

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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LAND USE COMMISSION
STATE OF HAWAII

In the Matter of the Petition of

DOCKET NO. A13-797

CMBY 2011 INVESTMENT, LLC

PETITIONER'S RESPONSE TO OFFICE
OF PLANNING'S COMMENTS AND
OBJECTIONS TO PETITIONER'S
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION AND ORDER, FILED ON
OCTOBER 4, 2013; EXHIBIT A;
CERTIFICATE OF SERVICE

To Amend the Agricultural Land Use District
Boundaries into the Urban Land Use District
For Certain Lands Situate at Pulehunui,
District of Wailuku, Island and County of
Maui, State of Hawai'i, consisting of
approximately 86.030 acres, Tax Map Key No.
(2) 3-8-008:019

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OBJECTIONS TO PETITIONER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND ORDER, FILED ON OCTOBER 4, 2013;

EXHIBIT A

AND

CERTIFICATE OF SERVICE

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To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District For Certain Lands Situate at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of approximately 86.030 acres, Tax Map Key No. (2) 3-8-008:019

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Petitioner CMBY 2011 Investment, LLC, by and through its attorneys, Steven S.C. Lim, Esq. and Jennifer A. Benck, Esq., of the law firm of Carlsmith Ball LLP, hereby respectfully submits to the Land Use Commission of the State of Hawaii, *Petitioner's Response to Office of Planning's Comments and Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order*, which was filed by the Office of Planning ("OP") on October 4, 2013, in response to *Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order*, filed on September 20, 2013 ("**Petitioner's Proposed D&O**"). The other party to these proceedings, the County of Maui Department of Planning ("**DP**"), filed a joinder to Petitioner's Proposed D&O on October 1, 2013. *See Joinder of the Department of Planning, County of Maui, In Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Dated September 20, 2013.*

Attached hereto as Petitioner's Exhibit A is a blackline showing the changes that Petitioner now proposes to Petitioner's Proposed D&O. These changes incorporate many of the revisions suggested by OP, and contain additional findings of fact ("**FOF**") to more accurately address the evidence presented to the Commission, and to provide context for OP's proposed FOF. Changes made to reflect OP's Comments and Objections to Petitioner's Proposed D&O are followed by a citation to "**OP C&O**" and the relevant FOF as identified by OP in its October 4, 2013, filing.

Petitioner's Proposed D&O contained 307 FOF. OP proposed 3 revisions to Petitioner's FOF, and 8 new FOF. With the exception of OP C&O, FOF 214B, Petitioner is in general agreement with all of the revisions proposed by OP. However, in several instances Petitioner has made grammatical or clarifying changes, which should not be considered as opposition to OP's proposed FOF. In addition, in order to put certain of OP's proposed FOF in context, Petitioner has added FOF, with appropriate citations to the record. In total, Petitioner's proposed FOF now number 329.

I. FINDINGS OF FACT

A. PROCEDURAL MATTERS

Petitioner does not oppose OP's proposed clarification to FOF 9. *See* Ex. A at 3. In addition, Petitioner has added new FOF 34, 35 and 36 to update the procedural record. *See* Ex. A at 5 - 6.

C. PROPOSAL FOR RECLASSIFICATION

Petitioner does not oppose OP's proposed clarification to FOF 62, now shown as FOF 64. *See* Ex. A at 10.

I. IMPACTS UPON RESOURCES OF THE AREA

Petitioner does not oppose OP's proposed FOF 116A in concept, but suggests minor modifications to the proposed FOF, now shown as FOF 119, to read as follows:

119. Petitioner represented that Petitioner will perform or implement the mitigation measures recommended by its consultants, or equivalent or better mitigation, in the development of the Project. [C.Jencks, Tr. 9/5/13, 134:15-20; OP C&O, FOF 116A] See Ex. A at 17.

I.2. FLORA AND FAUNA

Petitioner does not oppose OP's proposed FOF 134A in concept, but suggests minor modifications to the proposed FOF, now shown as FOF 138, to read as follows:

138. The U.S. Fish and Wildlife Service recommended that Petitioner should contact their office for additional information on avoiding impacts to the Nene goose; the Service indicated that the proposed retention basins may attract endangered waterbirds to the Petition Area. In addition, the Service indicated that barbed wire fencing could adversely impact the Hawaiian hoary bat and should not be used for fencing, and that to avoid impacts to the Hawaiian petrel and Newell's shearwater, Project-related lighting should be minimized, and all Project lights should be shielded so the bulb is not visible at or above bulb-height. [OP C&O, FOF 134A] See Ex. A at 19.

In addition, to put proposed new FOF 138 in context, Petitioner proposes the following as new FOF 139.

139. Notwithstanding the proposed retention basins, there is nothing at the Petition Area as it currently exists, nor as it will be developed, that would attract Nene. [Pet. Ex. 15, 4:8 - 4:11]

See Ex. A at 19.

K. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

1. HIGHWAY AND ROADWAY FACILITIES

Petitioner does not oppose OP's proposed FOF 214A in concept, but suggests some modifications to the proposed FOF to more accurately reflect the record, as now shown as proposed FOF 220 and 221, as follows:

220. The State DOT recommended that a fair share contribution for the cost of regional improvements related to and proportional to the reasonably foreseeable impacts of the Project should be considered. [OP C&O, FOF 214A; B.Yee, Tr. 9/6/13, 65:4 - 65:16] See Ex. A at 32.

221. The State DOT recommended that the TIAR be revised and resubmitted for acceptance prior to Petitioner obtaining preliminary subdivision approval. All recommended transportation improvements to mitigate local and direct Project-generated impacts should be implemented, including the dedication of roadway rights-of-way on Mokulele Highway, prior to occupancy. [R.Funakoshi, Tr. 9/6/13, 48:13 - 48:15; 49:13 - 49:18; OP C&O, FOF 214A] See Ex. A at 32.

Petitioner *strongly* objects to OP's proposed FOF 214B. OP's proposed FOF 214B ignores substantial evidence on the record that the State DOT often does not take any action to "accept" a TIAR. Instead, as reflected in the record, the State DOT's acceptance of a TIAR is typically communicated by the State DOT's sign-off on construction plans, which is a necessary precursor to final subdivision approval.

Substantial evidence on the record demonstrates that preliminary subdivision approval, which is the trigger for TIAR "acceptance" advocated by OP, is a highly inappropriate and impractical time to seek or obtain State DOT acceptance of a TIAR.

Finally, Petitioner submits that OP's proposed FOF 214B and the related condition of approval sought of OP (OP Condition 1.a), would put Petitioner in technical violation of the Decision and Order in this Docket due to circumstances that are entirely beyond Petitioner's control. To articulate the evidence on the record in this Docket, Petitioner now proposes new FOF 222 – 229, which are supported by substantial evidence on the record and which support Petitioner's position on the appropriate timing for State DOT acceptance of the revised TIAR. *See also* Ex. A at 32 – 33.

222. The State DOT does not always provide documentation to demonstrate that it has "accepted" a TIAR. [R.Funakoshi, Tr. 9/6/13, 55:19 - 56:1]

223. More often the State DOT's acceptance of a TIAR is implicit in DOT's sign off on documents, such as construction plans. [R.Funakoshi, Tr. 9/6/13, 55:24 - 56:5]

224. Construction plans are typically presented and signed off by agencies immediately prior to final subdivision approval, not tentative subdivision approval. [R.Funakoshi, Tr. 9/6/13, 56:6 - 56:15]

225. OP indicated that Petitioner should be required to obtain a letter from the State DOT stating that the revised TIAR and the mitigation therein is acceptable prior to obtaining preliminary subdivision approval. However, there is no guarantee that the State DOT would ever

submit such a letter, and the burden would fall to Petitioner to prod DOT. [R.Funakoshi, Tr. 9/6/13, 59:3 - 59:12]

226. If the Commission were to impose a condition of approval requiring Petitioner to obtain State DOT acceptance of a revised TIAR prior to Petitioner receiving preliminary subdivision approval from the County, even if Petitioner submitted a revised TIAR to DOT, Petitioner would be in technical violation of the condition of approval unless and until the State DOT issued a letter explicitly stating that it had accepted the revised TIAR. [R.Funakoshi, Tr. 9/6/13, 57:2 - 57:12]

227. Petitioner cannot obtain final subdivision approval from the County unless the State DOT signs-off on Petitioner's construction plans. [R.Funakoshi, Tr. 9/6/13, 57:13 - 57:19]

228. The County supports requiring Petitioner to obtain State DOT approval of a revised TIAR prior to final subdivision approval; the County does not believe it would be helpful to have State DOT approval of a revised TIAR prior to preliminary subdivision approval. [W.Spence, Tr. 9/5/13, 158:21 - 159:16]

229. Under the Maui County Code, Petitioner can obtain preliminary subdivision approval within 45 days of submittal of an application. However, in this case, where a change in zone and a community plan amendment are needed before the Project can be developed, the preliminary subdivision approval would be virtually meaningless because the Planning Commission and the Maui County Council may impose different requirements on the Project, which would require changes to the subdivision application. [W.Spence, Tr. 9/5/13, 161:17 - 162:20]

2. WATER SERVICE

Petitioner does not object to OP's correction to FOF 220, now shown as FOF 235. *See* Ex. A at 34.

3. WASTEWATER TREATMENT AND DISPOSAL

Petitioner does not oppose OP's proposed FOF 223A, but suggests minor modifications to the proposed FOF, now shown as FOF 239, to read as follows:

239. According to DOH wastewater system rules (HAR Chapter 11-62), any cesspool, seepage pit or soil absorption system must be a minimum distance of 1,000 feet from a potable water source serving a public water system. The Project layout will take into account this 1,000 foot radius. [OP C&O, FOF 223A; HAR Chapter 11-62, App. F, Table 2; S.Otomo, Tr. 9/5/13, 93:4 - 93:24] *See* Ex. A at 34.

Petitioner does not oppose OP's proposed FOF 226A, now shown as FOF 243. *See* Ex. A at 35.

In addition, Petitioner proposes new FOF 245, 246 and 247 to reflect the updated record in this Docket, and show the submission of letters from surrounding property owners, the Office of the Mayor and Alexander & Baldwin, as follows:

245. By letter to the Commission dated September 27, 2013, from the Office of the Mayor of the County of Maui, the Mayor confirmed that the County, as a landowner of approximately 222,626 acres of land adjacent to the Petition Area, is aware of the limitations on the siting of future injection wells and individual wastewater systems as a result of the development of Petitioner's potable water system. The County confirmed that it does not have, and does not intend to have, injection wells within the County property, but if injection wells are desired in the future, there is ample space within the County property outside of the one-quarter mile radius

from Petitioner's drinking water wells. The County also confirmed that there is sufficient space within the County property for the siting of any new wastewater systems, irrespective of Petitioner's drinking water wells, and reiterated the County's continued support for the reclassification and the proposed Project. [Letter from Alan M. Arakawa, Mayor of the County of Maui to the Land Use Commission (Sept. 27, 2013)] See Ex. A at 35.

246. By letter to the Commission dated September 27, 2013, Alexander & Baldwin, owner of approximately 161.447 acres of land adjacent to the Petition Area, confirmed that it is aware of the limitations on the siting of future injection wells and individual wastewater systems as a result of the development of Petitioner's potable water system. Alexander & Baldwin confirmed that it does not have, and does not intend to have, injection wells within its property, but if it desires to install injection wells in the future, there is ample space within its property that is outside of the one-quarter mile radius from Petitioner's drinking water wells. Alexander & Baldwin also confirmed that there is sufficient space within its property for the siting of any new wastewater systems, irrespective of Petitioner's drinking water wells, and reiterated Alexander & Baldwin's support for the proposed reclassification and the proposed Project. [Letter from Randall Endo, V.P. Alexander & Baldwin, to the Land Use Commission (Sept. 27, 2013)] See Ex. A at 36.

247. As shown on the Land Ownership Map submitted with the letters of support from the Office of the Mayor and Alexander & Baldwin, the properties surrounding the Petition Area are owned primarily by the County of Maui and Alexander & Baldwin/Hawaiian Commercial & Sugar Company. A small portion of a large parcel owned by the State DLNR is adjacent to the south/west end of the Petition Area. [Letter from Alan M. Arakawa, Mayor of the County of Maui to the Land Use Commission (Sept. 27, 2013); Letter from Randall Endo, V.P. Alexander & Baldwin, to the Land Use Commission (Sept. 27, 2013)] See Ex. A at 36.

5. DRAINAGE AND STORMWATER

Petitioner does not oppose OP's proposed FOF 243A, now shown as FOF 264. See Ex. A at 39.

Petitioner does not oppose OP's proposed FOF 243B, now shown as FOF 265. *See* Ex. A at 39.

DECISION AND ORDER

In Petitioner's Proposed D&O, Petitioner proposed 25 Conditions of Approval ("**COA**"). OP seeks to modify 3 of those COA (COA 1.a, COA 3, COA 10). Petitioner does not oppose OP's proposed revision to COA 3, but suggests a minor modification to recognize the letters from surrounding property owners that were submitted to the Commission on September 27, 2013.

Petitioner does not object to OP's proposed revision to COA 10.

Petitioner *strongly* objects to OP's proposed revisions to COA 1.a. for the reasons discussed above in the section regarding Highway and Roadway Facilities, and as supported by Petitioner's newly proposed FOF 222 - 229.

In accordance with proposed COA 1.a., Petitioner shall submit a Revised TIAR to the State DOT prior to submitting an application for preliminary subdivision approval. The State DOT's acceptance of that Revised TIAR, which very likely will be demonstrated by the State DOT's sign-off on Petitioner's subdivision construction plans, should be required prior to final subdivision approval. Therefore, Petitioner continues to advocate for the following as COA 1.a.

1. **Highway and Road Improvements.** The Petitioner shall abide by, complete and/or submit the following:
 - a). The **TIAR** shall be revised and resubmitted to the State Department of Transportation ("**DOT**") for review prior to Petitioner submitting an application for Preliminary Subdivision

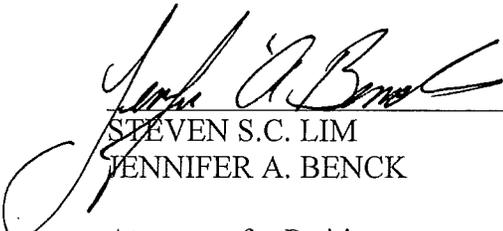
Approval to the County of Maui. The DOT shall accept the revised TIAR ("**Revised TIAR**") prior to Petitioner receiving Final Subdivision Approval from the County of Maui. *See* Ex. A at 60.

Petitioner does not object in concept to OP's proposed addition to COA 3, but suggests a modification to reflect the record in this Docket. *See e.g.*, Petitioner's proposed FOF 245 - 247. Petitioner's proposed COA 3 now reads as follows:

3. **Water System**. Petitioner shall provide the necessary water source, storage and transmission facilities to the satisfaction of the County of Maui's Department of Water Supply and/or DOH and/or Commission on Water Resource Management, as applicable, to service the Petition Area. Petitioner shall also provide notice to the State DLNR, as an adjacent landowner, regarding the required separation distance for individual wastewater systems from Petitioner's proposed drinking water source. [OP C&O, Cond. 3] *See* Ex. A at 61.

Petitioner does not object to OP's proposed revisions to COA 10. *See* Ex. A at 64.

DATED: Honolulu, Hawaii, October 10, 2013.



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EXHIBIT A

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DOCKET NO. A13-797

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

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

Petitioner CMBY 2011 INVESTMENT, LLC, a Washington limited liability company ("**Petitioner**") filed a Petition for Land Use District Boundary Amendment ("**Petition**") on May 3, 2013, pursuant to Chapter 205, Hawai'i Revised Statutes ("**HRS**") and Title 15, Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("**HAR**") to amend the land use district boundary to reclassify approximately 86.030 acres of land, situated at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, identified by Tax Map Key No. (2) 3-8-008:019 (the "**Petition Area**"), from the State Land Use Agricultural District to the State Land Use Urban District. The reclassification of the Petition Area was sought to allow for the development of the Pu'unene Heavy Industrial Subdivision ("**Project**").

The Land Use Commission of the State of Hawai'i ("**Commission**"), having examined the testimony, evidence and arguments of counsel presented during the hearings, along with the

pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order:

I. FINDINGS OF FACT

A. PROCEDURAL MATTERS

1. On May 3, 2013, Petitioner filed a Petition for Land Use District Boundary Amendment in Docket A13-797; Petitioner's Exhibits 1 through 11; Verification of Jennifer A. Benck; Affidavit of Jennifer A. Benck attesting to service of Petition; Affidavit of Jennifer A. Benck attesting to mailing of the Notification of Petition Filing; Certificate of Service; and a \$500.00 filing fee.

2. Petitioner's Exhibit 1 is titled Final Environmental Assessment, Pu'unene Heavy Industrial Subdivision ("**Final EA**"), which was prepared by Chris Hart & Partners.

3. The Final EA was accepted by the Maui Planning Commission at its meeting of November 27, 2012, and notice of the Final EA and Finding of No Significant Impact was published in The Environmental Notice on January 8, 2013. [Pet. Ex. 2]

4. On June 18, 2013, Petitioner served copies of the Petition on A&B Hawaii, Inc., the owner of TMK Parcel No. (2) 3-8-008: 030, which is adjacent to the Petition Area, and on the owners of record of the parcels located adjacent to southern boundary of the Petition Area: TMK Nos. (2) 3-8-008: 038 (State of Hawai'i as fee owner, Alexander & Baldwin, LLC as lessee), and 3-8-008: 005 (A & B Hawaii Inc.), and on Alexander & Baldwin, Inc., through its division Hawaiian Commercial & Sugar Company.

5. On June 18, 2013, the Executive Officer of the Commission deemed the Petition a proper filing and accepted for processing as of June 18, 2013.

6. On July 15, 2013, the Executive Officer of the Commission conducted a prehearing conference at the Commission's office at the State Office Tower, Leiopapa A Kamehameha

Building, 235 South Beretania Street, Honolulu, Hawai'i 96813. Representatives for Petitioner, the State of Hawai'i Office of Planning ("OP") and the County of Maui Department of Planning ("DP") were present.

7. On July 15, 2013, the Commission issued its Prehearing Order.
8. On July 11, 2013, DP submitted its Position Statement of the Department of Planning, County of Maui, in support of the Project.
9. On July 18, 2013, OP submitted its Office of Planning's Statement of Position, in support of the Project- with conditions. [OP C&O, FOF 9]
10. On July 23, 2013, DP filed Department of Planning's List of Witnesses, List of Exhibits, Exhibits 1 - 3.
11. On July 29, 2013, Petitioner mailed the Notice of Hearing scheduled for September 5, 2013, in a form approved by the Executive Officer, as required by HAR § 15-15-51(b), and filed the Affidavit of Jennifer A. Benck Attesting to Service and Mailing of Petitioner's Notice of Hearing; Exhibits A - D.
12. On July 29, 2013, the Notice of Hearing was published in The Honolulu Star Advertiser, West Hawaii Today, The Maui News and The Garden Island.
13. On July 29, 2013, Petitioner filed Petitioner's First List of Witnesses; Petitioner's First List of Exhibits; Exhibits 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38 - 42.
14. On July 29, 2013, OP filed Office of Planning's List of Witnesses, List of Exhibits, Exhibits 1 and 3.
15. On July 31, 2013, the Notice of Hearing was published in the Hawaii Tribune Herald.

16. On August 8, 2013, Petitioner filed Affidavit of Jennifer A. Benck Attesting to Publication of Notice of Hearing; Exhibits A - E.

17. On August 8, 2013, Petitioner filed Petitioner's First Amended List of Witnesses; Petitioner's List of Rebuttal Exhibits; Exhibits 43 - 46.

18. On August 8, 2013, the Commission conducted a site visit of the Petition Area.

19. On August 13, 2013, DP filed Department of Planning County of Maui's List of Witnesses - Amendment #1 and List of Exhibits - Amendment #1, Exhibit #4 (Testimony Statement of the Department of Planning, County of Maui).

20. On August 15, 2013, Petitioner filed Petitioner's Exhibits 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37 and 47 (Written Direct Testimony of Witnesses); Petitioner's First Amended List of Exhibits; Exhibits 18A; Errata to Exhibits 40, 42.

21. On August 15, 2013, OP filed Office of Planning's Amended List of Witnesses, Amended List of Exhibits, Exhibit 2 (Office of Planning's Testimony in Support of Petition With Conditions), and Exhibits 6, 7 and 8.

22. On August 29, 2013, Petitioner filed the Notice of Hearing with the Lieutenant Governor's Office, and transmitted copies of said filed Notice to the Commission.

23. On September 5, 2013, the Commission opened the evidentiary hearings in this Docket at the Haleakala Room, Courtyard Maui Kahului Airport, 532 Keolani Place, Kahului, Maui, Hawai'i. Entering appearances were Jennifer A. Benck, Esq., Carlsmith Ball LLP and Charles Jencks for Petitioner, Deputy Corporation Counsel James A. Giroux, Esq. and Kurt Wollenhaupt for DP, and Deputy Attorney General Bryan Yee, Esq. and Rodney Funakoshi for OP.

24. Public testimony was provided by Garret Hew of Hawaiian Commercial & Sugar Company, who confirmed that the concrete-lined ditch and roadway within the Petition Area serve no purposes and are not in use. [G.Hew, Tr. 9/5/13, 18:13 - 19:3; Pet.Ex. 38]

25. The Commission admitted into evidence Petitioner's Exhibits 1 - 47, DP's Exhibits 1, 2 and 4, and OP's Exhibits 1, 2, 3, 6, 7, 8: DP withdrew DP Exhibit 3 and OP withdrew OP's Exhibits 4 and 5. [Tr. 9/5/13, 20:21 - 22:14]

26. Petitioner provided the testimonies of the following witnesses: Glenn Tadaki, Michael Dega, Glenn Kunihsa, Stacy Otomo and Charles Jencks.

27. DP provided the testimony of William Spence, DP Director.

28. On September 6, 2013, the Commission continued the evidentiary hearings in this Docket at the Haleakala Room, Courtyard Maui Kahului Airport, 532 Keolani Place, Kahului, Maui, Hawai'i. Entering appearances were Jennifer A. Benck, Esq., Carlsmith Ball LLP and Charles Jencks for Petitioner, Deputy Corporation Counsel James A. Giroux, Esq., and Deputy Attorney General Bryan Yee, Esq. and Rodney Funakoshi for OP.

29. Petitioner provided the testimonies of the following witnesses: Tom Nance and Steve Dollar.

30. OP provided the testimony of Rodney Funakoshi, Planning Program Administrator of the Land Use Division of OP.

31. On September 6, 2013, following the completion of the parties' respective cases-in-chief, the Commission closed the evidentiary portion of the proceedings.

32. On September 20, 2013, pursuant to the Commission's instructions, Petitioner filed Petitioner's Second Amended List of Exhibits: Exhibit 48 (Marine Environmental Monitoring Program: Honua'ula, Wailea, Maui - Water Chemistry Report 1-2012 (August 2013)), and

Petitioner's Exhibit 49 (Honua'ula Partners, LLC Water Quality Monitoring Condition (Ordinance No. 3554, Bill No. 22 (2008))).

33. Also on September 20, 2013, Petitioner filed Petitioner's Proposed Findings of Fact, Conclusions of Law, Decision and Order.

34. On _____, October 1, 2013, DP filed Joinder of the Department of Planning, County of Maui, In Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order Dated September 20, 2013.

35. On October 4, 2013, OP filed Office of Planning's Comments and Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Second Amended List of Exhibits; Exhibit 9.

36. On October 17, 2013, the Commission met at _____ the Maui Arts and Cultural Center in Kahului, Maui to hear oral argument and conduct decision-making on the Petition. Following discussion on the findings of fact and conditions agreed to by the parties in their respective filings, a motion was made and seconded to grant the Petition. There being a vote tally of _____, the motion carried.

B. DESCRIPTION OF THE SUBJECT PROPERTY

37. ~~35.~~ The Petition Area consists of approximately 86.030 acres, situate at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, Tax Map Key No. (2) 3-8-008:019. [Pet. Ex. 5]

38. ~~36.~~ The Petition Area is located about 1.0 mile southeast of the intersection of Kama'aina Road, Mehameha Loop, and Mokulele Highway, a divided, four-lane facility linking South and Central Maui. [Pet. Ex. 1 at 6; G.Tadaki, Tr. 9/5/13, 30:16 - 30:18]

39. ~~37.~~ The Petition Area is approximately 4 miles south of Kahului and 3 miles north of Kihei. [G.Tadaki, Tr. 9/5/13, 27:6 - 27:7]

40. ~~38.~~ Access from Mokulele Highway to the Petition Area is provided by Kama'aina Road, South Firebreak Road and Lower Kihei Road. [Pet. Ex. 31, 4:21 - 5:11; Pet. Ex. 43]

41. ~~39.~~ The Petition Area is vacant and undeveloped. [Pet. Ex. 1 at 2; Pet. Ex. 35, 5:13]

42. ~~40.~~ During World War II, the Petition Area was part of the Pu'unene Naval Air Station and was used for military purposes. Military use likely ceased in the late 1940s, and the site began to be used for sugar cane cultivation and as a plantation camp. [Pet. Ex. 1, App. L; Pet. Ex. 35, 5:13 - 5:20; M.Dega, Tr. 9/5/13, 68:10 - 68:17]

43. ~~41.~~ Between 1995 and 2007 the site was used as an unpermitted solid waste management facility, i.e., scrap metal storage; there has been no active use of the Petition Area since 2007. [Pet. Ex. 1, App. L; G.Tadaki, Tr. 9/5/13, 31:6 - 31:8]

44. ~~42.~~ Petitioner acquired the Petition Area in March 2011 in fee simple from Alexander & Baldwin, Inc. [Pet. Ex. 6; C.Jencks, Tr. 9/5/13, 114:13 - 114:16]

45. ~~43.~~ The Petition Area is not subject to any leases or agreements to develop the land. [Pet. Ex. 7; Pet. Ex. 38]

46. ~~44.~~ The Petition Area slopes in an easterly to westerly direction with on-site elevations ranging from 140 feet to 120 feet above mean sea level, with an average slope of 1.8 percent. [Pet. Ex. 1 at 23; Pet. Ex. 1 App. B]

47. ~~45.~~ The Petition Area is located approximately 2.5 miles from the Pacific Ocean. [G.Tadaki, Tr. 9/5/13, 45:1 - 45:2]

48. ~~46.~~ The Petition Area is not located within the tsunami inundation zone and therefore does not lie in an area subject to tsunami evacuation. [Pet. Ex. 1 at 23]

49. ~~47-~~Historical records show that the Petition Area is in an area of Maui that averages about only 13 inches of precipitation per year, with the summer months being the driest. [Pet. Ex. 1 at 23]

50. ~~48-~~The two soil types found in the Petition Area according to the Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawai'i (1972), prepared by the U.S. Department of Agriculture, are (i) Waiakoa extremely stony silty clay loam, 3 - 25% slopes, eroded (WID2); and (ii) Alae cobbly sandy loam, 0 - 3% slopes (AcB). [Pet. Ex. 1, Fig.8]

51. ~~49-~~The USDA National Conservation Research Service Land Capability Grouping for the Petition Area is primarily Class VII, with some areas in Class VI (Class VIII are the worst quality soils and preclude agricultural uses). [Pet. Ex. 1, App. N at 15; G.Kunihisa, Tr. 9/5/13, 84:15 - 84:20]

52. ~~50-~~The Land Study Bureau overall productivity rating for the soils within the Petition Area is E73, as to approximately 66% of the land, and E71, as to the remaining portions of the Petition Area. [Pet. Ex. 1, Fig. 10; G.Kunihisa, Tr. 9/5/13, 85:1 - 85:4]

53. ~~51-~~The Petition Area is deemed Unclassified under the Agricultural Lands of Importance to the State of Hawai'i designation: it does not qualify as Prime, Unique or Other. [Pet. Ex. 1, Fig. 11; Pet. Ex. 27, 8:18 - 8:19]

54. ~~52-~~The U.S. Federal Emergency Management Agency Floor Insurance Rate Map, Panel Number 1500030580E, shows the Petition Area located Flood Zone "X," which represents areas outside of the 0.2% annual chance flood plain. [Pet. Ex. 1, Fig. 9; Pet. Ex. 1, App. A]

55. ~~53-~~The Petition Area is designated as Agriculture by the Kihei-Makena Community Development Plan. [Pet. Ex. 1, App. A; G.Tadaki, Tr. 9/5/13, 29:10 - 29:12]

56. ~~54-~~The Petition Area is currently zoned by the County of Maui as Agricultural. [Pet. Ex. 40 at 8; G.Tadaki, Tr. 9/5/13, 29:16 - 29:17]

57. ~~55.~~ Petitioner filed a consolidated application for a Community Plan amendment to the Heavy Industrial designation and a change in zone to the County M-3 Restricted Industrial district with the County of Maui in April of 2012. [G.Tadaki, Tr. 9/5/13, 33:15 - 33:20; Pet. Ex. 40 at 13]

58. ~~56.~~ Residential uses are not permitted within the M-3 zoning district. [G.Tadaki, 9/5/13, 37:20 - 37:22; Pet. Ex. 39]

59. ~~57.~~ The Petition Area is within the Maui Island Plan ("MIP") Urban Growth Boundary, and within the Pulehunui Planned Growth Area. [DP Ex. 4 at 11; Pet. Ex. 3; Pet. Ex. 40 at 6]

60. ~~58.~~ Under the MIP, the Pulehunui Planned Growth Area will be used primarily for heavy industrial, public/quasi-public, and recreational purposes. [DP Ex. 1; DP Ex. 4 at 11]

61. ~~59.~~ There are no residential uses within the immediate proximity or vicinity of the Petition Area. [G.Tadaki, Tr. 9/5/13, 28:17 - 28:18]

C. PROPOSAL FOR RECLASSIFICATION

62. ~~60.~~ Petitioner seeks to have the Petition Area reclassified from the Agricultural District to the Urban District in order to develop a heavy industrial subdivision consisting of up to 28 developable lots plus internal roadways and drainage retention basins, to be known as the Pu'uneune Heavy Industrial Subdivision. [G.Tadaki, Tr. 9/5/13, 32:4 - 32:11; C.Jencks, Tr. 9/5/13, 114:21 - 115:7; Pet. Ex. 40 at 17]

63. ~~61.~~ Petitioner intends to subdivide the Petition Area, creating lots ranging in size from 0.5 acre to 20 acres, however, the final number and size of the lots may change based on market demand. [C.Jencks, Tr. 9/5/13, 114:21 - 115:15; G.Tadaki, Tr. 9/5/13, 32:6 - 32:16; 51:1].

64. ~~62.~~ Petitioner is responsible for constructing the backbone infrastructure for the Project; the ~~unimproved~~improved subdivided lots will be sold or leased to interested users. [C.Jencks, Tr. 9/5/13, 126:15 - 126:17; G.Tadaki, Tr. 9/5/13, 55:21 - 55:23; OP C&O, FOF 62]

65. ~~63.~~ Backbone subdivision improvements include construction of internal roadways, drainage retention systems, grading work, landscaping and utilities (e.g., water, telephone, cable, electric, private water system). [Pet. Ex. 29, 5:1 - 5:4; S.Otomo, Tr., 9/5/13, 90:23 - 91:4]

66. ~~64.~~ Each lot owner will be responsible for installing their own individual wastewater system. [S.Otomo, Tr., 9/5/13, 91:4 - 91:8; 93:4 - 93:14]

67. ~~65.~~ The current concept plan is for the developable lots to encompass approximately 66 acres and for the interior roadways and drainage retention basins to encompass approximately 20 acres. [Pet. Ex. 29, 2:15 - 2:23]

68. ~~66.~~ The Project's intended market will be buyers or tenants who are looking for areas that allow pure industrial uses, which will likely include businesses that manufacture or treat goods from raw materials, in addition to industrial warehouse users and those seeking secured baseyards. [Pet. Ex. 1, App. M at 32; G.Kunihisa, Tr. 9/5/13, 82:9 - 82:14; C.Jencks, Tr. 9/5/13, 115:2 - 115:11]

69. ~~67.~~ The estimated sales price for each fee simple lot was projected to be \$20 per square foot in 2011 dollars; final sales prices will depend on market demand and conditions, but should range between over \$20 per square foot to less than \$45 per square foot. [Pet. Ex. 1 at 12; G.Kunihisa, Tr. 9/5/13, 86:23 - 87:11]

70. ~~68.~~ Petitioner represented that the Petition Area will not be used as a landfill, which is a permitted use within the M-3 District, unless the Petitioner seeks approval of the Commission pursuant to a Motion to Amend or such other procedure. [C.Jencks, Tr. 9/5/13, 117:19 - 117:23; 118:19 - 118:22]

71. ~~69.~~ Petitioner represented that the Petition Area may be used for a solid waste processing and disposal, which is a permitted use within the M-3 District. [C.Jencks, Tr. 9/5/13, 152:8 - 153:8]

72. ~~70.~~ Covenants, Conditions and Restrictions ("**CC&R**") will be recorded against the Petition Area that will require all lot owners to prepare and implement Best Management Practices and emergency response plans that are specific to the heavy industrial use on their lots. [Pet. Ex. 1 at 36].

73. ~~71.~~ An association of subdivision lot owners ("**Association**") will be responsible for reviewing the development plans of each lot and for ensuring compliance with the CC&R.

74. ~~72.~~ The Association will be responsible for operating and maintain the Project improvements. [G.Tadaki, Tr. 9/5/13, 61:9- 61:11]

75. ~~73.~~ Petitioner represented that there may be two Associations within the Project; one to maintain and operate the water system in compliance with the Department of Health ("**DOH**") regulations, and one to own and maintain the common areas within the Project, and to enforce the CC&R. [C.Jencks, Tr. 9/5/13, 128:15 - 129:3]

76. ~~74.~~ According to the "Market Study, Economic Impact Analysis and Public Costs/Benefits Assessment for the proposed Pu'unene Heavy Industrial Subdivision in Wailuku, Island and County of Maui" prepared by ACM Consultants, Inc., dated July 2011, a copy of which was included in the Final EA, the Petition Area is ideally situated for heavy industrial activities because it not located by residential developments, is centralized, will be convenient for customers and suppliers, and is in close proximity to the transportation facilities located at the Kahului Harbor and the Kahului Airport. [Pet. Ex. 27, 5:1 - 5:5]

77. ~~75.~~ The Project will offer heavy industrial users an opportunity to purchase lots in fee simple. [G.Kunihisa, Tr. 9/5/13, 80:17 - 80:20]

78. ~~76.~~ The estimated cost of the Project infrastructure is approximately \$20,000,000. [Pet. Ex. 1, App. M at 48; G.Kunihisa, Tr. 9/5/13, 83:1 - 83:4; C.Jencks, Tr. 9/5/13, 126:20 - 126:22]

79. ~~77.~~ Assuming timely approval of the requested reclassification, Petitioner anticipates obtaining final approval of the pending Community Plan Amendment and change in zone by the end of 2014. [C.Jencks, Tr. 9/5 /13, 123:5 - 123:8; 135:1 - 135:8]

80. ~~78.~~ Petitioner anticipates completing the backbone infrastructure for the Project within 30 months of obtaining final subdivision approval from the County of Maui, subject to prevailing market conditions. [Pet.Ex. 35, 4:26 - 5:2; G.Kunihisa, Tr. 9/5/13, 83:1 - 83:4; Pet. Ex. 1, App. M at 48]

81. ~~79.~~ It is anticipated that all lots within the Project will be sold within 10 years of being brought to market; the projected absorption rate is 6.6 acres per annum. [Pet. Ex. 27, 5:19 - 5:20]

82. ~~80.~~ Petitioner represented that it would complete the construction of the backbone infrastructure for the Project within ten years of the Commission's reclassification of the Petition Area to the Urban District. [C.Jencks, Tr. 9/5/13, 134:21 - 134:25]

83. ~~81.~~ Petitioner represented that residences will not be developed within the Petition Area. [C.Jencks, Tr. 9/5/13, 153:9 - 153:14]

D. PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE THE PROJECT

84. ~~82.~~ Petitioner's current financial condition is sound as evidenced by Petitioner's balance sheet and income statement, prepared January 30, 2013. [Pet. Ex. 11] .

85. ~~83.~~ Petitioner holds title to the Petition Area free and clear of any mortgage. [Pet. Ex. 7]

86. ~~84.~~ Petitioner intends to finance infrastructure improvements through a variety of sources, including, but not limited to, private investment sources, which may include financing from GBI HOLDING Co. and banking institutions. [Pet. Ex. 33, 2:16 - 2:19]

87. ~~85.~~ Based upon Petitioner's ownership of the Petition Area and current financial condition, Petitioner has the necessary economic ability to carry out its representations and commitments relating to the Project. [C.Jencks, Tr. 9/5/13, 126:23 - 127:15]

E. STATE AND COUNTY PLAN AND SMA DESIGNATIONS

88. ~~86.~~ The Petition Area is currently designated in the State Land Use Agricultural District. [DP Ex. 4 at 2]

89. ~~87.~~ The Petition Area is within the MIP Urban Growth Boundary and the Pulehunui Planned Growth Area. [DP Ex. 4 at 2]

90. ~~88.~~ The Kihei-Makena Community Plan designates the Petition Area as "Agriculture." [DP Ex. 4 at 2]

91. ~~89.~~ The Petition Area is currently zoned "Agricultural" by Maui County zoning. [DP Ex. 4 at 2]

92. ~~90.~~ The Petition Area is not located within the County of Maui's Special Management Area. [Pet. Ex. 1, Fig. 16]

F. NEED FOR THE PROPOSED DEVELOPMENT

93. ~~91.~~ According to the Market Study, there is high demand on Maui for heavy industrial land. [Pet. Ex. 1, App. M, at 46]

94. ~~92.~~ There have not been any purely heavy industrial projects developed in Central Maui for more than a decade. [Pet. Ex. 27, 5:10 - 5:12; G.Kunihisa, Tr. 9/5/13, 79:12 - 79:16]

95. ~~93.~~ With the exception of the Project, no heavy industrial projects are proposed on Maui at this time. [DP Ex. 4 at 5]

96. ~~94.~~ The vast majority of available industrial land in Central Maui is zoned and/or in use by light industrial uses, resulting in increasing difficulty in finding suitable space for heavy industrial uses. [Pet. Ex. 1, App. M, at 43]

97. ~~95.~~ The availability of heavy industrial land in Central Maui is so limited that rising land values and industrial rents are making it infeasible for heavy industrial users to build or expand their operations. [Pet. Ex. 27, 5:13 - 5:16; G.Kunihisa, Tr. 9/5/13, 79:23 - 80:3]

98. ~~96.~~ The growth of Maui's population (41.67% from 1980 - 1990, and 26.73% from 1990 - 2000) has led to an increase in the provision of light industrial goods and services, which has severely limited the space available for heavy industrial users. [Pet. Ex. 27, 5:16 - 5:19; G.Kunihisa, Tr. 9/5/13, 80:4 - 80:16]

99. ~~97.~~ The MIP, enacted into law on December 28, 2012 by Maui Ordinance No. 4004, has identified the Petition Area as an area suited for urban expansion and development. [Pet. Ex. 3; DP Ex.1]

100. ~~98.~~ The Petition Area, because it is in a relatively isolated location, next to a drag strip and motorcross track, and not near any residences, is the perfect location for the Project. [W.Spence, Tr. 9/5/13, 157:5 - 157:18]

G. ECONOMIC IMPACTS

101. ~~99.~~ The Project will aid in diversifying the State and Maui economies by allowing for the expansion of existing enterprises and the possible creation of new industrial businesses. [DP Ex. 4 at 6]

102. ~~100.~~ Development of the Project is expected to have a direct beneficial effect on the County and State economies by generating significant expenditures by the Petitioner, as well as by secondary owners of the lots within the Project. [Pet. Ex. 1, App. M at 55]

103. ~~101.~~ Using 2011 dollars, Petitioner's average construction costs for the 30-month infrastructure development are expected to be \$8,000,000 per year. [Pet. Ex. 1, App. M at 48; Pet. Ex. 27, 6:11 - 6:12]

104. ~~102.~~ Based on State economic multipliers, off-Island indirect sales are estimated to be about \$5,920,000 per year during the backbone infrastructure phase of development. [Pet. Ex. 27, 6:13]

105. ~~103.~~ Maui indirect sales are estimated at \$4,144,000 per year during the backbone infrastructure phase of development. [Pet. Ex. 1, App. M at 49; Pet. Ex. 27, 6:13]

106. ~~104.~~ Individual lot construction and development is expected to generate average costs of \$17,504,000 per year. [Pet. Ex. 1, App. M at 49; Pet. Ex. 27, 6:14 - 6:15]

107. ~~105.~~ Based on State economic multipliers, off-Island indirect sales are estimated to be about \$14,348,000 per year during individual lot build-out, and Maui indirect sales are estimated at \$10,044,000 per year. [Pet. Ex. 1, App. M at 49; Pet. Ex. 27, 6:15 - 6:17]

108. ~~106.~~ Development of the Project will generate new County and State revenues, primarily in the form of conveyance tax, real property taxes, excise tax and income tax. [Pet. Ex. 1, App. M at 53; Pet. Ex. 27, 6:18 - 6:19]

109. ~~107.~~ The initial conveyance taxes expected are approximately \$132,000, and County real property taxes are expected to generate \$1,161,000 per year once the lots are developed. [Pet. Ex. 1, App. M at 54; Pet. Ex. 27, 6:20]

110. ~~108.~~ Over the course of backbone infrastructure development and subsequent lot construction, excise tax will exceed \$5,000,000. [Pet. Ex. 1, App. M at 53; Pet. Ex. 27, 6:22]

111. ~~109.~~ The increase in employment opportunities at the Petition Area will cause an increase in demand at area stores, restaurants, service stations, etc., which will in turn drive a need for additional employees at those establishments. [Pet. Ex. 1, App. M at 50]

112. ~~110.~~ The development is projected to cause an increase of 32 direct and 33 indirect jobs on Maui each year and 17 jobs off-Island during the initial infrastructure development period. [Pet. Ex. 27, 7:3 - 7:4]

113. ~~111.~~ Total direct and indirect payroll attributed to the phase of backbone infrastructure is forecasted to be \$3,871,000 per year. [Pet. Ex. 1, App. M at 51; Pet. Ex. 27, 7:6 - 7:7]

114. ~~112.~~ Individual lot construction is expected to create a demand for 70 direct and 72 indirect jobs on Maui each year, and off-Island to create a demand for 38 indirect jobs per year. [Pet. Ex. 27, 7:7 - 7:9]

115. ~~113.~~ Total direct and indirect payroll attributed to the lot construction phase of the Project is forecasted to be \$8,494,000 per year. [Pet. Ex. 1, App. M at 51; Pet. Ex. 27, 7:9 - 7:10]

H. SOCIAL IMPACTS

116. ~~114.~~ The Project should not affect population as the Project is not considered a population generator that would typically impact educational, social, and recreational services and/or extend the current limits of police, fire, and emergency medical services. [Pet. Ex. 35, 8:19 - 8:21; G.Tadaki, Tr., 9/5/15, 42:7 - 42:10]

117. ~~115.~~ The Petition Area is located in an area that has been planned for industrial uses for over a decade, and that planning was scrutinized by the community and the County Council. [W.Spence, Tr., 9/5/13, 157:9 - 157:14]

118. ~~116.~~ The potential, proposed uses of the nearby land owned by the Department of Hawaiian Home Lands, within the Pulehunui Master Plan area, includes public and quasi-public uses, as well as commercial, industrial and open space; no residential uses are proposed. [G.Kunihisa, Tr., 9/5/13, 85:18 - 86:10]

I. IMPACTS UPON RESOURCES OF THE AREA

119. ~~Petitioner represented that Petitioner will perform or implement the mitigation measures recommended by its consultants, or equivalent or better mitigation, in the development of the Project.~~ [C.Jencks, Tr. 9/5/13, 134:15-20: OP C&O, FOF 116A]

1. AGRICULTURAL RESOURCES

120. ~~117.~~ Reclassification of the Petition Area from the Agricultural District to the Urban District will have an insignificant effect on agriculture in the State of Hawai'i. [G.Kunihisa, Tr., 9/5/13, 85:7 - 85:8]

121. ~~118.~~ The Petition Area is presently vacant and undeveloped and no agricultural activity has taken place within the Petition Area for years. [Pet. Ex. 1 at 2]

122. ~~119.~~ The Petition Area is poorly suited for agriculture because all of the land is classified by the University of Hawai'i Land Study Bureau as "E," the lowest class of productivity. [Pet. Ex. 1, Fig. 10]

123. ~~120.~~ The Land Study Bureau overall productivity rating for the soils within the Petition Area is E73, as to approximately 66% of the land, and E71, as to the remaining portions of the Petition Area. [G.Kunihisa, Tr. 9/5/13, 85:1 - 85:4]

124. ~~121.~~ The two soil types found in the Petition Area according to the Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii (1972), prepared by the U.S. Department of Agriculture, are (i) Waiakoa extremely stony silty clay loam, 3 - 25% slopes, eroded (WID2); and (ii) Alae cobbly sandy loam, 0 - 3% slopes (AcB). [Pet. Ex. 1, Fig.8]

125. ~~122.~~ The USDA National Conservation Research Service Land Capability Grouping for the Petition Area is primarily Class VII, with some areas in Class VI (Class VIII are the worst quality soils and preclude agricultural uses). [Pet. Ex. 1, App. N at 15; G.Kunihisa, Tr. 9/5/13, 84:15 - 84:20]

126. ~~123.~~ The Petition Area is deemed Unclassified under the Agricultural Lands of Importance to the State of Hawai'i designation: it does not qualify as Prime, Unique or Other. [Pet. Ex. 1, Fig. 11; Pet. Ex. 27, 8:18 - 8:19]

127. ~~124.~~ The unsuitable soil conditions and poor productivity ratings of the Petition Area preclude any feasible agricultural development on the site and therefore development of the Project is not expected to have an adverse impact on actual or potential agricultural production in the vicinity of the Petition Area or in the County or State. [Pet. Ex. 1, App. N at 15]

2. FLORA AND FAUNA

128. ~~125.~~ Several studies were conducted to support the Final EA, including a Botanical Resource Assessment conducted by Maya LeGrande, Environmental Consultant, on August 2011 [Pet. Ex. 1, App. E]; a Nene Survey and an Arthropod Study conducted by Robert W. Hobdy, Environmental Consultant, on July 16, 2012 and July 23, 2012, respectively [Pet. Ex. 1, App. F-1 and F-2]; and an Avifaunal and Feral Mammal Survey conducted by Phillip L. Bruner, Environmental Consultant, on August 8, 2011. [Pet. Ex. 1, App. F]

129. ~~126.~~ The Botanical Resource Assessment concluded that no threatened or endangered plant species are located within the Petition Area. [Pet. Ex. 17, 3:18 - 3:19]

130. ~~127.~~ The dominant vegetation in the Petition Area is Dry Kiawe/Buffelgrass, with some koa haole scrub. [Pet. Ex. 1, App. E at 4]

131. ~~128.~~ There are no wetlands in the Petition Area, and the Project is not expected to have any significant negative impact on botanical resources within the Petition Area or the general region. [Pet. Ex. 1, App. E at 5]

132. ~~129.~~The Arthropod Study concluded that none of the arthropods found within the Petition Area were designated as threatened or endangered species. [Pet. Ex. 15, 2:18]

133. ~~130.~~There was no evidence of the Blackburn's sphinx moth being located within the Petition Area. [Pet. Ex. 15, 2:24 - 2:27]

134. ~~131.~~To the extent that the Petition Area contains any tree tobacco plants, which are the preferred host plant for the Blackburn's sphinx moth, those individual plants were very small and not optimum host plants for the moth. [Pet. Ex. 15, 2:24 - 2:27; Pet. Ex. 17, 4:8 - 4:13]

135. ~~132.~~The Nene Survey concluded that no Nene were located within the Petition Area, and the Petition Area was determined not to have an environment that would attract Nene. [Pet. Ex. 1 at 26-33; Pet. Ex. 15, 3:9 - 3:17]16]

136. ~~133.~~Development of the Project will not have any adverse effect on any threatened or endangered arthropods or Nene. [Pet. Ex. 15, 4:17 - 4:23]

137. ~~134.~~The Avifaunal and Feral Mammal Survey of the Petition Area concluded that no endangered or threatened bird species were located within the Petition Area, nor any Hawaiian Hoary Bats located within the Petition Area. [Pet. Ex. 1, App. F at 4-5; Pet. Ex. 13, 3:1 - 3:28]

138. The U.S. Fish and Wildlife Service recommended that Petitioner should contact their office for additional information on avoiding impacts to the Nene goose; the Service indicated that the proposed retention basins may attract endangered waterbirds to the Petition Area. In addition, the Service indicated that barbed wire fencing could adversely impact the Hawaiian hoary bat and should not be used for fencing, and that to avoid impacts to the Hawaiian petrel and Newell's shearwater, Project-related lighting should be minimized, and all Project lights should be shielded so the bulb is not visible at or above bulb-height. [OP C&O, FOF 134A]

139. Notwithstanding the proposed retention basins, there is nothing at the Petition Area as it currently exists, nor as it will be developed, that would attract Nene. [Pet. Ex. 15, 4:8 - 4:11]

140. ~~135.~~ Development of the Project will not have any adverse effect on any threatened or endangered bird or mammal species. [Pet. Ex. 13, 5:3 - 5:10]

3. ARCHAEOLOGICAL AND HISTORICAL RESOURCES

141. ~~136.~~ Scientific Consultant Services Inc. prepared an Archaeological Inventory Survey of the Petition Area dated September 2011 ("AIS"); the AIS was prepared to support the Project's historic preservation review process under HRS Chapter 6 E-8. [Pet. Ex. 1, App. I; Pet. Ex. 19, 4:16 - 4:18]

142. ~~137.~~ The DLNR State Historic Preservation Division ("SHPD") approved the AIS by letter dated June 18, 2012. [Pet. Ex. 1, App. I at 1]

143. ~~138.~~ Prior to the current AIS, a large portion of the Petition Area had been previously surveyed by International Archaeological Research Institute, Inc. in 1999. [Pet. Ex. 1, App. I at 1; Pet. Ex. 19, 3:10 - 3:15]

144. ~~139.~~ The current AIS relocated State Site 50-50-09-4164, the former Pu'unene Naval Air Station, and State Site 50-50-09-4801, two post-World War II cattle ranching sites, which had been identified in the International Archaeological Research Institute, Inc survey, and assessed the presence/absence of features within both Sites and identified previously undocumented features within each Site. [Pet. Ex. 1, App. I at 20; Pet. Ex. 19, 3:10 - 3:15]

145. ~~140.~~ No pre-contact archaeological sites were identified. [Pet. Ex. 1, App. I at 52; Pet. Ex. 19, 5:10]

146. ~~141.~~ Archival research has indicated the northern half of the Petition Area was used for hog farming and as a scrap metal storage site, while the southern half of the Petition Area remained fallow. [Pet. Ex. 1, App. I at 20]

147. ~~142.~~ A total of 34 features were identified, of which 15 were previously unrecorded; in total, 30 features were determined to be associated with the Pu'unene Naval Air Station. [Pet. Ex. 1, App. I at 20; Pet. Ex. 19, 5:7 - 5:10]

148. ~~143.~~ The 15 new features recorded by the AIS were evaluated and found to be significant under Criterion D for their information content. [Pet. Ex. 1, App. I at 53; Pet. Ex. 19, 5:11 - 5:12]

149. ~~144.~~ State Site 50-50-09-4164, the former Naval Air Station, has also been assessed as significant under Criterion A, as it has yielded information important to the history of Maui. [Pet. Ex. 1, App. I at 53; Pet. Ex. 19, 5:12 - 5:14]

150. ~~145.~~ Based on the results of the AIS, no further archaeological work is recommended on the Petition Area, however, the AIS noted that if the area designated as the "Alternate Access Road" was used for access to the Project, archaeological monitoring should be conducted. [Pet. Ex. 1, App. I at 53; Pet. Ex. 19, 5:16]

151. ~~146.~~ Petitioner represented that it does not intend to pursue the Alternate Access Road because the DLNR approved Petitioner's request for a 56-foot wide access and utility easement over the existing asphalt roadway. [Pet. Ex. 10; G.Tadaki, Tr. 9/5/13, 59:10 - 59:12]

152. ~~147.~~ Petitioner's Archaeological Monitoring Plan for the Alternate Access Road and Petition Area was accepted by SHPD by letter dated August 24, 2012. [Pet. Ex. 1, App. J-1; M.Dega, Tr. 9/5/13, 73:21 - 74:8]

153. ~~148.~~ SHPD did not require the Archaeological Monitoring Plan for the Petition Area, but Petitioner took a proactive approach and had one prepared anyway. [M.Dega, Tr., 9/5/13, 75:1 - 75:6]

4. CULTURAL RESOURCES

154. ~~149.~~ Scientific Consultant Services Inc. prepared a Cultural Impact Assessment Report for the Project dated September 2011 pursuant to the OEQC Guidelines for Assessing Cultural Impacts (the "CIA"). [Pet. Ex. 1, App. K; Pet. Ex. 19, 6:18 - 6:19]

155. ~~150.~~ In order to prepare the CIA, individuals and organizations with knowledge of cultural practices in, or in close proximity to, the Petition Area, traditional stories, practices and beliefs associated with the Petition Area or historical properties within the Petition Area were sought out for consultation and interviews, and letters were sent to organizations whose jurisdiction included knowledge of the area, consultation was sought from the following: (i) History and Culture Branch Chief of the SHPD; (ii) Office of Hawaiian Affairs, Oahu Branch; (iii) Office of Hawaiian Affairs, Maui Branch; (iv) Central Maui Hawaiian Civic Club; (v) Kimokeo Kapahuleua; (vi) Maui SHPD; (vii) Cultural Resources Commission of the County of Maui Planning Department; and (viii) Hale Mahaolu. In addition, a CIA Notice was published in The Honolulu Star Advertiser and The Maui News on July 20, 21 and 24, 2012. Notice was also published in the August edition of the Office of Hawaiian Affairs' newsletter, Ka Wai Ola. [Pet. Ex. 19, 6:19 - 7:4]

156. ~~151.~~ There are no specific ongoing traditional cultural practices being exercised at the Petition Area, and the Petition Area has not been used for traditional cultural purposes within recent times. [Pet. Ex. 1, App. K at 24; Pet. Ex. 19, 9:7 - 9:11; M.Dega, Tr. 9/5/13, 72:18 - 72:23]

157. ~~152.~~ The CIA concluded that it is unlikely that the exercise of native Hawaiian rights related to gathering, access or other customary activities will be affected by the development of the Project. [Pet. Ex. 1, App. K at 25; ; M.Dega, Tr. 9/5/13, 72:18 - 72:23]

158. ~~153.~~ Since no cultural activities were identified within the Petition Area, the Project will not have any adverse effect upon Native Hawaiian traditional and customary rights, which would require protection under Article XII, section 7, of the Hawai'i State Constitution. [Pet. Ex. 1, App. K at 25]

5. GROUNDWATER AND SURFACE WATER RESOURCES

159. ~~154.~~ Tom Nance Water Resource Engineering prepared a Groundwater Resource and Water System Assessment for the Project dated September 2011. [Pet. Ex. 1, App. O]

160. ~~155.~~ Project development will include construction of drainage retention areas consisting of approximately 9 acres along the western edge of the Petition Area. There will be a series of linear retention basins of 3 to 4 feet deep. [S.Otomo, Tr. 9/5/13, 91:18 - 92:5]

161. ~~156.~~ Disposal of that water will occur by evaporation and seepage, and therefore will not impact surface water resources. [Pet. Ex. 1, App. O at 5]

162. ~~157.~~ Development of the Project will also involve the construction of a private water system; it will be a dual system using the on-site only slightly brackish groundwater for non-potable uses, and potable water will be provided from the same groundwater, which will be put through reverse osmosis ("**RO**") treatment within the Petition Area. [T.Nance, Tr., 9/6/13, 6:7 - 6:12]

163. ~~158.~~ The private water system will consist of two, or possibly three, supply wells, each outfitted with a 300 gallon per minute ("**GPM**") pump. In addition to the wells there will be two, possibly three, 75 GPM RO treatment trains, one 0.4 MG non-drinking water storage tank, one 0.25 drinking water storage tank, and booster pumps for the drinking and non-drinking water sources. [Pet. Ex. 42 (errata); Pet. Ex. 37, 3:5 - 3:9]

164. ~~159.~~ Regarding the two storage tanks, the larger of which will contain the on-site, untreated, groundwater to be used in the non-potable system, and a smaller tank, which will receive the product water from the RO treatment plant, and which will be used for drinking water. [T.Nance, Tr., 9/6/13, 6:13 - 6:24; Pet. Ex. 42, Errata]

165. ~~160.~~ The final location of the supply wells will be based on the best location for water quality, but the supply wells will be located within the Petition Area. [Pet. Ex. 42, Errata; T.Nance, Tr., 9/6/13, 7:8 - 7:21]

166. ~~161.~~The conservatively estimated water demand for the Project, based on Maui Department of Water Supply design standards for industrial uses is 6,000 gallons per day ("GPD")/acre, which results in a demand at full build-out of 118,800 GPD. [T.Nance, Tr. 9/6/13, 8:1 - 8:5; Pet. Ex. 37, 2:24 - 2:26]

167. ~~162.~~Actual water use for industrial projects such as planned for the Project is more on the order of 1,200 GPD/acre. [T.Nance, Tr. 9/6/13, 8:5 - 8:12]

168. ~~163.~~Irrigation water demands are conservatively estimated at 305,200 GPD, which includes uses within the industrial lots, as well as irrigation of the drainage retention areas and roadways. [Pet. Ex. 37, 3:1 - 3:2]

169. ~~164.~~Based upon the anticipated lot configuration, under a conservative estimate, the total projected average daily demand for water is 424,000 GPD, of which 118,800 GPD will be for drinking water and 305,200 GPD will be for irrigation water. [Pet. Ex. 1 at 77]

170. ~~165.~~Under a conservative estimate, the RO treatment is anticipated to convert 60% of the brackish water for drinking water uses. [Pet. Ex. 37, 3:14 - 3:15]

171. ~~166.~~The quality of the brackish water from the on-site wells prior to RO treatment meets all drinking water primary contaminant levels. [T.Nance, Tr. 9/6/13, 19:8 - 19:12]

172. ~~167.~~The concentrate from the RO process will be disposed of via disposal wells that are located at the south end of the Petition Area, at least 1,500 feet from the source wells. [Pet. Ex. 1, App. O at 4-5; Pet. Ex. 42(errata); T.Nance, Tr. 9/6/13, 20:16 - 20:25]

173. ~~168.~~The disposal wells will go 150 feet into groundwater, and the lower 40 to 45 feet of that depth is the zone where the RO concentrate will move into the receiving ground; the RO concentrate will not go into the basal lens. [Pet. Ex. 37, 4:17 - 4:22; T.Nance, Tr. 9/6/13, 21:3 - 21:24]

174. ~~169.~~ The Petition Area is makai of the UIC line, thus disposal wells are permitted. [T.Nance, Tr. 9/6/13, 13:24 - 14:8]

175. ~~170.~~ Prior to the start of construction, an application for the Project's water system will be prepared and submitted to the DOH, Safe Drinking Water Branch for review and approval. The water system will meet all DOH requirements, including those under HAR § 11-20-29.5, which requires all new private water systems to demonstrate appropriate water source (in terms of quality and quantity), and technical, managerial, and financial capacity in order to receive DOH approval for construction and operation. [Pet. Ex. 1 at 82-83; T.Nance, Tr. 9/6/13, 17:15 - 18:5]

176. ~~171.~~ A required component of getting the DOH certification of a new drinking water source is that all property owners within one quarter mile of the new water source must be notified that once the new water source is certified, no new disposal wells will be permitted within the one quarter mile arc of that well. [T.Nance, Tr. 9/6/13, 14:19 - 15:10]

177. ~~172.~~ Existing disposal wells within the one quarter mile radius would be permitted to remain in place. [T.Nance, Tr. 9/6/13, 15:23 - 15:25]

178. ~~173.~~ The Project CC&R will require all lot owners to prepare and implement BMP and emergency response plans that are specific to their proposed heavy industrial use. [Pet. Ex. 1 at 83]

179. ~~174.~~ The groundwater flowrate beneath the Petition Area is 4.0 MGD. [Pet. Ex. 1, App. O at 9; Pet. Ex. 37, 4:5]

180. ~~175.~~ The total groundwater pumpage for the Project's water system is conservatively estimated at 0.503 MGD; this estimate is possibly five times higher than the anticipated actual use at the Project. [Pet. Ex. 1, App. O at 12; T.Nance, Tr., 9/6/13, 8:1 - 9:2]

181. ~~176.~~ About 55% of the 0.503 MGD of groundwater withdrawal will be returned to the groundwater in the following ways: (i) disposal of the RO concentrate in on-site disposal wells

(0.0792 MGD); (ii) disposal of treated domestic wastewater in leach fields (0.107 MGD); (iii) percolation of excess landscape irrigation water (0.012 MGD); and (iv) return to groundwater by other non-potable uses (0.075 MGD). The net consumptive use of groundwater is estimated at 0.23 MGD. This represents a reduction of less than six (6) percent of the 4.0 MGD of groundwater flow beneath the Project site. [Pet. Ex. 37, 4:9 - 4:15]

182. ~~177.~~ Changes in the salinity and nutrient (nitrogen and phosphorus) levels of the groundwater will be modest and are considered insignificant from an aquifer-wide perspective. [Pet. Ex. 37, 5:8 - 5:10]

183. ~~178.~~ Except for the RO concentrate, which will be delivered to the groundwater directly, all of the other returns to the groundwater will travel vertically through sand soil, alluvium and unweathered lava before reaching the groundwater, which is anticipated to remove more than 80% of the nitrogen and more than 95% of the phosphorus. [Pet. Ex. 37, 4:27 - 5:2]

184. ~~179.~~ Even under more conservative estimates of removal rates of 50% for nitrogen and 90% for phosphorus, the net changes to the groundwater flow under the Petition Area will be 3.8% increase in salinity; 1.3% increase in nitrogen; and 7.1% increase in phosphorus. [Pet. Ex. 1, App. O at 14; Pet. Ex. 37, 5:2 - 5:5]

185. ~~180.~~ The Project is not anticipated to have any significant impact to groundwater, surface water or nearshore ocean waters. [Pet. Ex. 37, 5:19 - 5:22; Pet. Ex. 47, 3:10 - 4:5]

6. RECREATIONAL AND SCENIC RESOURCES

186. ~~181.~~ The Project is located adjacent to the Maui Raceway Park as well as other recreational motor sport activities. [G.Tadaki, Tr. 9/5/13, 30:7 - 30:9]

187. ~~182.~~ Development of the Project is not expected generate or increase the demand on existing recreational facilities or resources. [Pet. Ex. 1 at 73]

188. ~~183.~~ The Project will not have any impact on residential or visitor facilities. [W.Spence, Tr. 9/5/13, 157:19 - 157:20]

189. ~~184.~~ The Project will not adversely impact scenic resources or view corridors due to the distance of the Petition Area from surrounding roadways and residential areas. [Pet. Ex. 1 at 47]

J. ENVIRONMENTAL QUALITY

1. NOISE

190. ~~185.~~ Y. Ebisu & Associates prepared an Acoustic Study for the Project dated November 2011. [Pet. Ex. 1, App. G]

191. ~~186.~~ While construction activities will create some increase in noise during construction of the Project, no adverse noise impacts are anticipated due to the absence of noise-sensitive development in the neighborhood, as well as the physical separation and distance between the Petition Area and the nearest residential areas. [Pet. Ex. 1 at 34 - 35; Pet. Ex. 21, 5:17 - 5:21]

192. ~~187.~~ During the construction phase of the Project, Petitioner will use noise mitigation measures such as proper equipment maintenance, use of sound-dampening equipment, and limiting construction activities to daylight working hours. [Pet. Ex. 1 at 34-35; Pet. Ex. 21, 6:1 - 6:6]

193. ~~188.~~ If noise from construction activities or future industrial operations exceeds permissible sound levels, Petitioner will obtain a Community Noise Permit from the Department of Health in accordance with HAR Chapter 11-46 Community Noise Control. [Pet. Ex. 1 at 34-35]

194. ~~189.~~ No significant increase in traffic noise levels along Mokulele Highway is expected as a result of the Project. Project-related traffic is expected to increase traffic noise levels by 0.3 - 0.4 Day-Night Average Sound Level, while non-Project-related traffic is expected to provide an increase of 1.0 DNL. [Pet. Ex. 1 at 34; Pet. Ex. 21, 6:9 - 6:13]

195. ~~190.~~ Once completed, the Project is not anticipated to generate significant adverse noise conditions based on the relatively undeveloped areas around the Petition Area and the far distance from any residential or other noise sensitive land uses. [Pet. Ex. 1 at 34; Pet. Ex. 21, 6:7 - 6:22]

2. AIR QUALITY

196. ~~191.~~ B.D. Neal & Associates prepared an Air Quality Study for the Project dated November 2011. [Pet. Ex. App. H]

197. ~~192.~~ During construction-related activities, air quality within the immediate vicinity of the Project may be temporarily impacted from the emission of fugitive dust and exhaust emissions from construction vehicles. [Pet. Ex. 1 at 38; Pet. Ex. 23, 4:21 - 4:20]

198. ~~193.~~ Petitioner will minimize air quality impacts through fugitive dust measures required under HAR § 11-60.1-33 and institute measures to control dust such as watering, dust barriers, wind screens, mulching and/or chemical soil stabilizers, routine road cleaning and/or tire washing during construction of the Project. [Pet. Ex. 1 at 38-39; Pet. Ex. 23, 4:26 - 5:5]

199. ~~194.~~ On a long-term basis after completion of construction, the Project is not anticipated to significantly impact the air quality, and no mitigation measures are needed. [Pet. Ex. 23, 5:12 - 5:23]

3. WATER QUALITY

200. ~~195.~~ The Petition Area is located approximately 2.5 miles from the Pacific Ocean. [G.Tadaki, Tr. 9/5/13, 45:1 - 45:2]

201. ~~196.~~ Petitioner did not have an ocean water study prepared as part of the Final EA. However, Petitioner's expert in coral reef ecology and coastal oceanography, Dr. Steven Dollar was the principal investigator on a project award from the County of Maui in 2010 - 2011 to do a very in-depth study of the chemistry and biology aimed at looking at impacts to coral reefs in Ma'alaea Bay. [S.Dollar, Tr. 9/6/13, 33:21 - 34:2]

202. ~~197.~~ As part of that study, Dr. Dollar did extensive sampling in the areas that are downslope from the Petition Area. [S.Dollar, Tr. 9/6/13, 34:3 - 34:4]

203. ~~198.~~ Based on this prior study, and the Groundwater Study prepared by Tom Nance Water Resources for the Project, Dr. Dollar determined that the Project should have no detectable effect whatsoever on the nearshore marine biology or water quality. [S.Dollar, Tr. 9/6/13, 36:6 - 36:9]

204. ~~199.~~ The Project will not involve discharges into Class 1 (inland) waters or Class AA (marine) waters of the State of Hawai'i. [Pet. Ex. 1 at 86]

205. ~~200.~~ Studies have indicated that the mud cap rock along the southern two-thirds of Ma'alaea Bay prevents groundwater discharge along the shoreline, forcing it further offshore into deep water where it is thoroughly mixed to background ocean water levels, and therefore very diffused. [Pet. Ex. 1 at 87; Pet. Ex. 47, 3:12 - 3:24; S.Dollar, Tr. 9/6/13, 38:3 - 38:10]

206. ~~201.~~ Based on operating experiences at Kealia National Wildlife Refuge, where ponds are filled by surface water during the wet season, and require pumping during the dry season, it has been established that groundwater flow is not the primary source of water for those ponds. As such, any small changes to groundwater flow and composition that may result from the development of the Project should have no effect on the Kealia Pond National Wildlife Refuge. [Pet. Ex. 47, 3:25 - 4:5]

4. ENERGY CONSERVATION

207. ~~202.~~ Consistent with Act 181 (2011), Petitioner will encourage lot owners to implement and utilize sustainability measures and practices during construction and operations. [Pet. Ex. 1 at 128; G. Tadaki, Tr. 9/5/13, 52:24 - 52:13]

208. ~~203.~~ Energy conservation measures that lot owners may incorporate include using fiberglass insulation in ceiling and walls to help keep temperatures stable, glass tinting on windows, extended roof overhangs, solar energy systems, solar water heating systems,

photovoltaic systems, low-flow fixtures, utilizing either time sensitive or rainfall-triggered sensor for irrigation systems, drip irrigation systems and drought-tolerant plants for landscaping and use of low-energy appliances. [G.Tadaki, Tr. 9/5/13, 54:4 - 54:16]

K. ADEQUACY OF PUBLIC SERVICES AND FACILITIES

1. HIGHWAY AND ROADWAY FACILITIES

209. ~~204.~~ Phillip Rowell and Associates prepared a traffic impact analysis report ("**TIAR**") for the Project dated January 24, 2012, which identified the individual and cumulative traffic impacts of the Project, and provided recommendations concerning mitigation measures. [Pet. Ex. 1, App. Q]

210. ~~205.~~ There are no Maui public bus stops along Mokulele Highway, therefore the Petition Area cannot be accessed by public bus service. [Pet. Ex. 1, App. Q at 8]

211. ~~206.~~ The Petition Area is located about 1.0 mile southeast of the intersection of Kama'aina Road, Mehameha Loop, and Mokulele Highway, a divided, four-lane facility linking South and Central Maui. [Pet. Ex. 1 at 6; G.Tadaki, Tr. 9/5/13, 30:16 - 30:18]

212. ~~207.~~ Access to the Petition Area will be via the intersection of Mokulele Highway and Kama'aina Road and Mehameha Loop. The intersection is four-legged and signalized. Mokulele Highway is a four-lane divided highway with a north-south orientation connecting Kahului to the north, and Kihei to the south. The posted speed limit is 45 miles per hour. A bike path runs along the east side of the Highway. Mokulele Highway is under the jurisdiction of the State Department of Transportation ("**DOT**"). [Pet. Ex. 31, 4:22 - 4:27]

213. ~~208.~~ Upon leaving Mokulele Highway, access will be on Kama'aina Road, which is also under the DOT jurisdiction. Kama'aina Road has 24 foot wide concrete pavement for approximately 1,500 feet from Mokulele Highway and transitions to an asphalt pavement up to South Firebreak Road. [Pet. Ex. 31, 5:1 - 5:4]

214. ~~209.~~ From Kama'aina Road, access will be taken along South Firebreak Road. South Firebreak Road has 24-foot wide asphalt pavement all the way to the entrance of the Petition Area. Access over a portion of South Firebreak Road that goes directly to the Petition Area is via a 56 foot wide, non-exclusive access and utility easement that was approved by the DLNR in April of this year. [Pet. Ex. 31, 5:5 - 5:11; Pet. Ex. 10]

215. ~~210.~~ The intersection of Mokulele Highway at Kama'aina Road/Mehameha Loop operates at Level of Service ("LOS") D or better (the overall LOS at the intersection was A), even at the AM and PM peak hours. [Pet. Ex. 1, App. Q at 12]

216. ~~211.~~ Without the proposed Project, the Mokulele Highway intersection is expected to operate at a LOS D or better in 2015, even with the addition of general background growth in traffic of 1.6% per year, plus anticipated growth from newly proposed projects. [Pet. Ex. 1, App. Q at 14-16, 20; Pet. Ex. 31, 6:2 - 6:10]

217. ~~212.~~ With the anticipated traffic impacts from the development of the Project, the overall Mokulele Highway intersection level of service in 2015 is projected to operate a LOS D or better. However, PM peak hour service at two approaches is expected to be LOS E and F. [Pet. Ex. 31, 6:21 - 6:27]

218. ~~213.~~ The decrease in LOS is based on anticipated trips that will be generated from the Project, which, based on 66 acres of developable land, are 472 trips during the AM peak hours and 471 trips during the PM peak hours. [Pet. Ex. 31, 6:12 - 6:17]

219. ~~214.~~ Proposed mitigation measures include (A) the following improvements at the intersection of Mokulele Highway at Kama'aina Road and Mehameha Loop: (i) modify westbound approach to provide a separate right-turn lane; (ii) Provide acceleration lane for westbound to northbound right turns; and (iii) Lengthen southbound left-turn deceleration lane from 60 feet to 350 feet; (B) the areas adjacent to Kama'aina Road, South Firebreak Road, and Lower Kihei Road should be monitored to insure that sugar cane growth does not impede sight distances, and that visibility to traffic control devices is maintained; (C) Kama'aina Road, South Firebreak Road and

Lower Kihei Road should be striped and signed per County of Maui standards. [Pet. Ex. 31, 7:2 - 7:14]

220. The State DOT recommended that a fair share contribution for the cost of regional improvements related to and proportional to the reasonably foreseeable impacts of the Project should be considered. [OP C&O, FOF 214A; B.Yee, Tr. 9/6/13, 65:4 - 65:16]

221. The State DOT recommended that the TIAR be revised and resubmitted for acceptance prior to Petitioner obtaining preliminary subdivision approval. All recommended transportation improvements to mitigate local and direct Project-generated impacts should be implemented, including the dedication of roadway rights-of-way on Mokulele Highway, prior to occupancy. [R.Funakoshi, Tr. 9/6/13, 48:13 - 48:15; 49:13 - 49:18; OP C&O, FOF 214A]

222. The State DOT does not always provide documentation to demonstrate that it has "accepted" a TIAR. [R.Funakoshi, Tr. 9/6/13, 55:19 - 56:1]

223. More often the State DOT's acceptance of a TIAR is implicit in DOT's sign off on documents, such as construction plans. [R.Funakoshi, Tr. 9/6/13, 55:24 - 56:5]

224. Construction plans are typically presented and signed off by agencies immediately prior to final subdivision approval, not tentative subdivision approval. [R.Funakoshi, Tr. 9/6/13, 56:6 - 56:15]

225. OP indicated that Petitioner should be required to obtain a letter from the State DOT stating that the revised TIAR and the mitigation therein is acceptable prior to obtaining preliminary subdivision approval. However, there is no guarantee that the State DOT would ever submit such a letter, and the burden would fall to Petitioner to prod DOT. [R.Funakoshi, Tr. 9/6/13, 59:3 - 59:12]

226. If the Commission were to impose a condition of approval requiring Petitioner to obtain State DOT acceptance of a revised TIAR prior to Petitioner receiving preliminary

subdivision approval from the County, even if Petitioner submitted a revised TIAR to DOT, Petitioner would be in technical violation of the condition of approval unless and until the State DOT issued a letter explicitly stating that it had accepted the revised TIAR. [R.Funakoshi, Tr. 9/6/13, 57:2 - 57:12]

227. Petitioner cannot obtain final subdivision approval from the County unless the State DOT signs-off on Petitioner's construction plans. [R.Funakoshi, Tr. 9/6/13, 57:13 - 57:19]

228. The County supports requiring Petitioner to obtain State DOT approval of a revised TIAR prior to final subdivision approval; the County does not believe it would be helpful to have State DOT approval of a revised TIAR prior to preliminary subdivision approval. [W.Spence, Tr. 9/5/13, 158:21 - 159:16]

229. Under the Maui County Code, Petitioner can obtain preliminary subdivision approval within 45 days of submittal of an application. However, in this case, where a change in zone and a community plan amendment are needed before the Project can be developed, the preliminary subdivision approval would be virtually meaningless because the Planning Commission and the Maui County Council may impose different requirements on the Project, which would require changes to the subdivision application. [W.Spence, Tr. 9/5/13, 161:17 - 162:20]

230. 215-The Project's interior subdivision streets will have 56 foot right-of-ways and will be improved with two 18 foot wide travel lanes and 10 foot wide shoulders on each side. Flexible design standards will be utilized in the design of the subdivision's roadway system as provided for by Section 18.32.030 of the Maui County Code pertaining to General Criteria for Flexible Design Standards. [Pet. Ex. 29, 5:10 - 5:14]

231. 216-Each lot owner will be responsible for installing a driveway to connect his or her lot to the interior Project roadway fronting the lot. [Pet. Ex. 1 at 11]

2. WATER SERVICE

232. ~~217.~~ There is no County of Maui Department of Water Supply service to the Petition Area or to adjacent properties. [Pet. Ex. 1 at 75; Pet. Ex. 29, 4:17]

233. ~~218.~~ Petitioner will develop a water system for the Project using groundwater to be supplied from two, possibly three, on-site wells. [Pet. Ex. 1 at 76; Pet. Ex. 37, 2:19 - 2:25]

234. ~~219.~~ By letters dated November 8, 2012, Petitioner obtained from the DLNR-Commission on Water Resource Management the necessary Well Construction and Pump Installation Permits for two wells (Nos. 4927-02 and 4927-03). [Pet. Ex. 41]

235. ~~220.~~ The Project's water system will be privately owned and maintained by the Association to make sure the water system remains in compliance with DOH ~~Clean~~ Safe Drinking Water Branch regulations. [C.Jencks, Tr. 9/5/13, 128:19 - 128:21; Pet. Ex. 37, 2:21 - 2:22; OP C&O, FOF 220]

236. ~~221.~~ As lots are developed, each lot owner will be responsible for tying in to the private water system by connecting to the lateral on their lot. [Pet. Ex. 1 at 11]

3. WASTEWATER TREATMENT AND DISPOSAL

237. ~~222.~~ The nearest County of Maui sewer system is located approximately 10,000 feet south of the Petition Area. [Pet. Ex. 1 at 84; Pet. Ex. 29, 4:14 - 4:15]

238. ~~223.~~ Wastewater service at the Project will be provided through individual wastewater systems ("IWS") that will include an aerobic treatment unit and individual leach field. [Pet. Ex. 29, 6:14 - 6:17]

239. According to DOH wastewater system rules (HAR Chapter 11-62), any cesspool, seepage pit or soil absorption system must be a minimum distance of 1,000 feet from a potable water source serving a public water system. The Project layout will take into account this 1,000

foot radius. [OP C&O, FOF 223A; HAR Chapter 11-62, App. F, Table 2; S.Otomo, Tr. 9/5/13, 93:4 - 93:24]

240. ~~224.~~ As the Project develops and individual building permits are applied for, the building permit applicant will be required to submit the design of each IWS for the DOH's review and approval. [Pet. Ex. 1, App. P; Pet. Ex. 29, 6:15 - 6:17]

241. ~~225.~~ Depending upon the location of the lot, it may share a common leachfield with adjacent lots provided that the proper easement documentation is provided. [S.Otomo, Tr. 9/5/13, 93:10 - 93:14; 107:15 - 107:21]

242. ~~226.~~ As currently proposed, DOH certification of the Project water system will result in some limitations on the permitted locations of IWS within the Petition Area, and potentially on adjacent properties. [T.Nance, Tr. 9/6/13, 11:7 - 11:12]

243. The DOH Safe Drinking Water Branch has public notification procedures for new drinking water sources located below the Underground Injection Control line. Notification is required to property owners within a one-quarter mile radius of the drinking water well. The required notice does not include any warning that future individual wastewater systems must be sited a minimum distance of 1,000 feet from the drinking water source. [OP C&O, FOF 226A; T.Nance, Tr. 9/6/13, 30:5 - 30:17]

244. ~~227.~~ The adjacent parcels that could potentially be impacted consist of large land areas, and therefore contain sufficient acreage such that those parcels should not be precluded from utilizing IWS due to the development of the Project water system. [S.Otomo, Tr. 9/5/13, 95:24 - 99:11; T.Nance, Tr. 9/6/13, 12:19 - 13:19]

245. By letter to the Commission dated September 27, 2013, from the Office of the Mayor of the County of Maui, the Mayor confirmed that the County, as a landowner of approximately 222.626 acres of land adjacent to the Petition Area, is aware of the limitations on the siting of future injection wells and individual wastewater systems as a result of the

development of Petitioner's potable water system. The County confirmed that it does not have, and does not intend to have, injection wells within the County property, but if injection wells are desired in the future, there is ample space within the County property outside of the one-quarter mile radius from Petitioner's drinking water wells. The County also confirmed that there is sufficient space within the County property for the siting of any new wastewater systems, irrespective of Petitioner's drinking water wells, and reiterated the County's continued support for the reclassification and the proposed Project. [Letter from Alan M. Arakawa, Mayor of the County of Maui to the Land Use Commission (Sept. 27, 2013)]

246. By letter to the Commission dated September 27, 2013, Alexander & Baldwin, owner of approximately 161,447 acres of land adjacent to the Petition Area, confirmed that it is aware of the limitations on the siting of future injection wells and individual wastewater systems as a result of the development of Petitioner's potable water system. Alexander & Baldwin confirmed that it does not have, and does not intend to have, injection wells within its property, but if it desires to install injection wells in the future, there is ample space within its property that is outside of the one-quarter mile radius from Petitioner's drinking water wells. Alexander & Baldwin also confirmed that there is sufficient space within its property for the siting of any new wastewater systems, irrespective of Petitioner's drinking water wells, and reiterated Alexander & Baldwin's support for the proposed reclassification and the proposed Project. [Letter from Randall Endo, V.P. Alexander & Baldwin, to the Land Use Commission (Sept. 27, 2013)]

247. As shown on the Land Ownership Map submitted with the letters of support from the Office of the Mayor and Alexander & Baldwin, the properties surrounding the Petition Area are owned primarily by the County of Maui and Alexander & Baldwin/Hawaiian Commercial & Sugar Company. A small portion of a large parcel owned by the State DLNR is adjacent to the south/west end of the Petition Area. [Letter from Alan M. Arakawa, Mayor of the County of Maui to the Land Use Commission (Sept. 27, 2013); Letter from Randall Endo, V.P. Alexander & Baldwin, to the Land Use Commission (Sept. 27, 2013)]

4. SOLID WASTE DISPOSAL

248. ~~228.~~ The Project is not expected to have any impact on existing solid waste collection and disposal services and facilities. [Pet. Ex. 1 at 75]

249. ~~229.~~ County landfills located in Hana, Central Maui, Lanai, and Molokai accept residential and commercial solid waste for disposal. [Pet. Ex. 1 at 75]

250. ~~230.~~ Privately-owned commercial haulers will dispose of any construction materials during the subdivision and development of the Project at the Maui Demolition and Construction Landfill, a commercial facility near Ma'alaea that accepts construction and demolition waste for disposal. [Pet. Ex. 1 at 75]

251. ~~231.~~ During the infrastructure development stage of the Project, cleared and grubbed material may be used as mulch or transported to the County of Maui's green waste recycling facility at the Central Maui Landfill for disposal, which is located near Pu'unene and contains recycling and composting facilities, and also accepts green waste and used motor oil. [Pet. Ex. 1 at 75]

252. ~~232.~~ Once the construction of backbone infrastructure is completed, solid waste collection and disposal is anticipated to be provided by private commercial haulers under contract with the Association. [Pet. Ex. 1 at 75]

5. DRAINAGE AND STORMWATER

253. ~~233.~~ Otomo Engineering, Inc. prepared a preliminary engineering report for the Project dated February 2012 that addressed the drainage requirements of the Project. [Pet. Ex. 1, App. P]

254. ~~234.~~ There are no natural drainageways across the Petition Area. Existing runoff at the Petition Area is estimated to be 75.2 cubic feet per second, and the current runoff volume is 135,400 cubic feet. [Pet. Ex. 1 at 86]

255. ~~235.~~ The post-development runoff is projected to be 328.5 cubic feet per second, while runoff volume is projected to be 413,900 cubic feet. The incremental increase between the pre- and post-development conditions is 253.3 cubic feet per second in runoff and 278,500 cubic feet in runoff volume. [Pet. Ex. 1 at 87]

256. ~~236.~~ Project development will include construction of drainage retention areas consisting of approximately 9 acres along the western edge of the Petition Area. There will be a series of linear retention basins of 3 to 4 feet deep. [S.Otomo, Tr. 9/5/13, 91:18 - 92:5]

257. ~~237.~~ Additional drainage facilities will be catch basins, storm drain manholes and drain lines within the Project roadways. A drainage stubout will be provided to each developable lot as part of the backbone infrastructure. [S.Otomo, Tr. 9/5/13, 92:8 - 92:20]

258. ~~238.~~ As individual lots are developed, lot owners will be required to install their own on-site drainage system and provide a drainline connection to the drain stubouts on each lot. [Pet. Ex. 1 at 87; S.Otomo, Tr. 9/5/13, 92:18 - 92:24]

259. ~~239.~~ Petitioner will construct the backbone stormwater and drainage infrastructure, and the obligation to operate and maintain that infrastructure will be turned over to the Project Association. [G.Tadaki, Tr. 9/5/13, 60:19 - 61:11]

260. ~~240.~~ The Project drainage system will be designed in accordance with the Rules for the Design of Storm Drainage Facilities in the County of Maui (1995). [Pet. Ex. 29, 6:9 - 6:12]

261. ~~241.~~ Petitioner represented that it will incorporate a pollution prevention plan into the Project CC&Rs, and that the pollution prevention plan will include Best Management Practices for both the construction phase of the Project and the operational phases of the Project. [C.Jencks, Tr. 9/5/13, 128:3 - 128:17]

262. ~~242.~~The CC&R will also require all lot owners to prepare and implement emergency response plans that are specific to their proposed heavy industrial use. [Pet. Ex. 1 at 88]

263. ~~243.~~Depending on the type of industrial activity on each lot, the lot owner may be required to install additional mitigation measures to comply with permitting requirements specific to their proposed uses. [Pet. Ex. 1, at 88; S.Otomo, Tr. 9/5/13, 106:9 - 106:20]

264. In its memorandum of August 13, 2013, the DOH recommended that specific conditions be imposed relating to injection wells, drainage catch basins and the development of a Pollution Prevention Plan that incorporates Best Management Practice for the operations of the heavy industrial lots. [OP C&O FOF 243A]

265. A water quality monitoring program should be implemented to determine if there are any adverse effects on ground and coastal water quality as a result of the industrial operations. [OP C&O FOF 243B]

6. POLICE, FIRE PROTECTION, EMERGENCY MEDICAL SERVICES

266. ~~244.~~The proposed reclassification and Project are not anticipated to impact the service capability and capability of police, fire, and emergency medical operations. [Pet. Ex. 1 at 73]

267. ~~245.~~In addition to regular patrol duties, the Maui Police Department's Kihei Patrol District has a substation at 1881 S. Kihei Road, across from the Kihei Town Center, as well as programs for visitor and community oriented policing, and citizen patrols. [Pet. Ex. 1 at 73]

268. ~~246.~~In South Maui, the County of Maui Department of Fire and Public Safety has two stations, one in Kihei at 11 Waimahaihai Street and a second in Wailea at 300 Kilohana Drive. [Pet. Ex. 1 at 73]

269. ~~247.~~The Project's private water system will provide the necessary water for fire flow protection, to be confirmed by the Department of Fire and Public Safety prior to the issuance of any building permits. [Pet. Ex. 1 at 73; T.Nance, Tr. 9/6/13, 6:20 - 6:24]

270. ~~248.~~The Project will not expand or extend the existing services area limit of emergency medical services, and will not generate demand for new or additional health care facilities. [Pet. Ex. 1 at 74; DP Ex. 4 at 37]

271. ~~249.~~Appropriate lighting and security measures will be utilized during and after construction of the Project for crime prevention and deterrence and to ensure safe vehicular movement. [Pet. Ex. 1 at 73; DP Ex. 4 at 37]

7. PARKS AND SCHOOLS

272. ~~250.~~The State Department of Education operates several public schools in the Kihei area. However, the Project does not include a residential housing component so no significant impacts to existing educational facilities are anticipated. [Pet. Ex. 1 at 74; DP Ex. 4 at 36]

273. ~~251.~~Similarly, the Project will not increase demand for recreational resources, and does not trigger any of the County's park dedication requirements. [Pet. Ex. 1 at 72]

8. CIVIL DEFENSE

274. ~~252.~~The closest civil defense warning siren is approximately two miles to the southwest near the intersection of North Kihei Road and South Kihei Road. [Pet. Ex. 1 at 25]

275. ~~253.~~The State of Hawai'i Department of Defense, Office of the Director or Civil Defense, recommended installing an omni-directional 121 db(c) siren to provide coverage for the Petition Area. Petitioner will work with the agency to install the siren. [Pet. Ex. 1 at 26]

9. **POWER, TELECOMMUNICATIONS AND CABLE SERVICES**

276. ~~254.~~ There is an existing electrical transmission system traversing Kama'aina Road and South Firebreak Road, located within an easement that has been granted to Maui Electric Company, Ltd. [Pet. Ex. 1, App. P at 3; Pet. Ex. 29, 4:23 - 4:25]

277. ~~255.~~ The Project will be served by electrical, cable, and telephone systems installed overhead from the existing overhead facilities located along the north of the Petition Area. [Pet. Ex. 1, App. P at 7; Pet. Ex. 29, 7:13 - 7:14]

278. ~~256.~~ Within the Petition Area, the electric, cable, and telephone systems may be installed underground in accordance with the utility companies' rules and regulations. Street lights will be installed within the Project at intervals to be determined by the Project's electrical engineer. [Pet. Ex. 1, App. P at 7; Pet. Ex. 29, 7:14 - 7:17]

L. **COMMITMENT OF STATE FUNDS AND RESOURCES**

279. ~~257.~~ No State or other public funds will be used in the development of the Project. [G.Tadaki, Tr., 9/5/13, 44:6 - 44:12]

280. ~~258.~~ The Project infrastructure will be developed and funded by the Petitioner. The internal roads within the Project will be constructed by Petitioner, and will be privately owned and/or and maintained by the Project's lot owners' Association. [Pet. Ex. 35, 11:23 - 11:28]

281. ~~259.~~ Solid waste disposal generated from the Project will be hauled by privately-owned commercial haulers, and paid for by the Project's lot owners' Association. [Pet. Ex. 1 at 113]

282. ~~260.~~ The Project will not generate any new or additional demands for parks, schools, and health care services nor will it extend the service area limits for police and fire protection. [Pet. Ex. 1 at 113]

283. ~~261.~~ Petitioner shall be responsible for completing all transportation improvements required by the DOT under the Revised TIAR. [C.Jencks, Tr. 9/5/13, 148:20 - 149:2]

M. CONFORMANCE WITH URBAN DISTRICT STANDARDS

284. ~~262.~~ The proposed reclassification is in conformance with the applicable standards used by the Commission for determining the State Land Use Urban District set forth in HAR § 15-15-18. [OP Ex. 2 at 9]

HAR 15-15-18(1). It shall include land characterized by "city-like" concentrations of people, structures, streets, urban level of services, and other related land uses.

285. ~~263.~~ The Petition Area is surrounded by existing and proposed industrial type uses, and sugar cane land. Heavy industrial uses at the Hawaiian Cement Quarry are located 0.2 miles to the east, and the Central Maui Baseyard, an existing industrial development on 52 acres of land in the State Urban District, is located 1.3 miles to the north of the Petition Area. [Pet. Ex. 1 at 100; Pet. Ex. 40 at 9 - 11]

HAR 15-15-18(2). It shall take into consideration the following specific factors: (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment.

286. ~~264.~~ The Petition Area is approximately 4 miles south of Kahului and 3 miles north of Kihei. [G.Tadaki, Tr. 9/5/13, 27:6 - 27:7]

287. ~~265.~~ The Petition Area is located about 1.0 mile southeast of the intersection of Kama'aina Road, Mehameha Loop, and Mokulele Highway, a divided, four-lane facility linking South and Central Maui. [Pet. Ex. 1 at 6; G.Tadaki, Tr. 9/5/13, 30:16 - 30:18]

288. ~~266.~~ Development of the Project, as a heavy industrial subdivision, will generate a new center for employment. The development is projected to cause an increase of 32 direct and 33 indirect jobs on Maui each year and 17 jobs off-Island during the initial infrastructure development period. [Pet. Ex. 27, 7:3 - 7:4]

HAR 15-15-18(2). It shall take into consideration the following specific factors: . . . (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection.

289. ~~267.~~ The Project does not include a residential housing component, so no significant impacts to existing educational facilities are anticipated. Additionally, the Project will not increase the need for park space, and does not trigger any County requirements for park dedication. [Pet. Ex. 1 at 72, 74]

290. ~~268.~~ Adequate public utilities are available for the Project. Electrical, cable, and telephone systems serving the Project will be installed overhead from the existing overhead facilities located along the north of the Petition Area and installed underground within the Petition Area in accordance with the utility companies' rules and regulations. [Pet. Ex. 1, App. P at 7]

291. ~~269.~~ Adequate police and fire protection is available for the Project. [Pet. Ex. 1 at 73]

292. ~~270.~~ The internal roads within the Project will be constructed by Petitioner, and will be privately owned and/or and maintained by the Project's lot owners' Association. [Pet. Ex. 35, 11:23 - 11:28]

293. ~~271.~~ Petitioner will provide the backbone infrastructure for the Project such as internal roadways, drainage retention systems, grading work, landscaping and utilities (e.g., water, telephone, cable, electric, private water system). [Pet. Ex. 29, 5:1 - 5:4; S.Otomo, Tr., 9/5/13, 90:23 - 91:4]

294. ~~272.~~ Each lot owner will be responsible for installing their own individual wastewater system. [S.Otomo, Tr., 9/5/13, 91:4 - 91:8; 93:4 - 93:14]

HAR 15-15-18(2). It shall take into consideration the following specific factors: . . . and (C) Sufficient reserve areas for foreseeable urban growth.

The Petition Area and the lands in the vicinity of the Project are either planned or designated for future urban development. The Petition Area, the Pu'unene Airport Master Plan area and Project District 10 all fall within the newly established Urban Growth Boundaries of the Maui Island Plan. [Pet. Ex. 3]

HAR 15-15-18(3). It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects.

295. ~~273.~~ The Petition Area slopes in an easterly to westerly direction with on-site elevations ranging from 140 feet to 120 feet above mean sea level, with an average slope of 1.8 percent. There are no known unstable soil conditions nor are there any other adverse physical or environmental conditions that would render the Petition Area unsuitable or inappropriate for the proposed development. [Pet. Ex. 1 at 23, 109]

296. ~~274.~~ According to the evacuation maps prepared by the Maui County Civil Defense Agency, the Petition Area is not located within the tsunami inundation zone and therefore does not lie in an area subject to tsunami evacuation. The Petition Area is located in Flood Zone "X," which represents areas outside of the 0.2% annual chance flood plain. [Pet. Ex. 1 at 25; Pet. Ex., Fig. 9; Pet. Ex., App. A; Pet. Ex. 1, App. P at 3]

HAR 15-15-18(4). Lands contiguous with existing urban areas shall be given more consideration than non-contiguous land, and particularly when indicated for future urban use on state or county general plans.

297. ~~275.~~ The Petition Area is not contiguous with State Land Use Urban lands, however, the Petition Area and the lands in the vicinity of the Petition Area are either planned or designated for future urban development and fall within the MIP Urban Growth Boundaries. The Petition Area is ideally situated for heavy industrial activities given its separation and distance from both residential and commercial development, it's convenient and centralized location for customers and suppliers and its proximity to major transportation facilities. [Pet. Ex. 40; Pet. Ex. 27, 5:1 - 5:7]

HAR 15-15-18(5). It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans.

298. ~~276.~~ The reclassification of the Petition Area, and the subsequent approval of the Petitioner's applications for a change in zone and Community Plan amendment will permit the Petition Area to be developed in conformity with the MIP. [W.Spence, Tr. 9/5/13, 156:20 - 157:18]

HAR 15-15-18(5). It may include lands which do not conform to the standards in paragraphs (1) to (5) [of HAR § 15-15-18]: (A) When surrounded by or adjacent to existing urban development; and (B) Only when those lands represent a minor portion of this district.

299. ~~277.~~ The Petition Area meets the standards set forth in HAR § 15-15-18(1) - (5) and need not comply with paragraph (6). While the Petition Area is not characterized as "city-like" under HAR § 15-15-18(1), it is centrally located near centers of trading and employment and reclassification is needed to support trade and employment. The land is suitable for urban uses and generally unsuitable for agricultural pursuits. The topography and drainage are suitable for the proposed industrial uses and outside of flood and tsunami zones. Lands used for industrial purposes are located very nearby, and the MIP encourages the contiguous location of these lands within an Urban Growth Boundary. [Pet. Ex. 35, 10:9 - 10:17]

HAR 15-15-18(5). It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services.

300. ~~278.~~ The reclassification of the Petition Area will not contribute to scattered spot urban development or require unreasonable investment in public infrastructure or support services. The Petition Area is adjacent to Project District 10, the Pu'unene Airport Master Plan area and the Pulehunui Master Plan area, all of which anticipate future urban type development. [Pet. Ex. 35, 10:18 - 10:21]

301. ~~279.~~ The Project will not necessitate unreasonable public investment for infrastructure or public services as there is no residential component within the proposed Project, water will be developed privately, and wastewater will be handled on-site. [Pet. Ex. 35, 10:22 - 10:224]

HAR 15-15-18(5). It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

302. ~~280.~~ The Petition Area elevations range from 140 feet to 120 feet above mean sea level, with an average slope of 1.8 percent and does not include any slope of 20 percent or more. [Pet. Ex.35, 9:23 - 9:24]

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

303. ~~281.~~ With appropriate mitigation, the Project is generally supportive of one or more goals, objectives, policies and priority guidelines of the Hawai'i State Planning Act, HRS Chapter 226 ("HSP"). [OP Ex. 4 at 9; R.Funakoshi, Tr. 9/6/13, 47:24 - 48:2]

1. **HRS § 226-4 - State Goals.**

(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.

(2) A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.

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

2. HRS § 226-5 – Objectives and Policies for Population.

(b)(2) Encourage an increase in economic activities and employment opportunities on the neighbor islands consistent with community needs and desires.

(b)(3) Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.

3. HRS § 226-6 – Objective and Policies for the Economy in General.

(a)(1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people, while at the same time stimulating the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.

(a)(2) A steadily growing and diversified economic base that is not overly dependent on a few industries, and includes the development and expansion of industries on the neighbor islands.

(b)(3) Seek broader outlets for new or expanded Hawaii business investments.

(b)(5) Assure that the basic economic needs of Hawaii's people are maintained in the event of disruptions in overseas transportation.

(b)(6) Strive to achieve a level of construction activity responsive to, and consistent with, state growth objectives.

(b)(8) Encourage labor-intensive activities that are economically satisfying and which offer opportunities for upward mobility.

(b)(10) Stimulate the development and expansion of economic activities which will benefit areas with substantial or expected employment problems.

(b)(13) Stimulate the development and expansion of economic activities capitalizing on defense, dual-use, and science and technology assets, particularly on the neighbor islands where employment opportunities may be limited.

(b)(14) Encourage businesses that have favorable financial multiplier effects within Hawaii's economy, particularly with respect to emerging industries in science and technology.

304. ~~282.~~ The Project conforms with the above-quoted goals, objectives and policies of the HSP, HRS §§ 226-4, 5, and 6. The Project will increase economic and employment opportunities on Maui. During infrastructure development, the Project is projected to cause a direct increase of 32 jobs and an indirect increase of 33 jobs a year on Maui and a demand for 17 jobs off-Island. Total direct and indirect payroll attributed to this phase of development is forecasted to be \$3,871,000 per year. [Pet. Ex. 1, App. M at 51; Pet. Ex. 35, 6:13 - 7:2]

305. ~~283.~~ Individual lot construction is expected to create a demand for 70 direct and 72 indirect jobs on Maui a year and a demand for 38 jobs off-Island. Total direct and indirect payroll attributed to this period is forecasted to be \$8,494,000 per year. [Pet. Ex. 1, App. M at 51]

306. ~~284.~~ Development of the Project supports the priority guidelines of the HSP related to economic development, population growth and land resource management as follows:

1. HRS § 226-103 - Economic Priority Guidelines

(1) Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.

(a) Encourage investments which:

Reflect long term commitments to the State;

Rely on economic linkages within the local economy;

Diversify the economy;

Re-invest in the local economy;

Are sensitive to community needs and priorities; and

Demonstrate a commitment to management opportunities to Hawai'i residents.

307. ~~285.~~ The Project is in keeping with the economic priority guidelines of HRS § 226-103 because the Project will rely on economic linkages within the local economy through potential lessees and lot purchasers, who in turn will serve other businesses. In addition, the Project will aid in diversifying the State and Maui economies by providing expansion

opportunities for heavy industrial businesses. It will also provide reinvestment opportunities in the local economy through the expansion or development of local businesses. [Pet. Ex. 35, 7:3 - 7:7]

2. HRS § 226-104 Population Growth and Land Resources Priority Guidelines

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

(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.

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

(b)(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.

308. ~~286.~~ The Project is likewise in keeping with the population, growth and land resources priority guidelines of HRS § 226-104. The Project encourages urban growth in an area proposed for future urban development. Reclassifying the Petition Area will make available marginal lands for heavy industrial uses while maintaining nearby lands for agricultural purposes. [Pet. Ex. 35, 7:7 - 7:12]

309. ~~287.~~ Reclassification of the Petition Area is consistent with the State of Hawai'i Agricultural Functional Plan, which was prepared by the State of Hawai'i, Department of Agriculture ("DAG") in 1991 and which set as an objective the "achievement of productive agricultural use of lands most suitable and needed for agriculture." The soils within the Petition Area are not suitable for productive agriculture. [Pet. Ex. 27, 8:17 - 8:27]

310. ~~288.~~DAG determined that development of the Project will not significantly impact agriculture on Maui. [OP Ex. 1, Att. C]

311. ~~289.~~Reclassification of the Petition Area is consistent with the State of Hawai'i Employment Functional Plan in that it will stimulate the development and expansion of economic activities in the heavy industrial sector and increasing and diversifying employment opportunities such as job creation in construction, development, sales, and professional services. [Pet. Ex. 35, 7:16 - 7:19]

312. ~~290.~~Reclassification of the Petition Area is consistent with the State of Hawai'i Transportation Functional Plan in Petitioner has identified traffic mitigation measures that, with the concurrence of DOT, are to be constructed as part of the development of the Petition Area, and Petitioner will improve the portions of the State DLNR easement area necessary to satisfy State requirements as part of the Project's infrastructure development. [Pet. Ex. 35, 7:21 - 7:24]

O. CONFORMANCE WITH THE COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

313. ~~291.~~The proposed reclassification of the Petition Area generally conforms to the objectives, policies and standards of the Coastal Zone Management objectives and policies set forth in HRS § 205A-2. [OP Ex. 2 at 9; R.Funakoshi, Tr. 9/6/13, 47:24 - 48:2]

314. ~~292.~~The Petition Area is not within the Special Management Area delineated by the County of Maui. [Pet. Ex. 1, Fig. 16]

315. ~~293.~~The Project is consistent with the follow objectives and policies of the Coastal Zone Management program: [Pet. Ex. 1 at 120 - 127]

Historic Resources.

Objective: Protect, preserve and, where desirable, restore those natural and man-made historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies: (a) *Identify and analyze significant archeological resources;*

(b) *Maximize information retention through preservation of remains and artifacts or salvage operations; and*

(c) *Support state goals for protection, restoration, interpretation, and display of historic resources.*

Economic Uses.

Objective: *Provide public or private facilities and improvements to the State's economy in suitable locations.*

Policies: (a) *Concentrate coastal development in appropriate areas;*

(b) *Ensure that coastal development such as harbors and ports, and coastal related development such as visitor facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and*

(c) *Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-terms growth at such areas, and permit coastal dependent development outside of presently designated areas when:*

(i) *Use of presently designated locations is not feasible;*

(ii) *Adverse environmental effects are minimized; and*

(iii) *The development is important to the State's economy.*

Coastal Hazards.

Objectives: *Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.*

Policies: (a) *Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and non-point source pollution hazards;*

(b) *Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, point and non-point pollution hazards;*

(c) *Ensure that developments comply with requirements of the Federal Flood Insurance Program;*

(d) *Prevent coastal flooding from inland projects; and*

(e) *Develop a coastal point and non-point source pollution control program.*

Beach Protection.

Objective: *Protect beaches for public use and recreation.*

Policies: (a) *Locate structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;*

(b) *Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and*

(c) *Minimize the construction of public erosion-protection structures seaward of the shoreline.*

Marine Resources.

Objective: *Implement the State's ocean resources management plan.*

Policies: (a) *Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;*

(b) *Assure the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;*

(c) *Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;*

(d) *Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;*

(e) *Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how*

ocean development activities relate to and impact upon ocean and coastal resources; and

(f) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

Public Participation.

Objective: *Stimulate public awareness, education, and participation in coastal management.*

Policies: *(a) Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management.*

(b) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities; and

(c) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

P. CONFORMANCE WITH THE COUNTY PLANS AND PROGRAMS

1. COUNTY OF MAUI COUNTYWIDE POLICY PLAN, MAUI ISLAND PLAN, KIHAI-MAKENA COMMUNITY PLAN

316. ~~294.~~ The County of Maui 2030 Countywide Policy Plan ("CPP"), adopted by the Maui County Council in March of 2010 as Ordinance No. 3732, is the first component of the decennial General Plan update, and acts as an over-arching values statement and umbrella policy document for the MIP and the nine Community Plans, and provides broad goals, objectives, policies, and implementing actions that portray the desired direction of the County's future. [DP Ex. 4 at 8]

317. ~~295.~~ The broad goals, objectives, policies, and implementing actions of the CPP that relate to the Project include: (A) Protect the natural environment; (F) Strengthen the local economy; and (J) Promote sustainable land use and growth management. [See DP Ex. 4, 9 - 10; Pet. Ex. 35, 14:20 - 14:26]

Protect the Natural Environment.

Objective 3: Improve the stewardship of the natural environment.

Policies: Evaluate development to assess potential short-term and long-term impact on land, air, aquatic, and marine environments.

Educate the construction and landscaping industries and property owners about the use of best management practices to prevent erosion and nonpoint source pollution.

Strengthen the Local Economy.

Objective 1: Promote an economic climate that will encourage diversification of the County's economic base and a sustainable rate of growth.

Policies: Support economic decisions that create long-term benefits.

Support and promote locally-produced products and locally-owned operations and businesses that benefit local communities and meet local demand.

Support public and private entities that assist entrepreneurs in establishing locally operated businesses.

Promote Sustainable Land Use and Growth Management.

Objective 1. Improve land use management and implement a directed-growth strategy

Policies: Direct urban and rural growth to designated areas.

Objective 4. Improve and increase efficiency in land use planning and management.

Policies: Ensure that new development projects requiring discretionary permits demonstrate a community need, show consistency with the General Plan, and provide an analysis of impacts.

318. ~~296.~~ The Project is consistent with these goals, objectives and policies under the CPP. [Pet. Ex. 1 at 131 - 133]

319. ~~297.~~ The MIP sets forth an island-wide land use strategy for Maui and encompasses a managed and directed growth plan which includes the delineation of Urban Growth Boundaries. The Petition Area is within the Urban Growth Boundary of the MIP and therefore has been selected by the people of Maui County for future urban development. [Pet. Ex. 3; W.Spence, Tr. 9/5/13, 157:15 - 157:18]

320. ~~298.~~ The Petition Area is within the MIP designated as the Pulehunui Planned Growth Area, which is to be used "primarily for heavy industrial, public/quasi-public, and recreational purposes." This Planned Growth area is "a logical expansion of industrial land use in the area. The area's location, midway between Kihei and Kahului, makes it an ideal site to serve the island's long-term heavy industrial land use needs." [Pet. Ex. 40 at 6; DP Ex. 1]

321. ~~299.~~ The Petition Area is located within the Kihei-Makena Community Plan region, and is currently designated as Agriculture on the Community Plan land use map. [Pet. Ex. 40 at 7]

322. ~~300.~~ Petitioner has submitted an application for an amendment to the Community Plan designation from Agriculture to Heavy Industrial, and the County has confirmed its support for that amendment. [Pet. Ex. 40 at 13; W. Spence, Tr. 9/5/13, 156:20 - 157:14]

323. ~~301.~~ The development of the Project is consistent with the following goals, objectives, policies and standards of the Kihei-Makena Community Plan. [Pet. Ex. 1 at 133 - 135; DP Ex. 4 at 12 - 13].

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 areas.

Objectives and Policies: Provide for moderate expansion of light industrial use in the Central Maui Baseyard, along Mokulele

Highway. These areas should limit retail business These actions will place industrial use near existing and proposed transportation arteries for the efficient movement of goods.

Prevent urbanization of important agricultural lands.

Economic Activity

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

Objectives and Policies: Establish a sustainable rate of economic development consistent with concurrent provision of needed transportation, utilities, and public facilities improvements.

Establish balance between visitor industry employment and non-visitor industry employment.

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.

Liquid and Solid Waste

Objectives and Policies: Provide efficient, safe, and environmentally sound systems for the reuse, recycling, and disposal of liquid and solid wastes.

Energy and Public Utilities

Objectives and Policies: Encourage the provision of public utilities, which will meet community needs in a timely manner.

Government

Goal: Efficient, effective, and responsive government services in the Kihei-Makena region.

Objectives and Policies: Continue to streamline the permit process, where appropriate, through means such as consolidated public hearings and concurrent processing of applications.

Continue to expedite the review and approval process for projects, which will result in public benefit by "fast tracking" and the assignment of permit expeditors.

2. COUNTY OF MAUI ZONING

324. ~~302.~~ The Petition Area is zoned "Agricultural" by the County of Maui. The proposed Project is not permitted within the Agricultural district. [Pet. Ex. 1, Fig. 15; DP Ex. 4 at 2].

325. ~~303.~~ Petitioner has filed an application for a change in zone from the Agricultural zoning district to the M-3 Restricted Industrial zoning district. [Pet. Ex. 40 at 13]

326. ~~304.~~ Permitted uses within the County M-3 Restricted Industrial zoning district include those uses that involve the manufacture, processing, storage, or treatment of goods from raw materials. The intent of M-3 zoning district is to provide for manufacturing and nuisance industries, and to exclude retail and office uses. Some specific permitted uses include: canneries; factories; manufacturing facilities; major utility facilities; landfills, lumber yards; machine shops; rock quarries; and material recycling/processing facilities. The minimum lot size in the M-3 district is 10,000 square feet. The minimum lot width is 75 feet, and the maximum building height is 90 feet. Side and rear setbacks are zero feet or the same as the adjoining zoning category whichever is greater. [Pet. Ex. 39]

327. ~~305.~~ The Project is consistent with the M-3 Restricted Industrial zoning district. [G.Kunihisa, Tr. 9/5/13, 81:3 - 82:14]

Q. INCREMENTAL DISTRICTING

328. ~~306.~~ HAR § 15-15-50(c)(19) provides that a petition for district boundary amendment to the Urban District must include a schedule for development of the total project in increments, together with a map identifying the location of each increment (collectively, an "**Incremental Development Plan**"), if the proposed development cannot be substantially completed within ten years after the date of the Commission's approval of the proposed Urban reclassification.

329. ~~307.~~ Petitioner has not submitted an Incremental Development Plan, and has represented that its development of the Project will be substantially completed within ten years after the date of the Commission's approval of the requested reclassification. [C.Jencks, Tr. 9/5/13, 134:21 - 134:25]

RULINGS ON PROPOSED FINDINGS OF FACT

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

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

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapters 201H and 205, and the Commission Rules under HAR chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS section 205-17, the Commission finds upon the clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 86.030 acres of land in the State Land Use Agricultural District, situated at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, identified by Tax Map Key No. (2) 3-8-008:019, to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Urban District, is reasonable, not violative of HRS § 205-2 and is consistent with the policies and criteria established pursuant to HRS §§ 205-16, 205-17 and 205A-2.

2. Article XII, section 7, of the Hawai'i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights. The State of Hawai'i reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious

purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. The State and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n. 43, *certiorari denied*, 517 U.S. 1163 (1996).

3. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. *Ka Pa'akai O Ka' Aina v. Land Use Commission*, 94 Hawai'i 31, 7 P.3d 1068 (2000).

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

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

6. The Petition Area is not classified as Important Agricultural Land under Part III of HRS chapter 205

7. Article XI, Section 7, of the Hawai'i State Constitution states that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people.

8. Article XI, Section 1, of the Hawai'i State Constitution states that all public natural resources are held in trust by the State for the public benefit, and the State should make appropriate assessments and requirement reasonable measures to protect public natural resources, while applying a higher level of scrutiny where public natural resources are used for economic gain.

Kauai Springs v. Planning Comm. of the County of Kauai, P.3d (2013) (2013 WL 1829587) 29440; *cert. granted* (2013 WL 4779589) 29440.

9. The Commission concludes that it has observed and complied with its duties arising under Article XI, Section 1, Article XI, Section 3, Article XI, Section 7 and Article XII, Section 7 of the Hawai'i State Constitution.

DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of approximately 86.030 acres in the State Land Use Agricultural District in Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, Tax Map Key No. (2) 3-8-008:019, and shown on Exhibit "A," attached hereto and incorporated by reference herein, shall be and is reclassified to the State Land Use Urban District, and the State Land Use District boundaries shall be amended accordingly.

Based upon the findings of fact and conclusions of law stated herein, it is hereby determined that the reclassification of the Petition Area will not significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural, and natural resources of the area.

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

1. **Highway and Road Improvements.** The Petitioner shall abide by, complete and/or submit the following:

a) The **TIAR** shall be revised and resubmitted to the State Department of Transportation ("**DOT**") for review prior to Petitioner submitting an application for Preliminary

Subdivision Approval to the County of Maui. The DOT shall accept the revised TIAR ("**Revised TIAR**") prior to Petitioner receiving Final Subdivision Approval from the County of Maui.

b) Petitioner shall fund and provide for the planning, design and construction of all recommended transportation improvements required to mitigate local and direct Project-generated and/or related transportation impacts, in accordance with the Revised TIAR and required updates to the TIAR, as accepted by DOT, at no cost to the State, and in accordance with the requirements of the County of Maui Department of Public Works, as applicable. Petitioner shall also dedicate land to accommodate auxiliary lanes on Mokulele Highway, as required.

c) Petitioner shall provide its fair share contribution toward the cost of regional transportation improvements to State highways, as determined by Petitioner and DOT. Regional improvements may also include the reservation and contribution of land for such improvements.

d) Petitioner shall provide and complete all transportation improvements as recommended in the DOT-accepted Revised TIAR prior to the certificate of occupancy for the first building in the Project being issued by the County of Maui.

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

3. **Water System**. Petitioner shall provide the necessary water source, storage and transmission facilities to the satisfaction of the County of Maui's Department of Water Supply and/or DOH and/or Commission on Water Resource Management, as applicable, to service the Petition Area. Petitioner shall also provide notice to the State DLNR, as an adjacent landowner, regarding the required separation distance for individual wastewater systems from Petitioner's proposed drinking water source. [OP C&O, Cond. 3]

4. **Water Conservation.** Petitioner shall implement water conservation measures and best management practices, including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping.

5. **Environmental Management.** Petitioner shall comply with the requirements of the County Department of Environmental Management and/or DOH as applicable.

6. **Pollution Prevention Best Management Practices.** Petitioner shall prepare a pollution prevention plan that incorporates Best Management Practices ("BMPs") for use during construction and development and during the operational phase of the Project. The pollution prevention plan shall be implemented by Petitioner, its successors and assigns, and shall be incorporated into the CC&Rs for the Project. BMPs shall be implemented during construction to control fugitive dust, minimize infiltration and runoff from construction and vehicle operations, and reduce or eliminate soil erosion and groundwater and surface water pollution in accordance with DOH rules and guidelines and County of Maui rules and ordinances. BMPs for the operational phase of the Project shall be directed at preventing all pollutants that may be associated with a specified industrial use from being released into the environment, including structural BMPs such as oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination. The pollution prevention plan shall include but not be limited to:

a) Cleaning, repair, and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquids. Water drainage from these concrete floors shall, if necessary, pass through a separator sump before being discharged. The separated fluids shall be handled and disposed of in compliance with applicable DOH requirements for disposal of such materials. This material must be tested to determine whether it qualifies as hazardous waste and if determined to be hazardous waste, must be disposed of in compliance with hazardous waste rules.

b) Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain.

c) Petitioner and all lot owners and occupants shall inform their employees to immediately collect and contain any industrial liquid spills on the concrete floor. Employees shall be informed against discharging or spilling any industrial liquids, and shall be aware to prevent any industrial spill onto the bare ground.

d) For parking areas, BMPs emphasizing pollution prevention shall be established. Large vehicles such as trucks and construction equipment shall utilize drip pans to avoid release of petroleum onto paved surfaces. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup or oil or other automotive fluids: Maintenance work other than emergency work on vehicles should be prohibited in parking areas.

7. **Potable Water and Injection Wells.** Any injection well that would dispose of desalinization wastewater or other types of wastewater such as industrial process wastewater, sewage, or rainfall runoff, shall comply with HAR Chapter 11-23, entitled Underground Injection Control, and shall demonstrate that the injections shall not adversely affect downgradient streams, Kealia Pond National Wildlife Refuge, and coastal waters.

8. **Debris Catch Basin.** All drainage injection wells or subsurface drainage structures shall be designed with a debris catch basin to allow the detention, before flowing into the drainage well, of rubbish and sediments that are often carried and deposited by runoff. The debris catch basin shall be periodically inspected and cleaned. An environmental precautionary sign shall be installed at, or painted on the ground next to, each drainage injection well, which shall read: "DUMP NO WASTE, GOES TO GROUNDWATER AND OCEAN HELP PROTECT HAWAII'S ENVIRONMENT."

9. **Stormwater Management and Drainage.** Petitioner shall fund the design and construction of stormwater and drainage system improvements for the Petition Area in accordance

with the requirements of the County of Maui's Department of Public Works, and incorporate in the design and construction of backbone infrastructure low impact development features for stormwater capture and reuse, to the extent practicable and allowed by the County of Maui, to prevent runoff from adversely affecting downstream properties and facilities and receiving streams, Kealia Pond National Wildlife Refuge, and coastal waters, consistent with Federal, State, and County laws, rules, and ordinances. The Petitioner, its successors and assigns, shall cause to be maintained the stormwater and drainage system improvements for the Petition Area. Petitioner shall include in the CC&Rs for the Project the requirement that low impact development features be incorporated in individual site design and development, to the extent practicable and allowed by the County of Maui.

10. **Water Quality Monitoring.** Petitioner shall develop and implement a near shore water quality monitoring program to detect the presence of contaminants resulting from the development of the Project. The monitoring program ~~shall entail sampling and analysis of salinity and dissolved inorganic nutrients which may include silica, nitrate, nitrogen and phosphate phosphorus ("Contaminants").~~ Groundwater samples ~~shall be taken from well(s) located within the Petition Area, and the near shore water quality samples shall be taken from coastal waters that receive groundwater discharges from the same hydrologic unit within which the Petition Area is located.~~ The monitoring program shall be initiated no later than three (3) months prior to the start of grading activity within the Petition Area to establish a baseline understanding of the groundwater below the Petition Area, as well as the salinity levels and presence of Contaminants. ~~Thereafter, samples shall be taken from the on-site well(s) on a semi-annual basis, and from the near shore environment on an annual basis, until the earlier of: (i) fifty percent (50%) of the developable area within the Petition Area is sold; or (ii) fifty percent (50%) of the Project is occupied.~~ If Contaminants will be developed by the Petitioner in consultation with the State Department of Health, to include the sampling constituents, the location, frequency and duration of monitoring, and reporting requirements. If contaminants are present, and such presence is irrefutably linked to the development of, or operations at, the Project, Petitioner, its successors and assigns, shall, in coordination with the DOH, implement appropriate revisions to the pollution prevention plan and BMPs, and CC&Rs if applicable, to address such ~~Contaminants.~~ contaminants. [OP C&O, Cond. 10]

11. **Civil Defense.** Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location identified by the State Civil Defense agency.

12. **Restricted Industrial Uses.** The uses within the Petition Area shall be limited to those allowed in the M-3 Restricted Industrial District as established by the County of Maui under Ordinance 3977, as the same may be amended from time to time.

13. **Provisions of the Hawai'i Right to Farm Act.** For all land in the Petition Area or any portion thereof that is adjacent to land the State Land Use Agricultural District, Petitioner shall comply with the following:

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

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

14. **Flora and Fauna.** Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.

15. **Hawaiian Hoary Bats.** Petitioner shall include a provision in the CC&Rs prohibiting the construction of barbed wire fences within the Petition Area.

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

17. **Archaeological and Historic Preservation.** Petitioner shall comply with mitigation measures recommended by the SHPD. Archaeological monitoring shall be conducted should an alternative access road alignment be pursued.

18. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.

19. **Infrastructure Deadline.** The Petitioner shall complete construction of the proposed backbone infrastructure for the Project, which consists of the primary roadways and access points, internal roadways, water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of this Decision and Order approving the Petition.

20. **Compliance with Representations.** The Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in this Findings of Fact, Conclusions of Law, and Decision and Order. Failure to 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 of Ownership.** Petitioner shall notify the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Petition Area any time prior to completion of development of the Project.

22. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.

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

24. **Notice of Imposition of Conditions.** Within 7 days of the issuance of the Commission's Decision and Order reclassifying the Petition Area to the Urban District, Petitioner shall record with the Bureau of Conveyances a notice of imposition of conditions imposed by the Commission and file a copy of such recorded notice with the Commission.

25. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR § 15-15-92. All such conditions shall run with the land.

JAYE NAPUA MAKUA
Commissioner

ERNEST MATSUMURA
Commissioner

CAROL TORIGOE
Commissioner

Filed and effective on: _____, 2013.

Certified by:

DANIEL ORODENKER
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

DOCKET NO. A13-797

CMBY 2011 INVESTMENT, LLC

CERTIFICATE OF SERVICE

To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District For Certain Lands Situate at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i, consisting of approximately 86.030 acres, Tax Map Key No. (2) 3-8-008:019

CERTIFICATE OF SERVICE

I hereby certify that service of a copy of Petitioner's Response to Office of Planning's Comments and Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed on October 4, 2013; Exhibit A, in the above referenced Docket was made by depositing the same with the U.S. Mail, by certified mail, postage prepaid, or by hand delivery, on the date indicated below, to the following:

JESSE K. SOUKI
 Director
 Office of Planning
 235 Beretania Street, 6th Floor
 Honolulu, Hawaii 96813

BY HAND DELIVERY

BRYAN YEE, ESQ.
 Deputy Attorney General
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 Department of the Attorney General
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BY HAND DELIVERY

WILLIAM SPENCE
Director, Planning Department
County of Maui
250 South High Street
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BY MAIL

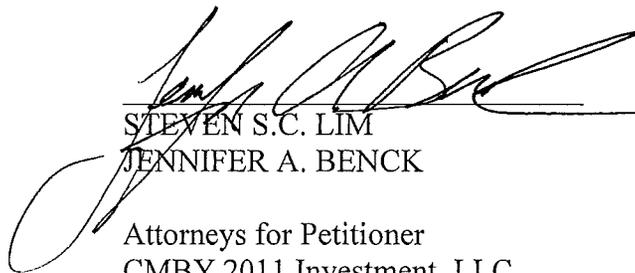
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PLANNING COMMISSION
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DATED: Honolulu, Hawaii, October 10, 2013.



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