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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of: WEST MAUI LAND COMPANY, INC., a Hawaii corporation, and KAHOMA RESIDENTIAL LLC, a Hawaii limited liability company, To Amend the Land Use District Boundary of certain land situated at Lahaina, Island of Maui, State of Hawaii, consisting of 16.7 acres from the agricultural district to the urban district, Tax Map Key No. (2) 4-5-010:005.	DOCKET NO. A12-795 PETITIONER'S MOTION TO RECONSIDER DECISION AND ORDER ADOPTED JANUARY 14, 2013; DECLARATION OF RORY FRAMPTON; EXHIBITS "42" TO "43"; Appendix "1"; CERTIFICATE OF SERVICE

PETITIONER'S MOTION TO RECONSIDER DECISION
AND ORDER ADOPTED JANUARY 14, 2013

Petitioner, West Maui Land Company, Inc. ("Petitioner"), pursuant to H.Admin.R. § 15-15-84, moves the Commission to reconsider its decision and order adopted on January 14, 2013 in this matter. The basis for the Motion is that six Findings of Fact are clearly erroneous and not

supported by the evidence in the record, two Conclusions of Law are clearly erroneous and not supported by the law, and legislation has been adopted following the conclusion of the evidentiary portion of this matter but before adoption of the Decision and Order which makes certain findings of fact clearly erroneous.

Petitioner requests that this Motion be set for hearing pursuant to H.Admin.R. § 15-15-70(b).

A. Standard of Review.

Findings of fact must pass two basic tests: (a) are they sufficiently comprehensive and pertinent to the issues to form a basis for the decision; and (b) are they supported by the evidence. Shannon v. Murphy, 49 Haw. 661, 426 P.2d 816 (1967). The findings must be clear, specific, non-conclusory, and supportive of the ultimate finding. Application of Hawaii Elec. Light Co., Inc., 60 Haw. 625, 594 P.2d 612 (1979).

A finding of fact that is not supported by the record is clearly erroneous. H.Rev.Stat. §91-14(g). A decision and order which relies upon clearly erroneous findings cannot be sustained on appeal.

Conclusions of law must be based on existing legal principles established by statute or by reported court decisions. Id. A conclusion of law not based on existing law

is clearly erroneous. Id. A decision and order based on clearly erroneous conclusions cannot be sustained. Id.

B. Findings 154, 158, 169, 171, and 172 Are Not Supported by Admitted Evidence.

Findings 154, 158, 169, 171 and 172[1] assert that the Commission is uncertain of the impacts of the Project on storm water runoff (FOF 169) and on culture (FOF 154, 158, 171 and 172). Support for each of these findings was based on the "amended testimony of Michael Lee" dated August 1, 2012. The amended written testimony was not offered as evidence, was not received in evidence, and is not a part of the record of this boundary reclassification proceeding.

The legal effect is that the "amended testimony of Michael Lee" cannot be used to support a finding or a conclusion; it is as if the amended testimony does not exist.

It is a basic principle of administrative proceedings that material not a part of the record cannot be used to make findings of fact or to draw conclusions. In re Application of Kauai Electric Division, 60 Haw. 166, 594 P.2d 612 (1978). The logic underlying that principle is simple and sound. A cornerstone of the adjudicatory process is the concept that the parties be provided due process. Due process means that the

[1] For ease of reference, the erroneous Findings and Conclusions are attached as Appendix 1 to this motion.

parties receive the opportunity to put to test a witness' statement by examining the witness on the testimony being offered; if the testimony is not offered, there is no basis to examine the witness on the testimony. Town v. Land Use Commission, 55 Haw. 538, 524 P.2d 84 (1974). Stated another way, a witness is examined based on the testimony actually offered, not on statements that were not made a part of the record.

In the improperly considered amended testimony, Michael Lee purports to conduct a cultural assessment used as the basis of the improper findings. Had the written amended testimony been offered, Michael Lee would have been examined about the "cultural assessment", the lack of reliability of which would have been established beyond doubt.

Cultural Assessments are required to meet Guidelines adopted by the Environmental Council of the State of Hawaii in 1997. Those guidelines require that a Cultural Assessment: 1) discuss the methodology used; 2) discuss the results of all consultations; 3) describe the methods used to identify, select and interview those familiar with the cultural practices and features; 4) describe the circumstances under which the interviews were conducted; 5) provide biographical information about the persons interviewed; 6) discuss the cultural and

historical source materials that were reviewed; 7) explain whether any confidential information was withheld from the assessment; 8) discuss conflicting information; 9) analyze the effect of physical alteration of the area; and 10) provide a bibliography of resources. The "cultural assessment" of Michael Lee did not meet any of these ten guidelines. Since it was not offered into evidence, examination on the deficiencies of the testimony was not conducted.

Neither the parties nor the Commission are required to guess if information is being presented; nor are the parties and the Commission expected to inquire about exhibits or written testimony that was not offered. Michael Lee's amended testimony was neither offered nor received as evidence in the hearing; since the amended testimony was not subject to cross examination, it cannot be used to support any finding. Id. Accordingly, Findings 154, 158, 169, 171 and 172 are improper as they are based on material that was not a part of the record.

C. Findings 169, 171 and 172 Are Inconsistent With The Reliable, Probative and Substantial Evidence.

Findings 169 and 172 assert that the impact on cultural practices of the proposed reclassification could not be determined. Such findings are inconsistent with, and ignore, the reliable, probative and substantial evidence of the lack of

any impact on cultural practices.

To impact traditional and customary practices, a practice that is being performed by a native Hawaiian must exist. A cultural assessment was prepared for Petitioner in 2005 to determine if any person was engaged in a traditional and customary practice on the Petition Area. Petitioner's Exhibit 7. Archival research from 18 separate sources was conducted; interviews of 5 persons knowledgeable of the Kahoma Stream area were completed. Id. The research and the interviews confirmed the Petition Area was not being used for traditional and customary practices at that time; no established traditional and customary practice was identified. Kapalehua WDT at pp. 4 - 6). Petitioner's cultural expert revisited the property before the hearing began in July, 2012 and confirmed that no current cultural practices were being conducted on the Petition Area. TR 7/20/12 at p. 86-87.

Archaeological investigation of the Petition Area was conducted in 2005. Petitioner's Exhibit 7. No archaeological features were found on the Petition Area. Id. The first claim of archaeological features arose at the first day of the hearing in July 2012. TR 7/19/12 at p. 30. When information concerning the location of the features and sites of the practices was provided in September, a supplemental investigation was

conducted. Petitioner's Exhibit 41. The supplemental investigation found no burials or human remains in the areas identified and Michael Lee admitted that the claimed archaeological feature was a rock push pile. Petitioner's Exhibit 41 and TR 10/5/12 at pp 89, 92 and 149.

Most of the Petition Area was in sugar cane cultivation for a very long period, making use of the Petition Area for traditional and customary practices unlikely. Petitioner's Exhibit 7 and TR 7/20/12 at pp. 84 and 87. None of the "neighbors" who testified concerning the Kahoma Stream use identified the use as being for a traditional and customary practice by a person who was a Native Hawaiian. TR 9/7/12 at pp. 115, 136-137, and 146-147.

None of the witnesses who engaged in the "libation" stone ceremony in June 2012 participated in a similar ceremony before the Petition was filed (or even had been on the Petition Area before that time). None of the persons who testified concerning the claimed traditional and customary practices asserted that the practices were established and ongoing in the Petition Area at any time before the filing of the Petition.

There was no evidence of an established traditional and customary practice. Petitioner's Exhibits 7 and 42; WDT Michael Dega; WDT Kimokeo Kapahulehua. If there was no

established practice, there can be no impact.

A claim without any substantiation is argument; argument does not make something a fact, regardless of the number of times it is repeated. Findings 169 and 172 were not based on evidence within the record and clearly are inconsistent with the substantial evidence that there was no established traditional and cultural practice.

Finding 171 contends that reclassification may have an impact on maintenance of valued cultural, historical or natural resources. The finding purportedly relates to previous findings that in some fashion stormwater runoff or discharge of treated effluent from the Lahaina Wastewater Treatment Facility will impact near shore water quality and in turn damage limu and corals that exist at the mouth of the Kahoma Stream. Each of these findings ignores substantial evidence to the contrary and is clearly erroneous.

As to the wastewater treatment facility, the discharge location is located at least 2 ½ miles away from the area where the claimed damage may occur. Petitioner's Exhibit 7. No evidence was provided that the discharge would travel to the Kahoma Stream mouth, let alone that the discharge might impact the coral and limu in that area.

As to the stormwater runoff, the soils in the Petition

Area are highly permeable with slow runoff and slight erosion hazard. Paul Singleton WDT p. 6. Stormwater runoff from the project will be funneled to a detention basin. TR 10/5/12 at pp. 110-112. The detention basin was designed to meet the criteria for capturing stormwater runoff generated by the project. Kirk Tanaka WDT at pp. 4-6. The detention basin as designed is compliant with the criteria required to capture stormwater runoff from the Project for purposes of meeting water quality regulations. TR 10/5/12 at pp. 110-112. Specifically, the detention basin will have the ability to completely detain the entire runoff volume from the smaller but more frequent storms, which are the events of concern related to water quality impacts from stormwater discharge. TR 10/5/12 at pp. 110-111.

Against these unrebutted facts lie the assertions that heavy metals (or other non-point source pollutants) will be generated by residents of the Project, that those residents will cause the runoff to bypass the detention basin, that the runoff will enter the Kahoma Stream Flood Control Channel, and that in some manner the runoff will be the sole cause of damage to corals and limu near the Kahoma Stream mouth.[2] The assertions ignore the effect of the detention basin, ignore the relative

[2] The only witness raising this concern acknowledged that the Project mitigated his concerns about water quality. TR 10/5/12 at p. 24.

significance of the potential discharge of a 16.7 acre site in comparison to the discharge from the entire 2,140 acre watershed, and the contributions of runoff from existing developments which have no facilities to address stormwater runoff. The assertions also ignore the testimony on the impact of the Kahoma Stream Flood Control Channel on the limu, which impact has existed for over 20 years. TR 9/7/12 at p. 135. In sum, the assertions were nothing more than argument and the "finding" drawn from the assertions ignores the mitigation measures proposed by Petitioner, the relative significance of the runoff from the Project in relation to the runoff from the entire watershed, and the impacts of existing developments which have no facilities to address stormwater runoff water quality.

Findings 169, 171 and 172 can be made only if facts are ignored and argument is accepted as fact. These findings are clearly erroneous and against the substantial and unrebutted evidence.

D. Finding 190 Is Clearly Erroneous.

In Finding 190, the statement is made that the financial condition of the Petitioner could not be determined because the financial statements provided by Petitioner were not audited. While the financial statements were not audited, the conclusion drawn by the Commission is erroneous.

First, the financial statements show a net worth in the company in excess of $2.5 MM. Petitioner's Exhibit 10. Audited or not, this is a substantial sum of money.

Second, the only testimony concerning the financial statements came from Heidi Bigelow. No one, including the Commissioners, questioned Ms. Bigalow on the accuracy of the financial statements or on the ability of Petitioner to complete the Project. Her testimony on the ability of Petitioner to complete the Project stands unrebutted.

Third, there was no evidence that the financial statements were improper. To the contrary, the evidence was overwhelming that Petitioner can and will carry out its obligation to construct the Project.

Finding 190 is contrary to the substantial and unrebutted evidence, is not supported by the evidence and thus is clearly erroneous.

E. Conclusions 7 and 8 are clearly erroneous.

Conclusion of Law 7 states "The Petition Area includes lands with open area recreational facilities . . . ." This conclusion is clearly erroneous.

The Petition Area is vacant and fallow. Bigelow WDT pp 4-5; TR 7/19/12 at p. 189. The last use of the lands for agriculture happened before 1990. TR 7/19/12 at p. 190. No

facilities, recreational or otherwise, exist on the Petition Area. The lands within the Petition Area have been used as a construction easement and for dumping of materials from the retention basin of the Kahoma Stream Flood Control project. There was no evidence that any portion of the lands within the Petition Area ever had recreational facilities. The finding that recreational facilities exist is clearly erroneous.

To the extent that any recreational activity occurred on the Petition Area, it was without authorization from the landowner. For the period of time that the Petition Area was in sugar cane production, the property owner took steps to restrict access to the property. Active sugar cane planting, harvesting and field preparation is not conducive to use for recreational purposes. During the construction of the Kahoma Stream Flood Control Channel, the property was used as a construction easement. The operation of heavy equipment to construct the flood control channel likewise is not conducive to the use of the Petition Area as a recreational space.

The Maui County Council was given the opportunity to purchase the property for recreational use in 2011. The offer was turned down. Bigelow WDT at pp. 15-16.

The only evidence of use of the Petition Area for recreational purposes was the admitted trespass by neighboring

residents. An unauthorized use of the Petition Area does not rise to the level of a recognized recreational activity. Conclusion 7 is clearly erroneous.

Similarly, Conclusion 8 is clearly erroneous. Specifically, Conclusion 8 states that the "proposed reclassification is not consistent with either the current Maui County Community Plan land use designation or County zoning." That statement both is incorrect and is misleading.

The West Maui Community Plan, as well as the Zoning provisions of the Maui County Code, is legislation enacted by the Maui County Council. As with any legislation, the ordinances are subject to review and change. As a part of its approval of the Project, the Maui County Council exempted the Project from the requirement to obtain Community Plan Amendments and Change in Zoning; the exemption as administered existing laws and had the effect of amending the other laws as applied to the Petition Area. See, Life of the Land v. City Council of the City and County of Honolulu, 61 Haw. 390, 606 P.2d 866 (1980).

Exhibit "11" is the resolution by which the Maui County Council approved this Project. Petitioner Exhibit "11", p. 6. By exempting the Petition Area from the provisions of the West Maui Community Plan and the Zoning Ordinance, the Petition Area is not subject to those provisions. As such, Conclusion 8

is clearly erroneous.

F. Adoption of New Laws Must Be Considered.

During the hearing, the Commission was informed that the County of Maui was in the process of adopting regulations and ordinances that addressed two aspects of the Project, the quality of any storm water runoff generated by the Project and the designation of the proposed use of the Petition Area in an update to the Maui County General Plan. As these two aspects figure prominently in the Decision and Order, changes in the law must be considered and taken into account in the Decision and Order.

On November 28, 2012, Maui County adopted rules governing water quality of storm water runoff. See, Declaration of Rory Frampton at ¶¶ 9 - 12. Heidi Bigelow and Rory Frampton both testified the Project was reviewed by engineers for compliance with the required Best Management Practices then proposed by the County of Maui; the engineers determined that the Project's handling of storm water runoff complied with the proposed rules (which were later adopted as proposed). It is clearly erroneous to find that the Project might have an adverse impact on natural resources when it is in compliance with County Rules designed to prevent the very issue over which concern was

expressed. Impacts to near shore water quality will be mitigated through the stormwater runoff control facilities which will detain the runoff volume from the storm (1 inch rainfall event) selected for the design and compliance criteria by the County of Maui. The Project will exceed the requirements of the stormwater runoff water quality rules. TR 10/5/12 at pp. 112-113. The capabilities of the proposed facilities to mitigate stormwater quality impacts and compliance with those rules are items which the Commission is not entitled to ignore, nor may the Commission continue to find that there are concerns about water quality impacts when Petitioner presented unrebutted evidence that the Project's proposed facilities comply with rules enacted to mitigate storm water quality concerns.

The second law adopted after October but before the adoption of the Decision and Order was the Maui Island Plan. As a part of the update of the General Plan, Maui County in 2006 began work on the Maui Island Plan. After going through review by the General Plan Advisory Committee, the Maui Planning Commission and hearings before the Maui County Council, land use decisions were made. The result of the years of effort was the Maui Island Plan adopted on December 28, 2012. The Maui Island Plan, together with the Countywide Policy Plan and the Community

Plans, are the General Plan. MCC § 2.80B.030.B.

Under the Maui Island Plan, the Maui County Council adopted a law identifying the areas in which urban growth would be permitted on Maui. One of the areas identified for urban grown was the Petition Area. The Petition Area was included and identified as the "Kahoma Infill" development area; a map identification, a project description and guidelines were provided for the Petition Area. See, Frampton Declaration ¶¶ 4 - 8.

Changes in law directly contrary to conclusions must be considered and the erroneous conclusions corrected.

G. Conclusion.

Petitioner recognizes that the Commissioners who did not support the Petition will be reluctant to change their votes to approve this affordable housing project. Nevertheless, to avoid reversible error, the decision and order must be reconsidered.

Each Commissioner took an oath to uphold the laws of Hawaii. This requires each Commissioner to place their personal views of and prior experiences with Petitioner aside. Each Commissioner must apply the facts contained in the record to the law.

Intervenors argued passionately that the Petition Area

should remain open space. However, the only legal basis for that argument no longer exists; adoption of the Maui Island Plan removed the argument as it overruled the existing West Maui Community Plan designation of the Petition Area. Emotional arguments are not fact. The record simply does not contain facts that support the decision and order; rather the unrebutted facts in the record demand a different result . . . that the Petition be granted.

The instant findings and conclusions reflect the impossibility of the task of the Commission. The record cannot support findings of impacts on culture or natural resources . . . the record clearly establishes that there are no impacts which have not been adequately and fully mitigated. The decision and order is erroneous, must be reconsidered, and must be changed.

DATED: Kahului, Hawai`i, JAN 22 2013.

JAMES W. GEIGER
Attorney for Petitioner

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of:	)	DOCKET NO. A12-795
WEST MAUI LAND COMPANY, INC., a Hawaii corporation, and KAHOMA RESIDENTIAL LLC, a Hawaii limited liability company,	)	DECLARATION OF RORY FRAMPTON; EXHIBITS "42" TO "43"
To Amend the Land Use District Boundary of certain land situated at Lahaina, Island of Maui, State of Hawaii, consisting of 16.7 acres from the agricultural district to the urban district, Tax Map Key No. (2) 4-5-010:005.	)	

DECLARATION OF RORY FRAMPTON

RORY FRAMPTON declares as follows:

1. My name is Rory Frampton. I am over the age of 21 and am competent to make this declaration. I have personal knowledge of the facts contained in this Declaration, which facts are true and correct.

2. I was qualified as an expert witness in the above proceeding and gave testimony on the area of land use planning.

3. As a part of my profession, I maintain familiarity with laws, regulations and rules which will impact land use planning decisions.

4. Land use planning in Maui County is done through a General Plan which is updated periodically, and through separate Community Plans which are in turn updated periodically.

5. Maui County began the process of updating its General Plan in 2006.

6. On December 28, 2012, Maui County enacted the Maui Island Plan which designates the future of land use for the island of Maui.

7. Attached as Exhibit 42 is a true and correct copy of portions of the Maui Island Plan enacted by the Maui County Council and signed into law by the Maui County Mayor on December 28, 2012.

8. The Petition Area is addressed in the Maui Island Plan and those portions of the Maui Island Plan which address the Petition Area are attached as Exhibit 42.

9. In early 2012, the Maui County Council adopted ordinances that authorized Maui County to prepare regulations to establish Best Management Practices to mitigate the effect of storm water runoff on water quality.

10. Proposed regulations were published and hearings held on the proposed regulations.

11. In November 2012, the proposed regulations were approved and adopted.

12. Attached as Exhibit 43 is a true and correct copy of the Best Management Practices regulations for storm water runoff adopted by Maui County.

13. I asked engineers who were familiar with the method by which the Project made the subject of this reclassification matter handled storm water runoff whether the proposed design would comply with the rules.

14. The engineers told me that they determined the Project's proposed design complied with the rules.

I, Rory Frampton, declare under penalty of law that the above Declaration is true and correct.

DATED: Kahului, Hawai`i, January 21, 2013

Rory Frampton

ORDINANCE NO. 4004

BILL NO. 101 (2012)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80B, MAUI COUNTY CODE, RELATING TO THE MAUI ISLAND PLAN

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Exhibit B of Chapter 2.80B, Maui County Code, which is attached hereto and made a part hereof, is hereby adopted as the Maui Island Plan of the County of Maui.

SECTION 2. Section 2.80B.020, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

""Archaeological district" means a place or group of physical sites in which evidence of past human activity, either prehistoric or at least fifty years of age, has been designated for preservation, research, or both.

"Beach nourishment" means a technique used to restore an eroding beach or to create a new sandy shoreline by placing sand fill, with or without supporting structures, along the shoreline to widen the beach.

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

"Class 'A', low-silt sand" means coarse sand with no silt.

"Community development corporation" means a broad term referring to not-for-profit organizations incorporated to provide programs and offer services that often focus on serving lower-income residents or struggling neighborhoods.

"Community facilities districts" means a special district that can issue tax-exempt bonds for the planning, design, acquisition, construction, and/or operation of infrastructure or public facilities.

"Comprehensive long range multimodal plan" means a plan that provides a framework to guide transportation decisions and investments that enhance the

EXHIBIT "42"

economy, support local communities, and protects the natural/man-made environment. The plan also addresses the mobility of people, goods, services, and information across all transportation modes, including biking, walking, driving, transit, railway, ferries, ships, aviation, and electronic communications.

"Conservation easement" means a legal mechanism whereby a landowner retains ownership of his land, but grants some right(s), which stipulate that the described land will remain in its natural state and preclude future or additional development. Conservation easements are typically used for the preservation of open space, environmentally sensitive areas, scenic views, wetland buffers, and agricultural land.

"Conservation subdivision design" means an approach to laying out subdivisions so that a significant percentage of buildable lands are permanently protected in such a manner as to create interconnected networks of conservation lands. This approach is distinct from clustering and planned unit development in terms of the higher open space ratios and conscious design to forge community-wide networks of open space. Conservation subdivisions are generally density-neutral, meaning that the overall number of dwellings built is not different from that done in conventional developments.

"Cultural impact assessment" means a report documenting cultural values, materials, and associations related to an area or a resource. A cultural impact assessment provides an analysis of the potential effect of any proposed physical alteration on cultural resources, practices or beliefs; the potential of the proposed action to isolate cultural resources, practices or beliefs from their setting; and the potential of the proposed action to introduce elements which may alter the setting in which cultural practices take place.

"Cultural landscape report" means a report that analyzes the history and integrity of a cultural landscape, including any proposed changes to its geographical context, features, materials, and use.

"Design guidelines" means a set of guidelines or parameters to be followed in a site or building design and development.

"Development" means any of the uses, activities, or operations on land or in or under water that are included below:

1. Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
2. Grading, removing, dredging, mining, or extraction of any materials;
3. Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
4. Change in the intensity of use of water, ecology related thereto, or of access thereto; and

5. Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

1. Construction of a single-family residence that is not part of a larger development;

2. Repair or maintenance of roads and highways within existing rights-of-way;

3. Routine maintenance dredging of existing streams, channels, and drainage ways;

4. Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, telephone, and minor appurtenant structures such as pad mounted transformers and sewer pump stations;

5. Zoning variances, except for height, density, parking, and shoreline setback;

6. Repair, maintenance, or interior alterations to existing structures;

7. Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;

8. Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;

9. Transfer of title to land;

10. Creation or termination of easements, covenants, or other rights in structures or land;

11. Subdivision of land into lots greater than twenty acres in size;

12. Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that, any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

13. Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;

14. Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;

15. Nonstructural improvements to existing commercial structures; and

16. Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens.

"Endangered species" means a species or ecosystem that is so reduced or delicate that it is threatened with, or on the verge of, extinction.

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

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

"Heritage area" means a designated area where natural, cultural, historical and scenic resources combine to form a cohesive and distinct landscape arising from patterns of human activity shaped by geography. The focus of the designation is on the protection and conservation of critical resources including the natural, cultural, historical, and scenic resources that uniquely identify an area and give a community a sense of place. Areas typically have the following characteristics:

1. Contains an outstanding example of a particular type of resource;
2. Possesses exceptional value or quality in illustrating or interpreting the natural or cultural themes of the island's heritage;
3. Offers superlative opportunities for recreation, public use, and enjoyment or for scientific study; and
4. Retains a high degree of integrity as a true, accurate and relatively unaltered example of a resource.

"Heritage area plan" means a plan that documents the history, significance, and treatment of a heritage area; the plan includes detailed guidelines and recommendations for the protection of the environmental and cultural integrity of a designated heritage area.

"Infill development" means development of land that is largely vacant or underutilized within areas that are already largely developed.

"Jobs/housing balance" means the ratio of jobs to households when both the type (such as single family, multi-family, rental) and quantity of housing opportunities match the job opportunities within an area.

"Level-of-service standards" means measures of the amount and/or quality of a public facility or infrastructure that must be provided to meet a community's basic needs and expectations. Level-of-service standards measures are typically quantitative and are expressed as ratios of facility capacity to demand by existing and projected future users. Level-of-service standards measures the size, amount, capacity, or quality of the capital facility.

"Linkage" means a physical or economic concept pertaining to the time and distance between land use and support facilities, or between people and their activities.

"Livable community" means an urban, suburban, rural, or neighborhood community that:

1. Provides safe and reliable transportation choices;

2. Provides some affordable, energy-efficient, and location-efficient housing choices for people of all ages, incomes, races, and ethnicities;

3. Supports, revitalizes, and encourages the growth of existing communities and maximizes the cost effectiveness of existing infrastructure;

4. Promotes economic development and economic competitiveness;

5. Preserves the environment and natural resources;

6. Protects agricultural land, rural land, and green spaces; and

7. Supports public health and improves the quality of life for residents of and workers in the community.

"Long term care home" means a variety of homes, dwellings, and buildings ranging from traditional nursing homes to buildings that provide home-like environments on a twenty-four hour basis to persons who need constant care and supervision. Long term care homes include, but are not limited to, care homes, foster homes, assisted living, and nursing homes.

"Low impact development" means an approach to land development or redevelopment that incorporates a suite of landscaping and design techniques known as "better site design" that attempts to maintain the natural, pre-development hydrology of a site and the surrounding watershed. Low impact development also integrates a range of structural best management practices for road design and storm water and wastewater management systems that minimize environmental impacts.

"Marine life conservation districts" means a type of marine managed area; usually prohibits or only allows for limited fishing and other consumptive uses.

"Marine managed area/marine protected areas" means any area of the marine environment that has been reserved by federal, state, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural or cultural resources contained therein.

"Native species" means a species that occurs naturally in an area and is not introduced.

"New towns" means a form of urban development designed as a unified concept of sufficient scale to provide its residents with a full range, or substantial range, of necessary land uses, public facilities, services, and employment opportunities. New towns typically include multiple pedestrian neighborhoods and they have a substantial employment base with a regional commercial or civic focus.

"New urbanism" means the process of reintegrating the components of modern life, such as housing, workplace, shopping, and recreation, into compact, pedestrian-friendly, and mixed-use neighborhoods linked by transit and set in a larger regional open space framework.

"Overlay district" means an area where certain additional requirements are superimposed upon a base zoning district or underlying district and where the requirements of the base or underlying district may or may not be altered.

"Productive agricultural land" means land that is capable of supporting sustained high yields of agriculture when treated and managed according to accepted farming methods and technology.

"Pyramid zoning" means a zoning scheme that allows lower, less intense uses, such as residences, to be located in higher, more intensive zoning districts, such as commercial or industrial.

"Resort destination area" means one of the planned resort destination areas of Kā`anapali, Kapalua, Mākena, and Wailea, which is intended as a major tourist destination area, consistent with the general and community plans.

"Threatened species" means a species likely to become endangered if limiting factors are not reversed.

"Transfer of development rights" means a program that can relocate potential development from areas where proposed land use or environmental impacts are considered undesirable to another site chosen on the basis of its ability to accommodate additional units of development beyond that for which it was zoned, with minimal environmental, social, and aesthetic impacts.

"Transportation demand management" means various strategies that change travel behavior to increase transport system efficiency and achieve specific planning objectives.

"Transportation impact fees" means charges assessed by local governments against new development projects to recover the cost incurred by government in providing the public facilities required to serve this new development. Impact fees are only used to fund facilities (e.g., roads, bus stops, transit centers) that are directly associated with the new development.

"Transportation system management" means transportation strategies designed to improve both the movement of people and goods and the operational efficiency of the existing transportation system at minimal cost.

"Urban expansion" means new growth areas typically located at the edge of an existing community and often include urban uses, such as housing, commercial, retail, or recreational uses.

"Wetland" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

"Wildland" means an area or region where the habitat remains in a natural state due to the minimization or prohibition of development and human activities that would alter the landscape and potentially harm the species that rely on the health of the ecosystem.

"Xeriscaping" means the practice of using native species and hardscape materials to create low-water-use landscaping."

SECTION 3. Section 2.80B.030, Maui County Code, is amended by amending subsection A to read as follows:

"A. Exhibit A-1 of this chapter, entitled "The Countywide Policy Plan," which is on file with the office of the county clerk, is adopted as the countywide policy plan and by reference made a part of this chapter. Exhibit B of this chapter, entitled "The Maui Island Plan," which is on file with the office of the county clerk, is adopted as the Maui island plan and by reference made a part of this chapter."

SECTION 4. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui
S:\ALL\JAG\Ords\Amend 2.80B.020 2.80B.030 11.2012.doc

WE HEREBY CERTIFY that the foregoing BILL NO. 101 (2012)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of December, 2012, by the following vote:

Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
No	Aye	Aye	Aye	No	Aye	No	No	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 24th day of December, 2012.

DATED AT WAILUKU, MAUI, HAWAII, this 24th day of December, 2012.

RECEIVED
2012 DEC 24 PM 3:46
OFFICE OF THE MAYOR

DENNIS A. MATEO, CHAIR
Council of the County of Maui

JEFFREY T. KUWADA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 28 DAY OF December, 2012

ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4004 of the County of Maui, State of Hawaii.

JEFFREY T. KUWADA, COUNTY CLERK
County of Maui

Passed First Reading on December 7, 2012.
Effective date of Ordinance December 28, 2012

RECEIVED
2012 DEC 28 PM 2:42
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4004, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

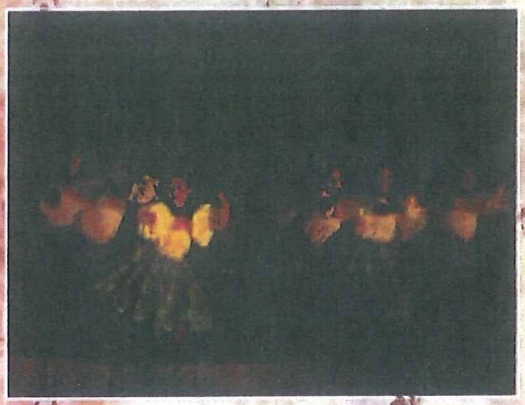
County Clerk, County of Maui

Maui Island Plan

General Plan 2030

'A 'ohe hana nui ke alu 'ia.

No task is too big when done together by all.



Prepared By:

County of Maui
Planning Department
Long Range Division

Prepared For:

The People of Maui

EXHIBIT B

The Lahaina Town South planned growth area is located mauka of Honoapi`ilani Highway, surrounding the Lahaina Aquatic and Recreation Center. The development will be a compact, mixed-use urban expansion with approximately 1,100 residential units.

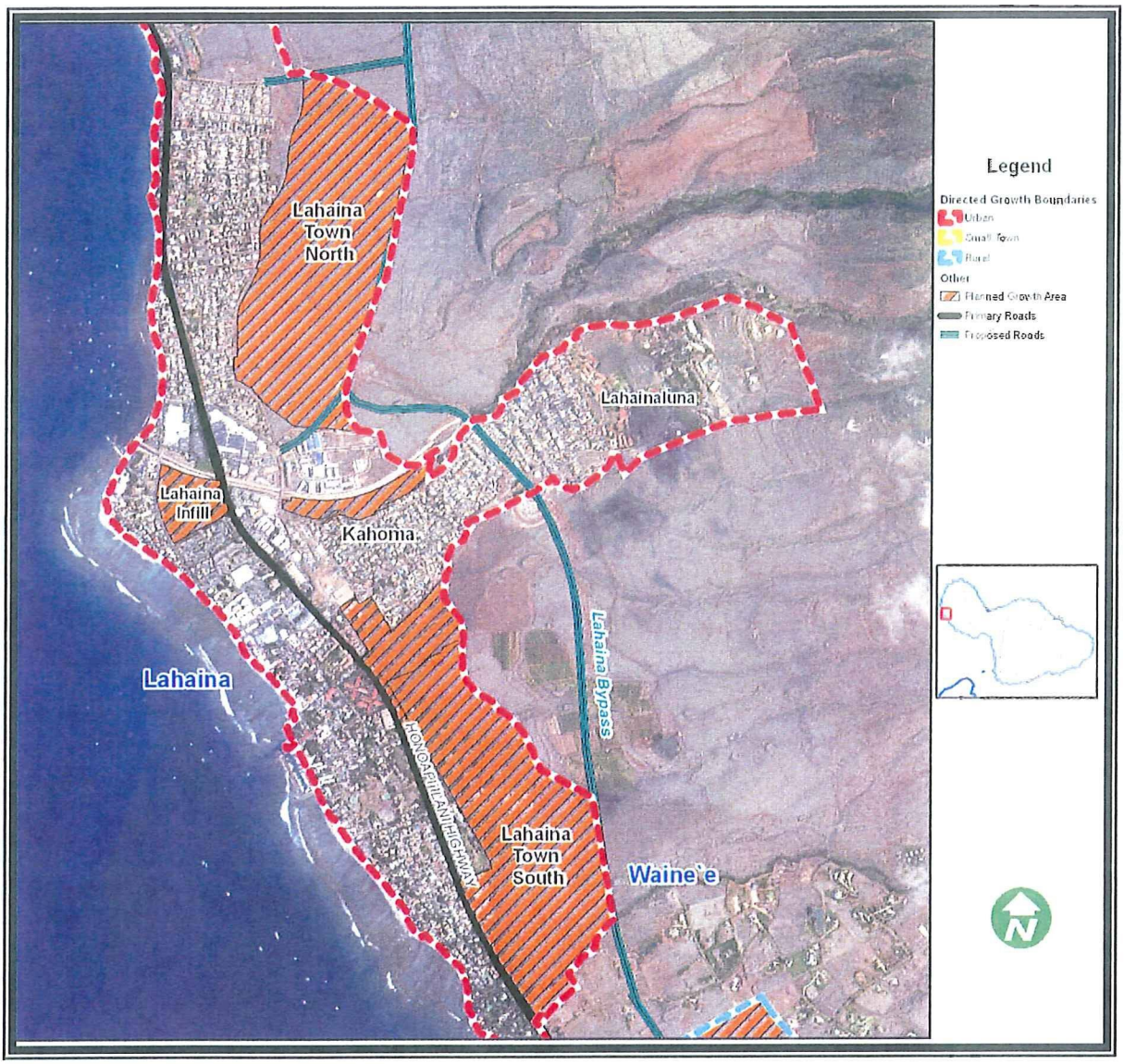


Figure 8 - 12: Lahaina Town North – Planned Growth Area.

Planned Growth Area Rationale

The site is contiguous with Lahaina Town and is a logical area for urban expansion to accommodate growth to 2030. The site is approximately 269 acres and is close to existing public facilities and infrastructure and West Maui employment. The planned growth area will provide a mix of commercial uses, housing types, and lot sizes. Given the growth area location and characteristics, it is likely to provide housing for Maui residents rather than off-island second home buyers. There should be a sufficient proportion of multi-family units developed to meet local needs.

Due to the existing traffic congestion in Lahaina Town, it will be paramount to ensure adequate highway access and develop multi-modal transportation options. The proposed Lahaina Bypass realignment should be completed prior to the growth site's build-out. Highway improvements should respect the surrounding land uses, view corridors and environmental conditions as much as possible. The Lahaina Town South planned growth area is depicted on Figure 8-12 and on Directed Growth Map #W3. Table 8-26 provides a summary of the project.

Table 8 - 26: Lahaina Town South Planned Growth Area

Background Information:			
Project Name:	Lahaina Town South	Directed Growth Map #:	W3
Type of Growth:	Urban Expansion	Gross Site Acreage:	269 Acres
Planning Guidelines:			
Dwelling Unit Count:	Approximately 1,100 Units[39]	Residential Product Mix:	Mix of SF and MF
Net Residential Density:	10-12 du/acre	Parks and Open Space%[40]:	≥ 20%
		Commercial:	Convenience Shopping

Kahoma Infill

The Kahoma Infill planned growth area is bordered by Honoapi`ilani Highway at the west bottom of the hill makai of the stormwater diversion structure. The project is an affordable housing project on approximately 18 acres.

Planned Growth Area Rationale

The Kahoma Infill planned growth area is intended to meet the needs of Maui residents and is surrounded by previously developed lands. Greenways are planned for the area and should include a bike trail and linkages to Lahaina Town. An open-space buffer is planned to accommodate a stormwater diversion structure. Table 8-27 provides a summary of the project. The Kahoma Infill planned growth area is depicted on Figure 8-12 and on Directed Growth Map #W3.

[39] Additional units may be permitted through a transfer of development rights program or to provide affordable housing in excess of what is required by law. Unit counts may be further defined through the entitlement process in response to infrastructure and environmental constraints.

[40] The distinct boundaries of the parks and open space, specific location of the recreational uses, and the precise amenities will be further defined during the West Maui Community Plan update and the project review and approval process.

Table 8 - 27: Kahoma Planned Growth Area

Background Information:			
Project Name:	Kahoma Infill	Directed Growth Map #:	W3
Type of Growth:	Urban Infill	Gross Site Acreage:	18 Acres
Planning Guidelines:			
Dwelling Unit Count:	Approximately 68 Units[41]	Residential Product Mix:	100% SF
Net Residential Density:	7-10 du/acre	Parks and Open Space[42]:	NA
		Commercial: NA	

Makila

The Makila planned rural growth area is located east of Lahaina Town on the mauka side of Honoapi`ilani Highway. The rural project shall be developed using a CSD plan that is intended to preserve open space; maximize the efficient use of infrastructure; and protect natural, agricultural, and scenic resources. The CSD plan shall cluster development within portion(s) of the site to keep the remainder of the land undeveloped and protected. The project may include limited neighborhood facilities and services to support the Makila community. The site is surrounded by agricultural lands.

Planned Growth Area Rationale

The Makila project is a rural subdivision adjacent to agricultural subdivisions that have occurred in and around Launiupoko. Linkages should be developed between the Makila project and neighboring communities including Launiupoko and Lahaina Town. An emphasis should be placed on providing safe pedestrian pathways and supporting regional-greenway systems. A 500-foot greenbelt shall be provided along the makai side of the project to ensure an open space buffer within the growth area and between the Honoapi`ilani Highway Bypass and future rural development. The project should utilize Low Impact Development techniques, such as drainage sedimentation control systems, to mitigate the potential for flooding makai of the project and to prevent nonpoint source pollution from entering coastal waters. The Makila planned growth area is depicted on Figure 8-13 and Directed Growth Map #W3. Table 8-28 provides a summary of the planned growth area.

Table 8 - 28: Makila Planned Growth Area

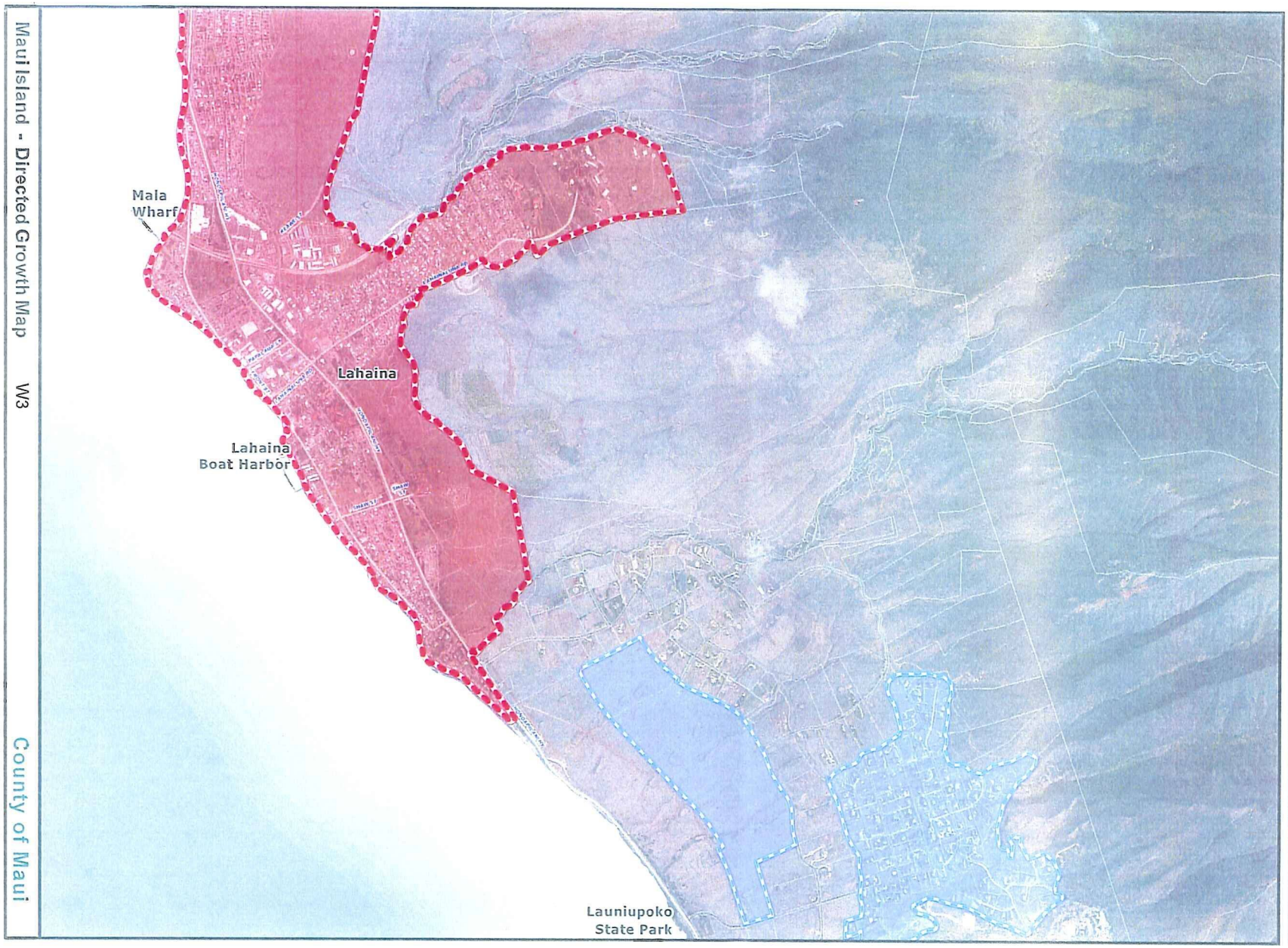
Background Information:			
Project Name:	Makila	Directed Growth Map #:	W3
Type of Growth:	Rural Growth	Gross Site Acreage:	270 Acres
Planning Guidelines:			
Dwelling Unit Count:	Approximately 200 Units[43]	Residential Product Mix:	SF – CSD
Net Residential Density:	1-2 du/acre	Parks and Open Space%[44]:	≥ 50%
		Commercial: Neighborhood Serving	

[41] Additional units may be permitted through a transfer of development rights program or to provide affordable housing in excess of what is required by law. Unit counts may be further defined through the entitlement process in response to infrastructure and environmental constraints.

[42] The distinct boundaries of the parks and open space, specific location of the recreational uses, and the precise amenities will be further defined during the West Maui Community Plan Update and the project review and approval process.

[43] Additional units may be permitted through a transfer of development rights program or to provide affordable housing in excess of what is required by law. Unit counts may be further defined through the entitlement process in response to infrastructure and environmental constraints.

[44] The distinct boundaries of the parks and open space, specific location of the recreational uses, and the precise amenities will be further defined during the West Maui Community Plan Update and the project review and approval process.



Maui Island - Directed Growth Map W3

County of Maui

Maui Island Plan Directed Growth Map

Lahaina Town
W3

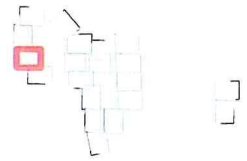
Legend

Growth Boundaries

- Urban
- Small Town
- Rural

Reference

- 2011 Parcels
- Primary Roads



Product Code: M-CCT_20121030-D2
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Background Image: Worldview 2 - 2010

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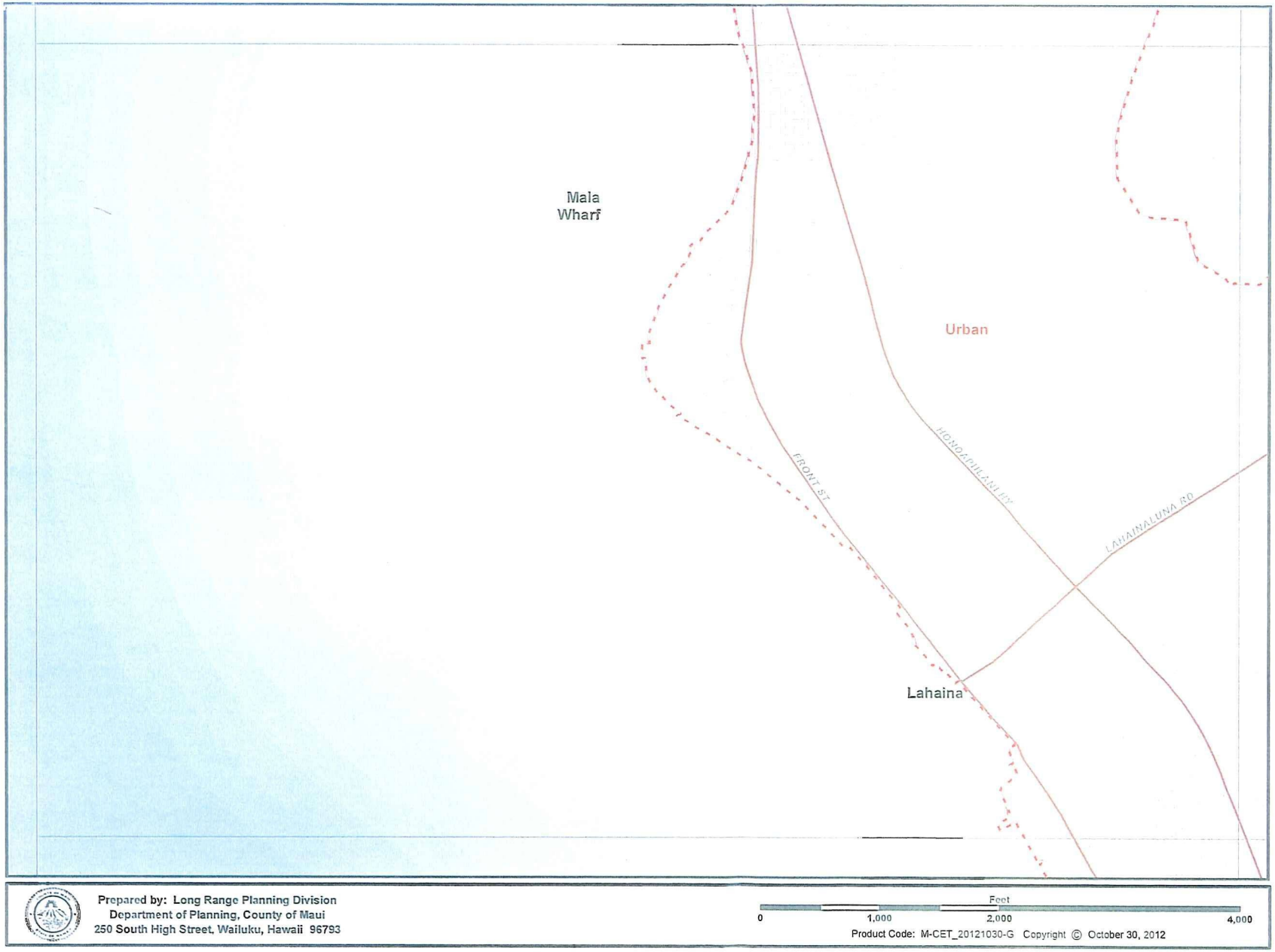
PREPARED BY:

Long Range Planning Division
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793



Maui Island Plan Directed Growth Boundaries

Legend

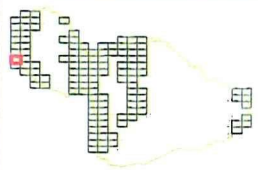
Growth Boundaries

- Urban
- Small Town
- Rural

Reference

- Primary Roads
- 2011 Parcels
- 100 Ft. Contours

This is not a zoning map.
Please contact the Planning Department for zoning confirmation



A-09

Mala

Prepared by: Long Range Planning Division
Department of Planning, County of Maui
250 South High Street, Wailuku, Hawaii 96793

Feet
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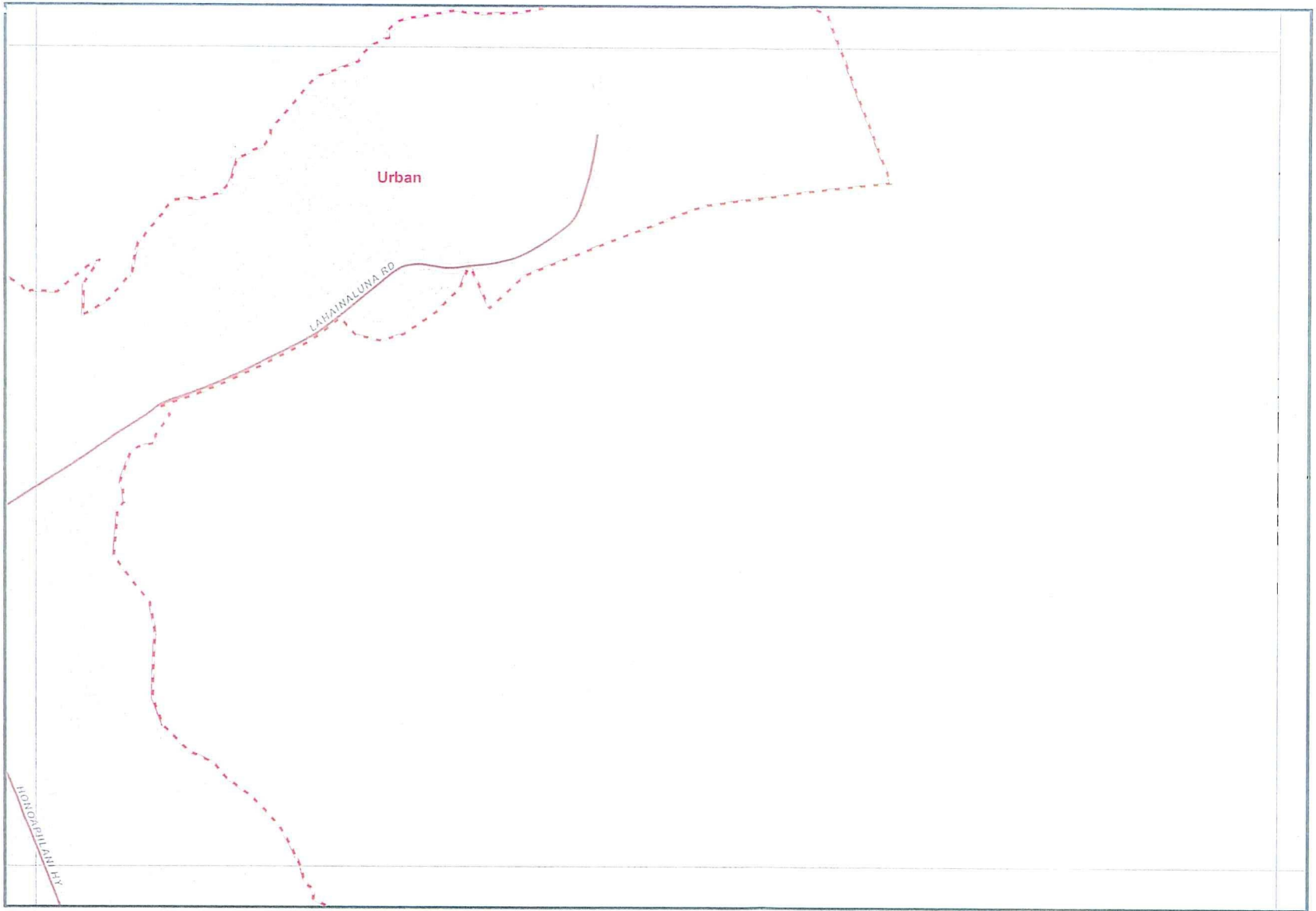


Maui Island Plan Directed Growth Boundaries

Legend

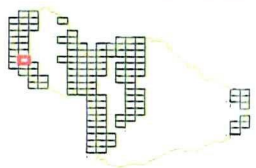
Growth Boundaries

- Urban
- Small Town
- Rural

Reference

- Primary Roads
- 2011 Parcels
- 100 Ft. Contours

This is not a zoning map.
Please contact the Planning Department for zoning confirmation



B-09

Lahainaluna

Prepared by: Long Range Planning Division
Department of Planning, County of Maui
250 South High Street, Wailuku, Hawaii 96793

Feet
0 1,000 2,000 4,000

DEPARTMENT OF PUBLIC WORKS

Adoption of Chapter 15-111
Rules for the Design of Storm Water Treatment
Best Management Practices

1. Chapter 15-111, entitled "Rules for the Design of Storm Water Treatment Best Management Practices", is adopted to read as follows:

EXHIBIT "43"

"TITLE MC-15

DEPARTMENT OF PUBLIC WORKS

SUBTITLE 01

DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS

CHAPTER 111

RULES FOR THE DESIGN OF STORM WATER TREATMENT BEST MANAGEMENT PRACTICES

SUBCHAPTER 1

GENERAL PROVISIONS

§15-111-1 Title. The rules in this title shall be known as the "Rules for the Design of Storm Water Treatment Best Management Practices." [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-2 Purpose. These standards shall establish controls on the timing and rate of discharge of storm water runoff to reduce storm water runoff pollution to the maximum extent practicable through the implementation of best management practices and engineering control facilities designed to reduce the generation of pollutants.

Long-term water quality is generally impacted by the volume and frequency of discharged pollutants. Therefore, the water quality of the ocean and other receiving waters would be impacted more by the runoff from smaller frequent storms or rainfall events, which are the sources of the large majority of the volume and frequency of storm water runoff, rather than large infrequent flood events. Consequently, water quality measures for a development should be designed to mitigate water quality impacts from small frequent storms. [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

SUBCHAPTER 2

CRITERIA AND STANDARDS

§15-111-3 Water quality criteria. (a) The purpose of the water quality criteria is to reduce the pollution associated with storm water runoff from new development and significant redevelopment.

(b) The department shall be responsible for the review and enforcement of these rules.

(c) These rules have been adopted to implement the provisions of sections 16.26B.3900 and 18.20.135, Maui County Code, as amended.

(d) The requirements of these rules shall apply as follows:

(1) Projects with a disturbed area of greater than one acre, must meet the specific criteria for sizing of storm water quality facilities. The disturbed area shall be determined by the director. The director may take into consideration all factors, including future construction, such as home construction, even if not immediately constructed with the development of the site improvements.

(2) Projects with a disturbed area of less than one acre, will be subject to approval of a site-specific best management practices ("BMP") plan to be proposed by the developer and approved by the director. These plans should consider and utilize appropriate BMP, including those described in these criteria as well as other non-structural control measures.

(3) All plans for storm water quality facilities on projects with a disturbed area over one acre shall be prepared by a civil engineer, licensed in the State of Hawaii.

(e) Low Impact Development (LID) techniques can be incorporated into site design to satisfy water quality criteria. LID is an approach to land development or redevelopment that is modeled after nature to manage storm water as close to its source as possible by using distributed small scale controls. This approach replicates a site's predevelopment hydrology by using techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source. Techniques are based on the premise that storm water management should not be seen as storm water disposal. Typical practices and controls include conservation of natural areas, bioretention cells, rain barrels, green roofs, permeable pavement, grassed swales, and commercially manufactured filtration or infiltration devices. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed.

(f) The director may exempt projects from the application of these rules if projects are determined to have submitted substantially completed construction drawings before these rules are approved.

(g) These criteria are required to be applied to runoff arising from a site and not from off-site runoff, unless the off-site runoff is entering the site as overland flow, and/or will not be separated from on-site runoff. If off-site runoff is to be conveyed through a water quality facility, then the facility must be designed to meet the requirements as described below for the combined on-site and off-site runoff volumes and/or rates.

(h) These are minimum requirements. If the department determines that additional controls and/or lower thresholds for developments are required to meet the specific water quality needs in watersheds that drain to sensitive receiving waters (as defined by the Hawaii State Department of Health Water Quality Limited Segments ["WQLS"], of Class 1 Inland Waters,

of Class AA Marine Waters), additional requirements may be imposed. These may include design requirements that result in larger facilities as well as additional types of structural or non-structural controls. The design solution will be contingent upon the pollutants that are found to be impacting such water bodies and the regulatory status of the water body.

(i) Water quality facilities shall remain privately owned and maintained unless dedication is approved by the Maui County Council.

(j) Parks may be utilized to satisfy water quality facility requirements, with concurrence of the appropriate County agencies.

(k) All water quality facilities will require regular maintenance to ensure their adequate performance. Applicants are required to submit a proposed maintenance plan. The plan should specify the frequency of inspection and maintenance that will occur and who will be responsible. [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-4 Criteria for sizing of storm water quality facilities. (a) The criteria can be met by:

(1) Either detaining storm water for a length of time that allows storm water pollutants to settle (detention treatment from such methods as extended detention wet and dry ponds, created wetlands, vaults/tanks, etc.);

(2) By use of filtration or infiltration methods (flow-through based treatment from such methods as sand filters, grass swales, other media filters, and infiltration);

(3) Short-term detention can be utilized with a flow-through based treatment system (e.g., a detention pond designed to meter flows

through a swale of filter) to meet the criteria; or

(4) Upstream flow-through treatment and detention treatment can be utilized.

(b) Other proposals to satisfy the water quality criteria may be approved by the director if the proposal is accompanied by a certification and appropriate supporting material from a civil engineer, licensed in the State of Hawaii, that verifies compliance with one of the following (by performance or design):

(1) After construction has been completed and the site is permanently stabilized, reduce the average annual total suspended solid ("TSS") loadings by eighty percent. For the purposes of this measure, an eighty percent TSS reduction is to be determined on an average annual basis for the two-year/twenty-four hour storm.

(2) Reduce the post development loadings of TSS so that the average annual TSS loadings are no greater than predevelopment loadings. [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-5 Management practices to meet criteria. (a) Detention based water quality control measures allow for the settling of fine particles and pollutants that are associated with these particles. Detention times for water quality control are typically much longer than for flood control. Although a detention system for water quality could be combined with a flood control system, the volume assigned for water quality control must meet minimum detention times. Therefore, this volume will typically not be available for peak rate volume control.

(1) The required design volume for detention based control is equal to the entire runoff volume that would occur from the area contributing to the detention facility with a one-inch rain storm.

(A) The runoff coefficient shall be determined from the following equation as developed by EPA for smaller storms in urban areas:

$C = 0.05 + (0.009) \times (IMP)$

C = Runoff coefficient

IMP = Impervious Area (surface areas which allow little or no infiltration, including pavements, roofs, etc.) for the tributary watershed, expressed as a percentage.

It shall be based upon the ultimate use of the drainage area, unless the water quality feature will be re-built/sized during subsequent phases of construction.

(B) The design storm for detention based water quality systems is a one-inch storm.

(C) The volume calculation will be computed as follows:

WQDV = C × 1" × A × 3630

WQDV = Water quality design volume in cubic feet

C = Runoff coefficient

A = Area of the site in acres

3630 = Conversion factor

(2) For water quality treatment to be effective, longer detention times are required.

(A) The draw-down (or draining) time for the detention volume, which is intended to drain down completely (vs. permanent wet volume), shall be greater than or equal to forty-eight hours. For the bottom half of the detention volume,

the draw-down time shall be greater than or equal to thirty-six hours.

(B) For detention based water quality controls with less than or equal to twenty acres of drainage area, the total draw-down time can be reduced to thirty-six hours, with the lower half of the detention volume draw-down time of twenty-four hours, if it can be demonstrated that the outlet sizing (e.g., outlet pipe diameter less than four inches) would not be practical.

(C) The detention system shall be designed to maximize the distance between the inlet and outlet, and to minimize "dead spaces" (areas where little or no exchange occurs during a storm event), thereby limiting short-circuiting. A minimum flow-path length to width ratio of three should be utilized.

(D) The outlet shall be sized to achieve the above required detention times. In addition, it shall be large enough that clogging is unlikely to occur. It should be four inches or larger in diameter. If this is not possible, the use of flow-through based measures as provided in subsection (c) should be considered, unless it can be demonstrated that clogging can be avoided.

(b) Flow-through based water quality control measures are measures where either the flow is passed with little or no storage through a filtration media or is infiltrated. In addition, there are measures or devices which utilize hydraulic particle separation techniques, however, these alone do not typically address the smaller sized fractions of solids which typically have a high proportion of other pollutants

such as copper and zinc attached to them that are desired to be removed.

(1) For flow-through treatment, flow-rate shall be calculated as follows:

(A) The runoff coefficient shall be determined from Tables 1, 2 and 3 of these rules.

(B) The required flow rate for treatment is the runoff that would be produced from a rainfall intensity of 0.4 inches per hour. This rate must be maintainable for a minimum of three hours (e.g., detention may be used to meter runoff through the flow-through water quality control measure at lower rates, but still meeting the criteria).

(C) Flow rate calculation shall be based upon the following:

WQFR = C × 0.4" × A

WQFR = Water quality flow rate in cubic feet per second

C = Runoff coefficient

A = Area of the site in acres

(2) For flow-through treatment, the level of treatment shall be addressed as follows:

(A) Infiltrated storm water shall be infiltrated through soils capable of filtering pollutants or other suitable media as described below in Other Filter prior to entering groundwater. Infiltration shall only be used where soil conditions and slope stability are suitable.

(B) Vegetated swales such as wetland/native plants and/or grass swales shall be designed so that at the water quality flow rate ("WQFR"), the swale width is such that the flow depth is no greater than four inches and the hydraulic grade line is no greater than two

percent, unless drop structures are employed, between structures. The inflow should be directed towards the upstream end of the swale as much as possible, but should at a minimum occur evenly over the length of the swale. The length of flow in the swale is a minimum of one hundred feet.

(C) Bioretention filters are vegetated, landscaped areas where runoff is directed through vegetation and soils for filtration. In most cases, unless there is shown to be adequate infiltration capacity, underdrains and overflow drains should be included to collect filtered runoff to discharge to the storm drainage system. The ponding depth should be six inches or less with a mulch layer of two to three inches. A sandy planting soil of two to three inches should be used. Each facility should have no more than one acre of tributary area, and should be designed to convey larger flows in a manner that does not cause re-entrainment of trapped materials.

(D) Other filters shall be accompanied by certification from a civil engineer, licensed in the State of Hawaii, that the filter device will remove a minimum of eighty percent TSS from the design flow rate.

(c) Short-term detention facilities may be combined with flow-through facilities to reduce the size of the flow-through facility. For example a detention basin may be employed to meter flows through a filtration system. The applicant must show that the combined system could sufficiently treat, as provided in subsection (b), storm water runoff for the runoff

produced by the flow-through treatment rate occurring each hour for a three-hour period.

(d) Flow-through based treatment may be located upstream from and combined with detention based treatment. The two treatment methods can be combined, to reduce the sizing of each. In this case, the flow-through treatment must be designed to treat the runoff produced from a minimum rainfall intensity of 0.2 inches per hour. The treated runoff shall then flow to a downstream detention system that is designed to capture and treat the entire runoff volume that would occur from the area contributing to the detention facility from a 0.6-inch rain storm. The upstream system must be designed so that larger flows will not re-entrain and mobilize materials previously deposited. [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-06 Water quality design standards. (a) Detention based storm water quality control facilities may be designed as follows:

(1) Wet ponds. The wet pond volume is equal to the water quality design volume and is entirely a permanent wet pond, where storm water exchanges with the pond water to achieve treatment. Detention time requirements do not apply.

(2) Dry extended detention ponds. The pond is normally dry, or has a small wet volume (less than ten percent of the total water quality design volume). Treatment is achieved by releasing flows over an extended period.

(3) Combination wet and extended detention ponds. The permanent wet volume of the pond is greater than ten percent of the total water quality design volume. In this case,

the detention time requirement applies to the extended detention volume.

(4) Storm water marsh. This pond is considered either a shallow combination wet and extended detention pond or a shallow wet pond, depending on the design. Detention time requirements apply to the extended detention volume.

(5) Figure 1 specifies the total extended storage and/or wet volume required for detention based water quality systems per tributary acre based upon the methodology as provided in section 15-111-3. The volume is affected by the percent imperviousness of a site. Minimizing the percentage of imperviousness will reduce the required sizes of water quality facilities.

(6) Figure 2 specifies the average outlet discharge rate from extended detention volumes to achieve the necessary detention times. This average outlet rate will then be used to design the outlet system. Figure 2 applies to all pond and marsh systems, except wet ponds or storm water marshes where the total volume is designed to be permanently wet. In addition, if combination ponds such as wet and extended detention include forty percent or more wet volume, the full to half full discharge rate may be applied to the entire extended detention volume. Otherwise, the volume difference between the permanent wet volume and the half full volume must be released at the half-full to empty discharge rate.

(7) For wet ponds and storm water marshes, the applicant must show a water balance that demonstrates that there will be sufficient dry weather flows to maintain the planned pool volume, without creating stagnate conditions.

(8) For dry extended detention ponds, the applicant must demonstrate that the pond will be able to handle dry-weather flows, such as irrigation return flows, without causing a nuisance such as visual eye sore or stagnate water.

(9) Detention based water quality facilities are recommended to be off-line from flood conveyance. If they are to be on-line or combined with a flood detention facility, then the facility must be designed to pass the appropriate flood without damage to the facility, as well as to minimize re-entrainment of pollutants. The water quality design must be based upon the entire tributary area to the facility.

(b) Flow-through based storm water quality facilities include filtering facilities such as vegetated swales, sand and peat filter, commercial filters, and infiltration facilities. The facility must be able to completely treat the flow rate as determined from Figure 3. Flows above this rate can either be by-passed, or routed through the facility if it can be demonstrated that velocities will not re-entrain captured pollutants.

(c) Short-term detention may be combined with flow-through based water quality control. In this case, detention may be utilized to "meter" flows through a flow-through water quality facility, and thereby reducing sizing of the flow-through facility. Figure 4 presents the flow-through treatment rate required, selected with appropriated detention, for four levels of upstream detention and outlet control. The detention volume in cubic feet per acre would be determined using Figure 1 or the equation in section 15-111-5(a), and modified by the ratio of the chosen detention volume, expressed as rainfall depth in inches, divided by the one inch design storm. The outlet from the detention facility to the treatment facility must be designed to discharge at the selected

water quality rate, which is the runoff produced by 0.4 inches of rain per hour minus one-third of the appropriate detention volume expressed in inches of rain per hour at a maximum. The chart is based upon the requirement to be able to treat flows from 0.4 inches of rainfall per hour for up to three hours, if detention is planned upstream.

(d) Flow-through based treatment may be located upstream from and combined with detention based treatment. The two treatment methods can be combined, to reduce the sizing of each. In this case, the flow-through treatment must be designed to treat the runoff produced from a minimum rainfall intensity of 0.2 inches per hour and therefore results from Figures 1, 2, and 3, or as provided in sections 15-111-5(a) and (b), must be scaled accordingly." [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

Design Charts.

Figure 1
Required Water Quality Design Volume for
Detention Based Systems

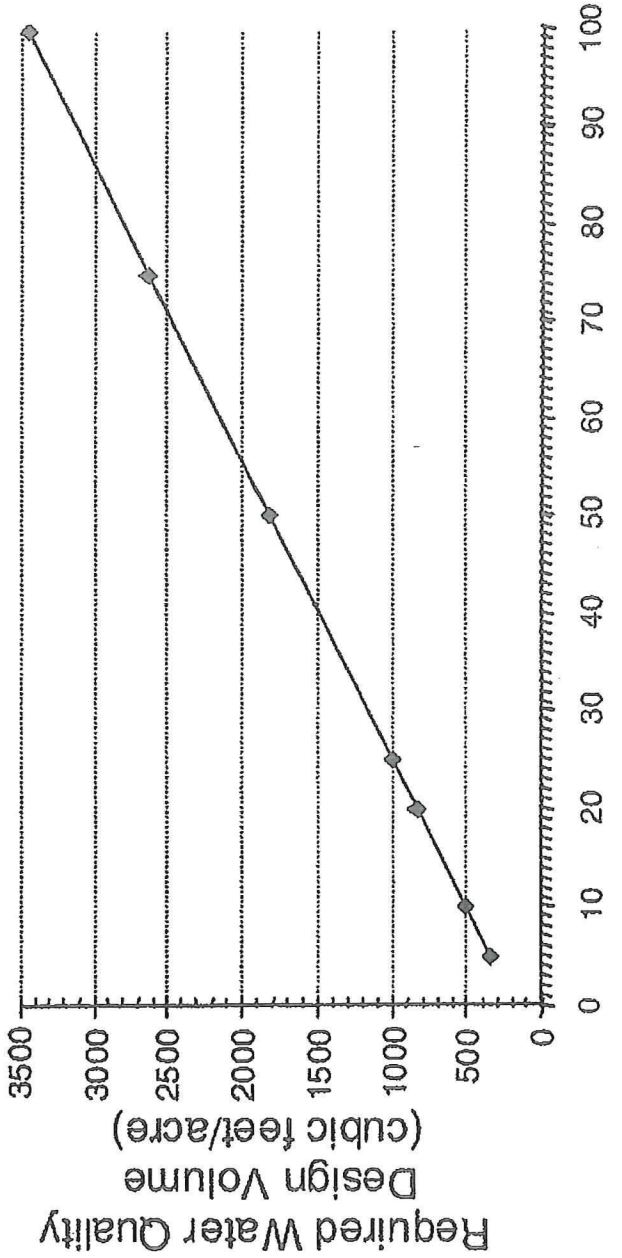


Figure 2: Required Average Outlet Discharge Rates for Extended Detention Volume

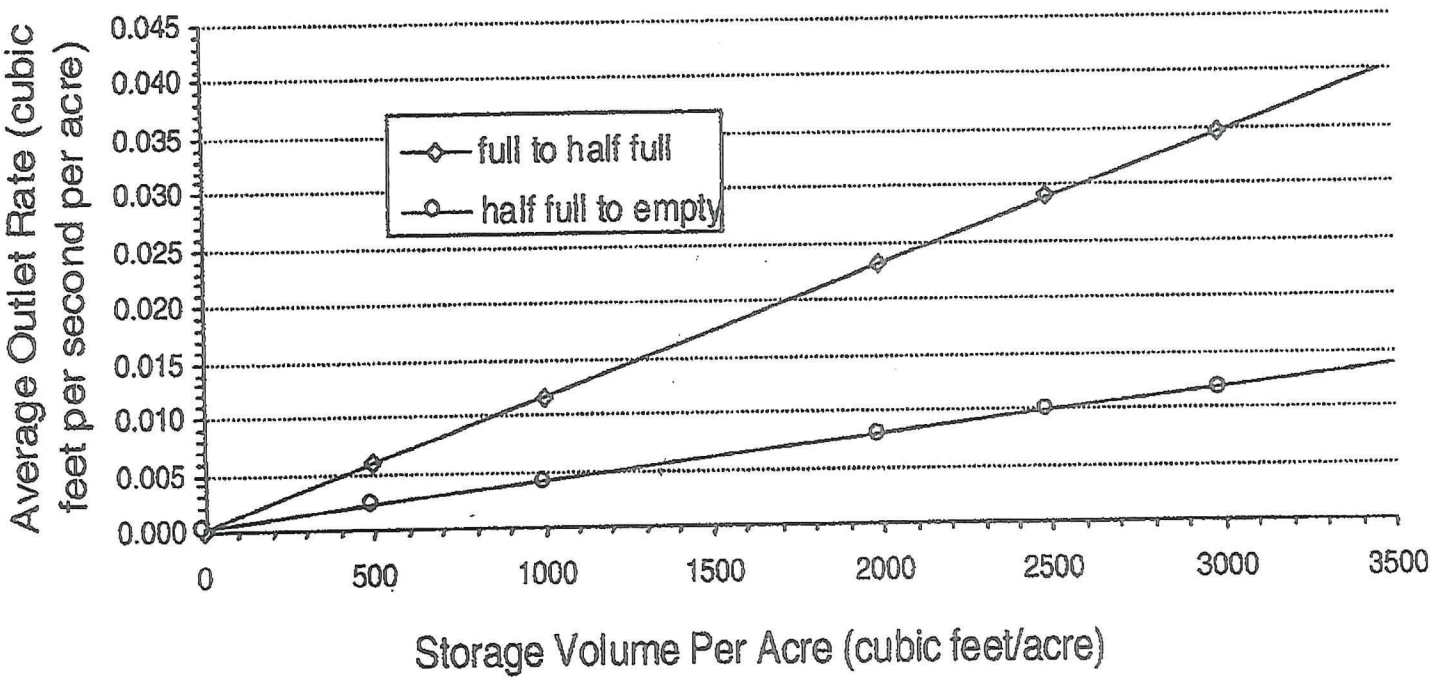


Figure 3
Required Flow-through Based
Storm Water Quality Control Flow Rate

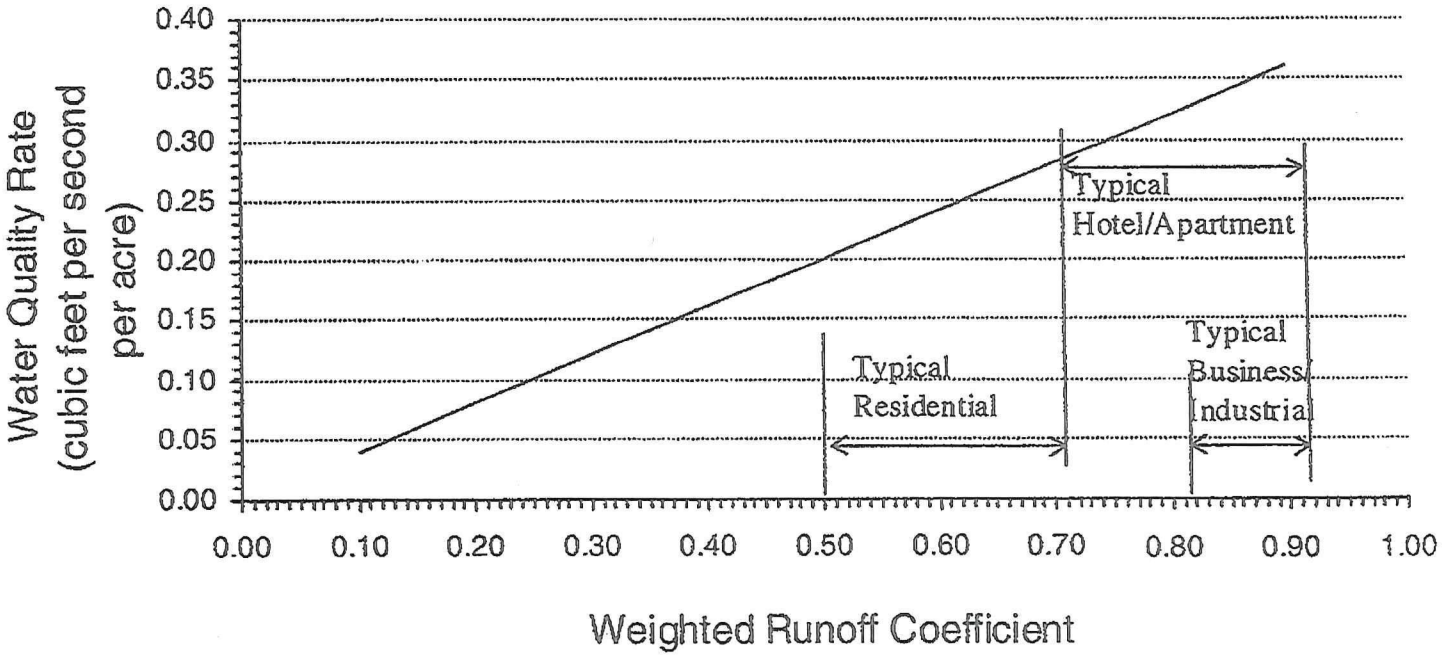


Figure 4: Flow-through Based Water Quality Flow Rate with Upstream Detention Volume

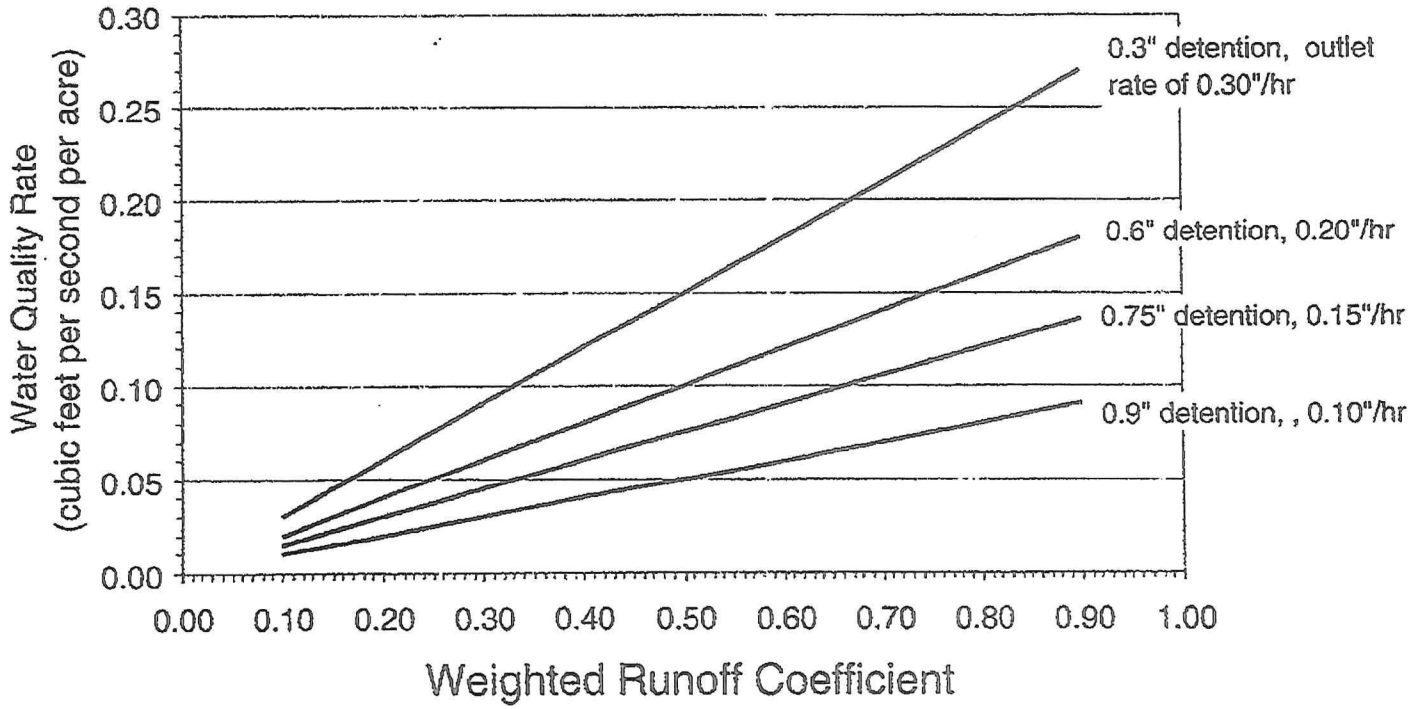


TABLE 1

GUIDE FOR DETERMINATION OF RUNOFF COEFFICIENTS FOR BUILT-UP AREAS

WATERSHED CHARACTERISTICS	EXTREME	HIGH	MODERATE	LOW
INFILTRATION	NEGLIGIBLE 0.20	SLOW 0.14	MEDIUM 0.07	HIGH 0.0
RELIEF	STEEP (>25%) 0.08	HILLY (15-25%) 0.06	ROLLING (5-15%) 0.03	FLAT (0-5%) 0.0
VEGETAL COVER	NONE 0.07	POOR (<10%) 0.05	GOOD (10-50%) 0.03	HIGH (50-90%) 0.0
DEVELOPMENT TYPE	INDUSTRIAL & BUSINESS 0.55	HOTEL-APARTMENT 0.45	RESIDENTIAL 0.40	AGRICULTURAL 0.15

Note: The design coefficient "C" must result from a total of the values for all four watershed characteristics of the site.

TABLE 2

TYPICAL RUNOFF COEFFICIENTS

TYPE OF DRAINAGE AREA	RUNOFF COEFFICIENT C
PARKS, CEMETERIES	0.25
PLAYGROUNDS	0.35
RAILROAD YARD AREAS	0.40
UNIMPROVED AREAS	0.30
STREETS	
ASPHALTIC	0.95
CONCRETE	0.95
BRICK	0.85
DRIVEWAY AND WALKS	0.85
ROOFS	0.95
LAWNS:	
SANDY SOIL, FLAT (2%)	0.10
SANDY SOIL, AVERAGE (2-7%)	0.15
SANDY SOIL, STEEP (7%)	0.20
HEAVY SOIL, FLAT (2%)	0.17
HEAVY SOIL, AVERAGE (2-7%)	0.22
HEAVY SOIL, STEEP (7%)	0.35

TABLE 3

MINIMUM RUNOFF COEFFICIENTS FOR BUILT-UP AREAS

TYPE OF DEVELOPMENT	RUNOFF COEFFICIENT C
RESIDENTIAL AREAS	0.55
HOTEL, APARTMENT AREAS	0.70
BUSINESS AREAS	0.80
INDUSTRIAL AREAS	0.80

Note: Soil type, open space, ground cover, and slope shall be considered in arriving at reasonable and acceptable runoff coefficients.

2. Chapter 15-111, Rules for the Design of Storm Water Treatment Best Management Practices, shall take effect ten days after filing with the Office of the County Clerk, except that these standards shall not apply to structures or work referenced in Section 16.26B.3900, Maui County Code, until that section takes effect as provided by Ordinance Number 3928 (2012).

ADOPTED THIS 9th day of November, 2012.

COUNTY OF MAUI

DAVID C. GOODE
Director of Public Works

ALAN M. ARAKAWA
Mayor
County of Maui

Approved this 9th day of November, 2012.

APPROVED AS TO FORM
AND LEGALITY:

MICHAEL J. HOPPER
Deputy Corporation
County of Maui
S:\ALL\MJH\Public Works\Rules\Storm Water Treatment Ch15-111 2012_Final 6-6-12.doc

Received this 15th day of November, 2012.

JEFFREY T. KUWADA
County Clerk
County of Maui

CERTIFICATION

I, DAVID C. GOODE, Director of Public Works, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules for the Design of Storm Water Treatment Best Management Practices, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the day of November 9, 2012, following a public hearing that closed on September 10, 2012, and which were filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in The Maui News on August 10, 2012.

DAVID C. GOODE
Director of Public Works

154. It is likely that agricultural or habitation pursuits of significance occurred in the Petition Area before the land was used for sugar cane production. (Lee Amended Testimony at p. 6, 8/01/2012/).

158. While Petitioner asserts 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; evidence was presented that refuted this analysis and the existence of a libation stone and assemblage of large stones suggests that the area may have contained significant features. (TR 10/5/12 at pp. 91-93; Petitioner Ex. 41;

169. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. There remain unresolved issues regarding the potential impacts from stormwater discharge from the Petition Area to water quality in the Kahoma Stream and nearshore coastal waters where customary and traditional practices take place. Therefore, the Commission cannot determine the effects of the proposed reclassification on such practices. (Lee Amended Testimony at p. 1-6, 8/01/2012).

171. Reclassification of the Petition Area may have a significant impact on the maintenance of valued cultural, historical or natural resources. (Lee Amended Testimony at p. 3-4, 8/01/2012).

172. There remains an unresolved dispute regarding the possible existence of burial sites and a heiau within the boundaries of the Petition Area. Therefore, the Commission cannot determine the extent of impacts to such rights and any appropriate protective measures to mitigate those impacts. (Lee Amended Testimony at p. 1-6, 8/01/2012)

190. Without an audited financial statement the Commission cannot determine whether the Petitioner has the economic ability to carry out its representations and commitments relating to the Project.

Conclusions of Law

7. The Petition Area includes lands with open area recreational facilities and therefore it meets the standards for determining the boundaries of the State Land Use Agricultural District in accordance with Section 205-2(d), and Section 15-15-19, HAR.

8. Pursuant to Section 205-17(5), HRS, in its review of any petition for reclassification the Commission shall specifically consider "[T]he county general plan and all community, development, or community development plans adopted pursuant to the county general plan, as they relate to the land that is the subject of the reclassification petition." In addition, pursuant to Section 15-15-77(b)(4), HAR, the Commission shall give consideration to general plan of the county in which the land is situated. The County of Maui 's West Maui Community Plan designates the Property as "Open Space" and its County Zoning designation is "Agricultural." The proposed reclassification is not consistent with either the current Maui County Community Plan land use designation or County zoning.

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served by depositing same in the United States mail, postage prepaid, to the following at their last known address:

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DATED: Kahului, Hawai`i, JAN 22 2013.

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