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LAND USE COMMISSION
STATE OF HAWAII

2013 JUN 10 A 8 28

Attorneys for Petitioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of:	)	DOCKET NO. A11-794
)	
STATE OF HAWAII, DEPARTMENT OF	)	PETITIONER'S FINDINGS OF
EDUCATION	)	FACT, CONCLUSIONS OF LAW
	)	AND DECISION AND ORDER;
To Amend the Agricultural Land Use District	)	CERTIFICATE OF SERVICE
Boundaries into the Urban Land Use District)	
for Approximately 77.2 acres of land at Kihei,)	
Maui, Hawai'i, Maui Tax Map Key Nos. 2-2-)	
02: 81 and 83.)	

PETITIONER'S FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

STATE OF HAWAII, DEPARTMENT OF EDUCATION ("Petitioner"),
submits the following proposed findings of fact, conclusions of law and decision and order to the
Land Use Commission of the State of Hawai'i (the "Commission") in the above-entitled matter.

Petitioner filed a petition for land use district boundary amendment on
December 20, 2011, and an amended petition for land use district boundary amendment on
February 7, 2013, pursuant to Chapter 205, Hawai'i Revised Statutes ("HRS"), and Chapter
15-15, Hawai'i Administrative Rules ("HAR"), to amend the State Land Use District boundary
to reclassify approximately 77.2 acres of land at Kihei, Maui, Hawai'i, identified as Maui Tax
Map Key Nos. 2-2-02: 81 and 83 (the "Petition Area"), from the State Land Use Agricultural

District to the State Land Use Urban District for the development and construction of Kihei High School, a public high school (the "Project").

The Land Use Commission of the State of Hawai'i (the "Commission"), having heard and examined the testimony, evidence and arguments of counsel presented during the hearings and the proposed findings of fact, conclusions of law and decision and order filed by Petitioner, the Department of Planning, County of Maui ("County") and the Office of Planning of the State of Hawai'i ("OP"), hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On December 20, 2011, Petitioner filed a petition for Land Use District Boundary Amendment (the "Petition") in this Docket. On February 5, 2013, Petitioner filed an amended Petition for Land Use District Boundary Amendment.
2. Petitioner State of Hawai'i, Department of Education, is a state government agency.
3. On November 9, 2012, Governor Neil Abercrombie accepted Petitioner's Final Environmental Impact Statement ("FEIS") (Petitioner's Exhibit ("Pet. Ex.") No. 9), and found that Petitioner's FEIS adequately disclosed the economic, social and environmental impacts of development of Kihei High School. (Pet. Ex. No. 10).
4. On December 14, 2012, the Commission issued a Declaratory Order in Docket No. DR 12-47, that waived the requirement that Petitioner submit a schedule and a map for development of Kihei High School in increments, under Section 15-15-50(c)(19), HAR.
5. By letter dated February 19, 2013, the Executive Officer of the Commission deemed the Petition a proper filing as of February 20, 2013.

6. On April 24, 2013, the Commission held a pre-hearing conference on the Petition, which was attended by all parties, and also issued a pre-hearing order.

7. On June 13 and 14, 2013, the Commission conducted hearings on the Petition pursuant to a public notice published on February 27, 2013, in the Honolulu Star Advertiser, Hawai'i Tribune Herald, West Hawai'i Today, The Maui News and Kauai Publishing Company dba The Garden Island.

8. _____, _____, and _____ testified as public witnesses on June 13, 2013.

9. On June 14, 2013, the Commission acted to adopt findings of fact, conclusions of law and decision and order.

DESCRIPTION OF PETITION AREA

10. The Petition Area is located at Kihei, Maui, Hawai'i, and consists of two separate parcels of land owned by the State of Hawai'i: Maui Tax Map Key No. 2-2-02: 81 containing approximately 29.175 acres, and Maui Tax Map Key No. 2-2-02:83 containing approximately 48.007 acres. Both parcels are located east of Pi'ilani Highway and bounded on all remaining sides by ranch land.

11. State of Hawai'i Board of Land and Natural Resources ("BLNR") is the fee simple owner of the two lots comprising the Petition Area. Kaonoulu Ranch LLLP conveyed Lot 1-A-1 of the Kaonoulu Ranch-Water Tank Subdivision (Maui Tax Map Key No. 2-2-02:81) to BLNR by deed dated January 13, 2012, recorded in the Bureau of Conveyances of the State of Hawai'i ("Bureau") as Document No. A-43950673. Haleakala Ranch Company conveyed Lot 2-A of the Anawio Subdivision (Maui Tax Map Key No. 2-2-02:83) to BLNR by deed dated January 13, 2012, recorded in the Bureau as Document No. A-43950672. (Pet. Ex. Nos. 13 and 14). BLNR authorized filing of the Petition on February 5, 2013. (Pet. Ex. No. 15).

12. The Petition Area is gently sloping with Kulanihako'i Gulch along its northern boundary and Waipu'ilani Gulch along its southern boundary. The Petition Area generally slopes downward to the west and southwest with onsite ground elevations ranging from approximately 40 feet above mean sea level ("MSL") in the southwest to an elevation of approximately 110 feet MSL in the northeast boundary with an average slope of approximately 11%. (Pet. Ex. No. 9).

13. The climate of the Petition Area is generally mild and semi-arid. Temperatures in the Kihei Area average in the mid to high 70 degrees Fahrenheit. Average annual rainfall in the Kihei Area is the lowest on Maui and ranges between 8.6 and 13 inches per year with the most precipitation occurring between November and March. Prevailing winds are northeast trade winds. (Pet. Ex. No. 9).

14. The U.S. Department of Agriculture Natural Resources Conservation Service classifies the soils of the Petition Area as Waiakoa extremely stony silty clay loam (WID2), and Alae sandy loam (AaB). (Pet. Ex. No. 9). The USDA Natural Resources Conservation Service's Land Capability Grouping rates these soil types according to eight levels, ranging from the highest classification level I, to the lowest level VIII. A description of each soil type follows:

a. The Waiakoa extremely stony silty clay loam (WID2), 7-15% slopes Series, consists of soils whose permeability is moderate, runoff is medium, and erosion hazard is severe. The surface layer is neutral and the subsoil is slightly acid to neutral. In most areas, about 50% of the surface layer has been removed by erosion with stones covering 3-15% of the surface. This soil type is used for pasture and wildlife habitat.

Approximately 76.2 acres (98%) of the Petition Area contain WID2 soils rated VIIIs. Class VII soils have severe limitations that make them unsuitable for cultivation and

restrict their use to pasture or range, woodland, or wildlife habitat. Subclass VII soils have an unfavorable texture, or are extremely rocky or stony.

b. Alae sandy loam (AaB), 3-5% slopes Series, consists of soils whose permeability is rapid, runoff slow, and erosion hazard slight. The surface layer of the soil is neutral or mildly alkaline and the substratum is mildly to moderately alkaline. This soil type is mostly used for sugarcane and pasture, but at times for truck crops as well.

Approximately 1.1 acres (2%) of the Petition Area contains AaB soils rated IVs, if irrigated. Class IV soils have severe limitations that reduce the choice of plants, require careful management, or both. Sub-class IVs soils are stony, shallow, have unfavorable texture, or have low water holding capacity. (Pet. Ex. No. 9, App. B).

15. The University of Hawai'i Land Study Bureau's *Detailed Land Classification for the Island of Maui* classifies the lands of the Petition Area as "E" in productivity rating. Class "E" soils are considered as having little or no suitability for soil based agricultural production. (Pet. Ex. No. 9, App. B).

16. The State Department of Agriculture's Agricultural Lands of Importance to the State of Hawai'i ("ALISH") classification system classifies the vast majority (75.6 acres) of the Petition Area as "Unclassified," which means that the lands have no value for soil-based agriculture. The remaining portion (1.7 acres) is rated as "Prime." According to the ALISH system, when treated and managed, including using water management and modern farming methods, Prime agricultural land has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically. (Pet. Ex. No. 9, App. B).

17. The U.S. Federal Emergency Management Agency's flood insurance rate maps designate the entire Petition Area in Zone X, which indicates an area of minimal flooding. (Pet. Ex. No. 9).

PROPOSAL FOR RECLASSIFICATION

18. Petitioner proposes to develop Kihei High School as a new public high school to serve the South Maui region. Kihei High School will relieve overcrowding in Central Maui's Maui High School. Petitioner proposes to construct approximately 209,435 square feet of educational buildings in the mauka portion of the Petition Area. The Kihei High School campus will also include approximately 575,660 square feet of associated athletic facilities, *i.e.*, football stadium, tennis courts, a track, and soccer, baseball, and softball fields in the middle and makai portions of the Petition Area, and necessary infrastructure improvements, *i.e.*, new roadways, utilities, drainage, wastewater, and potable and irrigation water systems. Petitioner proposes to construct a roadway to the mauka side of Pi'ilani Highway at its intersection with Kulanihako'i Street to serve as the main campus access road. (Pet. Ex. No. 9).

19. Petitioner intends to develop and construct the Project in two phases. Phase I will entail construction of all essential classroom and other buildings for a student population of 800 on the entire Petition Area. Phase II will involve campus expansion to accommodate a student population of 1,650. A proposed Conceptual Phasing Plan for the Project is shown as Figure 2-2 in Pet. Ex. No. 9. The major design and programmatic elements in Phase I will be two classroom houses, an administrative and student center, library, cafeteria, selected elective buildings and selected athletic facilities.

20. Petitioner intends to commence construction of Phase I of the Kihei High School immediately following approval of necessary land use permits, appropriation by the Legislature, and release of adequate funding and selection of a project designer-builder through an RFP process.

21. As enrollment increases justify the expansion, and funding becomes available, Phase II will consist of additional classroom houses and other amenities to increase the

school's capacity to a maximum student population of 1,650. Phase II facilities could include construction of two additional classroom houses, additional electives buildings, an auditorium and a swimming pool and additional athletic facilities. The buildings and other facilities comprising Phase II will be integrated in the campus master plan, and will not be located in a single contiguous area.

22. During Phase I, Petitioner's development of backbone infrastructure and facilities for the entire campus site will entail mass grading and site preparation of almost the entire Petition Area. Therefore, Petitioner requests the entire Petition Area be reclassified to the Urban District now rather than in increments. Petitioner proposes that no condition be imposed on timing of completion of infrastructure improvements due to the uncertain timing of State funding.

23. The design and construction schedule for Phase II has not been predetermined, but will also be based on availability of State funding. Subject to approval by the Legislature and release of funds by the Governor, as well as the demands of population growth in South Maui, individual elements of Phase II could be constructed separately, with projected completion of Phase II construction scheduled to be 10 years after the completion of Phase I.

24. The preliminary project budget for Phase I improvements is approximately \$130 million. The preliminary development and construction cost estimate for Phase II is \$30 million. (Pet. Ex. No. 9).

PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

25. As a State agency, Petitioner is not required by Section 15-15-50(c)(8), HAR to provide a financial statement. The State of Hawai'i, in the General Appropriations Act of 2008, SLH 2008, C 158, had appropriated \$20 million for the planning, land acquisition, design and construction of Kihei High School. BLNR has expended a portion of these funds to

complete land acquisition. Petitioner has expended funds for preparation of the environmental impact statement and permitting.

26. The traditional method of school financing involves the State appropriating capital improvement funds and issuing general obligation bonds to provide funds sufficient to complete design and construction of the Project. Petitioner is pursuing a design-build procurement for design and construction of Kihei High School.

27. The 2013 Legislature has approved Petitioner's request for \$130 million for design and construction of Phase I of Kihei High School in the State's capital budget for fiscal year 2014-2015.

STATE AND COUNTY LAND USE PLANS AND PROGRAMS

28. The Petition Area is currently designated in the State Land Use Agricultural District, as reflected on the Commission's official maps. (Pet. Ex. No. 9).

29. The Maui County General Plan 2030 was adopted by the Maui County Council in December 2012 and consists of three components: the Countywide Policy Plan, the Maui Island Plan, and nine Community Plans.

30. The Kihei-Makena Community Plan Land Use Map currently designates approximately 29.17 acres of the Petition Area for Agriculture and the remaining 48 acres of the Petition Area Public/Quasi Public. The Petition Area is also within the Proposed Urban Growth Boundary of the Maui Island Plan, and within the proposed Kihei-Makena Planned Growth Area as shown in the Planning Department's Directed Growth Map S-1 in Chapter 8 of the Maui Island Plan. (Pet. Ex. No. 23).

31. The Petition Area is not within the County of Maui's special management area. (Pet. Ex. No. 9).

NEED FOR THE PROPOSED DEVELOPMENT

32. Significant population growth in the Kihei-Makena region, coupled with the geographical separation from existing crowded Central Maui high schools, has created the need for Kihei High School.

33. According to the 2011 Maui County Data Book, the resident population of the County of Maui grew from 128,899 in 2000 to 154,834 in 2010, a 20 % change over the span of a decade. The resident population of the Kihei-Makena region experienced a 24.7% increase in the same decade from 16,749 to 20,881. The 2025 population estimate for the Kihei-Makena region is 35,962 persons, more than doubling the population from 2000. (Pet. Ex. No. 9).

34. Central Maui high schools currently serve students from the South Maui region. In 2011-2012 approximately 704 students from Kihei attended high school in Central Maui. Maui High School in Kahului serves South Maui communities including Kihei, Makena, and Wailea, and Baldwin High School in Wailuku serves Wailuku, Waiehu, Waikapu, Waihe'e, and Ma'alaea communities.

35. In 2011-12, Maui High School had a student population of 1,826, exceeding its design capacity of 1,580 by 246 students. Baldwin High School, with a design capacity of 1,669 and a student population of 1,612, had capacity for an additional 50 students. South Maui students may apply for a geographic exemption to attend Baldwin High School.

36. The only high school in South Maui is Kihei Charter School. In the 2011-2012 school year, Kihei Charter School enrolled 248 students in grades 9 through 12. Kihei Charter School does not meet regional needs for a high school complex.

SOCIO-ECONOMIC IMPACTS

37. In July 2011, Plasch Econ Pacific, LLC, prepared an Economic and Fiscal Impacts assessment for the Kihei High School project. (Pet. Ex. No. 9, App. L).

38. Kihei High School will complement the pattern of development in the Kihei-Makena region as envisioned in the Kihei-Makena Community Plan. The Project will support the existing and future residential developments in South Maui by providing a new public educational facility. The Project will reduce lengthy travel time and long commutes for Kihei Area high school students, and will help relieve the over-crowding of Central Maui high schools.

39. Development and construction of Kihei High School will have a positive impact on the economies of the State and the County on a direct and indirect basis. Phase I construction will provide an average of approximately 340 construction jobs over the 2.25-year construction period, in addition to approximately 320 indirect jobs on Maui and 160 indirect jobs on Oahu. Total average Phase I construction period employment will be approximately 820 jobs. Phase II construction will provide an average of approximately 82 construction jobs during the 2-year construction period, in addition to approximately 80 indirect jobs on Maui and 40 indirect jobs on Oahu. Total average Phase II construction period employment will be approximately 200 jobs.

40. Over the development period, total construction expenditures for the Kihei High School are estimated to be nearly \$170 million, including approximately \$140 million for Phase I and approximately \$30 million for Phase II. This translates into average construction expenditures of about \$62.2 million per year during the 2.25-year construction period of Phase I, and about \$15 million per year during the 2-year construction period Phase II. Indirect expenditures are expected to average approximately \$61 million per year during Phase I and approximately \$14.7 million per year during Phase II. Phase I construction activity is expected to generate a total payroll of approximately \$41.7 million per year, of which approximately \$22.4 million will be for construction workers, approximately \$12.5 million for indirect

employment on Maui and \$6.8 million for indirect employment on Oahu. Phase II construction activity is expected to generate payroll of approximately \$10.1 million, of which approximately \$5.4 million will be for construction workers, approximately \$3 million for indirect employment on Maui and \$1.7 million for indirect employment on Oahu. Individual annual wages will range from approximately \$25,000 to over \$100,000 per year. During the Phase I construction period, direct and indirect jobs will support approximately 1,680 residents housed in approximately 570 homes. Phase II construction activity will support approximately 400 residents and approximately 140 homes.

41. After Phase I, Kihei High School will provide approximately 120 on-campus jobs, 47 indirect Maui jobs, and 23 indirect Oahu jobs. Annual payroll for these jobs will total about \$8.4 million. After Phase II, Kihei High School will provide approximately 206 on-campus jobs, 81 indirect Maui jobs, and 40 indirect Oahu jobs. Annual payroll for these jobs will total about \$14.7 million.

42. The opening of Kihei High School will reduce transportation time and costs for student families and DOE employees resulting in a total annual savings of approximately \$1.01 million. In addition, students will save an estimated 108,000 hours per year in time commuting to high school in Kihei rather than to a high school in Central Maui. Following full build-out of Phase II of the campus, further reduction in transportation time and costs will result in a total annual savings of approximately \$2.08 million for student families and DOE employees. In addition, students will save an estimated 223,000 hours per year in commute time. (Pet. Ex. No. 9).

IMPACT ON RESOURCES OF THE AREA

Agricultural Resources

43. The Petition Area is unsuitable for cultivation of most commercial field crops grown in Hawai'i. The Petition Area has high solar radiation but consists of poor soils having low productivity ratings and lacks irrigation water. Kihei has a large supply of low-quality agricultural land similar to that of the Petition Area. Over 19,000 additional acres of higher-quality farmland is also available in Central and West Maui due to past closures of sugarcane and pineapple plantations, and 170,000 acres of high quality farmland is available state-wide. (Pet. Ex. No. 9).

Ranching Resources

44. Haleakala Ranch Company was incorporated in 1888 and has 23,000 acres of ranch land making it the oldest and largest cattle ranch on Maui. BLNR's acquisition of 44 acres from Haleakala Ranch has removed approximately 0.2% of Haleakala Ranch's total grazing acreage. Loss of the Petition Area has had a negligible impact on ranching operations because the Petition Area is located on the lower, less productive arid slopes of Haleakala. (Pet. Ex. No. 9).

45. Kaonoulu Ranch LLLP has been a family-owned and operated cattle ranch since 1916 and comprises approximately 10,000 acres of the Kaonoulu Ahupuaa. BLNR's acquisition of 32 acres from Kaonoulu Ranch has removed approximately 0.3% of Kaonoulu Ranch total grazing acreage. This acquisition has had a negligible impact on ranching operations due to the Petition Area's location and Kaonoulu Ranch's ability to move its cattle to other pastures. (Pet. Ex. No. 9).

Flora and Fauna

46. Rana Biological Consultants, Inc. conducted flora, fauna, and avian surveys on the Petition Area. The vegetation on the site is best described as savanna: grassland with scattered trees. There are ample signs of past wildfires. Rana recorded six plant species on the Petition Area (excluding a fungal fruiting body), which is a low number of species compared to the area of land. The only native species observed was the 'uhaloa (*Waltheria indicia*). Rana also surveyed the land between the Petition Area and Pi'ilani Highway. An additional six species of plants were observed, which were, with one exception, ruderal weeds typical of a highway verge. The exception was the endemic Hawaiian cotton or *ma'o* (*Gossypium tomentosum*), which is not an endangered or threatened species. Combined, the survey yielded a total of 12 recorded flowering plants, no ferns, and included one each of indigenous and endemic Hawaiian plant species. Rana detected no plant species classified as an endangered or threatened species by the US Fish and Wildlife Service or the State of Hawai'i on or in the vicinity of the Petition Area, nor any plant species proposed as a candidate for listing as an endangered or threatened species on the Petition Area. (Pet. Ex. No. 9, App. D).

47. Rana also recorded 11 avian species, one species being the native Pacific Golden-Plover (*Pluvialis fulva*). The Pacific Golden-Plover is an indigenous migratory shorebird species that nests in the high Arctic during the late spring and summer months, and returns to Hawai'i to spend the fall and winter months. The remaining species detected are considered to be alien to the Hawaiian Islands. (Pet. Ex. No. 9, App. D).

48. Rana did not detect any US Fish and Wildlife Service or the State of Hawai'i endangered or threatened fauna species on the Petition Area, nor any species proposed as a candidate for listing as an endangered or threatened species. Development of Kihei High

School is not expected to have an adverse impact on the botanical resources or biological resources of the Petition Area. (Pet. Ex. No. 9, App. D).

Archeological, Historical, and Cultural Resources

49. Section 6E-8(a), HRS requires Petitioner to afford the Department of Land and Natural Resources, State Historic Preservation Division ("SHPD"), an opportunity to review the effect of the Project on known or potential historic properties because the Project is considered a "State project."

50. In Ka Pa'akai O Ka'Aina v. Land Use Commission, 95 Hawai'i 31, 46, 7 P. 3d 1068 (2000) the Hawai'i Supreme Court held that Article XII, Section 7 of the Hawai'i Constitution obligates the Land Use Commission to protect the reasonable exercise of Native Hawaiian customary and traditional practices *to the extent feasible* when granting a petition for State Land Use Commission district boundary amendment application. The Court established the following three prong test:

In order to fulfill its duty to preserve and protect customary and traditional Native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must--*at a minimum*--make specific findings and conclusions as to following: (1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources-including traditional and customary Native Hawaiian rights-will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect Native Hawaiian rights if they are found to exist.

51. In 2009, Scientific Consultant Services, Inc. ("SCS") conducted an archeological inventory survey ("AIS") of the Petition Area. SCS completed a 100% pedestrian survey and a limited subsurface testing of the 77 acre Petition Area. SCS re-documented one known site located in the northeastern portion of the Petition Area -- State Inventory of Historic Properties ("SIHP") No. 50-50-10-6393. This site consists of eight features (seven mounds and

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one alignment). The site has already been evaluated for significance and is designated under Criterion D, which means that it has yielded or has the potential to yield information important in prehistory or history. The eight features have been thoroughly documented with photographs, scale plan view maps and written descriptions, and three of the features have been manually tested to gather additional information. SHPD concurred with SCS's finding that further mitigation for the site is unnecessary. The features have been adequately documented and additional research on the site would not contribute to the interpretation of the area or Hawaiian prehistory or history. (Pet. Ex. No. 9, App. E).

52. SCS completed a Cultural Impact Assessment ("CIA") in April 2010. SCS contacted numerous organizations and individuals with knowledge of the area. No kama'aina was aware of use of the Petition Area for gathering or other cultural purposes or for access to other areas for cultural purposes. Haleakala Ranch and Kaonoulou Ranch had owned the Petition Area for almost 100 years prior to selling the Petition Area to BLNR. Henry Rice, owner of Kaonoulou Ranch, did not know of any old trails, traditional properties, or cultural activities occurring on the Petition Area. The CIA concluded that no notable cultural activities took place on the Petition Area. It is reasonable to conclude that there will be no adverse impact to any exercise of native Hawaiian rights or cultural resources within the Petition Area by the construction of Kihei High School. (Pet. Ex. No. 9, App. F).

Water Resources

53. Water Resources Associates conducted an assessment of existing surface and groundwater resources in the Petition Area. The Petition Area is located in the northern part of the Kama'ole Aquifer System, which covers an area of approximately 90 square miles. It is bounded on the south by the Haleakala Southwest Rift Zone, which extends from the coast near La Perouse Bay to the top of Haleakala summit and back to the coast just north of Kihei. The

State Commission on Water Resource Management ("CWRM") has estimated the groundwater recharge from rainfall in the Kama`ole Aquifer System to be 25 million gallons per day ("MGD") or between 10-40 inches per year. Existing water use is approximately 1.859 MGD, primarily for golf course and landscape irrigation purposes. CWRM estimated that 11 MGD can be developed from the Kama`ole Aquifer System on a sustainable basis. There are a number of existing wells in the Kihei Area, most drilled makai of Pi`ilani Highway. (Pet. Ex. No. 9, App. C).

54. Kihei High School is expected to require 185,000 gallons of water per day ("GPD") for irrigation. To meet this need Petitioner plans to drill two wells to draw brackish water from the underlying Kamaole Aquifer. Each well is projected to have a pump capacity of 250 to 350 gallons per minute ("GPM") while producing a suitable brackish water supply in the salinity range of 400 to 500 mg/L chlorides. Kihei High School's use of 185,000 GPD represents only 1.7% of the Kama`ole Aquifer's 11 MGD sustainable yield. This use will have no adverse impact on the Aquifer or on other existing wells.

Visual Resources

55. Kihei High School will potentially impact mauka views from Pi`ilani Highway. The Project will replace vegetated land with a high school campus, including buildings, playing fields, and landscaping. To mitigate potential visual impacts, the campus will include open space and landscaped areas. To maintain a setback for reduction of visual and noise impacts and to maintain a park-like open visual corridor landscaping, overflow parking, a storm water detention basin, and playing fields are planned along Pi`ilani Highway. The Project is not anticipated to adversely impact mauka views of Haleakala or coastal views. (Pet. Ex. No. 9). The Maui Planning Department's recommendation of a landscaped buffer along Pi`ilani

Highway is incompatible with Petitioner's designation of this portion of the Petition Area a storm water detention basin, however Petitioner plans to landscape this frontal area as appropriate.

ENVIRONMENTAL QUALITY

Noise

56. Y. Ebisu and Associates conducted an Acoustic Study for the proposed Kihei High School in September 2011. (Pet. Ex. No. 9, App. I). The EPA's Day-Night Average Sound Level ("DNL") is the most widely used method to describe environmental noise. The State of Hawai'i Department of Health ("DOH") regulates noise from fixed mechanical equipment and construction activities (expressed in maximum allowable noise limits instead of DNL). DOH noise limits for single family residential lands equate to approximately 55 DNL. For multifamily residential, commercial, and resort lands, DOH noise limits equate to approximately 60 DNL. The existing background noise levels at the Petition Area are estimated to range from approximately 63 DNL near the makai boundary closest to Pi'ilani Highway to approximately 45 DNL at the mauka boundary of the Petition Area.

57. The Kihei High School campus is planned such that the noise sensitive buildings and classrooms are set back at least 650 feet from Pi'ilani Highway, where future traffic noise levels are predicted to be "acceptable" at less than 55 DNL. The Acoustic Study predicts that there will not be any significant increase in traffic noise levels along Pi'ilani Highway in the Project environs from 2013 to 2025 as a result of Project traffic. The growth in non-Project related traffic by 2025 is also predicted to result in an insignificant increase in the traffic noise level.

58. The potential noise from playground, practice field, pool, and athletic stadium activities could possibly disturb neighboring residences. The neighboring properties to

the south and across Pi'ilani Highway to the west are the areas most likely to experience an increase in intermittent noise levels from Kihei High School outdoor activities.

Air Quality

59. B.D. Neal and Associates prepared an Air Quality Study for the Petition Area in September 2011. Short-term impacts from fugitive dust will likely occur during the Project construction phases. Fugitive dust emissions can be controlled by watering active work areas, using wind screens, keeping adjacent paved roads clean, and by covering open-bodied trucks. Following completion of construction, motor vehicle emissions from vehicles entering and leaving the Kihei High School campus, during worst-case scenario conditions, will be well within both state and national ambient air quality standards. With or without the Project, carbon monoxide concentrations in the vicinity of the Petition Area during the next 15 years will likely decrease (improve) somewhat compared to existing concentrations. It will not be necessary to implement mitigation measures for traffic-related air quality impacts. (Pet. Ex. No. 9, App. H).

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Transportation and Traffic

60. Wilson Okamoto Corporation prepared a Traffic Impact Report ("TIAR") and Traffic Warrant Study to identify and assess potential impacts of the Project on existing roadways and traffic conditions. (Pet. Ex. No. 9, App. G).

61. Pi'ilani Highway is a four-lane, two-way limited access roadway oriented in the north-south direction that provides the principal vehicular access through Kihei and from Kihei to the rest of Maui. The access roadway for Kihei High School will be located on the east side of the "T" intersection of Kulanihako'i Street and Pi'ilani Highway to create a four way intersection.

62. The northbound approach of Pi'ilani Highway at this intersection has an exclusive left-turn lane and two through lanes, while the southbound approach has two through lanes and an exclusive right-turn lane. The Kulanihako'i Street approach has two stop controlled lanes that serve left-turn and right-turn movements.

63. The westbound approach of the access road connecting the campus to the intersection is expected to have two westbound lanes: a shared left turn and through lane, and a right turn only lane. Petitioner proposes to construct northbound deceleration and acceleration lanes along Pi'ilani Highway to facilitate traffic movements entering and exiting the campus.

64. The TIAR examined traffic conditions at five key intersections in Kihei: Pi'ilani Highway and Ka'ono'ulu Street, Pi'ilani Highway and Kulanihako'i Street, Pi'ilani Highway and East Waipu'ilani Road, Pi'ilani Highway and Pi'ikea Avenue, and Kulanihako'i Street and South Kihei Road, and concluded that traffic conditions will likely remain similar in the future whether or not Kihei High School is built. Projected traffic operations at many of these intersections are expected to deteriorate slightly in 2025 from 2015 primarily as a result of ambient growth in traffic along surrounding roadways and other projects.

65. Under 2015 Project conditions, traffic operations in the vicinity are expected to remain generally the same to without Project conditions.

66. Along Pi'ilani Highway, the critical movements at the intersection with Ka'ono'ulu Street are expected to continue operating at level of service ("LOS") C or better during the AM peak period and LOS D or better during the PM peak period while those at the intersection with Pi'ikea Avenue are expected to continue operating at LOS D during both peak periods.

67. At the intersection of Pi'ilani Highway and E. Waipuilani Road, the eastbound approach is expected to continue operating at LOS B during both peak periods while

the critical movements at the intersection of Kulanihako`i Street and South Kihei Road are expected to continue operating at LOS C or better during both peak periods.

68. At the intersection of Pi`ilani Highway and Kulanihako`i Street, the critical movements are expected to operate at LOS D or better during both peak periods primarily due to the proposed installation of a traffic signal at that intersection based on the recommendation of the Traffic Signal Warrant Study.

69. Under 2025 Project conditions, traffic operations in the vicinity are expected to deteriorate slightly from 2015 Project conditions, primarily due to ambient growth in traffic along the surrounding roadways.

70. Along Pi`ilani Highway, the critical movements at the intersection with Ka`ono`ulu Street are expected to operate at LOS D or better during the AM peak period and LOS E or better during the PM peak period while those at the intersections with Kulanihako`i Street and Pi`ikea Avenue are expected to operate at LOS E or better during both peak periods.

71. At the intersection of Pi`ilani Highway and E. Waipuilani Road, the eastbound approach is expected to operate at LOS C and LOS B during the AM and PM peak periods, respectively.

72. Along South Kihei Road, the critical movements at the intersection with Kulanihako`i Street are expected to operate at LOS C or better during both peak periods.

73. Petitioner plans to construct northbound deceleration and acceleration lanes along Pi`ilani Highway to facilitate traffic movements entering and exiting the campus.

74. Petitioner objects to the County's recommended condition and State of Hawai'i Department of Transportation's ("DOT") (through OP) original recommended condition that Petitioner construct a pedestrian overpass or underpass across Pi`ilani Highway at the intersection of Kulanihako`i Street .

75. Petitioner believes a traffic signal will be the most cost-effective means to assure pedestrian safety. A signalized intersection will accommodate both pedestrian and vehicular traffic movements safely.

76. OP bases its recommendation on the American Association of State Highway and Transportation Officials' *Policy of Geometric Design of Highways and Streets*, and a Federal Highway Administration (FHWA) study on *Warrants for Pedestrian Over and Underpasses*. Neither publication imposes a requirement for a grade separated pedestrian crossing at this intersection. The FHWA study was undertaken to predict whether a grade separated pedestrian crossing would be successful if built, not to determine if a grade separated pedestrian crossing is warranted in a particular situation. A number of the proposed warrants for grade separated pedestrian crossings, including pedestrian volume, traffic volume, distance to safe alternative crossings, pedestrian barrier to prevent on grade crossings, specific need and funding for construction of an overpass or underpass are not present in this instance.

77. Professional experience suggests grade separation (overpass or underpass) is not superior to traffic signals. Pedestrians will avoid the effort of climbing bridges or walking down and up tunnels. (Pet. Ex. No. 9, App. N). On-grade crossing of Pi'ilani Highway at intersection of Kulanihako'i Street would be most direct pedestrian route.

78. Suggestion of using storm drain culverts at Waipu'ilani Gulch or Kulanihako'i Gulch as a pedestrian underpass would require an additional 1,000 feet of walking on both sides of Pi'ilani Highway in either direction from Kulanihako'i Street, and poses security and maintenance issues and may attract unwanted behavior.

79. Construction of an overpass or underpass is unnecessary and undesirable based on Petitioner's experience with schools along a major highway without an overpass or underpass such as Kalani High School on Oahu and Baldwin High School on Maui, and schools

with an overpass or underpass such as Central Middle School, Royal Elementary School, Waipahu Elementary School and Mililani High School also on Oahu. Kalani High School and Baldwin High School, whose students must cross far busier highways to access the campus, operate safely without an overpass or underpass.

80. The City and County of Honolulu owns and maintains pedestrian bridges adjacent to Royal Elementary School and Waipahu Elementary School, and has offered to transfer these bridges to DOE. The State of Hawai'i Department of Transportation ("DOT") owns the bridge serving Central Middle School, but DOE was required to make safety improvements to that bridge. DOE closed its pedestrian tunnel adjacent to Mililani High School, in large part due to safety considerations.

81. DOT is willing to reexamine the need for a grade separated pedestrian crossing. DOT now requests that Petitioner resubmit to DOT an updated traffic signal warrant study for the intersection of Kulanihako'i Street and Pi'ilani Highway. If the study's traffic volumes satisfy the primary warrants for a traffic signal at the intersection, DOT will permit the installation of a crosswalk for pedestrian travel at the intersection and will not require a grade separated pedestrian crossing. If the study's traffic volumes do not satisfy the primary warrants for a traffic signal at the intersection, DOT will require Petitioner to request an appropriation from the State Legislature for the design and construction of a pedestrian overpass over Pi'ilani Highway as the preferred pedestrian crossing.

82. Petitioner also objects to DOT's proposed requirement that Petitioner pay the fair market value for access rights to Pi'ilani Highway and to pay Petitioner's fair share contribution toward the cost of regional transportation improvements to state highways. Kihei High School will be a public high school and as such is exempt from paying an impact fee pursuant to Section 14.68.120(A)(4), Maui County Code. County impact fees are to be paid into

the highway development special fund for state highway improvements pursuant to Section 264-122, HRS.

83. The County of Maui currently operates a public bus system that provides service in and between various Central, South, West, Haiku, and Upcountry Maui communities. All buses run seven days a week. Two routes serve the Petition Area: Kihei Villager #15 and Kihei Islander #10. The County also funds a commuter bus service. One commuter route, the Kihei-Kapalua Commuter, serves Kihei. The bus stop closest to the Petition Area is located at Kulanihako`i Street and South Kihei Road. Kihei High School may increase the number of daily passengers in the Kihei area, but this increase is not anticipated to have significant impacts on the public transit system. (Pet. Ex. No. 9).

Pedestrian and Bicycle Facilities

84. Stantec Consulting Services Inc. prepared a Pedestrian and Bicycle Analysis to evaluate access, community connectivity and safety for bicycles and pedestrians. (Pet. Ex. 9 App. N). Kulanihako`i Street is anticipated to be a common travel route to the new high school. Currently, there are nearly continuous sidewalks on Kulanihako`i Street from Pi`ilani Highway to South Kihei Road. There are bicycle lanes on Kulanihako`i Street from Pi`ilani Highway to Mahealani Street but there are no bicycle lanes makai of Malulani Street to South Kihei Road. The bicycle lanes along Pi`ilani Highway are not expected to serve much school traffic, but Kulanihako`i Street may become a desirable route for pedestrians and bicycles.

85. South Kihei Road is a two-lane arterial regional thoroughfare located along the Kihei coastline. Bicycle lanes are provided on approximately 90% of the length of South Kihei Road. The Kihei Greenway is a partially constructed bicycle path that is located on a State right-of-way between approximately 600 to 1,000 feet west of Pi`ilani Highway from

Waipu'ilani Road south to Lipoa Street. The Kihei Greenway does not extend north from Waipu'ilani Road to Kulanihako'i Street.

86. Petitioner plans to construct bicycle paths and bicycle racks on campus, but is precluded from improving bicycle paths or bicycle lanes on streets off campus.

Potable Water Service

87. Water Resource Associates concluded that there are no potable water resources, either surface or ground water, available within a two-mile radius of the Petition Area that could be economically or feasibly developed. Petitioner proposes to obtain potable water from the County of Maui Department of Water Supply's ("DWS") Central Maui Water System. The Project qualifies for an exemption from DWS' Water Availability Policy under §14.12.030, Maui County Code. Currently, there is no moratorium on issuance of water meters on the Central Maui System.

88. In recognition of Maui's potable water shortage, Petitioner plans to install a dual water system for Kihei High School. Petitioner proposes to obtain potable water from DWS, but will drill two brackish water wells on the Petition Area to serve as the source of non-potable irrigation water. These brackish wells are not anticipated to negatively impact fresh or brackish water supply.

89. Petitioner plans to connect to DWS's existing 18-inch water main on Liloa Drive and upgrade the existing 8-inch main in the Pi'ilani Village Subdivision. The Project will also utilize the DWS system for fire protection purposes.

90. Kihei High School will initially require an estimated average of 4,900 gallons per day ("GPD") of potable water in 2015, 9,000 GPD in 2016, 14,300 GPD in 2017, and 18,800 GPD in 2018. By 2025 at full build out, Kihei High School will require an estimated 37,450 GPD. The estimated demand for potable water is far less than demand if calculated using

Maui DWS standards because the estimate reflects proposed implementation of low flow fixtures and water conservation measures. The Project's potable water requirement represents less than one percent of the DWS' Central Maui Water System sources of supply. No adverse impact to DWS' existing potable water supplies is anticipated.

Wastewater

91. Kihei High School's wastewater collection system will be designed in accordance with applicable Maui Department of Environmental Services standards.

92. Because there is no existing wastewater facility or sewer connection on-site, Kihei High School will require construction of on-site wastewater collection facilities and extension of on- and off-site sewer connections. Kihei High School will connect to the County system preferably at the intersection of Kulanihako`i Street and Mahealani Street, or as approved by the County.

93. The existing wastewater collection system (including Kihei Wastewater Pump Stations Nos. 3, 4, 5 and 6) should have adequate capacity for flows generated by Kihei High School. Maui County Department of Environmental Management will confirm wastewater system capacity at the issuance of the building permit. The proposed on-site system will consist of gravity sewer mains to be located within roadways and sidewalks. (Pet. Ex. No. 9, App. K).

Drainage

94. The Petition Area is currently undeveloped and consists of dry rolling foothills on west-facing lowland slopes of Haleakala. There is no existing drainage system serving the site except for drainage infrastructure in Pi'ilani Highway, which is maintained by DOT. The majority of existing runoff drains towards a 72-inch diameter culvert under Pi'ilani Highway, with the remainder draining into either Kulanihako`i Gulch or Waipu'ilani Gulch. Both gulches cross Pi'ilani Highway under bridges spanning the gulches. Kihei High School is

expected to increase storm water runoff from a 50-year, 24-hour storm event from 8,881 to 8,902 CFS or by 21 CFS; and from a 100-year, 24-hour storm event from 10,796 to 10,822 CFS or by 26 CFS.

95. Petitioner plans to construct an on-site drainage detention basin at the makai boundary of the Petition Area to regulate the increase in runoff to the existing 72-inch culvert and to prevent runoff on to Pi'ilani Highway. The basin will be approximately 480 feet long by 90 feet wide and have a depth of 10 feet. The basin is expected to be able to hold 145,314 CF at a 3 ft depth which is above the estimated 112,807 CF needed based on a 50-year 1-hour storm event.

96. In addition, Petitioner also plans to construct a ditch along Kihei High School's mauka boundary that will divert runoff from mauka lands into Waipu'ilani Gulch. (Pet. Ex. No. 9, App. K).

Solid Waste

97. Petitioner anticipates that Kihei High School will be served by County of Maui solid waste collection and disposal services. Petitioner will emphasize waste diversion and recycling. During construction, waste will be hauled to the DeCoite Landfill for disposal.

Education

98. Kihei High School will serve the secondary school education needs of the residents of South Maui from Ma'alaea to Makena.

Police and Fire Protection

99. The Petition Area is in Maui Police Department District VI: Kihei. The Maui Police Department station that serves the Petition Area is located approximately 2.5 miles away at 1881 South Kihei Road. The Maui Police Department will be able to meet the need for additional police protection.

100. Maui Department of Fire and Public Safety will provide fire protection service from the Kihei Fire Station located at 11 Waimaha`iha`i Street in Kihei, also approximately 2.5 miles to the center of the Petition Area.

Emergency Medical Services

101. Emergency medical services to the Petition Area are presently provided from Maui County Paramedic Station in Kihei and Maui Memorial Medical Center in Wailuku.

Electrical Power and Telecommunications Services

102. Maui Electric Company, Inc. provides electrical power to the Petition Area. Hawaiian Telephone Company and Oceanic Time Warner Cable will provide telecommunications services to the Project. Electric and telecommunications transmission lines will be installed underground on site and will connect to existing systems. Petitioner will incorporate energy efficient technology and design to reduce the Project's overall energy consumption.

COMMITMENT OF STATE FUNDS AND RESOURCES

103. Kihei High School is not expected to require major additional support improvements from the County or State since neither construction nor operation of the School will add significantly to the County's population growth. State and County services for construction workers and their families are, for the most part, already provided since many of the needed construction workers are current residents of Maui.

104. Phase I construction activity will generate approximately \$12.9 million in tax revenues for the State, from general excise tax and corporate and personal income taxes. Phase II construction will bring total State tax revenues to approximately \$15.7 million. These tax revenues will offset approximately 9% of the cost of constructing the Project.

105. Following completion of Phase I of Kihei High School, families of Kihei High School faculty and staff and families of employees and owners of businesses who provide direct and indirect services to Kihei High School will pay approximately \$590,000 per year in general excise tax and income taxes to the State, and \$67,000 per year to the County. Following completion of Phase II, families of Kihei High School faculty and staff and families of employees and owners of businesses who provide direct and indirect services to Kihei High School will pay approximately \$1 million per year in taxes to the State, and approximately \$116,000 per year to the County. These revenues will pay much of the cost of providing State and County services to these families and businesses.

106. The County of Maui will incur expenditures to provide municipal services to Kihei High School, including water and waste water service, solid waste disposal, public safety and fire protection. Petitioner will pay service charges for water, waste water service, and solid waste disposal. Police and fire services are paid from the County General Fund.

ENERGY CONSERVATION AND SUSTAINABLE DEVELOPMENT

107. Section 196-9(b), HRS requires new State buildings to be designed and constructed to achieve the U.S. Green Building Council's Leadership in Energy Efficiency and Design ("LEED") Silver certification or equivalent. Petitioner, together with a Hawai'i Advisory Committee and the Collaborative for High Performance Schools ("CHPS") have worked to adapt a nationally recognized consensus-based energy efficiency and performance rating system for sustainable schools comparable to LEED for Schools Rating System to address Hawai'i climates, school needs, regulations and environmental priorities. The CHPS program's goal is to ensure that the school project is designed and constructed to incorporate the required high performance features to improve health, productivity and student performance, decrease operating costs and increase energy savings.

108. In 2012 Petitioner and CHPS promulgated Hawai'i – CHPS ("HI-CHPS") Criteria for new construction and major modernization of Hawai'i schools. HI-CHPS Criteria provides design, construction, and performance criteria for sustainable sites, water use efficiency, lighting, energy conservation, materials, waste management and ventilation (natural and mechanical).

109. Petitioner proposes to design and construct Kihei High School to achieve the HI-CHPS Verified designation, which is equivalent or greater than LEED Silver. In order to achieve the HI-CHPS Verified designation, an assigned third party assessor will commence outside project oversight and plan review during the design and documentation process.

CONFORMANCE TO URBAN DISTRICT STANDARDS

110. Kihei High School satisfies the standards applicable to establishing the boundaries of the State Land Use Urban District set forth in section 15-15-18, HAR, in the following respects:

a. The Petition Area is directly adjacent to Pi'ilani Highway, the eastern boundary of lands classified in the Urban District comprising the Kihei community. These lands are either being used or are planned for residential and other urban development, and are characterized by "city-like" concentrations of people, structures, streets, urban level services and other related land uses.

b. The location of Kihei High School is an appropriate location for the new school facility and is in accord with widely accepted planning principles of placing new urban uses contiguous to existing urban uses.

c. Kihei High School is located adjacent to Kihei and in close proximity to Wailea, South Maui's primary centers of trading and employment.

d. Basic services such as commercial centers, parks, wastewater systems, drainage, potable water, transportation systems, public utilities, and police and fire protection are either already available to the Petition Area or can readily be provided to the Petition Area.

e. Reclassification of Kihei High School is reasonably necessary for urban growth.

f. The Petition Area has satisfactory topography and drainage, and is free from danger of flood, tsunami, unstable soil conditions and other adverse environmental effects. The Petition Area does not include land with a general slope of 20% or more. Design and construction controls to be imposed on portions of Kihei High School will be adequate to protect the public health, welfare, and safety and the public's interests in the aesthetic quality of the landscape.

g. The Petition Area is in an appropriate location for new urban concentrations. A major portion of the Petition Area is designated for Public/Quasi-Public Facilities in the Kihei-Makena Community Plan Land Use Map, and the entire Petition Area is also within the Proposed Urban Growth Boundary of the Maui Island Plan, and within the proposed Kihei-Makena Planned Growth Area as shown in the Planning Department's Directed Growth Map S-1 in Chapter 8 of the Maui General Plan 2030 Maui Island Plan. (Pet. Ex. No. 9).

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

Hawai'i State Plan

111. Reclassification of the Petition Area generally conforms to the following applicable goals, objectives, policies and guidelines of the Hawai'i State Plan:

Chapter 226-4, HRS, State Goals.

226-4, HRS: In order to guarantee, for the present and future generations, those elements of choice and mobility that insure that individuals and groups may approach their desired levels of self-reliance and self-determination, it shall be the goal of the State to achieve:

(1) 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.

(3) Physical, social and economic well-being, for individuals and families in Hawai'i, that nourishes a sense of community responsibility, of caring, and of participation in community life.

Educational institutions build strong communities by enhancing the mental and physical well-being of youth and providing opportunities for employment. Kihei High School will allow Kihei-Makena youth to attend school in their home community.

Chapter 226-5, HRS, Objective and Policies for Population.

226-5(b)(2), HRS: Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

Chapter 226-6, HRS, Objectives and Policies for the Economy – In General

226-6(b)(6), HRS: Strive to achieve a level of construction activity responsive to, and consistent with, State growth objectives.

The construction of Kihei High School is consistent with the State's goals to develop land resources to meet the level of growth in the Kihei region.

Chapter 226-11, HRS: Objectives and Policies for the Physical Environment – Land Based, Shoreline, and Marine Resources.

226-11 HRS: (B) To achieve the land-based, shoreline and marine resources objectives, it shall be the policy of this State to:

(3) Take into account the physical attributes of areas when planning and designing activities and facilities.

(4) Manage natural resources and environs to encourage their beneficial and multiple uses without generating costly or irreparable environmental damage.

(8) Pursue compatible relationships among activities, facilities and natural resources.

(9) Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational and scientific purposes.

The Petition Area is almost one mile inland. Development of Kihei High School will not directly impact shoreline or marine resources and constitutes a prudent use of inland

resources. Development of Kihei High School will not have a deleterious impact on any known species of flora and fauna classified as an endangered or threatened species by the U.S. Fish and Wildlife Service or the State of Hawai'i or any species of flora or fauna proposed as a candidate for listing as an endangered or threatened species.

Chapter 226-13, HRS, Objectives and Policies for the Physical Environment – Land, Air, and Water Quality.

226-13 HRS: (B) To achieve the land, air and water quality objectives, it shall be the policy of this State to:

(6) Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.

(7) Encourage urban developments in close proximity to existing services and facilities.

Kihei High School will be located in close proximity to available services and facilities in Kihei and will provide a high school for Kihei students who currently commute to Central Maui. Kihei High School's design will incorporate open spaces and landscaping throughout the campus to foster an appreciation of Hawaii's environmental resources.

Chapter 226-14, HRS, Objectives and Policies for Facility Systems – In General.

226-14) HRS: (A) Planning for the State's facility systems in general shall be directed towards achievement of the objectives of water, transportation, waste disposal and energy and telecommunications systems that support statewide social, economic and physical objectives.

(B) To achieve the general facility systems objective, it shall be the policy of this State to:

(1) Accommodate the needs of Hawaii's people through coordination of facility systems and capital improvement priorities in consonance with State and county plans.

(2) Encourage flexibility in the design and development of facility systems to promote prudent use of resources and accommodate changing public demands and priorities.

(3) Ensure the required facility systems can be supported within resources capacities and at reasonable cost to the user.

Petitioner will coordinate development of off-site and on-site improvements to surrounding facility systems with the appropriate State and County agencies and/or private utility companies. Kihei High School will achieve a Verified designation under the HI-CHPS Criteria. Sustainable design strategies will include features to conserve energy and water.

Chapter 226-16 HRS, Objective and Policies for Facility Systems – Water.

226-16 HRS: (A) Planning for the State's facility systems with regard to water shall be directed towards achievement of the objective of the provision of water to adequately accommodate domestic, agricultural, commercial, industrial, recreational and other needs within resource capacities.

(B) To achieve the facility systems water objective, it shall be the policy of this State to:

(1) Coordinate development of land use activities with existing and potential water supply.

(3) Reclaim and encourage the productive use of runoff water and wastewater discharges.

(6) Promote water conservation programs and practices in government, private industry, and the general public to help ensure adequate water to meet long-term needs.

Kihei High School's domestic and fire protection water will be supplied through the Central Maui Water System. On-site brackish wells will provide irrigation water.

Chapter 226-18 HRS, Objective and Policies for Facility Systems – Energy.

226-18 HRS: (C) To further achieve the energy objectives, it shall be the policy of this State to:

(4) Promote all cost-effective conservation of power and fuel supplies through measures including: (A) Development of cost-effective demand-side management programs; (B) Education; (C) Adoption of energy-efficient practices and technologies;

Kihei High School will contribute to energy efficiency by incorporating green building standards and sustainable features to conserve energy and water usage, and principles of waste minimization and pollution prevention. Kihei High School will be designed and constructed in accordance with HI-CHPS Criteria and verified designation requirements. A new high school facility in South Maui will reduce lengthy commutes and travel times for students who must otherwise attend high school in Central Maui. The Petition Area is within walking distance to existing and future residential areas thereby encouraging walking, biking and other alternative means of transportation to commute to school.

Chapter 226-21 HRS, Objective and Policies for Socio-Cultural Advancement – Education.

226-21 HRS: (A) Planning for the State's socio-cultural advancement with regard to education shall be directed towards achievement of the objective of the provision of a variety of

educational opportunities to enable individuals to fulfill their needs, responsibilities and aspirations.

(B) To achieve the education objective, it shall be the policy of this State to:

(1) Support educational programs and activities that enhance personal development, physical fitness, recreation and cultural pursuits of all groups.

(2) Ensure the provision of adequate and accessible educational services and facilities that are designed to meet individual and community needs.

(3) Provide appropriate educational opportunities for groups with special needs.

(4) Promote educational programs which enhance understanding of Hawaii's cultural heritage.

(7) Promote programs and activities that facilitate the acquisition of basic skills, such as reading, writing, computing, listening, speaking and reasoning.

(8) Emphasize quality educational programs in Hawaii's institutions to promote academic excellence.

(9) Support research programs and activities that enhance the education programs of the State.

The development of Kihei High School will directly support the State's policies to encourage socio-cultural advancement in education. Kihei High School is planned for an enrollment of up to approximately 1,650 Kihei-Makena students in grades 9-12. The core curriculum will include various educational and research programs relating to personal development, physical fitness, recreation and culture. Kihei High School will also provide appropriate educational opportunities and facilities to individuals with special needs.

Chapter 226-104, HRS, Population Growth and Land Resources Priority Guidelines

226-104 HRS: (A)(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available planned resource capacities and reflect the needs and desires of Hawaii's people.

(3) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State.

(B)(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.

(2) Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

(9) Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized.

(12) Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline conservation lands, and other limited resources for future generations.

The development of Kihei High School is consistent with the State's goals to develop land resources to meet the level of population growth in the Kihei region. Development of Kihei High School will provide a new educational facility in South Maui to reduce lengthy commutes and travel times for students who must otherwise attend high school in Central Maui. Kihei High School will be designed, constructed and operated sustainably pursuant to the HI-CHPS Criteria. Mauka and coastal views will not be adversely impacted.

Chapter 226-107, HRS, Quality Education Priority Guidelines

226-197 HRS: (A) Priority guidelines to promote quality education:

(1) Pursue effective programs which reflect the varied district, school and student needs to strengthen basic skills achievement.

(2) Continue emphasis on general education "core" requirements to provide common background to students and essential support to other university programs.

(5) Increase and improve the use of information technology in education by the availability of telecommunications equipment for:

(a) The electronic exchange of information.

(b) Statewide electronic mail.

(c) Access to the Internet.

Kihei High School will provide accessible educational facilities and services to students living in the Kihei-Makena region. (Pet. Ex. No. 9)

Functional Plans

103. Reclassification of the Petition Area generally conforms to the functional plans in the following program areas: education, employment, energy and recreation.

Education. The proposed Kihei High School is consistent with the goals and policies of the Education Functional Plan. Significant population growth in the Kihei-Makena region, coupled with the geographical separation from crowded Central Maui schools has created the need for Kihei High School. The agricultural productivity of the Petition Area is considered to be low. Kihei High School will provide jobs, easier access to education and new opportunities within the Kihei-Makena region. The Kihei-Makena Community Plan (1998) and the Maui

Island Plan General Plan 2030 (Pet. Ex. No. 9) both contemplate development of Kihei High School.

Employment. Kihei High School will provide students access to quality education for improving employment qualifications. Kihei High School will also contribute to overall employment by creating construction-related jobs and long-term employment opportunities to support school operations (Pet. Ex. No. 9).

Energy. Kihei High School will include energy conservation measures, including energy efficiency, in accordance with the HI-CHPS Criteria and Verified designation requirements. Kihei High School will reduce lengthy commutes and travel distances for students in South Maui who currently drive to Central Maui high schools. (Pet. Ex. No. 9).

Recreation. Kihei High School will provide indoor and outdoor athletics facilities, including a gymnasium, sports stadium, grassed playfield, outdoor basketball courts and tennis courts. Athletic courts on the lower campus may be accessible for public use during non-school hours (Pet. Ex. No. 9).

CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

104. Reclassification of the Petition Area generally conforms to the policies and objectives of the Coastal Zone Management Program as defined in Chapter 205A, HRS, as follows:

(1) Recreational Resources

(A) Provide coastal recreational opportunities to the public.

The Kihei High School Petition Area is not near the shoreline and its development will not impact coastal recreational opportunities or affect existing public access to the shoreline.

(2) Historic Resources

(A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Kihei High School is not expected to impact cultural resources as no archaeological or cultural resources have been identified on the Petition Area. There is no evidence of past or present use of the Petition Area for gathering or Hawaiian cultural practices, or access to other areas for cultural purposes. Petitioner and its contractors will comply with all laws and rules regarding the preservation of archaeological, cultural, and historic sites should any such sites be found during construction.

(3) Scenic and Open Space Resources

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

The Petition Area is not near the shoreline. Development of the Petition Area will not impact coastal scenic and open space resources. The campus setting will preserve and maintain a considerable amount of scenic open space.

(4) Coastal Ecosystems

(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

The Project will have no direct impact on the coastal or marine environment. Best management practices and other measures such as ground stabilization with landscape and hardscape will prevent non-point source pollution and other impacts to coastal resources.

(5) Economic Uses

(A) Provide public or private facilities and improvements important to the State's economy in suitable locations.

The proposed development is not a coastal dependant development. As represented by the "Public Facilities" designation on Kihei-Makena Community Plan, school uses on the site are appropriate and represent the carefully planned out expansion of Kihei.

(6) Coastal Hazards

(A) Reduce hazard to life and Petition Area from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

The Petition Area is designated Zone X, outside the 100-year flood plain and is not in the tsunami inundation zone. The Petition Area is secure from tsunami, storm waves, subsidence or stream flooding. Kihei High School will comply with applicable building codes and DOE standards in preparation for natural hazards. Kihei High School may be used as a shelter for the Kihei community in the event of emergencies.

(7) Managing Development

(A) Improve the development review process, communication and public participation in the management of coastal resources and hazards.

Kihei High School will be developed in conformance with all applicable, laws, regulations and requirements. Assessment and evaluation of the Project has entailed and will entail the following processes:

- Environmental Impact Review (Chapter 343 HRS)
- State Land Use District Boundary Amendment
- County Change in Zoning

(8) Public Participation

(A) Stimulate public awareness, education and participation in coastal management.

The Environmental Assessment, State Land Use District Boundary Amendment, and County Change in Zoning processes all provide for both agency and public review and comment, as well as opportunities for the public and decision-makers to request for more information.

(9) Beach Protection

(A) Protect beaches for public use and recreation.

The Petition Area is located a significant distance from the shoreline and will not adversely affect the use of marine and coastal resources. Development of the Project is not expected to have any adverse impact on beaches, shorelines, or existing shoreline recreational activities (Pet. Ex. No. 9).

CONFORMANCE WITH THE COUNTY'S GENERAL PLAN

105. Development of Kihei High School is consistent with the following objectives and policies of the Maui County General Plan 2030. The Maui County Planning Department supports approval of the district boundary amendment for Kihei High School. The following Countywide Policy Plan objectives and policies are applicable to Kihei High School:

Protect the Natural Environment

Objective 3: Improve the stewardship of the natural environment.

No species of flora or fauna classified as endangered, or threatened by the U.S. Fish and Wildlife Service or the State of Hawai'i, nor any species proposed as a candidate for listing as an endangered species was detected on or in the immediate vicinity of the Petition Area. The development of Kihei High School will not involve alteration of the shoreline or offshore environments, as the Petition Area is located upslope and away from the shoreline. Kihei High School will not affect natural resources with significant scenic, economic, cultural, environmental, or recreational value. Kihei High School students can reduce their overall travel time and distance by attending school in their own community.

Improve Education

Objective 1: Encourage the State to attract and retain school administrators and educators of the highest quality.

Objective 2: Provide nurturing learning environments that build skills for the 21st century.

Objective 3: Provide all residents with educational opportunities that can help them better understand themselves and their surroundings and allow them to realize their ambitions.

Objective 4: Maximize community-based educational opportunities.

Kihei High School will provide a new school facility to support the Kihei-Makena community. Petitioner will hire teachers and administrators to provide a nurturing environment for learning and building skills for future development of students and the community. Kihei High School will decrease overcrowding occurring at Central Maui high schools.

Strengthen the Local Economy

Objective 1: *Maui County's economy will be diverse, sustainable and supportive of community values.*

Kihei High School is an important investment for the successful and directed growth of the region. Kihei High School will create jobs through both its construction and operations that will have a positive impact on the economies of the State and County on a direct and indirect basis.

Improve Parks and Public Facilities

Objective 1: *A full range of island-appropriate public facilities and recreational opportunities will be provided to improve the quality of life for residents and visitors.*

Objective 2: *Improve the quality and adequacy of community facilities.*

Objective 3: *Enhance the funding, management and planning of public facilities and park lands.*

Athletic fields and large open spaces on the makai campus area will be safe and accessible for people of all ages and physical abilities. Kihei High School will provide a range of recreational opportunities, many of which may be carried out in coordination with other groups and organizations. The campus will be a place for the community to gather for sports and recreational activities to build community pride.

Diversify Transportation Options

Objective 2: *Reduce the reliance on the automobile and fossil fuels by encouraging walking, bicycling and other energy-efficient and save alternative modes of transportation.*

Kihei High School will serve students who currently attend high schools in Kahului and Wailuku, thus alleviating lengthy commutes and travel times for students who must otherwise attend school in Central Maui. On-campus safe walking and bicycling opportunities will be integrated into the overall Project design.

Improve Physical Infrastructure

Objective 1: Improve water systems to assure access to sustainable, clean, reliable and affordable sources of water.

Objective 2: Improve waste-disposable practices and systems to be efficient, safe and as environmentally sound as possible.

Objective 3: Significantly increase the use of renewable and green technologies to promote energy efficiency and energy self-sufficiency.

Objective 4: Direct growth in a way that makes efficient use of existing infrastructure and to areas where there is available infrastructure capacity.

The Central Maui Water System will provide domestic and fire water supply in accordance with the County's water system standards. On-site brackish wells will provide irrigation water. Kihei High School will be designed and constructed to achieve the HI-CHPS Verified designation, incorporating sustainable design principles. The Kihei-Makena region has a demonstrated need for an educational facility that will serve students currently attending schools elsewhere. Kihei High School will also be used as a shelter for the community in the event of a natural disaster. (Pet. Ex. No. 9).

MAUI ISLAND PLAN

107. The second part of the Maui County General Plan 2030 is the Maui Island Plan. The purpose of the Maui Island Plan is to implement the Directed Growth Strategy which identifies areas appropriate for future urbanization and revitalization. The corresponding Directed Growth Maps specify "urban growth boundaries" for the Island of Maui. The Petition Area is within the Proposed Urban Growth Boundary of the Maui Island Plan, and within the

proposed Kihei-Makena Planned Growth Area as shown in the Planning Department's Directed Growth Map S-1 in Chapter 8 of the Maui Island Plan. The Maui Island Plan's Public Facility/Infrastructure Improvements Map designates the Petition Area for the development of a future high school.

KIHEI-MAKENA COMMUNITY PLAN

108. The Kihei-Makena Community Plan, one of nine community plans comprising the third part of the Maui General Plan 2030, designates a 48 acre portion of the Petition Area for Public/Quasi-public facilities. The Kihei-Makena Community Plan designates balance of the Petition Area for Agriculture.

109. The proposed project supports the following goals, objectives, policies, and implementing actions set forth in the Kihei-Makena Community Plan:

Land Use

Goal: A well-planned community with land use and development patterns designed to achieve the efficient and timely provision of infrastructural and community needs while preserving and enhancing the unique character of Ma'alaea, Kihei, Wailea and Makena as well as the region's natural environment, marine resources and traditional shoreline uses.

Objective (b): Identify priority growth areas to focus public and private efforts on the provision of infrastructure and amenities to serve existing residents and to accommodate new growth.

Objective (f): Establish a distribution of land uses which provides housing, jobs, shopping, open space, and recreation areas in close proximity to each other in order to enhance Kihei's neighborhoods and to minimize dependence on automobiles.

Kihei High School will add to the County's design of a well-planned community to support existing and future growth of the Kihei-Makena region. The Petition Area is identified as the site for a proposed high school in the Maui Island Plan's Public Facility/Infrastructure Improvements Map and for a Public/Quasi Public Facility on the Kihei-Makena Community Plan. Development of Kihei High School fits with existing land use and development patterns to achieve efficient provision of infrastructure while preserving and

enhancing the unique character of the region's natural environment, marine resources and traditional shoreline uses.

Implementing Action (f): Establish and enforce building height limits and densities mauka of Pi'ilani Highway which preserve significant mauka views and vistas.

Kihei High School will not have significant adverse impacts on mauka views and vistas.

Economic Activity

Goal: A diversified and stable economic base which serves resident and visitor needs while providing long-term resident employment.

Objective (b): Expand educational opportunities and encourage research and technological activities.

Development of Kihei High School will satisfy a need for an educational facility to serve the Kihei-Makena region as described in the Kihei-Makena Community Plan.

Expenditures for the development of Kihei High School will have a positive impact on the economies of the State and the County, including increased long-term employment and tax revenues in the Kihei-Makena region.

Physical and Social Infrastructure

Goal: Provision of facility systems, public services and capital improvement projects in an efficient, reliable, cost effective, and environmentally sensitive manner which accommodates the needs of the Kihei-Makena community, and fully support present and planned land uses, especially in the case of project district implementation.

Transportation

Objective (c): Strengthen the coordination of land use planning and transportation planning to promote sustainable development and to reduce dependence on automobiles. New residential communities should provide convenient pedestrian and bicycle access between residences and neighborhood commercial areas, parks and public facilities.

Objective (d): Support ridesharing, bicycle and pedestrian use, alternative work schedules, traffic signal synchronization, and/or other transportation demand management strategies.

Implementing Action (g): Provide left turn storage lanes and acceleration/deceleration lanes on Pi'ilani Highway, and traffic signals at important intersections along South Kihei Road.

The development of Kihei High School will include acceleration and deceleration lanes on Pi'ilani Highway and a traffic signal system at the intersection of Pi'ilani Highway with Kulanihako'i Street and the access road for Kihei High School. This intersection will integrate safe walking and bicycling opportunities. Kihei High School will serve students who currently attend high schools in Kahului and Wailuku, thus alleviating lengthy commute and travel time for students who must now attend high school in Central Maui. The Petition Area is within walking distance to existing and future residential areas, thereby encouraging students to walk and bicycle to and from school.

Water Distribution

Objective (c): Develop water conservation, reuse and educational programs.

Objective (d): Encourage the use of non-potable water for irrigation purposes and water features. Prohibit the use of potable water in large water features or require substantial mitigation fees.

Objective (e): Encourage the use of plants which have a relatively low need for water.

The Central Maui Water System will provide domestic water to Kihei High School. On-site brackish wells will provide irrigation water. Kihei High School will be designed and constructed to achieve the HI-CHPS Verified designation. Sustainable design strategies will include water conservation measures, such as xeriscape landscaping principles, and best management practices for water use.

Energy and Public Utilities

Objective (a): Promote energy efficiency as the energy resource of first choice, and increase energy efficiency in all sectors of the community.

Objective (b): Locate goods, services, and employment in close proximity to residential centers to minimize energy expenditures for transportation.

Kihei High School will be designed and constructed to achieve the HI-CHPS Verified designation. Kihei High School will contribute to energy efficiency through incorporating sustainable building features to conserve energy and water usage, and principles of waste minimization and pollution prevention. Kihei High School will be located in close proximity to existing and future residential neighborhoods thereby encourage walking, biking and other alternative means of transportation.

Recreation

Objective (a): Provide high-quality recreational facilities to meet the present and future needs of residents of all ages and physical ability.

Implementing Action (d): Provide adequate maintenance programs and enforce existing regulations regarding littering and defacement of public property at all public facilities.

Kihei High School will provide a range of recreational opportunities, many of which may be carried out in coordination with other groups and organizations. Athletic fields and large open spaces will be provided on the makai campus area of the proposed high school. Public parking would be provided after school hours. The campus is envisioned as a place for the community to gather for sports and recreational activities.

Education

Objective (c): Require the delivery of quality educational facilities at the time such facilities are needed. Emphasize advanced planning so that school facilities such as classrooms, playgrounds, libraries, cafeterias and other appurtenant structures are delivered in a timely manner so as to eliminate the use of portable facilities.

Objective (d): Enhance the classroom learning environment through measures which would reduce excessive temperature and background noise problems.

Objective (f): Build a high school to serve the Kihei region when required to accommodate growth.

Implementing Action (a): Enhance the classroom learning environment through such measures as the installation of air-conditioning and ceiling fans.

Implementing Action (d): Plan and locate a site for a high school to serve the Kihei region.

Significant population growth in the Kihei-Makena region, coupled with the geographical separation from existing crowded Central Maui high schools has created the need for Kihei High School. Kihei High School is included in County's Maui Island Plan General Plan 2030. Kihei community residents have desired this educational resource for a number of years.

PROJECT PHASING

86. Petitioner intends to develop and construct the Project in two phases. Petitioner intends to commence design and construction of Phase I of Kihei High School immediately following approval of necessary land use permits, appropriation by the Legislature and release of adequate funding and selection of a project designer-builder through an RFP process. Phase I will entail mass grading and development of backbone infrastructure and related facilities on the entire Petition Area, as well as construction of two classroom houses, an administrative and student center, library, cafeteria, selected elective buildings and selected athletic facilities for a student population of 800.

Phase II facilities could include construction of two additional classroom houses, additional electives buildings, an auditorium and a swimming pool and additional athletic facilities and other amenities to increase the school's capacity to a maximum student population of 1,650. The buildings and other facilities comprising Phase II will not be located in a single contiguous area, but will be integrated in the campus master plan initiated during Phase I. Individual elements of Phase II could be constructed separately, with projected completion of Phase II construction scheduled to be approximately 10 years after the completion of Phase I. Therefore, incremental redistricting would be inappropriate for Kihei High School.

RULING ON PROPOSED FINDINGS OF FACT

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

Any conclusion of law improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact 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, and the Hawai'i Land Use Commission Rules under Chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 77.2 acres of land at Kihei, Maui, Hawai'i, and identified as Maui Tax Map Key Nos.: 2-2-02: 81 and 83, from the State Land Use Agricultural District to the State Land Use Urban District for development of Kihei High School, subject to the conditions in the Order below, conforms to the standards for establishing the Urban District boundaries, is reasonable, is not violative of Section 205-2, HRS, and is consistent with the Hawai'i State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to Sections 205-17 and 205A-2, HRS.

2. Article XII, Section 7, of the Hawai'i 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 Hawai'i an Islands prior to 1778, subject to the right of the State to regulate such rights.

3. The archaeological or cultural sites that were encountered during the archaeological inventory surveys and the cultural impact study of the Petition Area have been fully and adequately documented so that there is no need for mitigation.

4. The Petition Area is set well back from the coast, has no surface water, and no unique topographic features. There were no commoner land claims within the Petition Area. There is no evidence that Native Hawaiians utilized the Petition Area for gathering or any cultural or religious purposes.

5. Article XI, Section 1, of the Hawai'i 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.

6. There are no naturally growing endangered or threatened species of flora nor any species proposed as a candidate for listing as an endangered or threatened species on the Petition Area.

7. There is no critical habitat of any endangered or threatened species of bird, mammal or insect nor any critical habitat of any species of fauna proposed as a candidate for listing as an endangered or threatened species on the Petition Area.

8. The ambient air quality of the Petition Area, and the surrounding communities are anticipated to be adversely impacted from fugitive dust during the construction phase of the development. A dust control plan that would include watering of active work areas

and the use of wind screens in sensitive areas will be employed to minimize the potential for fugitive dust emissions.

9. Based on the relatively small increases in predicted concentrations from Kihei High School's traffic and continued compliance with national standards, air quality mitigation measures for long-term traffic related impacts from the development are unnecessary.

10. The development will alter the existing mauka views from lands makai of the Petition Area. However, most distant views of the Petition Area and of Haleakala as well as makai views of the ocean from the Petition Area will not be impeded.

11. Article XI, Section 3, of the Hawai'i 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.

12. Development of the Petition Area will eliminate the possibility of continuation of ranching on the Petition Area or the possibility of using the Petition Area for diversified agriculture, but will not adversely impact growth of diversified agriculture in South Maui in particular, or on Maui, as a whole. There is ample more productive agricultural land available on Maui for diversified agriculture because of the closure of the sugar plantations.

13. Article XI, Section 7, of the Hawai'i Constitution states that the State has an obligation to protect the use of Hawaii's water resources for the benefit of its people. Kihei High School will not adversely affect the Kama'ole Aquifer System.

PROPOSED DECISION AND ORDER

IT IS HEREBY FURTHER ORDERED that the Petition Area being the subject of Docket A11-794 filed by Petitioner, consisting of approximately 77.2 acres of land in the State Land Use Agricultural District located at Kihei, Maui, Hawai'i, identified as Maui Tax Map Key Nos: 2-2-02: 81 and 83 and approximately shown on Exhibit A attached and incorporated by

reference shall be and hereby is reclassified to the Urban District and the State Land Use District Boundaries shall be amended accordingly.

Conditions

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

1. **Transportation Improvements.** Petitioner shall fund and implement traffic improvements and mitigation measures as recommended or required by the Traffic Impact Analysis Report (TIAR) for Kihei High School to be developed on the Petition Area, and as accepted by the State of Hawai'i Department of Transportation Highways Division (DOT) and the County of Maui Department of Public Works, including, but not limited to, construction of access road intersection improvements to create a four way signalized intersection at the intersection of Kulanihako'i Street and Pi'ilani Highway, dedication of land for and construction of northbound acceleration and deceleration lanes on Pi'ilani Highway to DOT standards, and construction of a paved shoulder, and other mutually agreed upon improvements along the frontage of the Petition Area bordering Pi'ilani Highway. Petitioner and DOT shall mutually agree to the scope and method of funding of the proposed vehicular traffic and bicycle and pedestrian safety improvements, prior to Petitioner applying for a building permit for any Kihei High School improvements.

2. **Grade Separation Improvements.** Petitioner will resubmit to DOT an updated traffic signal warrant study for the intersection of Kulanihako'i Street and Pi'ilani Highway. If the study's traffic volumes satisfy the primary warrants for a traffic signal at the intersection, DOT will permit the installation of a crosswalk for pedestrian travel at the intersection and will not require a grade separated pedestrian crossing. If the study's traffic volumes do not satisfy the

primary warrants for a traffic signal at the intersection, DOT will require Petitioner to request an appropriation from the State Legislature for the design and construction of a pedestrian overpass over Pi'ilani Highway as the preferred pedestrian crossing.

3. **On Campus Traffic Improvements.** Petitioner shall install paved shoulders and other mutually agreed upon improvements along Pi'ilani Highway fronting the Kihei High School campus and provide bicycle paths and bicycle racks on campus. Petitioner shall designate an overflow parking area to accommodate special events to be held on campus.

4. **Civil Defense.** Petitioner shall permit the State of Hawai'i Department of Defense, Office of Civil Defense or County of Maui Civil Defense Agency to construct and maintain a solar-powered civil defense warning siren at a mutually agreeable location on the Petition Area.

5. **Archaeological Inventory Survey and Historic Preservation Mitigation Plan.** Petitioner shall prepare, submit to, and obtain approval from the State of Hawai'i Department of Land and Natural Resources, Historic Preservation Division ("SHPD") of an archaeological monitoring plan to protect historic sites in the general vicinity of the Petition Area prior to commencement of any ground altering activities.

6. **Unidentified Finds.** In the event any previously unidentified human skeletal remains or archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, pavings, or lo'i walls are identified during construction activities, Petitioner shall cease work in the immediate vicinity of the find. Petitioner shall immediately notify SHPD, and comply with requirements of Chapter 6E, HRS, and applicable regulations. All construction activity in the vicinity of the find shall cease until SHPD has determined the significance of the find, and has issued an archaeological clearance that appropriate mitigative measures have been implemented in order for subsequent work to proceed.

7. **Established Access Rights Protected.** Petitioner shall observe any legal access rights of native Hawaiians for legally recognized purposes.

8. **Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program if required by the State of Hawai'i Department of Health.

9. **Notification of Potential Nuisances.** Petitioner shall disclose to all students and parents of the school to be developed on the Petition Area that potential odor, noise and dust pollution may result from agricultural uses on adjacent lands.

10. **No Restraint on Farming Operations.** Petitioner 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 Agricultural District.

11. **Provisions of the Hawai'i Right to Farm Act.** Petitioner shall notify all students and parents of the school to be developed on the Petition Area that the Hawai'i Right to Farm Act, Chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.

12. **Drainage Improvements.** Petitioner shall fund the design, construction and maintenance of storm water and drainage system improvements to prevent increased runoff resulting from the development of the Petition Area from adversely affecting State and County highway facilities in compliance with appropriate federal, State, and County laws and rules, based on 24 hour of runoff from a 100 year storm event. To the extent economically and physically feasible, Petitioner shall implement Best Management Practices and incorporate low impact development practices for onsite storm water capture and reuse into site planning and

landscape planning for the Petition Area to control water quality and mitigate nonpoint sources of pollution.

13. **Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the State of Hawai'i Department of Health and County of Maui Department of Environmental Services to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawai'i Department of Health. Petitioner shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities within the proposed development.

14. **Water Resources Allocation.** Petitioner shall provide adequate potable water storage and transmission facilities and improvements to accommodate the proposed development of the Petition Area to the satisfaction of the County of Maui Department of Water Supply and other appropriate State and County government agencies.

15. **Best Management Practices.** Petitioner shall implement best management practices applicable to the proposed land use in order to minimize infiltration and runoff from construction and vehicle operations to reduce or eliminate soil erosion and ground water pollution, and effect dust control measures during and after the development process in accordance with the State Department of Health guidelines.

16. **Water Conservation Measures.** Petitioner, where feasible, shall implement water conservation measures and best management practices, such as use of water efficient plumbing fixtures and planting of endemic, indigenous, and drought tolerant plants and turf.

17. **Energy Conservation.** Petitioner shall incorporate and implement energy conservation, sustainable design, and environmental stewardship measures in the design and

construction of Kihei High School pursuant to the Hawai'i – Collaborative for High Performance Schools (HI-CHPS) Criteria in order to qualify for the HI-CHPS Verified designation.

18. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access points, internal roadways, and water supply, sewage, electrical infrastructure and buildings for Phase I of Kihei High School within ten (10) years from the date of filing of the Commission's decision and order.

19. **Order to Show Cause.** If Petitioner fails to complete construction of the proposed backbone infrastructure as described above on the Petition Area then the Commission may, on its own motion or at the request of any party or other interested person, issue an Order to Show Cause requiring Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural District classification or be changed to a more appropriate classification.

20. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

21. **Notice of Change to Ownership Interests.** 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, prior to development of the Petition Area. This condition shall not require notice of mortgage financing, and shall be satisfied by the giving of notice only, and shall not require approval by the Commission.

22. **Annual Reports.** Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the Office of Planning and the Maui County Planning Department in connection with the status of the development proposed for the Petition Area, and

Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition.

23. **Release of Conditions Imposed by the Commission.** Petitioner shall seek from the Commission full or partial release of these conditions as to all or any portion of the Petition Area upon assurance acceptable to the Commission of satisfaction of these conditions.

24. **Statement of Imposition of Conditions.** Within seven (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 a statement that the Petition Area is subject to conditions imposed by the Commission in the reclassification of the Petition Area, and (b) file a copy of such recorded statement with the Commission.

25. **Recording of Conditions.** Petitioner shall record the conditions imposed by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, Hawai'i Administrative Rules.

DATED: Honolulu, Hawai'i, June 10, 2013.

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BEFORE THE LAND USE COMMISSION
 OF THE STATE OF HAWAII

In the Matter of the Petition of:)	DOCKET NO. A11-794
)	
STATE OF HAWAII, DEPARTMENT OF	)	CERTIFICATE OF SERVICE
EDUCATION)	
)	
To Amend the Agricultural Land Use District	)	PETITIONER'S FINDINGS OF
Boundaries into the Urban Land Use District	)	FACT, CONCLUSIONS OF LAW
for Approximately 77.2 acres of land at Kihei,	)	AND DECISION AND ORDER AND
Maui, Hawai'i, Maui Tax Map Key Nos. 2-2-	)	CERTIFICATE OF SERVICE
02: 81 and 83.)	
)	
)	
)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the following documents:

Petitioner's Findings of Fact, Conclusions of Law, and Decision and Order

have been duly served on the following parties at their last known addresses by hand delivery,
 electronic mail or depositing in the US mail, postage prepaid on June 10, 2013.

Copies mailed or delivered to:
(At last known address)

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DATED: Honolulu, Hawai'i, June 10, 2013.



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