



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII  
2013 MAY -3 P 1:26

In The Matter Of The Petition Of	)	DOCKET NO. A12-796
	)	
WAIKŌ INDUSTRIAL INVESTMENT,	)	FINDINGS OF FACT, CONCLUSIONS
LLC	)	OF LAW, AND DECISION AND
	)	ORDER; AND CERTIFICATE OF
To Amend The State Land Use Agricultural	)	SERVICE
District Boundary Into The State Land Use	)	
Urban District For Approximately 31.222	)	
Acres Of Land At Waikapū, Wailuku,	)	
Maui, Hawai'i, Tax Map Key: 3-8-007: 102	)	

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.

May 3, 2013 by

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by several loops and a long horizontal stroke.

Executive Officer



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

WAIKŌ INDUSTRIAL INVESTMENT, LLC, a Washington limited liability company ("Petitioner"), filed a Petition for Land Use District Boundary Amendment ("Petition") on September 13, 2012, and a First Amendment to Petition for District Boundary Amendment Filed September 13, 2012 ("First Amendment to Petition"), on October 9, 2012, pursuant to chapter 205, Hawaii Revised Statutes ("HRS"), and chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the land use district boundary to reclassify approximately 31.222 acres of land at Waikapū, Wailuku, Maui, Hawai'i, identified by Tax Map Key ("TMK"): 3-8-007: 102 ("Petition

Area" or "Lot 1-C"), from the State Land Use Agricultural District to the State Land Use Urban District for an approximate 41-lot light industrial subdivision ("Project").

The State of Hawai'i Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and arguments of counsel presented during the hearing; the comments and objections filed by the State of Hawai'i Office of Planning ("OP"); the joinder filed by the County of Maui Department of Planning ("DP"); and Petitioner's response to OP's comments and objections filed thereto, hereby makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On September 13, 2012, Petitioner filed the Petition, Petitioner's Exhibits "1" through "8," Petitioner's filing fee of \$500 for the Petition, and Certificate of Service.<sup>1</sup>
2. On September 13, 2012, Petitioner filed the Affidavit of Service of Petition for District Boundary Amendment and Certificate of Service upon OP as well as the DP and the Office of the Corporation Counsel (collectively "County").
3. On September 17, 2012, Petitioner filed its Affidavit of Mailing (Notification of Petition Filing); Exhibits "A" and "B"; and Certificate of Service.

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<sup>1</sup> Petitioner's Exhibit "1" is the Final Environmental Assessment ("FEA") for the Project. On July 10, 2012, the County of Maui Planning Commission ("Planning Commission") accepted the FEA and issued a finding of no significant impact.

4. By letter dated September 26, 2012, the Executive Officer of the Commission requested Petitioner to submit additional information and address certain deficiencies in the Petition.

5. On October 9, 2012, Petitioner filed the First Amendment to Petition, Verification, Appendix J-1, Exhibits "9" through "11," and Certificate of Service.

6. By letter dated October 16, 2012, the Executive Officer of the Commission deemed the Petition a proper filing as of October 16, 2012.

7. On November 2, 2012, the Executive Officer of the Commission conducted a prehearing conference at the Courtyard Maui Kahului Airport, 532 Keolani Place, Kahului, Maui, Hawai'i, with representatives of Petitioner, OP, and County.

8. On November 8, 2012, the Commission issued its Prehearing Order.

9. On November 19, 2012, the County submitted its Statement of Position in support of the Project.

10. On November 21, 2012, the County filed its List of Witnesses, List of Exhibits, Exhibits "1"-"4," and Certificate of Service.

11. On November 21, 2012, OP submitted its Statement of Position in support of the Project, List of Witnesses, List of Exhibits, Exhibits "1," "3" through "5" and "8," and Certificate of Service.

12. On November 21, 2012, Petitioner submitted its List of Witnesses, List of Exhibits, Exhibits "1" through "51," and Certificate of Service.

13. On November 29, 2012, the County filed its List of Witnesses, List of Exhibits, Exhibits "1" through "4," and Certificate of Service.

14. On November 30, 2012, OP filed its Testimony in Support of Petition with Conditions.

15. On November 30, 2012, Petitioner filed its Written Direct Testimony of Witnesses consisting of Exhibits "28," "32," "34," "36," "39," "41," "43," "45," "47," and "49"; Rebuttal List of Witnesses and Rebuttal List of Exhibits; and Certificate of Service.<sup>2</sup>

16. On December 3, 2012, the County filed the written testimony of William R. Spence, Director, DP; the written testimony of Kyle K. Ginoza, Director, County of Maui Department of Environmental Management ("DEM"); Amended List of Exhibits; Exhibit "3";<sup>3</sup> and Certificate of Service.

17. On December 6, 2012, the Commission conducted a site visit to the Petition Area.

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<sup>2</sup> The only named rebuttal witness was David A. Nobriga. His written testimony was listed as Exhibit "52."

<sup>3</sup> Exhibit "3" was previously filed on November 29, 2012.

18. On December 7, 2012, Petitioner filed its Withdrawal of Petitioner's Rebuttal List of Witnesses and Rebuttal List of Exhibits, Filed on November 30, 2012.<sup>4</sup>

19. On January 18, 2013, the Notice of Hearing on the Petition was published in *The Maui News*, *The Honolulu Star-Advertiser*, *West Hawaii Today*, *Hawaii Tribune-Herald*, and *The Garden Island*, which noticed the commencement of the hearing on the Petition on February 21, 2013, at the Haleakalā Room, Courtyard Maui Kahului Airport, Kahului, Maui, Hawai'i 96732.

20. On January 22, 2013, Petitioner filed its Affidavit of Mailing of Notice of Hearing; Exhibits "A", "B," and "C," and Certificate of Service.

21. On January 25, 2013, Petitioner filed a Notice of Appearance of Counsel for Petitioner and Certificate of Service.

22. On February 4, 2013, Petitioner filed its Affidavit(s) of Publication and Certificate of Service.

23. On February 21, 2013, the Commission opened the hearing on the Petition at the Haleakalā Room, Courtyard Maui Kahului Airport, 532 Keolani Place, Kahului, Maui, Hawai'i. Entering appearances were Gregory Garneau, Esq., Carlsmith Ball LLP, and Charles Jencks for Petitioner; Deputy Corporation Counsel James A.

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<sup>4</sup> By this filing, Petitioner effectively withdrew David A. Nobriga as its rebuttal witness and Exhibit "52" as its rebuttal exhibit.

Giroux and Planning Director William Spence for the County; and Planning Program Administrator Rodney Funakoshi and Deputy Attorney General Bryan Yee for OP.

24. Roderick Fong (Fong Construction Company), Perry Artates (Hawai'i Operating Engineers Industry Stabilization Fund), and Randy Piltz provided public testimony in support of the Project.

25. Petitioner provided the testimonies of the following witnesses: Charles Jencks, Vince Bagoyo, Glenn Kunihi, Phillip Rowell, and Erik Fredericksen.

26. Petitioner filed its Supplemental List of Exhibits and Exhibits "53" through "57." Petitioner moved to admit Exhibits "1" through "7," and Exhibits "9" through "57" with the exclusion of Exhibits "30," "50," and "51." Exhibit "52" had been previously withdrawn from the proceedings. Without objection by the parties, the Commission admitted into evidence Petitioner's Exhibits "1" through "7" and "9" through "57" excluding Exhibits "30," "50," and "51."

27. OP provided the testimony of Rodney Funakoshi.

28. The Commission, upon motion of the County and without objection, admitted into evidence County's Exhibits "1" through "4."

29. The Commission, upon motion of OP and without objection, admitted into evidence OP's Exhibits "1" through "5" and "8," as OP Exhibits "6," "7," "9," and "10" were not filed or admitted into evidence.

30. Following the completion of the parties' respective cases-in-chief, the Commission closed the evidentiary portion of the hearing.

31. On April 3, 2013, the parties filed a Stipulation to Clarify the Record as to Petitioner Waikō Industrial Investment, LLC's Exhibit "8," Exhibit "38," and Exhibit "52" ("Stipulation"). By the Stipulation, the parties stipulated and agreed that (a) Petitioner acknowledged the submission of Exhibit "8," which was moved into the record and admitted into evidence without objection by the parties; and (b) the record is clarified to reflect that Petitioner's Exhibit "38" was reserved but not used and Exhibit "52" was identified and withdrawn.

32. On April 18, 2013, the Commission met at the Haleakalā Room, Courtyard Maui Kahului Airport, 532 Keolani Place, Kahului, Maui, Hawai'i, to hear oral argument and conduct decision-making on the Petition. At the meeting, Petitioner requested that the Commission take judicial notice of County of Maui Ordinance No. 4004 amending chapter 2.80B, Maui County Code, Relating to the Maui Island Plan. The Commission, without objection, took official notice of Ordinance No. 4004 and admitted it into evidence as part of the record in this docket pursuant to section 15-15-63(k), HAR. Following discussion on the findings of fact and conditions further agreed to by the parties beyond their respective filings, a motion was made and seconded to grant the Petition. There being a vote tally of 6 ayes, 0 nays, and 3 excused, the motion carried.



### DESCRIPTION OF THE PETITION AREA

33. The Petition Area is located in Waikapū, Wailuku, Maui, Hawai`i. The Petition Area consists of approximately 31.222 acres, and is identified by TMK: 3-8-007: 102.

34. The Petition Area is adjacent to an existing light industrial subdivision known as the Consolidated Industrial Baseyard and East Waikō Road. To its north and east are undeveloped pasture lands, and to the south is Kūihelani Highway.

35. Approximately four acres of the Petition Area are currently being utilized for storage of construction equipment and materials storage facility through an approved State Special Use Permit and County Conditional Permit applicable to the Petition Area. The remaining portion of the Petition Area is vacant and is covered with kiawe trees, guinea grass, and buffelgrass.

36. Fee simple ownership of the Petition Area is vested in Petitioner. Therefore, Petitioner has standing to file the Petition pursuant to section 205-4(a), HRS, and section 15-15-46(3), HAR.

37. The topography of the Petition Area is generally flat. The western section of the Petition Area slopes down in a west to east direction with an average slope of 3 percent. The eastern section of the Petition Area slopes down in a west to east direction with an average slope of approximately 2 percent.

38. As indicated by the Flood Insurance Rate Map of the Federal Emergency Agency for the County of Maui, the Petition Area is located within Zone X. Flood Zone X represents areas outside of the 0.2 percent annual chance flood plain.

39. According to the Soil Survey of Islands of Kaua'i, O'ahu, Maui, Moloka'i, and Lāna'i, State of Hawai'i (August, 1972), prepared by the United States Department of Agriculture, Soil Conservation Service, the Petition Area is classified entirely within the Pu'uone sand series, which consists of loose sandy soil over subsurface lithified sand layers. It is characterized as having rapid permeability above the cemented layer, slow runoff, and a moderate to severe wind erosion hazard where vegetation has been removed. The Petition Area also consists of 'Ewa silty clay loam.

40. The State of Hawai'i Department of Agriculture ("DOA") has established three categories of Agricultural Lands of Importance to the State of Hawai'i ("ALISH"). These categories include the following: (a) "Prime" agricultural lands, which have soil quality, growing season, and moisture supply needed to produce sustained high yield of crops economically when treated and managed according to farming methods; (b) "Unique" agricultural lands, which have the special combination of soil quality, location, growing season, and moisture used to produce sustained high quality and of high yields of specific crop when treated and managed according to modern farming methods; and (c) "Other" important agricultural lands, which are lands other than Prime or Unique agricultural lands that are also of statewide or local

importance for agricultural use. The Petition Area falls within the Other important agricultural lands category.

41. The University of Hawai'i Land Study Bureau ("LSB") classified the productivity of the land underlying the Petition Area as "E" on a rating scale that runs from "A," considered to be land of the highest productivity, to "E," considered to be land of the lowest productivity.

42. The Petition Area is located away from the coastline in central Maui.

#### PROPOSAL FOR RECLASSIFICATION

43. The Petition Area will be developed into an approximate 41-lot light industrial subdivision.

44. Petitioner intends to subdivide the Petition Area, creating lots ranging in size from 10,000 square feet to 78,000 square feet along with an 8.5-acre parcel. The improved lots will be sold or leased to interested users. The Project's intended market will be small light industrial users, i.e., local owner-users who now have an opportunity to develop and occupy their own properties.

45. Estimated sales prices for each fee simple lot are currently projected to be in the range of \$40 to \$45 per square foot. Final sales prices and lease prices will depend on market demand and conditions.

46. Subdivision improvements include construction of internal roadways, drainage retention systems, utilities, private wastewater system, site grading work, and offsite roadway improvements.

47. Petitioner represented that there will be no apartments in the Project.

48. The Petition Area consists of two separate portions: one area, located along the Kūihelani Highway, is an 8.5-acre portion of the Petition Area proposed for commercial use; and a second area, located mauka of the existing Consolidated Baseyards subdivision, proposed for light industrial use.

49. Construction of the subdivision improvements and related infrastructure improvements is anticipated to begin as soon as all permitting approvals have been received and will take approximately 12 months to complete.

50. The estimated cost of the Project (excluding vertical construction) is approximately \$8 million to \$10 million.

51. Petitioner represented that it would implement the mitigation measures recommended by its consultants within the FEA or better or equivalent mitigations that might be available in the future.

52. Petitioner represented that the proposed conditions in OP's written testimony are acceptable.

### PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

53. Petitioner's financial statement as of December 31, 2011, reflects total consolidated assets of \$2,058,097.40.

54. Petitioner intends to finance infrastructure improvements through a conventional loan from a commercial lending institution.

55. Based on Petitioner's ownership of the Petition Area, substantial equity in the Petition Area, current financial position, and favorable financing from various commercial institutions, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project.

### STATE AND COUNTY LAND USE DESIGNATIONS

56. The Petition Area is currently designated in the State Land Use Agricultural District.

57. The Wailuku-Kahului Community Plan designates the Petition Area as "Agriculture."

58. The Petition Area is currently zoned "Agricultural" by Maui County zoning.

59. The Petition Area is not located within the County of Maui's Special Management Area.

## NEED FOR THE PROJECT

60. ACM Consultants, Inc., prepared a market study for the Project effective March 15, 2011.

61. The Central Maui region of Wailuku and Kahului has seen growth in population over the past decade and is the hub of commercial activity, transportation, and employment for Maui County.

62. There is a lack of suitable vacant land in Central Maui. Upon economic recovery, prices for vacant land and rental rates for industrial land and commercial space are expected to rise significantly.

63. The Project will focus on industrial users in the market, a segment that has been largely under-served over the years. Typical industrial tenants may include plumbers, electricians, contractors, building suppliers, wholesalers, fabrication companies, auto repair companies, warehousing companies, trucking companies, and similar type businesses.

64. The majority of the lots in the Project will be small, and therefore well-suited to the small owner-user, or the lots may be combined for larger industrial businesses.

65. The Project is expected to be well received by the market.

66. There is a need and demand for additional light industrial land to satisfy current and future demand in Wailuku and Kahului.

## ECONOMIC IMPACTS

67. The Project will have a direct beneficial effect on the local and State economy, including the generation of general excise and real property tax revenues through increased employment opportunities in construction, construction-related, and real estate jobs.

68. In addition to revenues generated for the subdivision improvements, it is anticipated that the vertical construction of buildings for the individual lots would also support the local construction industry, with an estimate of over \$75 million for lot buildout.

69. The Project is expected to have a positive impact on employment within the State of Hawai'i and the County of Maui, both directly and indirectly, as opportunities for future owners and tenants are created.

70. Employment for business operations is anticipated to be one employee per 1,000 square feet of light industrial floor space. This equates to a total of approximately 66 to 106 jobs per year based on a 5-year to 8-year buildout of the subdivision.

## SOCIAL IMPACTS

71. The Project should not affect population as the Project is not considered a population generator that would typically impact educational, social, and recreational services and/or extend the current limits of police, fire, and emergency

medical services. Most potential commercial users are expected to come from existing light industrial complexes.

## IMPACTS UPON RESOURCES IN THE AREA

### Agricultural Resources

72. The Petition Area is presently fallow and undeveloped, except for approximately four acres which are currently used for storage of equipment and construction materials and a small portion used as a livestock feedlot and pasture uses.

73. The DOA expressed concern that the feedlot is the only one on Maui and has helped ranchers feed their cattle. Petitioner represented that Mr. Nobriga of Nobriga's Ranch, Inc., which operates the feedlot on a portion of the Petition Area, is in discussions with A&B Properties, Inc., regarding relocation to another property.

74. Development of the Petition Area affects a relatively small amount of farm land that is poorly suited for agriculture – approximately 31.222 acres that are classified by the Land Study Bureau as "E," the lowest class of productivity.

75. The reclassification of the Petition Area will not substantially impair actual or potential agricultural production in the vicinity of the Petition Area or in the county or State.

### Flora and Fauna

76. Robert W. Hobdy, Environmental Consultant, conducted a biological resources survey of the Petition Area dated December 2010. The survey



included a botanical survey report and a fauna survey report. Both reports utilized the walk-through survey method to ensure complete coverage of the Petition Area.

77. Vegetation throughout much of the Petition Area is characterized by primarily buffelgrass, guinea grass, and kiawe.

78. There are no known significant habitats, or rare, endangered, or threatened species of flora or fauna in the Petition Area.

79. The Project is not expected to have a significant negative impact upon wetland areas or on the biological resources of the Petition Area.

#### Archaeological and Historical Resources

80. Xamanek Researches LLC ("Xamanek") prepared an archaeological assessment ("AA") of the Petition Area dated August 23, 2011.

81. The AA included historic background research and settlement pattern analysis prior to fieldwork, a complete pedestrian survey, subsurface testing, and reporting.

82. All accepted standard archaeological procedures and practices were followed during the course of the field work on the Petition Area.

83. Xamanek prepared the AA in compliance with section 13-275-276, HAR, and Maui County guidelines, rules, and recommendations.

84. The AA has been accepted by the State of Hawai'i Department of Land and Natural Resources ("DLNR"), State Historic Preservation Division ("SHPD") (Doc. No. 1205TD05).

85. The goals of the AA were to determine the existence of any historic properties on the Petition Area, assess the significance of any identified historic properties/sites, and to provide recommendations to the SHPD concerning any mitigation on the Petition Area during the development of the Project.

86. The Petition Area consists of Aeolian sand dunes with meandering alluvial stream deposit.

87. Prior uses of the Petition Area included the following: (a) pasture land for horses and cows; (b) construction or farming baseyards; (c) sand mining areas; (d) stockpiling of sand, rock, dirt and gravel; (e) ponds; (f) cattle feed lots; and (g) a utility line easement.

88. Much of the land is currently heavily utilized as baseyards with various large stockpiles as well as cattle feed lots and associated settling ponds.

89. A majority of the Petition Area has been previously disturbed through grading, grubbing, sand mining, and agricultural activity.

90. Archaeological fieldwork consisted of surface and subsurface investigation.

91. Subsurface testing consisted of 20 mechanical backhoe test trench excavations across accessible areas through the Petition Area.

92. Subsurface testing for certain portions of the Petition Area was not possible due to two active cattle feedlots (including settling ponds), a graded access roadway, and selected areas where pipelines, high voltage, or other inaccessible areas were present.

93. All backfill material was visually inspected by the archaeologist and exposed sidewalls were examined.

94. Following the test excavations, a representative wall from subsurface test trenches was hand scraped with a trowel to aid in documentation.

95. Standard recordation methods were followed.

96. In general, the Petition Area is located within an area that contains human burials; however, no significant surface or subsurface cultural remains were identified during the AA.

97. Complete surface inspection of accessible areas occurred and 20 mechanical backhoe test trenches were excavated to assess surface and subsurface conditions.

98. Visual observation of the mechanical excavation and inspection of the backfill did not reveal any significant cultural material.

99. No historic properties were identified within the Petition Area during the conduct of the AA work.

100. Based on the results of the AA, no further archaeological work is warranted on the Petition Area as archeological monitoring is the recommended mitigation for the Project.

101. An archaeological monitoring plan for the Project has been approved by SHPD. In compliance with this plan, Petitioner will conduct archaeological monitoring in conjunction with all earth altering activities related to the Project.

102. Under the archaeological monitoring plan, in the event that archaeological remains or cultural materials are encountered during construction and/or earth altering activities, work in the vicinity of the find will be halted and appropriate protocols will be followed in coordination with SHPD.

103. Under the archaeological monitoring plan, Petitioner is required to contact SHPD for direction on the treatment of inadvertent discoveries and to establish appropriate mitigation measures in accordance with State preservation law and applicable administrative rules, including chapter 6E, HRS.

104. For inadvertent discoveries, the archaeological monitoring plan requires Petitioner to coordinate treatment activities with the Maui/Lānaʻi Islands Burial Council and to contact the Office of Hawaiian Affairs.

### Cultural Resources

105. Xamanek prepared a cultural impact assessment for the Project dated September 20, 2011.

106. The cultural impact assessment involved an extensive literature and records review of historical and contemporary sources discussing the area surrounding the Petition Area, including, but not limited to, a review of the following: (a) the AA for the Project; (b) the archaeological monitoring plan for the Project; and (c) other archaeological inventory surveys for portions of the larger area surrounding the Petition Area.

107. The objectives of the cultural impact assessment were to interview and obtain information from local informants who would provide a cultural context for the Petition Area, as well as to describe potential impacts, if any, from the development of the Petition Area, including measures to mitigate impacts, if necessary.

108. There are no specific traditional Native Hawaiian cultural uses or practices at the Petition Area. Therefore, the Project will not have any adverse effect upon Native Hawaiian traditional and customary rights, which would require protection under Article XII, section 7, of the Hawai'i State Constitution.

### Groundwater and Surface Water Resources

109. The Kahului Aquifer System underlies the Petition Area. The State Commission on Water Resources Management ("CWRM") has set the sustainable yield

of this aquifer at 1 million gallons per day ("MGD") based on rainfall recharge on approximately half of the aquifer's total area.

110. The Kahului Aquifer has been pumped for many years at 45 MGD and is presently pumped at between 25 and 30 MGD without increased salinity or water level decline. This is possible because the CWRM's sustainable yield assessment does not include the aquifer's most important sources of recharge, such as groundwater underflow from Haleakalā and from the West Maui Mountains, surface runoff from both of these mountains out onto the Kahului isthmus, irrigation return flow from the Hawaiian Commercial & Sugar Company ("HC&S") sugarcane fields, leakage from HC&S ditch systems, and leakage from Wai'ale Reservoir. With these additional sources of recharge, salinity intrusion into the aquifer is retarded by thick caprock deposits along the aquifer's two discharge shorelines, Mā'alaea and Kahului Bays.

111. Petitioner will implement pro-active environmental measures during construction to protect the underlying Kahului Aquifer, including but not limited to supervising the use, storage, and handling of hazardous materials; prohibiting public access to hazardous materials onsite when the Petition Area is unsupervised; removing vehicles and stationary equipment that are found to be leaking fuel, hydraulic fluid, and/or other hazardous materials; and preventing hazardous materials from entering stormwater systems. Petitioner will also incorporate conservation measures to alleviate water demand from the aquifer.

112. It is not anticipated that the Project will have short-term or long-term adverse impacts to groundwater resources.

113. There are no wetlands within the Petition Area or in the immediate vicinity of Petition Area.

114. Waikapū Stream is located approximately 0.4 miles to the south of the Petition Area and will not be affected by the Project.

115. Drainage generated from the Petition Area will not be discharged into Waikapū Stream.

#### Recreational and Scenic Resources

116. The Project is not a population generator and is not expected to generate the need for recreational facilities or services.

117. There are no anticipated impacts to existing recreational facilities or resources.

118. The scenic resources of the Petition Area are defined by Mount Haleakalā to the east and the West Maui Mountains and Waikapū Valley to the west.

119. The Project is not part of a scenic corridor and will not affect views from inland vantage points.

120. The Project will not adversely impact upon the visual character of the surrounding areas.

## ENVIRONMENTAL QUALITY

### Noise

121. Ambient noise conditions may be temporarily impacted by onsite construction activities during the initial construction phase of the Project, which will only be conducted during the daytime.

122. During the construction phase of the Project, Petitioner will use noise mitigation measures such as equipment mufflers, barriers, and other noise-attenuating equipment as required by applicable rules or regulations.

123. Where construction noise exceeds, or is expected to exceed the State of Hawai'i Department of Health ("DOH") maximum permissible noise levels, Petitioner will obtain all required permits from the DOH.

124. During construction of the Project, Petitioner will also institute Best Management Practices ("BMPs"), including maintaining equipment and vehicles, limiting hours of construction, and limiting the access route for heavy equipment.

125. Construction-related noise will be mitigated in accordance with chapter 11-46, HAR, Community Noise Control.

126. All construction equipment and onsite vehicles will be equipped with mufflers as required in section 11-46(b)(1)(A), HAR.



127. Once completed, the Project is not anticipated to generate significant adverse noise conditions based on the existing and surrounding heavy and light industrial uses occurring in the area.

#### Air Quality

128. During construction-related activities, air quality within the immediate vicinity of the Project may be temporarily impacted from the emission of fugitive dust.

129. Petitioner will minimize air quality impacts through its proper use of appropriate BMPs.

130. BMPs to control dust during the construction of the Project include the following: (a) dust barriers; (b) water trucks watering unpaved work roads and graded areas on an as-needed basis; (c) sprinkler system to control dust; (d) proper maintenance and cleaning of construction equipment and vehicles; and (e) daily monitoring of dust at the Project during construction.

131. On a long-term basis after completion of construction, the Project is not anticipated to significantly impact the air quality.

#### Water Quality

132. There are no anticipated short or long-term impacts to groundwater quality as a result of the Project. Petitioner will implement BMPs during construction to protect the wells and the underlying aquifer. In addition, drainage

generated by the Project will not be discharged into Waikapū Stream. All increases in runoff will be contained within the Petition Area by the proposed drainage improvements and not adversely affect stream water quality.

#### Energy Conservation

133. Petitioner will promote energy efficiency and reduce energy use by encouraging lot owners within the Project to utilize, to the extent feasible, both solar water heating and photovoltaic technologies.

#### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

##### Transportation Systems

134. Phillip Rowell and Associates prepared a traffic impact analysis report ("TIAR") for the Project dated May 17, 2011.

135. The purposes and objectives of the TIAR were to identify the individual and cumulative traffic impacts of the Project, and provide recommendations concerning mitigation measures.

136. The State of Hawai'i Department of Transportation ("DOT") reviewed the TIAR and found that the TIAR is not acceptable and needs to be revised to address the DOT's concerns as stated in OP Exhibit "1," Attachment E.

137. Access to the Project will be from Waikō Road, which is a two-lane County collector roadway that connects Honoapi'ilani Highway and Kūihelani Highway.

138. Honoapiʻilani Highway is a State highway and the main artery connecting Waikapū to Central, South, and West Maui. Honoapiʻilani Highway is located approximately 4,000 feet west of the Project.

139. In the vicinity of the Project, Honoapiʻilani Highway is a two-lane, two-way facility with separate left turn lanes into East and West Waikō Road. Kūihelani Highway is a four-lane divided State highway connecting Kahului and Māʻalaea.

140. The intersection with Waikō Road is a signalized T-intersection with a separate left turn lane for northbound to westbound left turns onto Waikō Road.

141. Also located in the vicinity of the Project is Waiʻale Road, a two-lane road with its southern terminus at Waikō Road.

142. The intersection of Honoapiʻilani Highway and Waikō Road currently operates at an acceptable Level of Service ("LOS") B during the morning peak hour and LOS A during the afternoon peak hour.

143. The intersection of Kūihelani Highway at Waikō Road operates at LOS B during the morning peak hour and LOS A during the afternoon peak hour.

144. At the signalized intersections with Honoapiʻilani and Kūihelani Highways, the overall intersections and major northbound and southbound through movements operate at LOS D, or better, and all the volume-to-capacity ratios are less than 1.00.

145. The intersection of Waikō Road and Wai`ale Road is the only unsignalized study intersection.

146. For this intersection, all the controlled movements will operate at LOS C during the morning peak hour and LOS F during the afternoon peak hour with Project generated traffic.

147. The LOS of the southbound left and right turns will decrease from LOS C to LOS F, with the addition of Project-related traffic, during the afternoon peak hour.

148. The average vehicle delay increases from 18.5 seconds per vehicle to 151.0 seconds per vehicle due to Project-related traffic.

149. There will be two driveways in the Project – Drive A and Drive D.

150. Drive A will serve the retail portion of the Project, which is located in along the north side of Waikō Road between Kūihelani Highway and the Consolidated Baseyard.

151. The driveway will be along the west boundary of the parcel adjacent to the baseyard, which is approximately 580 feet from the right-of-way along Kūihelani Highway.

152. The second driveway, Drive B, will serve the industrial portion of the Project, which is located west of the Consolidated Baseyard.

153. Traffic generated by the Project will have LOS capacity, operational, and safety impacts on two State principal arterials, Honoapiʻilani Highway and Kūihelani Highway, especially at the signalized intersection with Waikō Road.

154. The DOT is concerned with the potential for vehicles queuing onto Kūihelani Highway, as the 580-foot distance along Waikō Road from Kūihelani Highway to Drive A is shorter than desirable.

155. Drive A should be monitored as the retail portion of the Project is developed to determine if additional improvements should be implemented.

156. Petitioner is working with the DOT to make further revisions to the TIAR so that the TIAR is acceptable to the DOT.

157. Revisions to the TIAR will need to address the DOT's concerns, including the following: elimination of any existing direct access to Kūihelani Highway; potentially unacceptable traffic impacts to Honoapiʻilani Highway and Kūihelani Highway and the need for Petitioner to provide local/direct transportation mitigation improvements; and impacts from heavy vehicle truck traffic.

158. The DOT will require that Petitioner provide its fair share contribution to the cost of regional highway improvements.

159. The interior subdivision streets of the Project will have 56-foot right-of-ways. In addition, Petitioner is working with Alexander & Baldwin and the

County of Maui in an effort to widen the North-South collector road as required by the County to 100 feet.

160. The cul-de-sacs within the Project will have an edge of pavement radius of 40 feet and a right-of-way radius of 50 feet.

161. The larger traffic lanes and cul-de-sac pavement radius are to accommodate the larger fire trucks in the Central Maui district.

162. The two north-south subdivision roadways will terminate at the northern boundary of the Petition Area. These roadways are planned to provide future connections to A&B Properties, Inc.'s, Wai'ale master-planned community.

163. It is contemplated that both roadways will eventually connect to Waikō Road.

164. Waikō Road in the area fronting the Project has an existing right-of-way of 60 feet.

165. Waikō Road will be improved to accommodate the two new intersections providing access into the subdivision and the recommended turning lanes.

166. All of the interior roadways of the Project will be constructed to County of Maui standards.

167. Concrete wheel chair ramps will be constructed at appropriate locations to comply with American with Disabilities standards.

168. Appropriate striping and signage will be installed in accordance with the requirements of the County of Maui's Department of Public Works ("DPW").

169. The DEM has an existing easement ("Easement 'C'") across the Petition Area from Waikō Road to access the closed Waikapū Landfill. The DEM's large trucks need to have access to the equipment and material that are often temporarily stored on the closed landfill. The Project proposes to relocate this existing access. The DEM's concern is that this relocated access is continuous with its access through the adjacent properties. The DEM is amenable to the proposed relocation of Easement "C," provided (a) all turning radii in the access easement is able to accommodate large vehicles accessing the landfill; (b) the replacement roadway surface in the access easement is sufficient to handle the weight of large vehicles that access the landfill; (c) the continuity of flow from Waikō Road to the remainder of the landfill access easement is preserved; and (d) there is an easement recorded on the land that will ensure County access to the landfill will not be interfered with, the terms of which shall be reviewed and approved by the DEM, Solid Waste Division.

170. A&B Properties, Inc., is willing to allow the establishment of a proposed temporary access easement within TMK: 3-8-007: 101 (Lot 12-A) on a portion of its Wai`ale master-planned community to accommodate for through traffic along Easement "C," provided Petitioner is responsible for making appropriate

improvements to this temporary access easement and provides appropriate legal documentation as determined by A&B Properties, Inc.

### Airports

171. The Petition Area lies west of the aircraft flight path to Kahului Airport. The DOT is concerned with the proximity of the Petition Area to Kahului Airport in that flight operations in and out of the Airport may affect the Petition Area.

172. To address this concern, the DOT recommends that Petitioner and any subsequent owners notify and formally disclose to all prospective buyers and lessees of real property in the Petition Area, as part of any prospectus, purchase, or conveyance document, that there is the potential for aircraft noise, emissions, vibrations, and other effects from the over-flight of aircraft and other incidences of aircraft operations.

173. The DOT is concerned that the construction of wastewater and storm water improvements will have the potential to attract wildlife and threaten aviation safety.

174. Since the Petition Area is within five miles from the airport operations area, the DOT recommends consultation and execution of a Memorandum of Agreement to ensure that the Federal Aviation Administration requirements are met, and that the Project does not create a safety hazard to aircraft operations.



### Water Service

175. Tom Nance of Water Resource Engineering prepared a Water Resources Report for the Project dated March 1, 2011 ("Water Resources Report").

176. There is no County of Maui Department of Water Supply ("DWS") service to the Petition Area or to adjacent properties.

177. The existing wells and storage tank, which are currently being used as the source for domestic water and fire flow for the Consolidated Baseyard Subdivision adjacent to the Petition Area, will be modified and used to supply drinking water to the Project ("System").

178. The System consists of two drinking water quality wells, a 350,000-gallon storage tank, a pump delivery system, and related water appurtenances.

179. Petitioner will upgrade the System as required to meet domestic water and fire flow requirements for the Project.

180. The System has been approved by the DOH as a drinking water system for public use.

181. Petitioner and the Consolidated Baseyards Association have entered into a Memorandum of Understanding dated February 20, 2013, to memorialize their agreement to expand the System.

182. The average water supply requirement for the existing Consolidated Baseyards Subdivision has been estimated by others to be 83,000 gallons per day ("GPD").

183. The total average water supply demand for the Project is estimated at 139,890 GPD.

184. The total average demand for the Project and the adjacent Consolidated Baseyard Subdivision is estimated to be 222,890 GPD.

185. The maximum day supply requirement, defined as 1.5 times the average demand (DWS's standard), amounts to 334,335 GPD.

186. An appropriate design criteria ("Criterion 2") was used to size the well pumping capacity needed to meet the maximum day amount.

187. Criterion 2 seeks to provide the maximum day demand in a 24-hour pumping day with the largest well out of service.

188. Criterion 2 is used by the Hawai'i and Kaua'i County municipal systems, as well as by most private water systems in the State.

189. Criterion 2 results in a required pumping capacity of 232 gallons per minute ("GPM") (rounded up to 235 GPM) for each of the System's two wells.

190. Using Criterion 2, the hydraulic capacities of each well were studied.

191. Both wells have adequate hydraulic capacity to supply both the Consolidated Baseyard Subdivision and the Project.

192. In accordance with DWS standards, the fire flow demand for a light industrial or commercial development is 2,000 GPM for a two-hour duration.

193. The maximum spacing for fire hydrants is 250 feet.

194. Petitioner will implement the conclusions and recommendations for the Project as set forth in the Water Resources Report.

#### Wastewater Treatment and Disposal

195. Otomo Engineering, Inc., prepared a preliminary engineering report for the Project dated May 2011 that addressed the wastewater disposal requirements of the Project.

196. The nearest County of Maui sewer system is located approximately 3,000 feet from the Petition Area.

197. A master sewer system will be installed within the Project's subdivision roadways and a sewer lateral will be provided to each subdivided lot.

198. The master sewer system will outlet into a community leach field, which will require review and approval of the DOH.

199. Individual wastewater systems ("IWS") will be used for the treatment of wastewater for each subdivided lot.

200. Each lot will be required to connect the outlet line of the IWS to the sewer lateral provided.

201. Wastewater will be conveyed from each lot into the community leach field.

202. Each IWS will adhere strictly to the requirements set forth by the DOH.

203. It is estimated that the average daily wastewater contribution is 16,436 gallons.

204. As the Project develops and individual building permits are applied for, the building permit applicant will be required to submit the design of each IWS for the DOH's review and approval.

205. The IWS to be used for the Project will be aerobic units which will allow installation in proximity to the existing water wells providing water to the Project.

#### Drainage and Stormwater Management

206. Otomo Engineering, Inc., prepared a preliminary engineering report for the Project dated May 2011 that addressed the drainage requirements of the Project.

207. The Project's drainage system will be designed to accommodate the increase in runoff generated by the development of the entire Petition Area.

208. Subdivision improvements will include a master drainage system within the roadways, including curb-inlet catch basins, manholes, drain lines, and a drain stub out to each subdivided lot.

209. As each lot is developed, it will be required to install an onsite drainage system to collect runoff from the site and provide a drain line connection to the drain stub out to the master drainage system.

210. The master drainage system will be sized to accommodate runoff from the roadways and developed lots.

211. The runoff will be conveyed to a master underground perforated drainage system to accommodate the increase in runoff from the subdivision.

212. It is estimated that the post development runoff will be 123.49 cubic feet per second.

213. Accordingly, the developed runoff volume will total 101,068 cubic feet, a net increase of 59,134 cubic feet.

214. There are no anticipated impacts on downstream properties and no further mitigation measures are required.

#### Solid Waste Management

215. Private commercial haulers will be used to dispose any construction materials during the subdivision and development of the Project.

216. Once construction is completed, solid waste collection and disposal will be provided by private commercial haulers.

217. After subdivision is completed, lot owners and tenants will be encouraged to implement waste recycling programs to reduce the amount of waste delivered to the County's Central Maui Landfill site.

Police, Fire Protection, and Emergency Medical Services

218. Police protection for the Wailuku-Kahului region is provided by the County of Maui Police Department ("MPD") with its main headquarters located at 55 Mahalani Street in Wailuku, approximately two miles north of the Petition Area.

219. A satellite MPD substation is located on Market Street in Wailuku, approximately two miles north of the Petition Area.

220. The MPD commented on the Project and expressed no objections to the Project.

221. The Project will not result in the extension of the current service area of the MPD.

222. Fire protection for the Wailuku-Kahului region, which encompasses fire prevention, suppression, rescue, and emergency services, is provided by the County of Maui Department of Fire and Public Safety ("MFD").

223. The MFD has two stations that service the Wailuku-Kahului region that are in proximity to the Petition Area.

224. The stations are the Wailuku Fire Station, which is located in Wailuku Town approximately two miles north of the Petition Area, and the Kahului Fire Station, which is located on Dairy Road in Kahului approximately one and a half miles east of the Petition Area.

225. The MFD submitted comments and recommendations for the Project.

226. The MFD recommended that the Project subdivision include a minimum of 2,000 gallons/minute of water supply for fire protection purposes; hydrant spacing at 250 feet; and a minimum of 20-foot-wide, all weather surface fire apparatus access roads.

227. The MFD reserved the right to modify their recommendations or requirements for the Project at the building permit or certificate of occupancy stage.

228. The Project is not anticipated to adversely impact the service capacity and capability of fire operations.

229. The State-owned Maui Memorial Medical Center ("MMMC"), which is the only major medical facility on the island, services the Wailuku-Kahului region by providing acute, general, and emergency care services.

230. MMC, a 231-bed facility, is located about two miles north of the Petition Area on Mahalani Street in Wailuku.

231. Other medical clinics located in proximity to the Petition Area include Kaiser Permanente, Maui Medical Group, Maui Medical Clinic, and Liberty Dialysis Clinic.

232. Dental and other medical offices are located within the Wailuku-Kahului region.

233. The Project is not anticipated to expand or extend the existing service area limit for emergency medical services.

#### Civil Defense

234. The location of the Petition Area does not have an outdoor warning system.

235. The State of Hawai'i Department of Defense, Office of the Director or Civil Defense ("SCD"), recommended a 121 dB Omni-Direct Siren be located on the plant property with repair access.

236. SCD has agreed to assist Petitioner in the future with determining a suitable location for the siren.

#### Power, Telecommunications, and Cable Service

237. Otomo Engineering, Inc., prepared a preliminary engineering report for the Project dated May 2011 that addressed the electrical, telephone, and cable television requirements of the Project.



238. The proposed electrical and telephone distribution systems to the Project will be installed overhead from the existing overhead facilities located approximately 1,000 feet to the west of the Petition Area.

239. Within the Project, the electrical, cable, and telephone systems will be installed underground in accordance with the utility companies' rules and regulations.

240. There are no anticipated impacts on public utility systems.

#### COMMITMENT OF STATE FUNDS AND RESOURCES

241. The Project is not considered a population generator and will not affect population within the Wailuku-Kahului Community Plan region, and therefore will not impact State educational, human services, and recreational resources.

242. No public funds will be used to develop the Project.

#### CONFORMANCE TO APPLICABLE URBAN DISTRICT STANDARDS

243. The applicable standards used by the Commission for determining the State Land Use Urban District boundaries and the proposed reclassification of the Petition Area to the State Land Use Urban District are set forth in section 15-15-18, HAR.

244. Under section 15-15-18(1), HAR, lands within the State Land Use Urban District are characterized by "city-like" concentrations of people, structures, streets, urban level of services, and other related land uses.

245. Although the Petition Area is currently in the State Land Use Agricultural District, it is located in proximity to lands characterized as such.

246. The Petition Area is surrounded by existing and proposed urban uses, in particular the Wai`ale master-planned community, which will have “city-like” concentrations of people, structures, streets, and urban level of service.

247. The Project is in proximity to areas of trading and employment, and with the proposed mitigation will have access to basic public services.

248. The Petition Area is surrounded by lands within the State Land Use Urban District and is located within the urban growth boundary of the Maui Island Plan.

249. Minimal impacts are anticipated from natural hazards due to existing topography and the inland location of the Petition Area.

CONFORMANCE WITH THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN; RELATIONSHIP WITH APPLICABLE PRIORITY GUIDELINES AND FUNCTIONAL PLANS AND POLICIES

250. With the appropriate mitigation recommended by OP, the reclassification of the Petition Area and the Project is generally consistent with one or more of the goals, objectives, policies, and priority guidelines of the Hawai`i State Plan, chapter 226, HRS.

251. Section 226-4(1), HRS, sets as a State planning goal to provide a “strong, viable economy, characterized by stability, diversity, and growth, that enables

the fulfillment of the needs and expectations of Hawai'i's present and future generations."

252. The Project is consistent with section 226-4(1), HRS, as it supports a steadily growing and diversified economic base, and complements the [State] Administration's New Day Comprehensive Plan by supporting the economy, jobs, and small businesses.

253. Section 226-5(b)(2), HRS, sets forth as a State planning objective to "encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires."

254. The Project will provide direct and indirect short and long-term employment opportunities for residents of Maui.

255. The development of the Project in its planned location is consistent with the Maui community's desire to locate light industrial developments within urban growth boundaries as defined by the Maui Island Plan.

256. The development of the Petition Area for light industrial business purposes and employment opportunities is consistent with several of the objectives and policies as set forth in section 226-6, HRS, including:

- a. Section 226-6(a)(1), HRS, increase and diversify employment opportunities particularly on the neighbor islands;
- b. Section 226-6(a)(2), HRS, grow and diversify the economic base;

c. Section 226-6(b)(3), HRS, seek broader outlets for new or expanded Hawai'i business;

d. Section 226-6(b)(5), HRS, meet economic needs at times of overseas transportation disruptions;

e. Section 226-6(b)(6), HRS, achieve construction activity level consistent with growth objectives;

f. Section 226-6(b)(8), HRS, encourage labor-intensive activities that offer good pay and upward mobility; and

g. Section 226-6(b)(10), HRS, stimulate economic activity to address employment problems.

257. The development of the Petition Area in its planned central location, away from scenic vistas, adjacent to other urban uses and with an existing water source is consistent with other objectives and policies of the Hawai'i State Plan, including:

a. Section 226-11(b)(3), HRS, take into account the physical attributes of areas in the planning process;

b. Section 226-11(b)(8), HRS, pursue compatible relationships among activities, facilities, and natural resources;

c. Section 226-13(b)(7), HRS, encourage urban developments in close proximity to existing services and facilities; and

d. Section 226-16(b)(1), HRS, coordinate development of land use activities with existing and potential water supply.

258. The development of the Petition Area on marginal agricultural lands is consistent with the objective and policies as set forth in section 226-104(b)(2), HRS, of the Hawai'i State Plan which provides, "make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district."

259. The reclassification of the Petition Area generally conforms to the Agricultural, Employment, and Transportation Functional Plans.

260. The Project is consistent with the State Agricultural Plan because it is in proximity to existing and planned urban uses.

261. The Project is consistent with the State Employment Functional Plan because it will provide quality jobs through business expansion and attract new business to the State.

262. The Project is also consistent with the State Employment Functional Plan because it will improve the quality of life for workers and families by providing employment opportunities that are located in proximity to residential development and the population center of Maui.

263. The Project conforms to the State Transportation Functional Plan because its road improvements will be developed in consultation with the DOT and the DPW to ensure consistency with State and County requirements.

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

264. The proposed reclassification of the Petition Area generally conforms to the objectives and policies of the Coastal Zone Management Program, chapter 205A, HRS.

265. The Project is located inland and away from coastal areas.

266. Given its location, the Project will not impact coastal recreational opportunities or existing public access to the shoreline, nor adversely affect beaches or marine resources.

267. No views or vistas from or to the shoreline will be impaired by the development of the Project.

268. The Petition Area is within areas generally unaffected by flooding.

269. The Project's grading and other site improvements will comply with the requirements of the Federal Flood Insurance Program and all State and County laws.

270. The Project's drainage improvements will be adequately planned and constructed per Maui County drainage standards.

271. Wastewater generated by the Project will be collected, treated, and disposed of in accordance with all applicable statutes, ordinances, and regulations.

#### CONFORMANCE WITH COUNTY PLANS AND PROGRAMS

##### *General Plan of the County of Maui, the Countywide Policy Plan, and the Wailuku-Kahului Community Plan District*

272. Chapter 2.80B of the Maui County Code, relating to the General Plan and Community Plans, calls for the preparation of a Countywide Policy Plan, a Maui Island Plan, and nine Community Plans.

273. The Countywide Policy Plan was adopted as Ordinance No. 3732 on March 24, 2010.

274. The Project is consistent with the goals, objectives, and policies of the Countywide Policy Plan with respect to strengthening the local economy, improving physical infrastructure, promoting sustainable land uses and growth management, protecting the natural environment, and preserving local culture and traditions.

275. The Maui Island Plan was adopted as Ordinance No. 4004 on December 28, 2012.

276. The Maui Island Plan was organized around a directed growth strategy which involved the creation of directed growth maps that specify "urban growth boundaries" for Maui.

277. The Petition Area is located within the urban growth boundary area, and therefore conforms to the Maui Island Plan.

278. The Wailuku-Kahului Community Plan was adopted as Ordinance No. 3061 (2002), as amended.

279. The Project is consistent with the objectives and policies of the Wailuku-Kahului Community Plan such as those that relate to economic activity, land use, the environment, infrastructure, water, wastewater, solid waste, drainage, and utilities.

280. Upon approval of Petitioner's community plan amendment application by the County, the community designation for the Petition Area will be amended from "Agriculture" to "Light Industrial," or such other appropriate community plan designation as determined by the County.

County of Maui Zoning

281. Upon approval of Petitioner's change in zoning request by the County, the Petition Area will be rezoned from "Agricultural" to "M-1, Light Industrial."

RULINGS ON PROPOSED FINDINGS OF FACT

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



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

### CONCLUSIONS OF LAW

1. Pursuant to chapter 205, HRS, the Commission's Rules under chapter 15-15, HAR, and upon consideration of the Commission decision-making criteria under section 205-17, HRS, the Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 31.222 acres of land at Waikapū, Wailuku, Maui, Hawai'i, identified as TMK: 3-8-007: 102, from the State Land Use Agricultural District to the State Land Use Urban District, for the development of the Project, and subject to the conditions in the Order below, conforms to the standards for establishing the State Land Use Urban District boundaries, is reasonable, is not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect Native Hawaiian traditional and customary rights. The State 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.

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

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

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 31.222 acres of land in the State Land Use Agricultural District at Waikapū, Wailuku, Maui, Hawai'i, identified as TMK: 3-8-007: 102, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, shall be and is hereby reclassified to the State Land Use Urban District, and the State land use district boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly

affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

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

1. Highway and Road Improvements. Petitioner shall abide by, complete and/or submit the following:
  - a. The TIAR shall be revised and resubmitted to the DOT Highways Division for review and acceptance prior to zone change approval.
  - b. Petitioner shall fund, construct and implement the Project's local/direct access improvements recommended in the TIAR accepted by the DOT for the Waikō Road intersections with Honoapi'ilani Highway and Kūihelani Highway.
  - c. Petitioner shall provide fair share contribution to the cost of regional improvements to State highways. These improvements could be on Honoapi'ilani Highway and/or on Kūihelani Highway.
  - d. The revised TIAR shall be updated every three (3) years until build out. If the Project is delayed beyond 2015, trips generated by A&B Properties, Inc.'s, development and any other committed developments in the vicinity that are developed before the build out of the Project shall be included as background traffic in the updated TIAR.

e. Petitioner shall include a provision in each of its sales, lease, and conveyance documents, whereby each person who may from time to time own the Petition Area, any portion thereof, or hold any other interest therein or occupy any improvements thereon, makes the same acknowledgement and the following agreements in favor of the State of Hawai'i: (a) such person assumes complete risk of and forever releases the State of Hawai'i from all claims for damages and nuisances occurring on the Petition Area and arising out of or related highway traffic noise from Kūihelani Highway and (b) such person waives any right to (i) require the State of Hawai'i to take any action to eliminate or abate any highway traffic noise from Kūihelani Highway; and (ii) file any suit or claim against the State of Hawai'i for injunction or abatement of any highway traffic noise from Kūihelani Highway and for any damages or other claims related to or arising therefrom. The provision shall be incorporated into the appropriate title documents and recorded at the Bureau of Conveyances.

2. Notification of Proximity to Kahului Airport. Petitioner and all subsequent owners shall notify and disclose to all prospective developers, purchasers, and/or lessees within the Project, as part of any conveyance document (deed, leases, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

3. Hazardous Wildlife Attractants on or Near Kahului Airport. As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities, or associated settling ponds) serving the Project. Petitioner shall enter into a Memorandum of Agreement with the DOT to document hazardous wildlife attractant mitigation prior to the granting of tentative subdivision approval.

4. Water Conservation. Petitioner shall implement water conservation measures including the use of endemic, indigenous, and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscaping.

5. Wastewater System and Facilities. Petitioner shall comply with chapter 11-62, HAR, entitled "Wastewater Systems" and any IWS shall be approved by the DOH. Petitioner shall construct internal sewer lines in accordance with County of Maui standards and provide stub outs for future sewer connection as may be required by the County.

6. Stormwater Management and Drainage. Petitioner shall construct and maintain stormwater and drainage system improvements as designed in

compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement BMPs and incorporate Low Impact Development practices for onsite stormwater capture and reuse into the Petition Area's site design and landscaping to control water quality and mitigate nonpoint sources of pollution.

7. Civil Defense. Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location approved by the SCD and County of Maui Civil Defense Agency.

8. Archaeological and Historic Preservation. Petitioner shall comply with mitigation measures recommended by the DLNR, SHPD. Archaeological monitoring shall be conducted during all ground disturbing activities on the Petition Area and a report of monitoring activities shall be submitted to the SHPD upon the completion of the fieldwork.

9. Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR, SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls 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 DLNR, SHPD, that mitigation measures have been implemented to its satisfaction.

10. Infrastructure Deadline. Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of the Decision and Order granting the requested reclassification.

11. County Access to Waikapū Landfill Site. Petitioner will provide continued access to the County of Maui Waikapū Landfill site as shown on the conceptual plan, page 2, of Petitioner's Exhibit "53" ("Access Easement"). Acceptable alternatives for County access are: (a) over existing Easement "C"; (b) over the Project's internal roadways in combination with the proposed temporary access over Lot 12-A; or (c) over permanent roads within A&B Properties, Inc.'s, future Wai'ale master-planned community. With the consent of the County, Easement "C" may be released before the development of an alternate, permanent route provided the proposed temporary access easement is in place or Petitioner has provided alternate access to the County over Lot 1-C to the satisfaction of the DEM.

12. County Conditions Related to Access Easement. Within the Access Easement area, Petitioner shall ensure that: (a) all turning radii in the Access Easement accommodate large vehicles accessing the landfill; (b) the replacement roadway surface in the Access Easement area is sufficient to handle the weight of the large vehicles that access the landfill; (c) the continuity of flow from Waikō Road to the remainder of the landfill Access Easement is preserved; and (d) there is a formal, written easement recorded against the Petition Area to document the Access Easement, the terms of which shall be reviewed and approved by the DEM, Solid Waste Division.

13. Condition Relating to Light Industrial and Commercial Uses. The uses in the area shown on the conceptual plan referenced in the Commission's proceedings as Petitioner's Exhibit "55" will be limited to the uses described in Exhibit "55." No residential or apartment uses are planned or will be built within the Petition Area. Uses within the 8.5-acre portion of the Petition Area fronting Kūihelani Highway as also shown on Petitioner's Exhibit "55" are limited to B-1, B-2, and B-3 zoning district uses except that no apartment uses are allowed.

14. Water Service. A private water system shall be developed for the Petition Area which shall be approved by the DOH, Safe Water Drinking Division, and the DLNR for well drilling and pump installation requirements. Petitioner shall construct internal water lines in accordance with County of Maui standards and will include a stub out for future connection should County of Maui water service becomes



available to the Petition Area. At such time, Petitioner and/or its successors shall apply to the DWS for connection and service.

15. Solid Waste. Petitioner shall comply with solid waste disposal as required by the DEM.

16. Dust Control Measures. In addition to the Stormwater Management and Drainage Condition recommended by OP, Petitioner shall use BMPs to implement dust control measures during and after the development process in accordance with the DOH guidelines.

17. Hazardous Materials. Storage and/or disposal of hazardous materials shall be approved by the DOH prior to their establishment within the Petition Area.

18. Energy Conservation Measures. Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development.

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

20. Compliance with Section 205-3.5, HRS, Related to Agricultural Uses on Adjacent Agricultural Land. For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:

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

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

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

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

23. Annual Reports. Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, 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. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.

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

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

26.     Recordation of Conditions. Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

ADOPTION OF ORDER

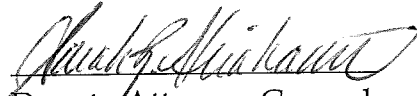
This ORDER shall take effect upon the date this ORDER is certified  
by this Commission.


Done at Honolulu, Hawai'i, this 3rd day of May , 2013, per  
motion on April 18, 2013.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


  
Deputy Attorney General

By   
RONALD HELLER  
Vice-Chairperson and Commissioner  
(Chair Chock delegated Vice-Chair Heller to sign order)

Filed and effective on:

5/3/13

Certified by:

  
DANIEL ORODENKER  
Executive Officer





BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII  
2013 MAY -3 P 1:26

In The Matter Of The Petition Of ) DOCKET NO. A12-796  
)  
WAIKŌ INDUSTRIAL INVESTMENT, ) CERTIFICATE OF SERVICE  
LLC )  
)  
To Amend The Agricultural Land Use )  
District Boundary Into The Urban Land )  
Use District For Approximately 31.222 )  
Acres Of Land At Waikapū, Wailuku, )  
Maui, Hawai'i, Tax Map Key: 3-8-07: )  
102 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **DOCKET NO. A12-796 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:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Aūhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
WILLIAM SPENCE, DIRECTOR Department of Planning County of Maui 250 South High Street Wailuku, Hawai'i 96793		X	
JAMES GIROUX, ESQ. Deputy Corporation Counsel Department of the Corporation Counsel County of Maui 200 South High Street Wailuku, Hawai'i 96793			X
GREGORY GARNEAU, ESQ. Carlsmith Ball LLP One Main Plaza, Suite 400 2200 Main Street Wailuku, Hawai'i 96793			X

Honolulu, Hawai'i, May 3, 2013



DANIEL ORODENKER  
Executive Officer