimony on behalf of Petitioner: Rory Frampton. The Vice-Chair admitted into the record Petitioner's Exhibit 41.
103. The Commission held evidentiary hearings in this docket on July 19 and 20, August 23, September 6 and 7, and October 4 and 5 2012. All hearings were conducted on the Island of Maui.
104. On October 5, 2012, the Commission closed the evidentiary portion of the proceedings.
105. On October 30, 2012, the Commission received the following: Petitioner and Maui County's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and

Order; Intervener Lincoln's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Intervener Lincoln's correspondence regarding errors in the July 20, 2012 hearing transcript.

106. On October 31, 2012, the Commission received Intervener Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
107. On November 13, 2012, the Commission received e-mail correspondence from Cammie Gilett (the substitute court reporter for the July 20, 2012, Commission hearing); after investigating Intervener Lincoln's concerns found no discrepancies in the transcripts.
108. On November 13, 2012, the Commission received written correspondence from Richard Rashon.
109. On November 14, 2012, the Commission received the following: Intervener Lincoln's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; OP's Comments and Objections to Petitioner's and County of Maui Planning Department's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; OP's Response to Intervener's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Objections to Intervenor Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Petitioner's Objections to Intervener Lincoln's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

110. On November 20, 2012, the Commission received the following: Intervener Lincoln's Reply to Petitioner's and County of Maui Planning Department's Joint Objections to Intervener's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Lincoln's Reply to OP's Objections to Intervener's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
111. On November 21, 2012, the Commission received the following: Petitioner's Reply to Intervener Lincoln's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Reply to Intervener Bolomet's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet's Response to Petitioner's Objections to Intervener Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet's Response to State OP's Objections to Intervener Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet transmittal of Letter from OHA to SHPD and Confirmation of Receipt of e-mail from Theresa Donham; and Intervener Bolomet's Revised Findings of Fact, Conclusions of Law, and Decision and Order in Response to OP and Petitioner's Objections.
112. On November 23, 2012, the Commission received the following: Petitioner's Reply to OP's Concerns and Objections to Petitioner and County of Maui's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and Exhibit A.
113. On November 28, 2012, the Commission mailed the notice and agenda for its December 6, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.

114. On November 29, 2012, the Commission mailed an amended notice and agenda for its December 6, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
115. On November 29, 2012, the Commission received the following: Department of Planning, County of Maui's Joinder in Petitioner's Reply to Office of Planning's Comments and Objections to Petitioner's and County of Maui Planning Department's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Reply to Intervener Michele Lincoln's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Petitioner's Reply to Intervener Bolomet's Response and Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
116. On December 6, 2012, the Commission held an action meeting in Kahului, Maui, to consider the Petition. There were no public witnesses. The parties presented oral argument on the matter. Thereafter, a motion was made and seconded to grant the Petition subject to conditions. The motion received four aye votes, three nays, with two excused, and therefore failed.
117. On January 2, 2013, the Commission mailed a notice and agenda for its January 10, 2013, meeting to the Parties, and the Statewide and Maui mailing lists.
118. On January 8, 2013, the Commission received a letter from Intervener Michele Lincoln advising that she would be unable to attend the January 10, 2013 hearing.
119. On January 10, 2013, the Commission held an action meeting in Honolulu, O`ahu, to adopt the form of the Findings of Fact, Conclusions of Law, and Decision and Order,

denying the Petition. A motion to adopt the Findings of Fact, Conclusions of Law, and Decision and Order received seven aye votes, no nays, with two excused; and therefore the motion passed.

120. On January 14, 2013, the Commission sent electronic copies and mailed the adopted Findings of Fact, Conclusions of Law, and Decision and Order to all parties.
121. On January 22, 2013, Petitioner filed a Motion to Reconsider Decision and Order Adopted January 14, 2013; Declaration of Rory Frampton; Exhibits "42" to "43," and Appendix "1."
122. On January 28, 2013, Intervener Michele Lincoln filed Intervener's Memorandum in Opposition to Petitioner's Motion for Reconsideration Letter Regarding Final FOF, COL, D&O.
123. On January 28, 2013, Intervener Routh Bolomet filed Intervener's Memorandum in Opposition to Petitioner's Motion for Reconsideration.
124. On January 28, 2013, the Commission received written correspondence from Travis Thompson, Treasurer at Habitat for Humanity.
125. On January 29, 2013, Maui County Planning Department filed its Joinder in Petitioner's Motion to Reconsider Decision and Order Adopted January 14, 2013.
126. On January 29, 2013, State Office of Planning's Joinder in Petitioner's Motion to Reconsider Decision and Order Adopted January 14, 2013.
127. On January 29, 2013, the Commission received written correspondence via electronic mail from: Joshua Guth; Sandra Duvauchelle; Gerald Hokoana; Debbie Wright; Andrea Riecke; Christine Riecke-Gonzales; Hans Riecke; Monica Moraskis; Lori

Powers; Joel Navarro; Jeanne Riley; Ciara Quam; Gary and Debbie Arakaki; Lisa Darcy; Greg Howeth; Barbara Potts; Mele Bintliff; Alice Tremble; and Bev K.

128. On February 4, 2013, the Commission received written correspondence via electronic mail from Helen Giron, Director, Habitat for Humanity.
129. On February 5, 2013, the Commission received written correspondence via electronic mail from Travis Thompson, Treasurer, Habitat for Humanity.
130. On February 6, 2013, Intervener Routh Bolomet filed Intervenor's Response to State OP Joinder Motion to Reconsider Decision and Order Adopted January 14, 2013; Motion That the LUC Not Take Petitions That Contain Allodial Titled Lands; Motion Seeking an Order Charging the Petitioner All Costs Associated With These Hearings; and Exhibit 1.
131. On February 11, 2013, Intervener Michele Lincoln filed Intervener's Response to State Office of Planning's Joinder in Petitioner's Motion to Reconsider Decision and Order Adopted January 14, 2013; Letter; and Revised Page 8.
132. On February 13, 2013, the Commission mailed a notice and agenda for its February 21-22, 2013, meeting in Kahului, Maui, to the Statewide, Maui and Kaua'i mailing lists.
133. On February 19, 2013, the Commission received written testimony via electronic mail from the following individuals: Gregg Nelson; Joseph Pluta; West Maui Taxpayers Association, Donald Lehman, President; and Paul Brown.
134. On February 20, 2013, Petitioner filed the following: Petitioner's Memorandum in Opposition to Intervener Bolomet's Motion That the LUC Not Take Petitions that

Contain Allodial Titled Lands; and, Petitioner's Memorandum in Opposition to Intervener Bolomet's Motion Seeking an Order Charging the Petitioner All Costs Associated with these Hearings.

135. On February 22, 2013, the Commission held an action meeting in Kahului, Maui, to consider the Petitioner's Motion and Intervener Routh Bolomet's Motions. The Commission heard oral and/or received written public testimony from the following individuals: William Greenleaf; Vincent Mina; Dick Mayer; Marvin Tenada; Sherry Dodson; Lucienne De Naie; Simon Russell; Johanna Kaumalu; Kaniloa Kaumalu; Bruce U'u; and Clare Apana.
 - a. The parties presented oral arguments on the Petitioner's motion. Thereafter, a motion was made and seconded to grant the Petitioner's motion to reconsider. The motion received six aye votes, no nays, with three excused, and therefore passed.
 - b. The parties presented oral arguments on Intervener Bolomet's motions. The Chair ruled that a decision on the LUC's lack of jurisdiction and authority in matters regarding allodial title and ownership had previously been rendered, and therefore, that the motion asking the Commission not to take petitions containing allodial titles was denied. Further, the Chair ruled that the motion seeking an order charging the Petitioner all costs associated with the hearings was without basis, and therefore denied.

136. On February 27, 2013, the Commission mailed a notice and agenda for its March 7, 2013, meeting in Kahului, Maui, to the parties, and the Statewide and Maui mailing lists.
137. On March 1, 2013, the Commission received County of Maui's List of Exhibits, Amendment #3, and Exhibits "14" and "15."
138. On March 4, 2013, the Commission received Intervener's Motion to Enter Into the Record all of Intervener Bolomet's Exhibits, Filings and Testimonies as well as Public Testifier Clare Apana Exhibits and Testimonies Submitted During the Evidentiary Hearings for A12-795, and Intervener Bolomet's Motion to Enter into the Record Missing Documents Left Out of Petition and to Put LUC on Notice.
139. On March 7, 2013, the Commission held an action meeting in Kahului, Maui, to hear and decide on the Petition, on Intervener Bolomet's motions; and to allow limited evidence presentations regarding Mr. Lee's amended testimony and County of Maui's Exhibits 14 and 15. The Commission heard oral and/or received written public testimony from the following individuals: Herman Kalani Naeole; Victoria Cheromcka; Robin Knox; Ciara Quam; Patricia Nishiyama; Bruce U'u; Kyle Ginoza; Sherry Dodson; Janet Six; Zeke Kalua; Clare Apana; and David Goode.
 - a. The parties presented oral arguments on Intervener Bolomet's motions. The Chair denied both of Intervener Bolomet's motions as being untimely. Chair clarified that Intervener Bolomet's Amended Written Testimony of Michael Lee filed August 1, 2012 and the included Exhibits 11 and 17, were part of the record.

- b. Witness Michael Lee, for Intervener Bolomet, was questioned by the parties on his concerns regarding cultural practices and archaeological findings in the Petition Area. The County of Maui's Exhibits 14 and 15 were offered and admitted into the record.
140. On March 13, 2013, the Commission mailed a notice and agenda for its March 21, 2013, meeting in Kahului, Maui, to the parties, and the Statewide and Maui mailing lists.
 141. On March 21, 2013, the Commission held an action meeting in Kahului, Maui, to decide on the Petition. There were no public witnesses. The Commission heard final oral arguments from each of the parties. Thereafter, a motion was made and seconded to grant the Petition subject to conditions. The motion received eight aye votes, no nays, with one excused, and therefore passed.

A. DESCRIPTION OF THE PETITION AREA

142. The Petition Area is located in Lāhainā, Maui, Hawai'i, and consists of about 16.7 acres.
143. The Petition Area is currently vacant.
144. The Petition Area is surrounded by areas of urban uses.
145. Single-family residences exist on lands mauka and to the south of the Petition Area. Multi-family properties are located on the land makai of the Petition Area. On the north of the Petition Area is the Kahoma Stream Flood Control Channel. Just north

of the Kahoma Stream Flood Control Channel lies the Lāhainā Business Park which consists of light industrial and commercial properties.

146. The Petition Area slopes away from Lui Street at the mauka end toward an old cane haul road in a westerly direction at an average slope of 4.5%. The Petition Area ranges in elevation from 32 feet above sea level at its makai portion to 145 feet above sea level at its mauka portion.
147. The slope of the Petition Area is suitable for the planned use as a residential area.
148. The Petition Area is situated within Zone X, an area of minimal flooding as designated on Flood Insurance Rate Maps dated September 25, 2009 for the island of Maui.
149. The Petition Area is listed as Other Important Agricultural Lands according to the Agricultural Lands of Importance to the State of Hawai'i ("ALISH").
150. The productivity of the land underlying the Petition Area was classified as B72i by the University of Hawai'i Land Study Bureau. The Bureau's classification system rates lands on the scale of "A" to "E" reflecting land productivity characteristics. Lands designated "A" are considered to be of the highest productivity with "E" rated lands ranked as the lowest in productivity. The B72i designation means that the land is moderately suited to machine tillability and productive if irrigated. In the absence of irrigation, the land would have a lower productivity classification.

B. DESCRIPTION OF THE PROPOSED KAHOMA RESIDENTIAL
SUBDIVISION

151. The Project proposed by Petitioner will consist of 68 single-family housing units with on-site and off-site infrastructure improvements.
152. Lots within the Project will range in size from 5,000 to 12,000 square feet. Under Maui County Code, owners of lots that are 7,500 square feet or greater in area have the option of constructing an accessory dwelling or `ohana unit on their lot. The total number of potential dwelling units at build out of the Project is 99.
153. A 43,000 square foot grassed neighborhood park will be built in the center of the Project. Petitioner will work with the County to establish a public walking and biking path along the Kahoma Stream Flood Control Channel for additional recreational use.
154. Ten of the 68 lots will be developed under the direction of Habitat for Humanity. Homes developed for Habitat for Humanity will be sold to partner families at no profit and financed with affordable loans. Target families will be those earning less than 80% of the household median income of households in Maui County, Hawai`i.
155. The remaining 58 lots will be sold either as a lot only or as a house/lot package. Petitioner has not determined the number of lot-only sales that will be offered for the Project.
156. All lots will be priced to be marketed to individuals and families whose gross annual family incomes are between 80% and 160% of the household median income for Maui County, Hawai`i as established by the United States Department of Housing

and Urban Development as determined for 2011 or the date of sale, whichever is lower.

157. Two-car garages or car-ports will be required for each dwelling constructed on each lot developed by Petitioner.
158. In addition to the two-car garage or car-port, two parking spaces will be required on-site for each lot within the subdivision.
159. For those lots on which an `ohana is built, an additional on-site parking space will be required for a total of three on-site parking spaces for each lot with an `ohana.
160. The Project will be serviced internally by a road located within a 58 foot right-of-way that will be dedicated to the County of Maui.
161. Traffic calming structures will be constructed on the road within the Petition Area.
162. The mauka portion of the Project will connect to Lui Street while the makai portion of the Project will connect to an existing cane haul road known as the "Proposed Kuhua Street Extension." The Proposed Kuhua Street Extension will connect to Keawe Street to the north.
163. All utilities for the Project will be installed underground.
164. Petition is required by County Council Resolution No. 11-126 to commence construction of subdivision improvements within three years and to complete construction within seven years of the adoption of the Resolution. Thus, construction of the infrastructure in the Petition Area must be started by December 2, 2014 and must be completed by December 2, 2022.

165. Development of the Petition Area will be completed within ten years of Commission approval.
166. Timely development of entitled projects and project infrastructure is essential for attaining orderly growth and development of neighboring communities and the surrounding region.
167. Petitioner and Owner's consultants met with interested community groups to discuss the proposed Project.
168. The Project was approved and certified as a HRS Section 201H-38 affordable housing project by way of Resolution 11-126 of the Maui County Council adopted on December 2, 2011.
169. Petitioner will implement the mitigation measures, their equivalents, or better mitigation measures in the development of the Project, as recommended by consultants and as contained in the Project's Final Environmental Assessment.

C. **NEED FOR THE PROJECT**

170. There continues to be a substantial statewide need for housing that is affordable to low- and moderate-income households. Nearly 2,900 housing units are projected to be needed on Maui from 2012 through 2016 for households earning up to 140 percent of the area median income.

171. Pent-up demand for housing affordable to low- and moderate-income households may be higher for Maui due to larger price increases and a higher level of out-of-state ownership.
172. The average median sales price for single family homes in Lāhainā for the period from 2004 to 2011 was \$800,000.
173. The median income for a Maui household (family of four) is \$77,000.
174. Maui households earning the median income cannot buy a house in Lāhainā priced at market rates.
175. Lāhainā has a lack of inventory of newly constructed homes and vacant lots for families earning between 80% and 160% of the median income.
176. On June 27, 2012, there were three active listings for single family homes (3 to 4 bedroom, 1 to 2 bathrooms, living area between 1,000 and 1,500 square feet, on lots up to 11,000 square feet in area) in the West Maui Area.
177. On June 27, 2012, there were 11 vacant lots of 11,000 square feet or less listed for sale in the West Maui Area.
178. The number of persons living in each living unit in West Maui is double the average number of persons living in living units on the island of Maui.
179. There is a need for more housing at affordable prices in Maui.
180. While the Petition Area is classified as agricultural, the property is surrounded by urban levels of services and uses.

D. PROPOSAL FOR RECLASSIFICATION FROM AGRICULTURAL TO URBAN

181. Before the late 1980's, the Petition Area was part of a larger parcel used for sugar cane cultivation.
182. In the late 1980's, the Kahoma Stream Flood Control Channel was constructed along the northerly boundary of the Petition Area.
183. The construction of the Kahoma Stream Flood Control Channel severed the connection between the Petition Area and adjoining parcels.
184. To the south of the Petition Area lie the single-family residential subdivisions of Kelaweā Mauka and Kuhua Tract.
185. To the west, or makai, of the Petition Area lie light industrial uses, multi-family housing, and commercial shopping centers.
186. To the north of the Petition Area lies the Lāhainā Business Park, a light industrial/commercial area.
187. Since the construction of the Kahoma Stream Flood Control Channel, the properties adjacent to the Kahoma Stream Flood Control Channel on the north were reclassified from agricultural to urban and developed as a commercial and industrial area.
188. Although the Petition Area is zoned and classified as agricultural, given the constraints placed on the property by the soils and the proximity to existing residential subdivisions, the Petition Area is an undesirable site for agricultural use.

189. The County of Maui adopted a County-wide policy plan in March, 2010 identifying as a land use goal the encouragement of infill of lands intended for urban use.
190. The Maui Planning Commission and the Maui County Planning Department recommended that the Project be included in the draft Maui Island Plan Map as an urban use.

E. CONSISTENCY OF RECLASSIFICATION OF THE PETITION AREA WITH POLICIES AND CRITERIA ESTABLISHED PURSUANT TO SECTIONS 205-16, 205-17, AND 205A-2, HRS

191. The six criteria that must be reviewed in determining whether the reclassification is consistent with policies and criteria are: 1) conformance with the Hawai'i State Plan and adopted functional plans; 2) conformance with urban district standards; 3) impact on areas of state concern; 4) conformance with county general plan; 5) the economic ability of the Petitioner to complete the proposed Project; and 6) whether the lands were in intensive agricultural use for two years before the date of the Petition or whether the lands have a high capacity for intensive agricultural use.

1) Conformance with the Hawai'i State Plan and Adopted Functional Plans

192. The first criterion under which the proposed reclassification is examined is the extent to which it conforms to the goals, objectives, and policies of the Hawai'i State Plan and adopted functional plans.

193. The Hawai`i State Plan serves as a guide for the future long-range development of the State.
194. The Hawai`i State Plan is implemented through several functional plans which identify needs, problems and issues.
195. The State Housing Functional Plan provides for meeting housing needs to a variety of income levels.
196. The Project will add 68 single-family residential lots to the number of residential lots in Lāhainā.
197. Reclassification of the Petition Area will be consistent with the State Housing Functional Plan as it will meet housing needs at a variety of income levels.
198. The State Recreational Functional Plan recognizes outdoor recreation as an important part of life for Hawai`i's residents.
199. The Project will provide a 43,000 square foot neighborhood park in the middle of the Project.
200. Bicycle lanes, sidewalks and a walking path will be built within the Project.
201. Reclassification of the Petition Area will be consistent with the State Recreational Functional Plan as it will provide outdoor recreation opportunities to West Maui residents.
202. The State Transportation Functional Plan recognizes the role of transportation in light of population increases and community growth as a vital concern.
203. Connectivity between adjoining residential neighborhoods and commercial/industrial areas will be increased by the roadway within the Project.

204. The Hawai'i State Plan sets out priority guidelines and principles for sustainability, as codified in HRS Section 226-108, Sustainability, which guidelines include: (a) encouraging balanced economic, social, community, and environmental priorities; and (b) encouraging planning that respects and promotes living within the natural resources and limits of the State.
205. The Project proposes to develop an infill residential subdivision that provides affordable housing opportunities in proximity to employment and commercial centers.
206. The Project's location adjacent to existing urban areas shortens necessary trips to commercial areas, minimizing petroleum-fueled car and truck use.
207. Providing a neighborhood park within the Project encourages recreation and healthy lifestyles.
208. Reclassification of the Petition Area from agricultural to urban will conform to the Hawai'i State Plan and applicable adopted Functional Plans.

2) **The extent to which the reclassification conforms to applicable district standards**

209. HAR Section 15-15-18, outlines the standards applied to classify lands as urban.
210. The first standard is whether the lands are characterized by city-like concentrations of people, structures, streets, and urban levels of services.

211. The Petition Area is surrounded by urban uses consisting of single family residential subdivisions to the south, multi-family residential projects to the west, light industrial uses to the west and to the north, and commercial shopping centers to the west.
212. The streets that adjoin the Petition Area are residential streets.
213. Electrical, telephone, cable television, wastewater, and water systems exist in the urban properties that surround the Petition Area.
214. The Petition Area is surrounded by lands characterized by city-like concentrations of people, structures, streets, and urban levels of services.
215. The second standard is the proximity of the Petition Area to centers of trading and employment.
216. Two shopping centers, Lāhainā Gateway Center and the Cannery Mall, are located within two miles of the Petition Area.
217. Front Street in Lāhainā, a major commercial area, is located within one mile of the Petition Area.
218. The business area of Lāhainā is located between Front Street and the Petition Area.
219. The Petition Area is in proximity to centers of trading and employment.
220. The third standard is availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection.
221. The West Maui region is served by four public schools operated by the State of Hawai'i Department of Education.
222. Two smaller private schools serve the West Maui region.

223. The Lāhainā Recreation Center, which has baseball fields and play fields for soccer and football, is located about one mile from the Petition Area.
224. The Lāhainā Aquatic Center, the Lāhainā Civic Center, and the Waine`e Park are also located in the vicinity of the Petition Area.
225. The wastewater system operated by the County of Maui has existing lines in the vicinity of the Petition Area.
226. Solid waste disposal provided by the County of Maui is available on a weekly basis.
227. The County of Maui operates the domestic water system in West Maui. Water lines providing service to the adjoining urban uses exist.
228. A public transportation system operates from Lāhainā to Central Maui where transfer can be made to other buses serving the Kihei and Upcountry areas of Maui. Bus stops exist near Front Street.
229. Electrical, telephone and cable television service to West Maui, including Lāhainā, is provided by companies that have certificates issued by the Public Utilities Commission.
230. The Petition Area is within the Lāhainā Police Substation service area which includes the entire Lāhainā district. The Lāhainā Police Substation is located about 1.5 miles from the Petition Area.
231. The Petition Area is within the Lāhainā Fire District which is serviced by the Lāhainā Fire Station. The Lāhainā Fire Station is located about 1.5 miles from the Petition Area.

232. Basic services such as schools, parks, wastewater lines, solid waste disposal, potable water, police and fire protection, transportation and public utilities either cover the Petition Area or are adjacent to the Petition Area.
233. The fourth standard is whether there are sufficient reserve areas for foreseeable urban growth.
234. The Petition Area is infill as it is surrounded by existing urban uses.
235. There are other lands adjoining Lāhainā which can be used, and have been designated, for urban growth in the future.
236. The Petition Area does not decrease the areas available for foreseeable urban growth.
237. The fifth standard is whether the Petition Area is suitable for urban use by virtue of topography, drainage, and dangerous conditions arising from flood, tsunami, unstable soils or adverse environmental effects.
238. The Petition Area slopes from a high of about 145 feet above sea level to a low of about 32 feet above sea level. The average slope of 4.5% is considered suitable for residential use.
239. The soils of the Petition Area are highly permeable with slow runoff and slight erosion hazard.
240. There are minimal flows of water in the Kahoma Stream except during periods of moderate to heavy rain.
241. The Petition Area is not an area that is prone to flooding, being classified as Zone X, an area of minimal flooding, by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps revised in September 2009.

242. The Petition Area is not within the tsunami inundation zone.
243. The soils in the Petition Area are stable and good for building structures.
244. On September 23, 2011, the Final Environmental Assessment for the Project was published.
245. The Final Environmental Assessment was reviewed by the accepting agency which rendered a Finding of No Significant Impact ("FONSI").
246. The Petition Area is suitable for urban use.
247. The sixth standard is that land contiguous with existing urban areas will be given more consideration than non-contiguous land.
248. The Petition Area is contiguous with and surrounded by lands that are existing urban uses.
249. The seventh standard is whether the Petition Area is in an appropriate location for new urban concentrations and whether the area is shown as urban growth on state and county general plans.
250. The Petition Area is contiguous with and surrounded by lands that are existing urban uses.
251. The Petition Area is within the State's Coastal Zone Management Area.
252. The Petition Area is not within the Special Management Area.
253. The proposed Project will include mitigation measures to generally address the State Coastal Zone Management objectives and policies of HRS Section 205A-2, including: (a) implementing best management practices and erosion control measures to control runoff during construction; and (b) development of an onsite storm water

and drainage system to ensure that the Project does not adversely affect downstream and adjoining properties and stream and coastal waters and ecosystems.

254. Maui County is undergoing a review and update of its land use plans.
255. Maui County adopted a county-wide policy plan on March 24, 2010 that identifies goals, objectives, policies and implementing actions.
256. The Project complies with the policy plan by providing affordable housing, by increasing the affordable housing inventory, by infill in existing communities on lands intended for urban use, and by directing new development in and around communities with existing infrastructure and service capacity.
257. Inclusion of the Project on the Maui Island Plan Map covering the Lāhainā area was recommended by the General Plan Advisory Committee, the Maui Planning Commission and the Maui County Planning Department.
258. The Petition Area is an appropriate location for urban growth and has been so designated by the County of Maui.
259. The eighth standard is whether the urbanization of the Petition Area will contribute to spot zoning.
260. The Petition Area is contiguous with and surrounded by lands that are existing urban uses.
261. Changing the State land use classification of the Petition Area will not amount to or contribute to spot zoning.
262. Based on a review of the standards which lands classified as urban must meet, the Petition Area conforms with those standards.

3) **The impact of the reclassification on areas of State concern.**

263. The first area of State concern is the preservation or maintenance of important natural systems or habitats.
264. The Petition Area is located mauka of Honoapi`ilani Highway with West Maui mountains visible to the east and the island of Lāna`i visible to the west.
265. The Petition Area is not located within an identified or protected scenic view corridor.
266. The Project will be developed as an architecturally integrated area with low-rise residential structures.
267. A biologic resources study of the Project was conducted by Robert W. Hobdy, Environmental Consultant, in August 2005.
268. No endangered plant species were found on the Petition Area.
269. A single, small tree tobacco, which might act as a host to the Blackburn's Sphinx Moth, was observed in 2005.
270. No sign of the Blackburn's Sphinx Moth or its larvae were found.
271. The vegetation of the property is dominated by non-native, abundant species.
272. From a botanical standpoint, nothing in the Petition Area warranted protection either as a plant species or as plant habitat.
273. Only a single mammal was detected in two visits to the Petition Area, which was a cat.
274. Nine species of non-native birds were observed.
275. No evidence was found of the native Hawaiian Hoary bat.

276. While Hawaiian owls may have been seen in the Petition Area in the past, it would be difficult to establish habitat for the Hawaiian owl in the Petition Area.
277. No mammal or bird species or habitats warranting protection were observed during the biological survey of the Petition Area.
278. Federally-listed threatened and endangered seabirds, the Newell's shearwater and the Hawaiian petrel, are known to fly over the Petition Area.
279. The U.S. Fish and Wildlife Service recommended minimizing or down-shielding of external artificial lighting to reduce seabird mortality due to disorientation and downing.
280. Petitioner will install down-shielded lights within the Project, during construction and for completed residences, to mitigate seabird mortality.
281. Storm water runoff from the Petition Area will be detained in a detention basin to allow pollutants to settle out, keeping the pollutants from entering ocean waters.
282. The Kahoma Stream Flood Control Channel drains to coastal waters about 0.8 miles down gradient from the Petition Area. The offshore and marine waters in the area are an important recreational and community resource, and provide habitat for marine biota, including sensitive corals and humpback whales that winter in the waters of the Hawaiian Islands Humpback Whale National Marine Sanctuary.
283. If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will not have a significant impact on the preservation or maintenance of important natural systems or habitats.

284. The second area of State concern is the maintenance of valued cultural, historical or natural resources.
285. An Archaeological Assessment Report was completed for the Project by Scientific Consultant Services, Inc. in November 2005.
286. The Archaeological Assessment Report was reviewed and approved by the State Historic Preservation Division (SHPD) on February 9, 2006.
287. Fifteen trenches were excavated throughout the Petition Area to obtain a broad coverage of the property.
288. None of the trenches yielded evidence of any archaeological deposits or archaeological features.
289. Based on stratigraphic sequencing and the archaeologist's experience, it is unlikely that land alterations from sugar cane operations wholly obliterated archaeological features on the Petition Area.
290. It is unlikely that agricultural or habitation pursuits of any significance occurred in the Petition Area before the land was used for sugar cane production.
291. SHPD reviewed the Project again in 2012 and stated that it believed no archaeological resources will be affected.
292. In July 2012, an archaeological feature and burials were claimed to exist on the Petition Area.
293. In September 2012, the claimed locations of the archaeological feature and for the burials were provided to Petitioner.

294. The claimed archaeological feature was examined and determined by expert archaeologists to be a push pile of rock and boulders and not an archaeological feature.
295. The locations of the claimed burials were excavated to bedrock. No evidence was found of burials, either presently existing or which may have existed in the past.
296. The State Historic Preservation Division inspected the excavation and the claimed archaeological feature in September 2012.
297. The State Historic Preservation Division indicated in September 2012 that the claims made in July 2012 did not warrant further archaeological work.
298. A Cultural Impact Assessment was done in November 2005.
299. Archival research from 18 separate sources and interviews of five persons knowledgeable of the Kahoma Stream area were conducted.
300. In the pre-contact period, the Petition Area probably was not used for traditional practices.
301. Fishing activities usually were conducted at lower elevations and farming activities usually were conducted at higher elevations.
302. After the missionary period, the Petition Area probably was one of the lands farmed through the use of a ditch irrigation system.
303. The Kahoma Stream Flood Control Project, completed in 1990, diverted the stream flow from the existing stream bed.
304. The persons knowledgeable of the Kahoma Stream area indicated that the Petition Area was not used for cultural practices.

305. No current use of the Petition Area for cultural practices or by traditional cultural practitioners exists.
306. No historical use of the Petition Area for cultural practices was revealed in the cultural assessment.
307. If mitigation measures proposed by Petitioner are implemented, reclassification of the Petition Area will not have a significant impact on the maintenance of valued cultural, historical or natural resources.
308. The Kahoma Stream Flood Control Channel forms the northern boundary of the Petition Area.
309. There is minimal flow in the Kahoma Stream Flood Control Channel except during extreme storm events.
310. There are no wetlands within the vicinity of the Petition Area.
311. If mitigation measures proposed by Petitioner are implemented, the Project will not have a significant impact on any ground water resources.
312. A Preliminary Civil Engineering and Drainage and Soil Erosion Control Report was prepared by R.T. Tanaka Engineers, Inc. for the Project.
313. In compliance with the County of Maui drainage standards, the Project will incorporate drainage features to retain a 50-year, one-hour storm run-off volume increase anticipated to be generated by the Project.
314. A retention basin (drainage basin) will be located on-site near the west end of the Project with an overflow outlet connecting to the Kahoma Stream flood control structure.

315. In addition to the retention basin, the Project will include catch basins and/or grated drain inlets to collect runoff, non-perforated pipes to convey runoff to the drainage pond, drain manholes, and the rerouting of existing 30" and 36" drain lines between Lui Street and Kahoma Stream Flood Control Channel.
316. The retention basin will be owned and maintained by the Project's homeowner's association.
317. The County will be adopting rules governing the water quality of storm water runoff.
318. The drainage system of the Project has sufficient capacity to meet the rules for post-construction storm water quality proposed by the County.
319. The Project drainage system will need to comply with storm water runoff and water quality rules when construction permits are sought.
320. Petitioner will be required to obtain a National Pollutant Discharge Elimination System permit from the State Department of Health for storm water discharge associated with construction activity.
321. Petitioner will employ best management practices to ensure that fugitive dust and soil erosion are avoided, minimized or mitigated during Project construction.
322. Low impact development design and practices, including rain barrels, rain gardens, pervious surfaces and grassed swales have been developed to manage and filter storm water runoff onsite by increasing infiltration and storage of runoff onsite.
323. If properly designed, constructed and maintained, the proposed drainage system and construction activities should not increase off-site runoff nor cause an adverse impact

to adjacent or downstream properties or surface and coastal resources and water quality.

324. The West Maui region is served by the County of Maui, Department of Water Supply, Domestic Water System.
325. The sources of water for the Lāhainā portion of the West Maui region are four deep wells referred to as Nāpili Wells 1, 2 and 3 and Honokohau Well A. Water from the wells is supplemented by surface water drawn from Honolulu Ditch and Kanahā Valley and treated at water treatment plants.
326. Existing County waterlines serve the residential subdivisions adjacent to the Petition Area.
327. The Preliminary Civil Engineering and Drainage and Soil Erosion Control Report prepared by R.T. Tanaka Engineers, Inc. for the Project in October 2007 (and updated in June 2012) estimated the average daily demand for the Project at 59,400 gallons per day.
328. The size of the distribution line for the Project will be governed by fire flow requirements.
329. Fire flow demand of 1,000 gallons per minute was used for the design for the main distribution line.
330. An 8" waterline will be utilized to provide the required fire flow.
331. Residential housing projects with 100 % affordable units are exempt from the County's "Show-Me-The-Water" ordinance that requires demonstration of a long-term reliable supply of water.

332. As a project with 100 % affordable units, the Petitioner is not required to demonstrate a long-term reliable supply of water to obtain subdivision approval.
333. The County of Maui Department of Water Supply is prepared to supply water for the Project.
334. The County of Maui Department of Water Supply has adequate capacity of potable water available for additional projects in the vicinity of the Petition Area.
335. The County of Maui Department of Water Supply will be able to add capacity to stay ahead of demand for the foreseeable future in the West Maui area.
336. The Lāhainā Wastewater Reclamation Facility has sufficient capacity for the Project.
337. The third area of State concern is maintenance of other natural resources relevant to Hawai`i's economy, including but not limited to, agricultural resources.
338. The Petition Area has not been farmed commercially since 1990.
339. The Petition Area is not presently used for agriculture.
340. The Petition Area is listed as "Other Important Agricultural Land" under the ALISH system. This classification reflects the soils and management challenges facing any person who wishes to conduct farming operations on the Petition Area.
341. The soils underlying the Petition Area are of the Pūlehu-`Ewa-Jaucis general association. The soils within the Petition Area are classified as WdB (very stony silty clay), EaA (silty clay loam), and rRk (rock land). Used primarily for sugar cane cultivation, soils with these classifications are also used for home sites and pasture.

342. A general association of soils, while helpful in the management of large parcels, is not suitable for determining the management of a single property. A soils series classification is more helpful in determining the management of a single property.
343. The Petition Area is dominated by the Wahikuli very stone silty clay soil series (WdB) which is generally shallow and stony.
344. The soils in the Petition Area have a higher degree of stoniness than the average description for the WdB soils series, with depth of soils ranging from 1.5 to 8 feet beneath the surface.
345. The stoniness of the soils of the Petition Area limits the types of crops that can be grown.
346. Meeting the water needs for crops that could be grown on the Petition Area will be a severe limiting factor in farming the property.
347. The proximity of the Petition Area to neighboring residential subdivisions creates management challenges to address chemical drift, dust generation and odor generation from agricultural operations.
348. The soil conditions, water limitations and management challenges of the Petition Area make it unlikely that the property will be put into agricultural production now or in the future.
349. The Petition Area is very unlikely to be used for agriculture because of the limited crop selection allowed by the soils, the proximity of the Petition Area to residential neighborhoods, the difficulty in obtaining uniform water infrastructure to the crops and the financial risk in engaging in agriculture on the Petition Area.

350. The Petition Area would not be a candidate for designation as important agricultural land because it is not a large contiguous tract of land, it is sandwiched in an urban area, it has a lot of rocks in the soil, and it is not a good place to engage in commercial farming.
351. The size of the Petition Area represents a very minor percentage of the lands designated as agricultural on the island of Maui.
352. The reclassification would result in a reduction of 0.00007% of the land within the agricultural district on Maui.
353. If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will not have a significant impact on the maintenance of other natural resources relevant to Hawai'i's economy.
354. The fourth area of State concern is commitment of state funds and resources.
355. A Traffic Impact Analysis Report was developed for the Project in October 2007 by Wilson Okamoto Corporation.
356. A Supplemental Traffic Assessment was prepared by Austin, Tsutsumi & Associates, Inc. in January 2011.
357. The Supplemental Traffic Assessment analyzed the impact of development on traffic within the area surrounding the Petition Area.
358. The Project will not generate enough traffic to require the preparation of a Traffic Impact Analysis Report.
359. From a traffic standpoint, the Project will have no significant impact on the existing highways, streets and roads.

360. Petitioner will implement as part of the subdivision development the full recommendations of the Traffic Impact Analysis Report, which include maintenance of sufficient driveway width to accommodate safe vehicle ingress and egress, maintenance of adequate turning radii at project driveways to avoid or minimize vehicle encroachments to oncoming traffic lanes, and maintenance of adequate site distances for motorists to safely enter and exit all project driveways.
361. Petitioner will make improvements to the existing cane haul road from the Project site to Keawe Street as required by the County. The roadway improvements will be completed prior to occupancy of units.
362. The State Department of Transportation reviewed the Project and concluded the Project will not require expenditure of funds for State highway improvements.
363. Public schools in the Project area – two elementary, one middle school and one high school – are operating near or over capacity.
364. The State Department of Education (“DOE”) and the Petitioner executed a School Impact Fee Agreement to satisfy both the land and construction components of the DOE school impact fee requirements, which are imposed because the Petition Area is located within the West Maui School Impact Fee District.
365. The West Maui School Impact Fee was adopted by the Board of Education on November 18, 2010 pursuant to HRS Sections 302A-1601 to 1612, which require a fee payment for all new dwellings within the Impact Fee District.
366. Under the School Impact Fee Agreement, a total of \$392,904 will be paid to the DOE for the 68 house lots being sold, to be paid in increments of \$5,778 from each escrow

upon the closing and recordation of each lot within the Project. The amount of the fee will be adjusted as needed so that it is equal to the West Maui School Impact Fee in effect at the time of the closing and recordation.

367. In addition, the School Impact Fee Agreement provides that individual lot owners who build an accessory or `ohana dwelling on their house lot will be required to pay the prevailing multi-family West Maui School Impact Fee then in existence before the issuance of any building permit for the accessory or `ohana dwelling unit.
368. Potential buyers of units will be given notice of the school impact fee for any `ohana or accessory units. The notice will be included in deed restrictions for the affected lots.
369. If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will not have a significant impact on the commitment of state resources or funds.
370. The fifth area of State concern is the impact of the reclassification on providing employment opportunities and economic development.
371. The Project will provide construction and construction-related employment during the build out of the project.
372. The construction of single-family residences and `ohana units in the Project will result in construction worker labor revenues of \$8,400,000.
373. The total economic benefit to Maui will exceed the amount of the construction labor as some materials used to build the structures will be purchased locally.

374. If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will provide employment opportunities and economic development.
375. The sixth area of State concern is the impact of the reclassification on providing housing opportunities to all income groups and particularly to low, low-moderate, and gap income groups.
376. The Project was approved as an affordable housing development under HRS Section 201H-38 by the Maui County Council on December 2, 2011.
377. Ten of the lots will be developed by Habitat for Humanity Maui, Inc. and marketed to persons whose income are 80% or less of the median income.
378. Fifty-eight lots will be marketed by Petitioner at the lower of either the prices presented to the Maui County Council in November 2011 or when the Project is ready to market.
379. The lots must be marketed by Petitioner at the pre-established prices for a period of ten years before the prices can be changed.
380. If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will provide housing opportunities to low and gap income groups.

4) **Conformance With County General Plan.**

381. The Petition Area is zoned Agricultural by the County of Maui.
382. The Petition Area is designated Open Space by the West Maui Community Plan.

383. The Maui County Council reviewed the Project as an affordable housing project and discussed, among other things, the zoning and community plan designations of the Petition Area.
384. On December 2, 2011, the Maui County Council approved a HRS Section 201H-38 application submitted by Petitioner allowing an exemption from the Maui County Code to enable project implementation without the filing and processing of a community plan amendment application.
385. As the Project will provide affordable housing opportunities to the residents of Maui County, the Project offers significant benefits to the community and addresses the need for affordable housing on the island.
386. The Maui County Council exempted the Project obtaining a change in zoning.
387. The County of Maui has undergone a review and update of its land use plans, the current result of which is that the Project is included in the adopted Maui Island Plan as an urban use.
388. The State's Hawai'i Clean Energy Initiative has set a goal of achieving 70 percent clean energy by 2030 with 30 percent coming from efficiency measures and 40 percent from locally generated renewable sources. In addition, Act 181, Session Laws of Hawai'i 2011, established priority guidelines for sustainability in the Hawai'i State Plan codified as HRS Section 226-108.
389. Petitioner's *Kahoma Residential Subdivision Sustainability Plan*, uses the State Department of Health's "Healthy Community Design Smart Growth Checklist" to

highlight the project's sustainable development features, primarily citing the Project's locational and site design elements.

390. Petitioner will incorporate green building features currently required under State and County laws and ordinances, such as solar water heaters and low flow water fixtures. Developer-constructed homes will be designed and built to enable the installation of the photovoltaic energy systems, that is, these structures will be "PV-ready".
391. Other energy efficiency measures being considered for the developer-built homes include Energy Star appliances, energy efficient lighting, higher rated insulation in the ceiling and walls, dual pane or tinted windows, and the installation of fans to avoid air conditioning.

5) **The economic ability of the Petitioner to carry out the commitments**

392. Petitioner provided financial statements pursuant to HAR Section 15-15-50(c)(8).
393. Petitioner will obtain funding for improvements by bank or private financing.
394. Petitioner has the financial capability to undertake the Project.

6) **Whether the Petition Area was in intensive agricultural use**

395. The Petition Area was not in intensive agricultural use for the two years before the filing of the Petition.

**E. FINDINGS CONCERNING REQUEST TO RECLASSIFY PETITION AREA
FROM AGRICULTURAL TO URBAN**

396. Petitioner established by a clear preponderance of the credible evidence that the Petition Area should be reclassified from agricultural to urban.
397. Any finding of fact submitted by any party not already ruled upon by the Commission by adoption herein or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.
398. Any conclusion of law improperly designated as a finding of fact, shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the Commission rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS Section 205-17, the Commission finds upon the clear preponderance of the evidence, that the reclassification of the Petition Area, consisting of approximately 16.7 acres of land, situated in Lāhainā, Maui, Hawai'i, bearing Tax Map Key No. (2) 4-5-010:005 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, is not violative of HRS Section 205-2, and is consistent with the policies and criteria established pursuant to HRS Sections 205-16, 205-17 and 205A-2, Article XII, Section 7 and other relevant sections of the State Constitution.

2. Article XII, Section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights.
3. 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.
4. The State of Hawai'i 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)).
5. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. (*Ka Pa`akai O Ka `Āina v. Land Use Com'n*, 94 Haw. 31, 7 P.3d 1068 (2000)).
6. Article XI, Section 1, of the Hawai'i State Constitution requires the State of Hawai'i 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 the conservation and in furtherance of the self- sufficiency of the State.

7. Article XI, Section 3, of the Hawai`i State Constitution requires the State of Hawai`i to protect agricultural lands, to promote diversified agriculture, to increase agricultural self-sufficiency, and to ensure the availability of agriculturally suitable lands.
8. Article XII, Section 7, of the Hawai`i State Constitution states that the State of Hawai`i has the obligation to protect, control and regulate the use of Hawai`i's water resources for the benefit of its people.
9. HRS Section 205-16 provides that "no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai`i state plan."
10. HRS Section 226-19, the Hawai`i State Plan, Objectives and policies for socio-cultural advancement - housing, provides in relevant part:

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

 - (1) Greater opportunities for Hawai`i's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawai`i's population.
 - (2) The orderly development of residential areas sensitive to community needs and other land uses."

11. HRS Section 226-106, HRS, the Hawai`i State Plan, Priority guidelines for the provision of affordable housing, provides in relevant part:

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

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of about 16.7 acres of land, situated in Lāhainā, Maui, Hawai`i, bearing Tax Map Key No. (2) 4-5-010:005 and shown approximately on Exhibit “A” attached hereto and incorporated herein by reference, shall be and hereby is reclassified to 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 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. **Education Contribution Agreement.** Petitioner shall contribute to the development, funding, and/or construction of school facilities in compliance with the *School Impact Fee Agreement for Kahoma Residential Project*, dated February 9, 2012, entered into

by Kahoma Residential LLC and the DOE. Petitioner shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the West Maui School Impact Fee in accordance with the *School Impact Fee Agreement*. Such notice shall be recorded and shall run with the land.

2. **Water Conservation Measures**. Petitioner shall implement water conservation measures and best management practices such as the use of indigenous and drought-tolerant plants and turf to the extent practicable and incorporate such measures in the Project's landscape planting.
3. **Transportation**. Petitioner shall implement traffic improvements and mitigation measures, if any, as required by the State Department of Transportation and the County of Maui, Department of Public Works.
4. **Street Lights**. Petitioner shall use fully-shielded low sodium street lights within the Project to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.
5. **Affordable Housing**. Petitioner shall design and construct the Project, and provide affordable housing opportunities in substantial conformance with Maui County Council Resolution No. 11-126, dated December 2, 2011, approving the Project as an HRS Section 201H-38 affordable housing project, and the affordable housing agreement or any other agreement entered into by Petitioner and the County pursuant to said resolution.
6. **Established Access Rights Protected**. 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 for such purposes.

7. **Archeological Monitoring**. Petitioner shall employ archaeological monitors to ensure that all ground disturbances associated with mass grading of the Petition Area, and the trenching and excavation related to the installation of utilities, do not impact any subsurface cultural remains within the Petition Area.
8. **Previously Unidentified Burials and Archaeological/Historic Sites**. In the event that historic or archaeological resources, including human skeletal remains, are found and 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 as required by HRS Chapter 6E and its applicable regulations. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referred to herein are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.
9. **Storm Water Management and Drainage**. Petitioner shall design and construct storm water and drainage system improvements in compliance with applicable federal, State and County laws and rules, and maintain the improvements, or cause to be maintained the improvements, as designed. To the extent feasible, Petitioner shall mitigate nonpoint source pollution by incorporating low impact development

practices for on-site storm water capture and reuse into the Petition Area's site design and landscaping to reduce runoff and prevent pollution of affected State highway facilities, downstream properties, receiving gulches and streams and estuaries that connect with coastal waters.

10. **Best Management Practices.** Petitioner shall implement applicable best management practices for each proposed land use to minimize infiltration and run-off from construction and vehicle operations, to reduce or eliminate soil erosion and groundwater pollution, and to formulate dust control measures to be implemented during and after the development process in accordance with the State DOH guidelines and rules and applicable County ordinances.
11. **Compliance With Exhibit 1 of Resolution 11-126.** Petitioner shall comply with all provisions of the Modifications stated in Exhibit 1 of Resolution 11-126 and any agreement entered into by Petitioner and the County of Maui in accordance with that resolution.
12. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage improvements, within ten years from the date of the Decision and Order approving the Petition.
13. **Order to Show Cause.** If Petitioner fails to complete the construction of the proposed backbone infrastructure within ten years from the date of the Decision and Order approving reclassification of the Petition Area, the Commission may issue and

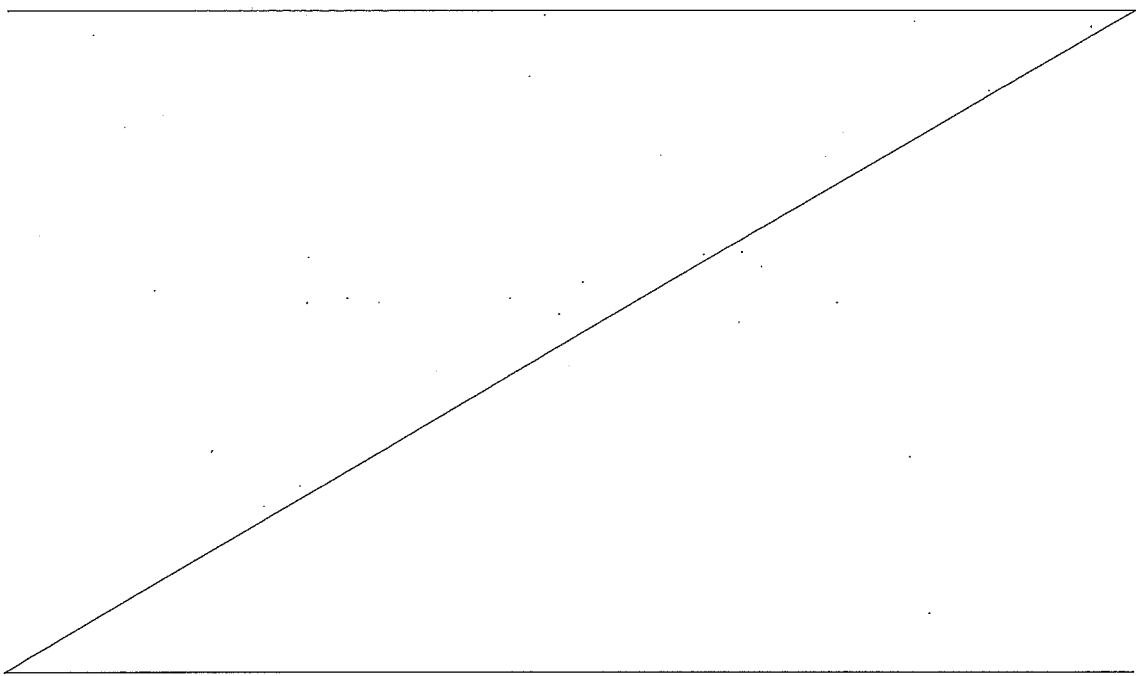
serve upon Petitioner an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use District Agricultural Classification or be changed to a more appropriate classification.

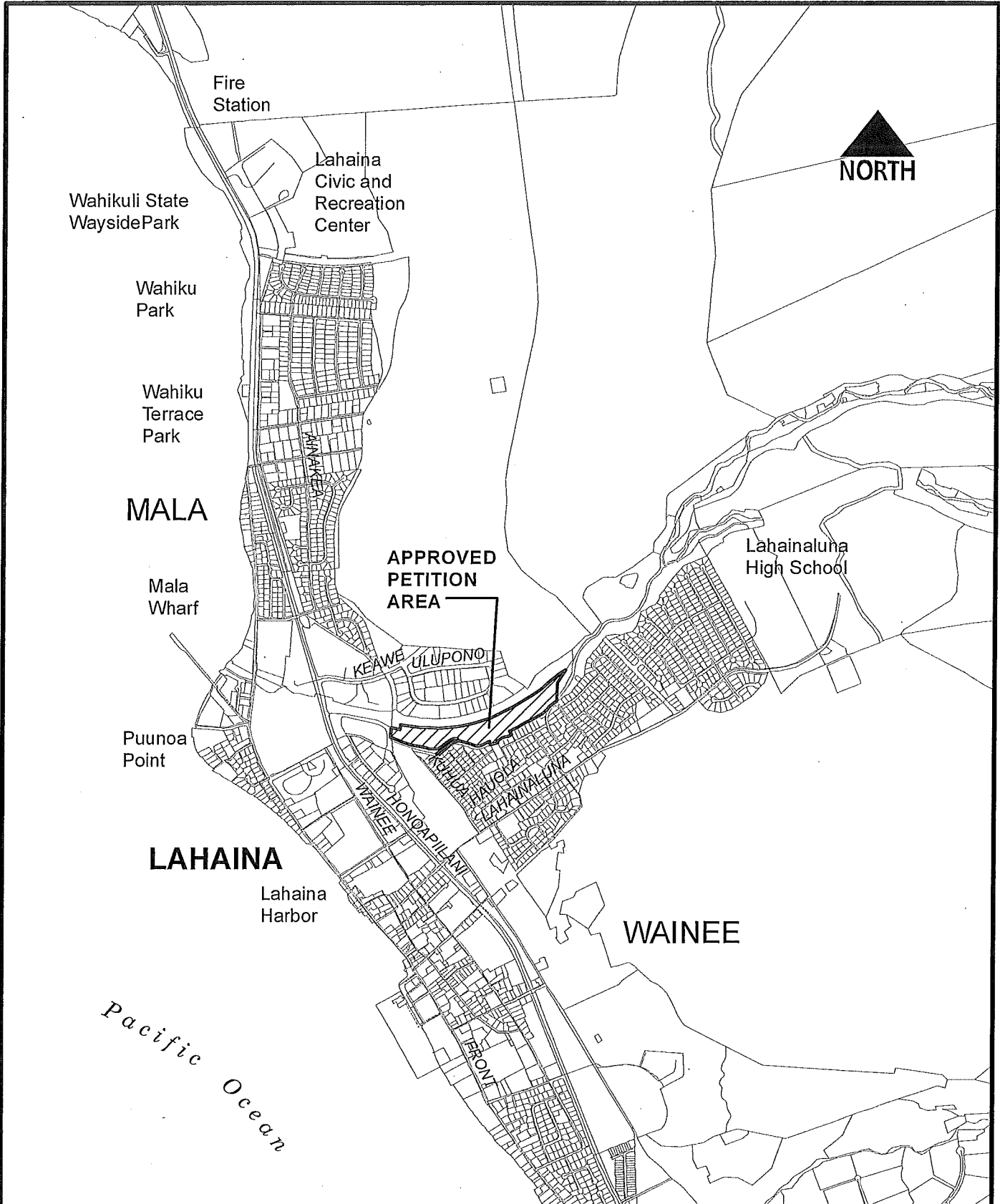
14. **Compliance With Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in this Findings of Fact, Conclusions of Law, and Decision and Order. Failure to develop the reclassified area in accordance with the representations may result in reversion of the reclassified area to its former classification or a change to a more appropriate classification.
15. **Annual Reports.** Petitioner shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, 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.
16. **Release of Conditions.** The Commission may fully or partially release conditions provided herein as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of these conditions by Petitioner or its successor assigns.
17. **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 construction of the backbone infrastructure of the Project.

18. Notice of Imposition of Conditions. Petitioner shall (a) within seven (7) days of issuance of the Commission's Decision and Order reclassifying the Petition Area, record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed in this Decision and Order by the Commission and (b) promptly thereafter file a copy of such recorded statement with the Commission.

19. Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawai'i pursuant to HAR Section 15-15-92.



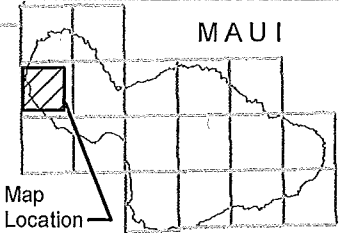


A12-795 WEST MAUI LAND COMPANY, INC., a Hawaii corporation, and
 KAHOMA RESIDENTIAL LLC, a Hawaii limited liability company

LOCATION MAP

Tax Map Key: 4-5-010: 005
 Lahaina, Island of Maui, State of Hawai'i
 SCALE: 1: 24,000

EXHIBIT "A"



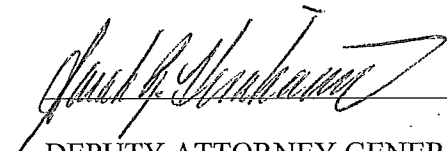
Map
 Location


ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing order this 5th day of April, 2013. This order may be executed in counterparts. This order shall take effect upon the date this order was certified by the Commission.

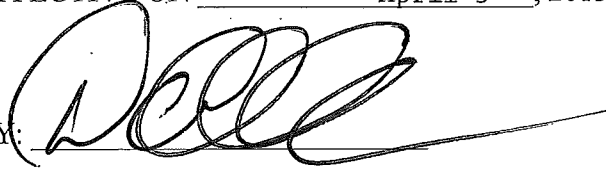
Done at Honolulu, Hawai'i, this 5th day of April, 2013, per motion on April 4, 2013.

APPROVED AS TO FORM:


DEPUTY ATTORNEY GENERAL
State of Hawai'i


KYLE CHOCK
Chairperson and Commissioner

FILED AND EFFECTIVE ON April 5, 2013.

CERTIFIED BY: 
Executive Officer
Land Use Commission



BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2013 APR -5 P 3:17

In The Matter Of The Petition Of)	DOCKET NO. A12-795
)	
WEST MAUI LAND COMPANY, INC, a)	
Hawai`i Corporation, and KAHOMA)	
RESIDENTIAL LLC, a Hawai`i Limited)	CERTIFICATE OF SERVICE
Liability Company)	
)	
To Amend The Agricultural Land Use)	
District Boundaries Into The Urban Land)	
Use District For Approximately 16.7 Acres)	
of Land at Lāhainā, Island of Maui, State of)	
Hawai`i, Tax Map Key No.: (2) 4-5-10:005)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

Certified Mail: JAMES W. GEIGER, Esq.
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Department of the Attorney General
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Attorney for State Office of Planning

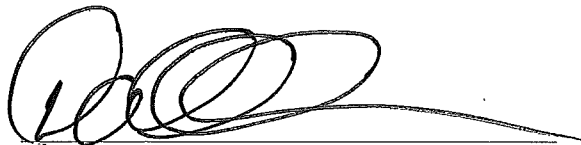
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Honolulu, Hawai`i 96837

DATED: April 5, 2013, Honolulu, Hawai`i.



Daniel Orodener, Executive Officer