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STATE OF HAWAII
LAND USE COMMISSION

Attorney for Petitioner
WAIKO INDUSTRIAL INVESTMENT LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A12-796
)	
WAIKO INDUSTRIAL INVESTMENT, LLC)	
)	
To Amend the Land Use District Boundary	)	PETITIONER'S RESPONSE TO
of Certain Lands Situated at Waikapu,	)	OFFICE OF PLANNING'S
Wailuku, Island of Maui, State of Hawaii,	)	COMMENTS AND OBJECTIONS TO
Consisting Of Approximately 31.222 Acres	)	PETITIONER'S PROPOSED
from the Agricultural District to the Urban	)	FINDINGS OF FACT, CONCLUSIONS
District, Tax Map Key No. 3-8-007:102	)	OF LAW, AND DECISION AND
	)	ORDER, FILED MARCH 15, 2013;
	)	EXHIBIT "A"; CERTIFICATE OF
	)	SERVICE

PETITIONER'S RESPONSE TO OFFICE OF PLANNING'S COMMENTS AND OBJECTIONS TO PETITIONER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, FILED MARCH 15, 2013

On March 28, 2013, the State of Hawaii, Office of Planning ("OP") filed its *Office of Planning's Comments and Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law and Order* ("OP's Comments"). On March 22, 2013, the Department of Planning, County of Maui, filed its *Department of Planning, County of Maui's Joinder in Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order* thereby joining substantively in OP's Comments. On April 3, 2013, the parties executed and filed a *Stipulation to Clarify the*

Record as to Petitioner Waiko Industrial Investment, LLC's Exhibit "8", Exhibit "38" and Exhibit "52" ("Stipulation").

Except as set forth below, Petitioner has no additional comments or objections to OP's Comments. Attached as Exhibit "A" to this response is an updated copy of Petitioner's Proposed Findings of Fact, Conclusions of Law and Order ("Petitioner's Proposed Order") which incorporates all comments and revisions agreed to by the parties to date.

Petitioner respectfully requests consideration by the Commission of the following additional revisions to Petitioner's Proposed Order for the following reasons:

I. FINDINGS OF FACTS

1. Paragraph 27 and 28, Procedural Matters. Add Paragraphs 27 and 28 to reflect the Stipulation of the parties.

2. Paragraph 43, Proposal for Reclassification. Delete term "affordable" in last sentence so clause reads: "i.e., local owner-users who now have an opportunity to develop and occupy their own properties." Although the term "affordable" was used for its common meaning by Petitioner's consultant, Petitioner requests that it be deleted because it may be interpreted to have a particular legal meaning.

3. Paragraph 47, Proposal for Reclassification. OP suggested that the paragraph be amended to read: "Petitioner represented that there will be no apartments or residential units in the Project." Petitioner represented several times on the record that there will be no apartments in the project. (Tr. 2/21/13, 27:21-25). Petitioner is willing to revise the phrase to read, "no apartment houses" as this is the term used in the Maui County zoning code. In the M-1 Light Industrial District, residential units are prohibited except for apartment houses (defined as multifamily under the code) and the very limited living quarters used by security

personnel or custodians. Petitioner does not wish to foreclose the possibility that a future owner may wish to install living quarters for security or caretaking reasons as part of his or her business.

4. Paragraphs 153 and 154, Environmental Quality, Water. Petitioner has deleted former paragraphs 153 and 154 and requests to insert the following alternate paragraph:

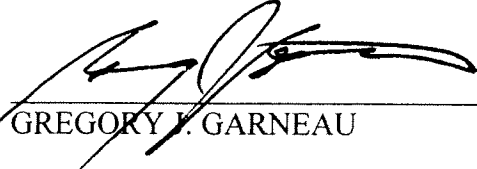
153. According to the Environmental Site Assessment, in order to protect surface waters and the area aquifer, pro-active environmental policies should be implemented during the on-site development-planning phase of the Project. (Pet. Exh. 1, App. K. p.44).

5. Paragraphs 160-214, Transportation Systems. Petitioner agrees that this section should be amended to eliminate unnecessary detail and to add a new paragraph 161A (now 162). In addition to the deletions recommended by OP, Petitioner further recommends deleting paragraphs 163 through 178, and 181.

II. CONDITIONS

Conditions 11, 12, 17 and 18. Petitioner recommends that Petitioner and County put on the record that the parties have agreed to Condition 11 and 12 and add a new finding of fact acknowledging such and referencing the hearing date. Petitioner recommends deleting Conditions 17 and 18.

DATED: Wailuku, Hawaii, April 4, 2013.



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Consisting Of Approximately 31.222 Acres)	
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District, Tax Map Key No. 3-8-007:102)	
_____)	

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

INTRODUCTORY INFORMATION:

WAIKO INDUSTRIAL INVESTMENT, LLC, a Washington limited liability company ("**Waiko**" or "**Petitioner**"), filed a Petition for District Boundary Amendment (as amended, the "Petition") on September 13, 2012, pursuant to chapter 205, Hawaii Revised Statutes ("**HRS**"), and Title 15, Subtitle 3, Chapter 15 of the Hawaii Administrative Rules ("**HAR**") to amend the land use district boundary to reclassify approximately 31.222 acres of land at Waikapu, Maui, Hawaii, identified by Tax Map Key ("**TMK**") No. (2) 3-8-007:102 (the

"**Petition Area**"), from the State Land Use Agricultural District to the State Land Use Urban District for an approximate 41-lot Light Industrial subdivision (the "**Project**").

The Land Use Commission of the State of Hawaii ("**Commission**"), having heard and examined the testimony, evidence and arguments of counsel presented during the hearing, and the stipulations among the parties, hereby makes the following findings of fact, conclusions of law, and decision and order.

FINDINGS OF FACT

A. PROCEDURAL MATTERS

1. On September 13, 2012, the Commission received the Petition, Petitioner's Exhibits "1"- "8", Petitioner's filing fee of \$500.00 for the Petition, and Certificate of Service.
2. On September 13, 2012, Petitioner filed the Affidavit of Service of Petition for District Boundary Amendment and Certificate of Service upon the State of Hawaii Office of Planning ("**OP**"), Maui Planning Department 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"; Certificate of Service.
4. By letter dated September 26, 2012, the Executive Officer of the Commission requested the Petitioner submit additional information and address certain deficiencies in the Petition.
5. On October 9, 2012, Petitioner filed its First Amendment to Petition for District Boundary Amendment Filed September 13, 2012 ("**First Amendment**"). Hereinafter, the Petition and the First Amendment will be collectively referred to as the "Petition" and cited to as "Pet." or "Am. Pet." along with the applicable page number.

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 Marriott, 532 Keolani Place, Kahului, Hawaii, with representatives of Petitioner, OP, and County.
8. On November 8, 2012, the Commission issued its Prehearing Order.
9. On November 14, 2012, the County submitted its Statement of Position in support of the Project.
10. On November 20, 2012, the County submitted 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"- "5" and "8", and Certificate of Service.
12. On November 21, 2012, Petitioner submitted its List of Witnesses, List of Exhibits, Exhibits "1"- "51" and Certificate of Service.
13. On November 29, 2012, the County filed the Testimony Statements of William Spence and Kyle Ginoza, Amended List of Exhibits, Exhibit "3" 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, Exhibits "28", "32", "34", "36", "39", "41", "43", "45", "47", and "49".

16. On December 6, 2012, the Commission conducted a site visit of the Petition Area.

17. 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 Kahului Marriot Courtyard Hotel - Haleakala Room, Kahului, Maui, Hawai'i 96732. [See, Petitioner's Affidavit(s) of Publication filed with the Commission on February 4, 2013.]

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

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

20. On February 21, 2013 at 9:30 a.m., the Commission opened the hearings on the Petition at its meeting at the Haleakala Room, Courtyard Marriott, 532 Keolani Place, Kahului, Island of Maui, Hawai'i. Entering appearances were the following persons for the parties: for Petitioner, Gregory Garneau, Esq., Carlsmith Ball LLP, and Charles Jencks; for the County, Deputy Corporation Counsel James A. Giroux and Planning Director William Spence; and for OP, Planning Program Administrator Rodney Funakoshi and Deputy Attorney General Bryan Yee. [Tr. 2/21/13, 2:15-22]

21. At the Commission's hearing on February 21, 2013, public witnesses 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. [respectively, Tr. 2/21/13, 14; 16; and 19]

22. At the Commission's hearing on February 21, 2013, Petitioner provided the testimonies of the following witnesses: Charles Jencks, Vince Bagoyo, Glenn Kunihiisa, Phillip Rowell and Erik Fredericksen. [respectively, Tr. 2/21/13, 24:8; 44:20; 55:11; 65:24 and 79:13]

23. At the Commission's hearing on February 21, 2013, Petitioner filed its Supplemental Exhibits "53"-"57". The 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. [Tr. 2/21/13, 21:10 - 22:2] Hereinafter, Petitioner's filings will be referred to as "Pet." or "Pet. Exh." along with the applicable page or exhibit number.

24. At the Commission's hearing on February 21, 2013, OP provided the testimony of Rodney Funakoshi. [Tr. 2/21/13, 89:11]

25. At the Commission's hearing on February 21, 2013, the Commission upon motion of the County and without objection admitted into evidence County's Exhibits "1"-"4". [Tr. 2/21/13, 22:3] Hereinafter, filings made by the County will be cited to as "Cty. Stmt." or "Cty. Exh." along with the applicable page or exhibit number.

26. At the Commission's hearing on February 21, 2013, the Commission on motion of OP and without objection admitted into evidence OP's Exhibits "1"-"5" and "8", as OP Exhibits 6, 7, 9 and 10 were not filed or admitted into evidence. [Tr. 2/21/13, 22:11] Hereinafter, filings made by OP will be cited to as "OP. Stmt." or "OP. Exh." along with the applicable page or exhibit number.

27. Pursuant to the Stipulation of the parties, Petitioner's Exhibit "8" was moved into the record and admitted into evidence without objection of the parties.

28. Pursuant to the Stipulation of the parties, the record was clarified to reflect that Petitioner's Exhibit "38" was reserved but not used and Exhibit "52" was identified and withdrawn.

B. DESCRIPTION OF THE PROPERTY/PETITION AREA

29. The Petition Area is located in Waikapu, Maui, Hawaii. The Petition Area consists of approximately 31.22 acres, and is identified by Tax Map Key No. (2) 3-8-007:102. [Pet. Exh. 12, 15, 32, p.2]

30. The Petition Area is adjacent to an existing light industrial subdivision known as the Consolidated Industrial Baseyard and East Waiko Road, and on its north and east sides by undeveloped pasture lands, and on its south side by Kuihelani Highway. [Pet. Exh. 32, p.2]

31. Approximately 4 acres of the Petition Area is 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 and buffelgrass. [Pet. Exh. 32, p.2]

32. Fee simple ownership of the Petition Area is vested in Petitioner. [Pet. Exhs. 3 & 4].

33. 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%. The

eastern section of the Petition Area slopes down in a west to east direction with an average slope of approximately 2%. [Pet. Exh. 1, p.7]

34. 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% annual chance flood plain. [Pet. Exh. 1, p.8]

35. According to the Soil Survey of Islands of Kaua'i, Oahu, 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 as Pu'uone sand series which is 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. [Pet. Exh. 1, p.7]

36. The State Department of Agriculture has established three (3) categories of Agricultural Lands of Importance to the State of Hawai'i ("**ALISH**"). These categories are: (1) "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; (2) "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, (3) "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. [Pet. Exh. 1, p.7-8]

37. The University of Hawai'i Land Study Bureau 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. [Pet. Exh. 1, p.37]

38. On July 10, 2012, the Maui Planning Commission accepted the final environmental assessment for the Project and issued a finding of no significant impact (FONSI). [Pet. Exh. 2]

39. The Petition Area is located away from the coastline in central Maui. [Pet. Exh. 1, p.70]

40. As owner of the Petition Area, Petitioner has standing to file the Petition pursuant to HRS § 205-4(a) and HAR § 15-15-46(3).

C. PROPOSAL FOR RECLASSIFICATION

41. The Petition Area will be developed into an approximate 41-lot light industrial subdivision. [Pet. Exh. 1, p.i]

42. The Market Study prepared for the Project indicates that there is sufficient demand for additional light industrial and commercial space in Central Maui. [Pet. Exh. 1, App. L and Exh. 43]

43. 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 affordable opportunity to develop and occupy their own properties. [Pet. Exh. 1, p.i]; [G. Kunihisa, Tr. 2/21/13, 56:20-21]

44. Estimated sales prices for each fee simple lot are currently projected to be in the range of \$40.00 to 45.00 per square foot. Final sales prices and lease prices will depend on market demand and conditions. [Pet. Exh. 1, p.2; Tr. 2/21/13, 42:21 and 64:17]

45. To implement the proposed light industrial subdivision, a State Land Use Commission District Boundary Amendment from the "Agricultural" district to the "Urban" district will be required. In addition, a Maui County Community Plan amendment from "Agriculture" to "Light Industrial" (or such other appropriate designation as determined by the County) will be needed. Finally, a Change in Zoning also will be needed to establish the "M-1, Light Industrial" zoning district. [Pet. Exh. 1, p.4]

46. Subdivision improvements include construction of internal roadways, drainage retention systems, utilities, private wastewater system, site grading work, and offsite roadway improvements. [Pet. Exh. 1, p.1-2]

47. Petitioner represented that there will be no apartments in the Project. [Pet. Exh. 55; Tr. 2/21/13. 27:21-25.]

48. The configuration of the Petition Area is such that it is comprised of two separate portions: one area, located along the Kuihelani Highway, is an 8.5 acre portion of the Petition Area for commercial use; and a second area, located mauka of the existing Consolidated Baseyards subdivision, which is for light industrial use. [Pet. Exh. 55]

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. [Pet. Exh. 1, p.2]

50. Petitioner represented that it would implement the mitigation measures recommended by its consultants within the Final Environmental Assessment or better or equivalent mitigations that might be available in the future. [Tr. 2/21/13. 32:14-19.]

51. Petitioner represented that the proposed conditions in OP's written testimony are acceptable. [Tr. 2/21/13. 32:7-13.]

D. PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT/ PROPOSED DEVELOPMENT

52. The estimated cost of the subdivision improvements is approximately \$8 million to \$10 million. [Pet. Exh. 1, p.2]

53. Petitioner's financial statement as of December 31, 2011, reflects total consolidated assets of \$2,058, 097.40. [Pet. Exh. 6]

54. Petitioner intends to finance infrastructure improvements through a conventional loan from a commercial lending institution. [Pet. Exh. 28]

55. Based on Petitioner's ownership of the Petition Area, substantial equity in the Petition Area, current financial position, demand for light industrial inventory, and favorable financing from various commercial institutions, Petitioner has the necessary economic ability to carry out the representations and commitments relating to the Project. [Pet. Exh. 6; Pet. Exh. 28]

E. STATE AND COUNTY PLAN AND SMA DESIGNATIONS

56. The Petition Area is currently designated in the State Land Use Agricultural District. [Pet. Exh. 1, p.4]

57. The Wailuku-Kahului Community Plan designates the Petition Area as "Agriculture". [Pet. Exh. 1, p.4]

58. The Petition Area is currently zoned "Agricultural" by Maui County zoning. [Pet. Exh. 1, p.4]

59. Accordingly, Petitioner filed with the County two land use applications for a Community Plan Amendment and Change in Zoning application for the Petition Area "**County Applications**"). [Pet. Exh. 1, second and third documents in Index]

60. County Applications were filed with the County Department of Planning for consideration by the Maui Planning Commission and final action by the Maui County Council. [Pet. Exh. 1, p.4]

61. The County Applications have been held in abeyance pending approval of this Petition by the Commission. [Pet. Exh. 2]

62. 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" zoning. [Pet. Exh. 1, p.4]

63. Upon approval by the County, Petitioner's community plan amendment application will change the community plan designation for the Petition Area from "Agriculture" to "Light Industrial", or such other appropriate community plan designation as determined by the County. [Pet. Exh. 1, p.4]

64. Together, approval of this district boundary amendment application along with the approval of the County applications will allow for the subdivision of the Petition Area into the 41-lot light industrial lots as proposed by Petitioner. [Pet. p.3]

65. The approval of the County Applications will also bring the Petition Area's zoning into conformity with the existing special and conditional uses of a portion of the Petition Area and the current use of the surrounding area. [Pet pp.9-10]

66. The Petition Area is located within the Coastal Zone Management Area pursuant to HRS Chapter 205A.

67. The Petition Area is not located within the County of Maui's Special Management Area. [Pet. p.51]

68. Four acres of the Petition Area are currently used as a storage facility for construction equipment and materials through an approved State special permit and a County conditional permit. [Pet. Exh. 1. App. W]

F. NEED FOR THE PROJECT/PROPOSED DEVELOPMENT

69. As detailed in the Market Study prepared by ACM Consultants, Inc., 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. [Pet. Exh. 1, App. L, pp. iii-iv and Exh. 43, pp.2-3]

70. 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 is expected to rise significantly. [Pet. Exh. 1, App. L. p.55 and Exh. 43, p.3]

71. 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. [Pet. Exh. 1, App. L, pp.28-29]

72. The majority of the lots in the Project are small and are well-suited to the small owner-user or may be combined for larger industrial businesses. [Pet. Exh. 1, App. L, pp.28-29 and Exh. 43, p.3]

73. This product is expected to be very well received by the market. [Pet. Exh. 43, p.2-3]

74. There is a strong need and demand for additional light industrial land to satisfy current and future demand in Wailuku and Kahului. [Pet. Exh. 43, p. 2-3]

G. ECONOMIC IMPACTS

75. In general, there are no significant adverse fiscal and economic impacts anticipated as a result of the Project. [Pet. Exh. 43]

76. The Project will also 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. [Pet. Exh. 43, p.3]

77. On a short term basis, the Project will have a direct beneficial impact on the local economy during construction and build-out by generating increased employment opportunities. [Pet. Exh. 43, p.3]

78. Initial estimated construction costs for the site work portion during the subdivision of the Project (excluding vertical construction) will be approximately \$8 million to \$10 million. [Pet. Exh. 1, p.36]

79. 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 build out. [Pet. Exh. 1, p.37]

80. The Project is expected to have a positive impact on employment within the State of Hawaii and the County of Maui, both directly and indirectly. [Pet. Exh. 1, App. L, pp.57-59]

81. Over the long term, the Project will have a direct and beneficial impact as employment opportunities for future owners and tenants are created. [Pet. Exh. 1, App. L, pp.57-59]

82. Petitioner's market consultant estimated that employment for business operations would be one (1) 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- to 8- year build-out of the subdivision. [Pet. Exh. 1, App. L, p.59]

H. SOCIAL IMPACTS

83. The Project will benefit the social and economic welfare of the community by providing additional light industrial inventory, as well as allowing for the development of additional warehouse space. [Pet. Exh. 1, App. L, p.59]

84. On both a short-term and long-term basis, the Project will have a direct beneficial impact on the local economy by generating much needed employment opportunities. [Pet. Exh. 1, pp.36-37]

85. The Project should not affect population as the Project is not considered a population generator since most potential commercial users are expected to come from existing light industrial complexes. [Pet. Exh. 1, p.37]

I. IMPACTS UPON RESOURCES IN THE AREA

Agricultural Resources

86. The Petition Area is presently fallow and undeveloped, except for approximately 4 acres which are currently used for storage of equipment and construction materials and a small portion used as a livestock feedlot and pasture uses. [Pet. Exh. 1, p.1]

87. The Department of Agriculture expressed concern that the feedlot is the only one on Maui and has helped ranchers feed their cattle. Petitioner represented that Mr. Nobriga is in discussions with A&B Properties regarding relocation to another property. [OP Exh. 1, Attach. D, p.2; V. Bagoyo, Tr. 2/21/2013, 54:9-12]

88. The Petition Area is located in close proximity to existing and future light industrial uses as well as in the vicinity of existing and planned urban uses. [Pet. Exh. 1, p.1, and Exh. 32, pp.2;11]

89. The location of the Petition Area is adjacent to land either in the Urban District or planned for urban uses. [Pet. Exh. 9]

90. The impact to the loss of agricultural land is minimal since a majority of the Petition Area has poor soils. [Pet. Exh. 1, pp.37-38 and App. G]

91. Development of the Petition Area affects a relatively small amount of farm land that is poorly suited for agriculture - about 31.22 acres that are classified by the Land Study Bureau as "E", the lowest class of productivity. [Pet. p.10]

92. The Petition Area is not categorized as "prime" or "unique" under the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. [Pet. p.10]

93. The reclassification of the Petition Area will not adversely affect agricultural resources. [Pet. Exh. 1, pp.37-38]

Flora and Fauna

94. A Biological Resources Survey of the Petition Area was conducted by Robert W. Hobdy which included a walk-through botanical survey method of the Petition Area. [Pet. Exh. 45]

95. Vegetation throughout much of the Petition Area is characterized by primarily buffelgrass and kiawe. [Pet. Exh. 45]

96. There are no known significant habitats, or rare, endangered or threatened species of flora or fauna in the Petition Area. [Pet. Exh. 45]

97. According to the Biological Resources Survey, the Project is not expected to have a significant negative impact upon wetland areas or on the biological resources of the Petition Area. [Pet. Exh. 45]

Archaeological and Historical Resources and Access

98. An archaeological inventory survey of the Petition Area was conducted by Xamanek Researches LLC. ("**Xamanek**"). As no significant cultural resources were identified, the report is referred to as an archaeological assessment ("AA"). [Pet. Exh. 1, App. O and Exh. 39]

99. The AA included historic background research and settlement pattern analysis prior to fieldwork, a complete pedestrian survey, subsurface testing, and reporting. [Pet. Exh. 1, App. O, p.i]

100. All accepted standard archaeological procedures and practices were followed during the course of the field work on the Petition Area. [Pet. Exh. 1, App. O, p.i]

101. Xamanek prepared the AA in compliance with HAR § 13-275-276 and Maui County guidelines, rules and recommendations. [Pet. Exh. 1, App. O, p.1]

102. The AA has been accepted by the State of Hawaii, Department of Land and Natural Resources, Historic Preservation Division ("**SHPD**") (Doc. No. 1205TD05). [Pet. Exh. 27, p.1 and Exh. 39, p.3]

103. 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. [Pet. Exh. 39]

104. According to the AA, the Petition Area consists of Aeolian sand dunes with meandering alluvial stream deposit. [Pet. Exh. 1, App. O, p.7]

105. According to the AA, prior uses of the Petition Area are: (1) pasture land for horses and cows; (2) construction or farming baseyards; (3) sand mining areas; (4) stockpiling of sand, rock, dirt and gravel; (5) ponds; (6) cattle feed lots; and (7) a utility line easement. [Pet. Exh. 1, App. O, p.4]

106. Much of the land is currently heavily utilized as baseyards with various large stockpiles as well as cattle feed lots and associated settling ponds. [Pet. Exh. 1, App. O, p.7]

107. A majority of the Petition Area has been previously disturbed through grading, grubbing, sand mining and agricultural activity. [Pet. Exh. 39, p.2]

108. Archaeological fieldwork consisted of surface and subsurface investigation. [Pet. Exh. 39, p.2]

109. Subsurface testing consisted of 20 mechanical Backhoe test Trench excavations across accessible areas through the Petition Area. [Pet. Exh. 39, p.2]

110. Subsurface testing for certain portions of the Petition Area was not possible due to two active cattle feed lots (including settling ponds), a graded access roadway, and selected areas where pipelines, high voltage, or other inaccessible areas were present. [Pet. Exh. 1, App. O, p.30]

111. All backfill material was visually inspected by the archaeologist and exposed sidewalls were examined. [Pet. Exh. 1, App. O, p.30]

112. Following the test excavations, a representative wall from subsurface test trenches was hand scraped with a trowel to aid in documentation. [Pet. Exh. 1, App. O, p.30]

113. Standard recordation methods were followed. [Pet. Exh. 1, App. O, p.30]

114. 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 survey. [Pet. Exh. 39, p.2]

115. Complete surface inspection of accessible areas occurred and 20 mechanical backhoe test trenches were excavated in order to help assess surface and subsurface conditions. [Pet. Exh. 39, p.2]

116. Visual observation of the mechanical excavation and inspection of the backfill did not reveal any significant cultural material. [Pet. Exh. 39, p.2]

117. No historic properties were identified within the Petition Area during the conduct of the AA survey work. [Pet. Exh. 39, p.2 and Exh. 1, App. O, p.1]

118. 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. [Pet. Exh. 39, p.2 and Exh. 1, App. O, p.64]

119. 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. [Pet. Exh. 27, p.2]

120. Under the archeological 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. [Pet. Exh. 27, p.2 and Pet. Exh. 1, App. N, p.38-40]

121. Under the archeological monitoring plan, the 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 HRS Chapter 6E. [Pet. Exh. 27, p.2 and Pet. Exh. 1, App. N, pp.38-40]

122. For inadvertent discoveries, the archeological plan requires the Petitioner to coordinate treatment activities with the Maui/Lanai Islands Burial Council and to contact the Office of Hawaiian Affairs. [Pet. Exh. 27, p.2 and Pet. Exh. 1, App. N, pp.38-40]

Cultural Resources and Access

123. As part of the environmental assessment process, an assessment of cultural impacts of the proposed development in the Petition Area was conducted. [Pet. Exh. 1, App. N]

124. The cultural impact assessment for the Project was conducted by Erik Fredericksen of Xamanek who was assisted by colleagues Marco P. Molina and Jenny L. Pickett. [Pet. Exh. 39, p.2]

125. Erik Fredericksen conducted 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: (1) the archaeological assessment for the Project; (2) the Archaeological Monitoring Plan for the Project; and (3) other archaeological inventory surveys for portions of the larger area surrounding the Petition Area. [Pet. Exh. 1, App. N]

126. The objectives of the cultural impact assessment were to interview and obtain information from local informants which would provide 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. [Pet. Exh. 39]

127. Mr. Fredericksen concluded from his documentary research, interviews and observation of the Petition Area that 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 Hawaii State Constitution. [Pet. Exh. 1, pp.35-36; Pet. Exh. 39]

Groundwater and Surface Water Resources

128. There are no wetlands within the Petition Area or in the immediate vicinity of Petition Area. [Pet. Exh. 1, p.31]

129. Waikapu Stream is located approximately 0.4 mile to the south of the Petition Area and will not be affected by the Project. [Pet. Exh. 1, p.9]

130. Drainage generated from the Petition Area will not be discharged into Waikapu Stream. [Pet. Exh. 1, p.31]

131. The Project will be served by an existing private potable water system which currently serves the Consolidated Baseyards subdivision which is adjacent to the Petition Area. [Pet. Exh. 1, pp.28-29]

132. This Consolidated Baseyards water system consists of two potable wells pumping water from the Kahului aquifer, a 350,000-gallon storage tank, pump delivery system and related improvements. [Pet. Exh. 36, p.1]

133. The Consolidated Baseyards water system is owned by the Consolidated Baseyards Water Association and has been approved by the State of Hawaii, Department of Health ("DOH"). [Pet. Exh. 36, p.1]

134. The Petitioner and the Consolidated Baseyards Water Association have reached a memorandum of understanding whereby water to the Petition Area will be provided from the Consolidated Baseyards water system. [Pet. Exh. 57]

135. Increased use of the Consolidated Baseyards water system by the Project is not anticipated to negatively impact the groundwater resources of the Kahului aquifer. [Pet. Exh. 36 and Exh. 1, App. U]

Recreational and Scenic Resources

136. The Project is not a population generator and is not expected to generate the need for recreational facilities or services. [Pet. Exh. 1, p.38]

137. There are no anticipated impacts to existing educational or recreational facilities or resources. [Pet. Exh. 1, p.38]

138. The scenic resources of the Petition Area are defined by Mount Haleakala to the east and the West Maui Mountains and Waikapu Valley to the west. [Pet. Exh. 1, p.34]

139. The Project is not part of a scenic corridor and will not affect views from inland vantage points. [Pet. Exh. 1, p.34]

140. The Project will not adversely impact upon the visual character of the surrounding areas. [Pet. Exh. 1, p.34]

J. ENVIRONMENTAL QUALITY

Noise

141. Ambient noise conditions may be temporarily impacted by on-site construction activities during the initial construction phase of the Project which will only be conducted during the daytime. [Pet. Exh. 1, p.33]

142. During the construction phase of the Project, the Petitioner will use noise mitigation measures such as equipment mufflers, barriers, and other noise-attenuating equipment as required by applicable rules or regulations. [Pet. Exh. 1, p.33]

143. Where construction noise exceeds, or is expected to exceed the DOH maximum permissible noise levels, Petitioner will obtain all required permits from DOH. [Pet. Exh. 1, p.33]

144. During construction of the Project, Petitioner will institute Best Management Practices, including equipment maintenance and vehicle maintenance, limiting hours of construction, and limiting the access route for heavy equipment. [Pet. Exh. 1, p.33]

145. Construction-period noise will be mitigated in accordance with Title 11, Administrative Rules, Chapter 46, Community Noise Control of DOH. [Pet. Exh. 1, p.33]

146. All construction equipment and on-site vehicles will be equipped with mufflers as required in HAR § 11-46(b)(1)(A). [Pet. Exh. 1, p.33]

147. 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. [Pet. Exh. 1, p.33]

Air Quality

148. During construction-related activities, air quality within the immediate vicinity of the Project may be temporarily impacted from the emission of fugitive dust. [Pet. Exh. 1, p.32]

149. Petitioner will minimize air quality impacts through the proper use of appropriate Best Management Practices including routine maintenance of construction equipment and vehicles. [Pet. Exh. 1, p.32]

150. Dust mitigation measures for the Project include: i) dust barriers, ii) water trucks watering unpaved work roads and graded areas on an as-needed basis, iii) sprinkler system to control dust, iv) proper maintenance and cleaning of construction equipment and vehicles, and v) daily monitoring of dust at the Project during construction. [Pet. Exh. 32, pp.3-4]

151. Petitioner will implement all required mitigation measures for fugitive dust control. [Pet. Exh. 1, p.32]

152. On a long-term basis after completion of construction of the Project, the proposed light industrial subdivision is not anticipated to significantly impact the air quality. [Pet. Exh. 1, p.33]

Water Quality

153. There is no anticipated short term or long term impact to groundwater as a result of construction activities on the Project site. [Pet. Exh. 1, App. M, p.3]

154. According to the Biological Resources Survey, there are no identified wetlands within or near the immediate vicinity of the Petition Area. [Pet. Exh. 1, App. M, p.3]

Energy Conservation and Sustainability Requirements

155. The Project's location in Central Maui supports energy conservation due to its proximity to transportation, commerce and the largest population area on Maui with the highest number of employees. [Pet. Exh, 1, App. L, p.iii]

156. The Project conforms to an island growth strategy that encourages development of land in proximity of major work, employment centers and existing infrastructure. [Pet. Exh. 1, p.123]

157. The State of Hawaii's Clean Energy Initiative has adopted a goal of using efficient and renewable energy resources to meet 70 percent of Hawaii's energy demand by

2013, with 30 percent from efficiency measures and 40 percent from locally-generated renewable sources. [OP Exh. 2, p.6]

158. OP recommended that a sustainability plan be prepared to identify and incorporate sustainability elements into the project design, including low impact development and energy and water conservation measures in site design and landscaping. [OP Exh. 2, pp.6-8]

159. The Project places light industrial uses on land with poor soil thus avoiding the consumption of good agricultural land for urban development. [Pet. Exh. 1, p.7]

K. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Transportation Systems

160. Phillip Rowell and Associates prepared a traffic impact analysis report ("TIAR") for the Project dated May 17, 2011. [Pet. Exh. 1, App. P]

161. 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. [Pet. Exh. 1, App. P, p.1]

162. The State of Hawaii, Department of Transportation ("DOT") reviewed the TIAR and found that the TIAR is not acceptable and needs to be revised to address DOT concerns as stated in OP Exh. 1, Attachment E. [OP Exh. 1, OP Exh. 2, p.6]

163. Access to the Petition Area will be from Waiko Road which is a two-lane County collector roadway that connects Honoapiilani Highway and Kuihelani Highway. [Pet. Exh. 34, p.4]

164. Honoapiilani Highway is a State highway and the main artery connecting Waikapu to Central, South and West Maui. Honoapiilani Highway is located approximately 4,000 feet west of the Project. [Pet. Exh. 34, p.4]

165. In the vicinity of the Project, Honoapiilani Highway is a two-lane, two-way facility with separate left turn lanes into East and West Waiko Road. Kuihelani Highway is a four-lane divided State highway connecting Kahului and Maalaea. [Pet. Exh. 34, p.4]

166. The intersection with Waiko Road is a signalized T-intersection with a separate left turn lane for northbound to westbound left turns onto Waiko Road. [Pet. Exh. 34, p.4]

167. Also located in the vicinity of the Project is Waiale Road, a two-lane road with its southern terminus at Waiko Road. [Pet. Exh. 34, p.4]

168. The Petitioner's TIAR states the intersection of Honoapiilani Highway and Waiko Road currently operates at an acceptable LOS B during morning peak hour and LOS A during the afternoon peak hour. [Pet. Exh. 34, p.4]

169. The Petitioner's TIAR states the intersection of Kuihelani Highway at Waiko Road operates at LOS B during morning peak hour and LOS A during afternoon peak hour. [Pet. Exh. 34, p.4]

170. According to the Petitioner's TIAR, at the signalized intersections with Honoapiilani and Kuihelani 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. [Pet. Exh. 34, p.5]

171. The intersection of Waiko Road and Waiale Road is the only unsignalized study intersection. [Pet. Exh. 34, p.5]

172. The Petitioner's TIAR indicates that 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. [Pet. Exh. 34, p.5]

173. 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. [Pet. Exh. 34, p.5]

174. The average vehicle delay increases from 18.5 seconds per vehicle to 151.0 seconds per vehicle due to Project-related traffic. [Pet. Exh. 34, p.5]

175. There will be two driveways in the Project – Drive A and Drive D. [Pet. Exh. 34, p.6]

176. Drive A will serve the retail portion of the Project, which is located in along the north side of Waiko Road between Kuihelani Highway and the Consolidated Baseyard. [Pet. Exh. 34, p.6]

177. 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 Kuihelani Highway. [Pet. Exh. 34, p.6]

178. The second driveway, Drive B, will serve the industrial portion of the Project, which is located west of the Consolidated Baseyard. [Pet. Exh. 34, p.6]

179. Traffic generated by the Project will have LOS capacity, operational, and safety impacts on two State principal arterials, Honoapiilani Highway and Kuihelani Highway, especially at the signalized intersection with Waiko Road. [OP Exh. 2, Attach. E]

180. DOT is concerned with the potential for vehicles queuing onto Kuihelani Highway, as the 580-foot distance along Waiko Road from Kuihelani Highway to Drive A is shorter than desirable. [OP Exh. 2, Attach. E]

181. Drive A should be monitored as the retail portion of the Project is developed in order to determine if additional improvements should be implemented. [Pet. Exh. 34, p.7]

182. The Petitioner is working with DOT to make further revisions to the TIAR so that the TIAR is acceptable to DOT. [2/21/13, Tr. 68:1 through 69:22]

183. Revisions to the TIAR will need to address DOT concerns, including the following: elimination of any existing direct access to Kuihelani Highway; potentially unacceptable traffic impacts to Honoapiilani Highway and Kuihelani Highway and the need for Petitioner to provide local/direct transportation mitigation improvements; and impacts from heavy vehicle truck traffic. [OP Testimony, Exh. 2, p.6]

184. DOT will require that the Petitioner provide its fair share contribution to the cost of regional highway improvements. [OP Exh. 2, p.6]

Airports

185. The Petition Area lies west of the aircraft flight path to Kahului Airport. DOT is concerned with the proximity of the Petition Area to Kahului Airport, that flight operations in and out of the Airport may affect the Petition Area. [OP Exh. 2, p.6]

186. To address this concern, the DOT recommends that the 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. [OP Exh. 2, p.7]

187. The DOT is concerned that the construction of wastewater and storm water improvements will have the potential to attract wildlife and threaten aviation safety. [OP Exh. 2, p.7]

188. Since the Petition Area is within five miles from the airport operations area, 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. [OP Exh. 2, p.7]

Water Service

189. Petitioner submitted a Water Resources Report, dated March 1, 2011, and prepared by Tom Nance of Water Resource Engineering ("**Water Resources Report**"). [Pet. Exh. 1, App. U.]

190. There is no Maui County Department of Water Supply ("**DWS**") service to the Project Area or to adjacent properties. [Pet. Exh. 36, p.1]

191. 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 Project will be modified and used to supply potable water to the Project (the "System"). [Pet. Exh. 41, p.4]

192. The System consists of two potable quality wells, a 350,000-gallon storage tank, pump delivery system, and related water appurtenances. [Pet. Exh. 36, p.1]

193. The Petitioner will upgrade the System as required to meet domestic water and fire flow requirements for the Project. [Pet. Exh. 41, p.4]

194. The System has been approved by the State Department of Health as a potable water system for public use. [Pet. Exh. 36, p.1]

195. The average water supply requirement for the existing Consolidated Baseyards Subdivision has been estimated by others to be 83,000 gallons per day (“GPD”). [Pet. Exh. 36, p.1]

196. The total average water supply demand for the Project is estimated at 139,890 GPD. [Pet. Exh. 36, p.2 and Pet. Exh. 41, p.4]

197. The total average demand for the Project and the adjacent Consolidated Baseyard Subdivision will be 222,890 GPD. [Pet. Exh. 36, p.2]

198. The maximum day supply requirement, defined as 1.5 times the average demand (DWS' standard), amounts to 334,335 GPD. [Pet. Exh. 36, p.2]

199. An appropriate design criteria ("Criterion 2") was used to size the well pumping capacity needed to meet the maximum day amount. [Pet. Exh. 36, p.2]

200. Criterion 2 seeks to provide the maximum day demand in a 24-hour pumping day with the largest well out of service. [Pet. Exh. 36, p.2]

201. Criterion 2 is used by the Hawaii and Kauai County municipal systems, as well as by most private water systems in the State. [Pet. Exh. 36, p.2]

202. Criterion 2 results in a required pumping capacity of 232 GPM (rounded up to 235 GPM) for each of the System's two wells. [Pet. Exh. 36, p.2]

203. Using Criterion 2, Mr. Nance studied the hydraulic capacities of each well. [Pet. Exh. 36, pp.2-3]

204. Based upon his study and calculations, Mr. Nance concluded that both wells do have adequate hydraulic capacity to supply both the Consolidated Baseyard Subdivision and the Project. [Pet. Exh. 36, p.3]

205. In accordance with DWS standards, the fire flow demand for a light industrial or commercial development is 2,000 gallons per minute for a two-hour duration. [Pet. Exh. 41, p.4]

206. The maximum spacing for fire hydrants is 250 feet. [Pet. Exh. 41, p.4]

207. The Petitioner will upgrade the existing offsite Consolidated Baseyard Subdivision water system to adequately meet the [potable water and fire flow] demands of the Project. [Pet. Exh. 41, p.4]

208. The Petitioner will implement the conclusions and recommendations for the Project as set forth in the Water Resources Report. [Pet. Exh. 41, p.4 referencing Pet. Exh. 1, App. U, pp.3-4]

Wastewater Treatment and Disposal

209. The nearest County of Maui sewer system is located approximately 3,000 feet from the Project Area. [Exh. 41, p.3]

210. A master sewer system will be installed within the Project subdivision roadways and a sewer lateral will be provided to each subdivided lot. [Exh. 41, p.3]

211. The master sewer system is subject to the review and approval of DOH. [Exh. 41, p.3]

212. Individual wastewater systems ("IWS") will be used for the treatment of wastewater for each subdivided lot. [Exh. 41, p.3]

213. Each lot will be required to connect the outlet line of the IWS to the sewer lateral provided. [Exh. 41, p.3]

214. Wastewater will be conveyed from each lot into the community leach field. [Exh. 41, p.3]

215. Each IWS will adhere strictly to the requirements set forth by DOH. [Exh. 41, p.3]

216. It is estimated that the average daily wastewater contribution is 16,436 gallons. [Exh. 41, p.3]

217. 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 DOH review and approval. [Exh. 41, p.3]

218. 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. [Exh. 41, p.3]

Drainage, Stormwater Management

219. The Project's drainage system will be designed to accommodate the increase in runoff generated by the development of the entire Project Area. [Pet. Exh. 41, p.2]

220. 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. [Pet. Exh. 41, p.2]

221. 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. [Pet. Exh. 41, p.2]

222. The master drainage system will be sized to accommodate runoff from the roadways and developed lots. [Pet. Exh. 41, p.2]

223. The runoff will be conveyed to a master underground perforated drainage system to accommodate the increase in runoff from the subdivision. [Pet. Exh. 41, p.2]

224. It is estimated that the post development runoff will be 123.49 cubic feet per second. [Pet. Exh. 41, p.3]

225. Accordingly, the developed runoff volume will total 101,068 cubic feet, a net increase of 59,134 cubic feet. [Pet. Exh. 41, p.3]

226. Based on this, there are no anticipated impacts on downstream properties and no further mitigation measures are required. [Pet. Exh. 41, p.3]

Solid Waste Management

227. Private commercial haulers will be used to dispose any construction materials during the subdivision and development of the Project. [Pet. Exh. 1, p.39]

228. Once construction is completed, solid waste collection and disposal will be provided by private commercial haulers. [Pet. Exh. 1, p.39]

229. 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. [Pet. Exh. 1, p.39]

Police, Fire Protection and Emergency Medical Services

230. Police protection for the Wailuku-Kahului region is provided by the Maui Police Department ("MPD") with its main headquarters located at 55 Mahalani Street in Wailuku, approximately two miles north of the Petition Area. [Pet. p.18]

231. A satellite MPD substation is located on Market Street in Wailuku, approximately two miles north of the Petition Area. [Pet. p.18]

232. The MPD commented on the Project and expressed no objections to the Project. [Pet. Exh. 1, p.102]

233. The Project will not result in the extension of the current service area of the MPD. [Pet. Exh. 1, p.101]

234. Fire protection for the Wailuku-Kahului region, which encompasses fire prevention, suppression, rescue and emergency services, is provided by the Maui County Department of Fire and Public Safety ("**MFD**"). [Pet. p.18]

235. The MFD has two stations that service the Wailuku-Kahului region that are in close proximity to the Petition Area. [Pet. p.18]

236. 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. [Pet. p.18]

237. The MFD submitted comments and recommendations for the Project. [Exh. 1, pp.111-112].

238. The MFD recommended that the Project subdivision include a minimum of 2000 gallons/minute of water supply for fire protection purposes; hydrant spacing at 250 feet; and a minimum of 20 feet wide, all weather surface fire apparatus access roads. [Exh. 1, p.111]

239. MFD reserved the right to modify their recommendations or requirements for the Project at the building permit or certificate of occupancy stage. [Exh. 1, p.111]

240. 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. [Pet. p.18]

241. **MMMC**, a two hundred and thirty one bed facility, is located about two miles north of the Petition Area on Mahalani Street in Wailuku. [Pet. p.18]

242. Other medical clinics located in proximity to the Petition Area are: Kaiser Permanente, Maui Medical Group, Maui Medical Clinic, and Liberty Dialysis Clinic. [Pet. p.19]

243. Dental and other medical offices are located within the Wailuku-Kahului region. [Pet. 19]

Civil Defense

244. The location of the Petition Area does not have an outdoor warning system. [OP Exh. 1, p.8 and OP Exh.1, Attach. F]

245. The State of Hawaii, 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. [OP Exh. 1, Attach. F]

246. SCD has agreed to assist the Petitioner in the future with determining a suitable location for the siren. [OP Exh. 1, Attach. F]

Power, Telecommunications, Cable Service & Street Lighting

247. 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 Project Area. [Pet. Exh. 41, p.4]

248. Within the Project, the electric, cable and telephone systems will be installed underground in accordance with the utility companies' rules and regulations. [Pet. Exh. 1, p.45 and Pet. Exh. 41, p.4]

249. Street lights will be installed along the subdivision streets at intervals to be determined by the electrical engineer. [Pet. Exh. 1, p.45 and Pet. Exh. 41, p.4]

250. There are no anticipated impacts on public utility systems. [Pet. Exh. 1, p.45]

Subdivision Internal Roadways

251. Access to Project will be from Waiko Road. [Pet. Exh. 41, p.1]
252. Waiko Road intersects with Honoapiilani Highway to the west and Kuihelani Highway to the east. [Pet. Exh. 41, p.1]
253. The interior subdivision streets of the Project will be improved to County of Maui standards. [Pet. Exh. 41, p.1]
254. The 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. [Pet. Exh. 41, p.2]
255. The cul-de-sacs will have an edge of pavement radius of 40 feet and a right-of-way radius of 50 feet. [Pet. Exh. 41, p.2]
256. The larger traffic lanes and cul-de-sac pavement radius are to accommodate the larger fire trucks in the Central Maui district. [Pet. Exh. 41, p.2]
257. These roadways are master-planned to provide future connections to Alexander and Baldwin's Waiale project. [Pet. Exh. 41, p.2]
258. It is contemplated that both roadways will eventually connect to Waiko Road. [Pet. Exh. 41, p.2]
259. Waiko Road in the area fronting the Project has an existing right-of-way of 60 feet. [Pet. Exh. 41, p.2]
260. Waiko Road will be improved to accommodate the two new intersections providing access into the subdivision and the recommended turning lanes. [Pet. Exh. 41, p.2]
261. The improvements will be designed and constructed to meet County of Maui standards. [Pet. Exh. 41, p.2]

262. All of the Project roadways will be constructed to County of Maui standards. [Pet. Exh. 41, p.2]

263. Concrete wheel chair ramps will be constructed at appropriate locations to comply with American with Disabilities standards. [Pet. Exh. 41, p.2]

264. Appropriate striping and signage will be installed in accordance with the requirements of the County of Maui's Department of Public Works. [Pet. Exh. 41, p.2]

L. COMMITMENT OF STATE FUNDS AND RESOURCES

265. 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. [Pet. Exh. 1, p.38]

266. No public funds will be used to develop the Project. [Amd. Pet., p.3].

267. In OP's Testimony in Support of Petition with Conditions, hereinafter "OP Testimony", OP express concern regarding the commitment of State fund and resources in the areas of (1) transportation, (2) civil defense and (3) airports. [OP Testimony, pp.6-7].

268. Based upon consultation with DOT, OP has recommended that conditions be imposed on the Project to address DOT concerns regarding the TIAR and mitigation of traffic impacts to the State highway system. [OP Testimony, p.6]

269. Based upon a comment by SCD, OP has recommended that a condition be imposed on the Project requiring the installation of civil defense warning siren. [OP Testimony, p.6 and OP Exh. 1, Attach. F]

270. After consultation with DOT, OP has recommended that conditions regarding notification and disclosure of airport operations and hazardous wildlife attractants be imposed on the project to address DOT airport concerns. [OP Testimony, p.7]

M. CONFORMANCE TO APPLICABLE URBAN DISTRICT STANDARDS

271. The applicable standards used by the Commission for determining Urban District boundaries and the proposed reclassification of the Petition Area to the Urban District are set forth in HAR § 15-15-18. [Pet. p.14]

272. Under HAR § 15-15-18(1), Urban District lands are characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses. [Pet. p.14]

273. Although the Petition Area is currently in the Agricultural District, it is located in close proximity to lands characterized as such. [Pet. p.14]

274. The Petition Area is surrounded by existing and proposed urban uses, in particular the Waiale master planned community which will have "city-like" concentrations of people, structures, streets and urban level of service. [OP's Testimony, p.8]

275. The Project is in the proximity to areas of trading and employment, and with the proposed mitigation will have access to basic public services. [OP's Testimony, p.8]

276. The Petition Area is surrounded by lands within the Urban District and is located within the urban growth boundary of the Maui Island Plan. [OP's Testimony, p.8 and Pet. Exh. 56]

277. Minimal impacts are anticipated from natural hazards due to existing topography and the inland location of the Petition Area. [OP's Testimony, p.8]

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

278. With the appropriate mitigation recommended by OP, the reclassification of the Petition Area and the proposed development is generally consistent with one or more of

the goals, objectives, policies, and priority guidelines HRS Chapter 26, the Hawaii State Plan, Chapter 226, HRS. [OP Testimony, p.8]

279. HRS §226-4(1) 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 Hawaii's present and future generations."

280. The Project is consistent with HRS §226-4(1) 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." [OP Testimony, p.9]

281. HRS § 226-5(b)(2) 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."

282. The Project will provide direct and indirect short and long-term employment opportunities for residents of Maui. [Pet. Exh. 1, App. L, pp.57-58]

283. The development of the Project in its planned location is consistent with the Maui community's desire to locate light industrial projects within urban growth boundaries as defined by the Maui Island Plan. [Pet. Exh. 56]

284. 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 HRS §§226-6 including:

a. HRS §226-6(a)(1), increase and diversify employment opportunities particularly on the neighbor islands;

b. HRS §226-6(a)(2), grow and diversify the economic base;

- c. HRS §226-6(b)(3), seek broader outlets for new or expanded Hawaii business;
- d. HRS §226-6(b)(5), meet economic needs at times of overseas transportation disruptions;
- e. HRS §226-6b(6), achieve construction activity level consistent with growth objectives;
- f. HRS §226-6b(8), encourage labor-intensive activities that offer good pay and upward mobility; and
- g. HRS §226-6b(10), stimulate economic activity to address employment problems.

285. 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 Hawaii State Plan including:

- a. HRS §226-11(b)(3), take into account the physical attributes of areas in the planning process;
- b. HRS §226-11(b)(8), pursue compatible relationships among activities, facilities, and natural resources;
- c. HRS §226-13(b)(7), encourage urban developments in close proximity to existing services and facilities; and
- d. HRS §226-16(b)(1), coordinate development of land use activities with existing and potential water supply.

286. The development of the petition area on marginal agricultural lands is consistent with the objective and policies as set forth in HRS §226-104(b)(2) of the Hawaii 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."

287. The reclassification of the Petition Area generally conforms to the Agricultural, Employment and Transportation Functional Plans. [Pet. Exh. 1, pp.64-65]

288. The Project is consistent with the State Agricultural Plan because it is in close proximity to existing and planned urban uses. [Pet. Exh. 1, p.64]

289. 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. [Pet. Exh 1, p.65]

290. 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 close proximity to residential development and the population center of Maui. [Pet. Exh. 1, App. L, p.iii]

291. The Project conforms to the State Transportation Functional Plan because its road improvements will be developed in consultation with the State DOT and the County of Maui Department of Public Works in order to ensure consistency with State and County requirements. [Pet. Exh. 1, p.65]

O. CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

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

293. The Project is located inland and away from coastal areas. [Pet. Exh. 1, p.70]

294. Given its location, the Project will not impact on coastal recreational opportunities, adversely affect existing public access to the shoreline, impact beaches or affect marine resources. [Pet. Exh. 1, pp.70; 72-74]

295. No views or vistas from or to the shoreline will be impaired by the development of the Project. [Pet. Exh. 1, p.34]

296. The Petition Area is within areas generally unaffected by flooding. [Pet. Exh. 1,p.73]

297. 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. [Pet. Exh. 1, p.73]

298. The Project' s drainage improvements will be adequately planned and constructed per Maui County drainage standards. [Pet. Exh. 1, p.73]

299. Wastewater generated by the Project will be collected, treated, and disposed of in accordance with all applicable statutes, ordinances, and regulations. [Pet. Exh. 1, pp.43-44]

P. CONFORMANCE WITH COUNTY PLANS AND PROGRAMS

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

300. 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. [Pet. pp.56-60]

301. The Countywide Policy Plan was adopted as Ordinance No. 3732 on March 24, 2010. [Pet. p.75]

302. 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. [Pet. Exh. 1, pp.75-80 and Pet. pp.56-58]

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

304. 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. [Pet. p. 56]

305. The Petition Area is located within the urban growth boundary area and therefore conforms to the Maui Island Plan. [Pet. Exh. 56]

306. The Wailuku-Kahului Community Plan was adopted as Ordinance No. 3061 (2002), as amended. [Pet. p.59]

307. 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. [Pet. p.59-60]

County of Maui Zoning

308. 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" zoning. [Pet. Exh. 1, p.4]

RULINGS ON PROPOSED FINDINGS OF FACT

309. 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.

310. 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 HRS Chapter 205, the Commission's Rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS § 205-17, the Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 31.22 acres of land at Waikapu, Maui, Hawaii, identified as Tax Map Key No. (2) 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 Urban District boundaries, is reasonable, not violative of HRS § 205-2, and is consistent with the policies and criteria established pursuant to sections HRS §§ 205-16, 205-17, and 205A-2.

2. Article XII, Section 7, of the Hawaii 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 Hawaii Constitution requires the State to conserve and protect Hawaii'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 Hawaii 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 31.22 acres of land in the State Land Use Agricultural District at Waikapu, Maui, Hawaii, identified as Tax Map Key No. (2) 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:

State Office of Planning Recommended 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. The Petitioner shall fund, construct and implement the project's local/direct access improvements recommended in the TIAR accepted by DOT for the Waiko Road intersections with Honoapiilani Highway and Kuihelani Highway.

c. The Petitioner shall provide fair share contribution to the cost of regional improvements to State highways. These improvements could be on Honoapiilani Highway and/or on Kuihelani 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. project and any other committed projects in the vicinity that are developed before the build out of the subject 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 Hawaii:

(a) such person assumes complete risk of and forever releases the State of Hawaii from all claims for damages and nuisances occurring on the Petition Area and arising out of or related highway traffic noise from Kuihelani Highway and (b) such person waives any right to (i) require the State of Hawaii to take any action to eliminate or abate any highway traffic noise from Kuihelani

Highway; and (ii) file any suit or claim against the State of Hawaii for injunction or abatement of any highway traffic noise from Kuihelani Highway and for any damages or other claims related to or arising there-from. 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 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 62 of Title 11, HAR entitled, "Wastewater Systems" and any IWS shall be approved by 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 Best Management Practices and incorporate Low Impact Development ("LID") 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 State of Hawaii Department of Defense, Office of Civil Defense and County 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.

County of Maui Recommended Conditions:

11. **County Access to Waikapu Landfill Site.** Petitioner will provide continued access to the County of Maui Waikapu Landfill site as shown on the conceptual plan, page 2, of Petitioner's Exhibit 53 ("Access Easement"). Acceptable alternatives for County access are: (1) over existing Easement "C"; (2) over the project's internal roadways in combination with the proposed temporary access over Lot 12-A; or (3) over permanent roads within A&B'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 Department of Environmental Management.

12. **County Conditions Related to Access Easement.** Within the Access Easement area, the Petitioner shall: (1) ensure that all turning radii in the Access Easement shall accommodate large vehicles accessing the landfill; (2) the replacement roadway surface in the Access Easement area shall be sufficient to handle the weight of the large vehicles that access the landfill; (3) the continuity of flow from Waiko Road to the remainder of the landfill Access Easement shall be preserved; (4) there shall be a formal, written easement recorded against the

Project site to document the Access Easement the terms of which shall be reviewed and approved by the County of Maui, Department of Environmental Management, 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 Kuihelani 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.

Other Conditions:

14. **Water Service.** A private water system shall be developed for the Petition Area which shall be approved by the State Department of Health, Safe Water Drinking Division, and the State Department of Land and Natural Resources 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 County of Maui, Department of Water Supply for connection and service

15. **Solid Waste.** Petitioner shall comply with solid waste disposal as required by the County of Maui Department of Environmental Management.

16. **Dust Control Measures.** In addition to the Stormwater Management and Drainage Condition recommended by the State Office of Planning, Petitioner shall use Best

Management Practices to implement dust control measures during and after the development process in accordance with State Department of Health guidelines.

17. **Hazardous Materials.** Storage and/or disposal of hazardous materials shall be approved by the State Department of Health 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 Hawaii 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 HRS § 205-3.5, 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 HRS § 165-2; and

b. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or

tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under HRS Chapter 165, 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.

Standard Conditions:

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 Findings of Fact, Conclusions of Law, and 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, the Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. 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 7 days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawaii 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.

DATED: Wailuku, Hawaii, _____, 2013.

GREGORY J. GARNEAU

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BY MAIL

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BY MAIL

DATED: Wailuku, Hawaii, April 4, 2013.



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