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BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

CMBY 2011 INVESTMENT, LLC

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

DOCKET NO. A13-797

PETITION FOR LAND USE DISTRICT  
BOUNDARY AMENDMENT;  
PETITIONER'S EXHIBITS 1 - 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

**PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT; PETITIONER'S  
EXHIBITS 1 - 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**

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Exhibit "3"	Maui Island Plan, Maps I-12 and I-13
Exhibit "4"	Authorization of CMBY 2011 Investment, LLC
Exhibit "5"	Tax Map Showing Petition Area
Exhibit "6"	Limited Warranty Deed dated March 17, 2011
Exhibit "7"	Title Report
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Exhibit "9"	Written Comments
Exhibit "10"	DLNR Staff Report, April 12, 2013
Exhibit "11"	Current Balance Sheet and Income Statement

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

CMBY 2011 INVESTMENT, LLC

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

DOCKET NO. A13-797

PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT

**PETITION FOR LAND USE DISTRICT BOUNDARY AMENDMENT**

Petitioner CMBY 2011 Investment, LLC ("**Petitioner**"), a Washington limited liability company, whose mailing address is P.O. Box 220, Kihei, Hawai'i 96753, by and through its legal counsel, CARLSMITH BALL LLP, hereby respectfully petitions this Honorable Land Use Commission of the State of Hawai'i (the "**Commission**") to amend the land use district boundaries of certain lands consisting 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 (the "**Petition Area**"), from the State Land Use Agricultural District ("**Agricultural District**") to the State Land Use Urban District ("**Urban District**").

**I. INTRODUCTION**

Petitioner is requesting a Land Use District Boundary Amendment to allow the Petition Area to be used as a heavy industrial site to be known as the Pu'unene Heavy Industrial Subdivision ("**Project**"). Upon receipt of all land use entitlement approvals, Petitioner's current land development plan calls for subdividing the Petition Area to provide up to 28 developable



lots ranging in size from 0.5 acres to 20 acres. Related improvements include grading, the construction of a drainage system and retention basin, construction of internal roadways, utilities, a private water system and individual wastewater systems. Due to the uncertain and volatile nature of the global economy, and the necessity of obtaining additional land use entitlements in order to develop the Project, the final number and size of the lots, and the timeframes related to development of the Project, may change.

To implement the Project, Petitioner seeks a Land Use District Boundary Amendment ("**DBA**") to reclassify the Petition Area from the Agricultural District to the Urban District. In addition, in order to develop the Project, Petitioner will be required to obtain an amendment to the Kihei-Makena Community Plan designation of the Petition Area from the Agriculture designation to the Heavy Industrial designation, and will also need to have the Petition Area rezoned from the County Agricultural district to the County M-3 Restricted Industrial district. A consolidated application for a Community Plan amendment ("**CPA**") and a change in zone ("**CIZ**") was filed with the County of Maui on April 16, 2012, and is being held in abeyance until such time as the Commission approves the requested reclassification to the Urban District.<sup>1</sup>

The need for a CPA, as well as anticipated uses of State land, triggered the requirement to comply with Hawai'i Revised Statutes ("**HRS**") Chapter 343. The Final Environmental Assessment for the Pu'unene Heavy Industrial Subdivision ("**FEA**"), a copy of which attached hereto as **Petitioner's Exhibit 1**, and incorporated herein by this reference, was accepted by the County of Maui Planning Commission ("**Planning Commission**") on November 27, 2012. The Planning Commission issued a Finding of No Significant Impact, as shown by letter dated

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<sup>1</sup> The original CIZ application sought a change in zone from Agricultural to M-2 Heavy Industrial. However, the County of Maui enacted Ordinance No. 3977 on September 24, 2012, to create the M-3 Restricted Industrial zoning district. Therefore, Petitioner amended its CIZ application on October 29, 2012, to request rezoning to the M-3 Restricted Industrial zoning district.

November 28, 2012 from the County of Maui Department of Planning ("**Planning Department**") to Mr. Gary Hooser, Director of the Office of Environmental Quality Control, attached hereto as **Petitioner's Exhibit 2.**

At the time of the FONSI, the Maui Island Plan had not yet been adopted by the Maui County Council and signed into law. Therefore, the FEA referenced the draft Maui Island Plan. However, the Maui Island Plan was enacted into law on December 28, 2012 by Maui Ordinance No. 4004. The Petition Area is located within the Urban Growth Boundary as shown on Maui Island Plan Map Nos. I-12 and I-13, copies of which are attached hereto as **Petitioner's Exhibit 3.**

## **II. AUTHORITY FOR RELIEF SOUGHT, PETITIONER, PETITION AREA, NOTIFICATION, SERVICE**

*HAR § 15-15-50(a)(1): State clearly and concisely the authorization or relief sought; and (2) Cite by appropriate reference the statutory provision or other authority under which commission authorization or relief is sought;*

The Commission is authorized to grant the relief sought herein pursuant to HRS Chapter 205, the Land Use Commission Rules of the State of Hawai'i found in Title 15, Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("**HAR**"), all other statutes applicable to the Commission, and rules promulgated thereby.

Petitioner reserves the right to amend this Petition in response to any reports, pleadings, arguments, exhibits, issues and witnesses identified by any party or other person.

### **A. Identification of Petitioner**

*HAR § 15-15-50(c)(1): The exact legal name of each petitioner and the location of the principal place of business and if applicant is a corporation, trust, or association, or other organized group, the state in which the petitioner was organized or incorporated;*

Petitioner CMBY 2011 INVESTMENT, LLC is a Washington limited liability company, whose mailing address is P.O. Box 220, Kihei, Hawai'i 96753.

**B. Authorized Representatives**

*HAR § 15-15-50(c)(2): The name, title, and address of the person to whom correspondence or communications in regard to the application are to be addressed;*

The law firm of CARLSMITH BALL LLP, has been appointed to represent Petitioner in this Petition and the proceedings thereon pursuant to HAR § 15-15-35(b). Attached hereto as **Petitioner's Exhibit 4** is Petitioner's authorization. Pursuant to HAR § 15-15-50(c)(2), all correspondences and communications in regard to this Petition shall be addressed to, and served upon:

STEVEN S.C. LIM  
JENNIFER A. BENCK  
CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawai'i 96813

CMBY 2011 INVESTMENT, LLC  
P.O. Box 220  
Kihei, Hawai'i 96753  
Attention: Blanca Lafolette

**C. Description Of The Petition Area**

*HAR § 15-15-50(c)(3): Description of the subject property, acreage, and tax map key number, with maps, including the tax map, that identify the area under petition. If the subject property is a portion of one or more lots, or the petition proposes incremental development of the subject property on both increments of development, the petitioner shall include a map and description of the subject property and increments in metes and bounds prepared by a registered professional land surveyor.*

The Petition Area is located in Pulehunui, District of Wailuku, Island and County of Maui, State of Hawai'i. The Petition Area consists of approximately 86.030 acres, and is entirely

within TMK parcel No. (2) 3-8-008:019. A tax map showing the Petition Area is attached hereto as **Petitioner's Exhibit 5**. Petitioner does not propose incremental development, and the Petition Area is contained within one tax parcel.

**D. Petitioner's Property Interest; Affidavit**

*HAR § 15-15-50(c)(5): (A) A true copy of the deed, lease, option agreement, development, or other document conveying to the petitioner a property interest in the subject property or a certified copy of a nonappealable final judgment of a court of competent jurisdiction quieting title in the petitioner; (B) If the petitioner is not the owner in fee simple of the subject property, or any part thereof, written authorization of all fee owners to file the petition and a true copy of the deed to the subject property; and (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48;*

Petitioner has standing to file this Petition pursuant to HRS § 205-4(a) and HAR § 15-15-46(3), which entitle any person with a property interest in the land sought to be reclassified to petition the Commission for a DBA. Petitioner is the fee simple owner of the Petition Area pursuant to that certain Limited Warranty Deed With Reservation of Easements, Covenants, Reservations and Restrictions, recorded in the Bureau of Conveyances as Document No. 2011-044566, a copy of which is attached hereto as **Petitioner's Exhibit 6**.

Under HAR § 15-15-48, Petitioner is required to serve copies of this Petition upon the County Planning Department and Planning Commission, the Office of Planning and all persons with a property interest in the Petition Area as recorded in the County's real property tax records at the time the Petition is filed. The Petition Area is subject to a grant of easement in favor of Maui Electric Company, Limited, and GTE Hawaiian Telephone Company Incorporated, now known as Hawaiian Telcom, Inc., dated July 9, 1991, granting rights over "easement 3" for electrical purposes only. Maui Electric Company and Hawaiian Telecom, Inc. shall each be served with a copy of this Petition.

In addition to the Limited Warranty Deed and the grant of electrical easement discussed above, the County real property tax records list three other documents noted as leases against the Petition Area. These agreements have all terminated, and therefore the Petition is not required to be served on any parties to those agreements. The document entitled "Sublease" recorded as Document No. 88-53099 was for the purposes of erecting and maintaining a broadcast antenna and support facilities. The term of the Sublease ran from February 1, 1987 to June 30, 1990. The next Sublease was dated and effective August 28, 1990, and ran to December 31, 2011, as noted on the Sublease recorded as Document No. 90-185709. A Short Form Sub-Sublease dated August 4, 1994, terminating as of December 31, 2011, was recorded as Document No. 94-171517. As shown on Preliminary Title Report dated as of March 1, 2013, attached hereto and incorporated herein as **Petitioner's Exhibit 7** the only recorded encumbrance against the Petition Area is the grant of easement to Maui Electric Company, Limited, and GTE Hawaiian Telephone Company Incorporated, now known as Hawaiian Telcom, Inc, discussed above. The Sublease documents are no longer valid and no longer encumber title.

An affidavit of Jennifer A. Benck, attorney with Carlsmith Ball LLP, attesting to Petitioner's compliance with HAR § 15-15-48 (Service of Petition) is filed with this Petition. In accordance with HAR § 15-15-48(b), copies of this Petition will also be served upon any potential intervenors upon receipt of a notice of intent to intervene pursuant to HAR § 15-15-52(b).

**E. Notification of Petition Filing**

*HAR § 15-15-50(c)(22): A copy of the notification of petition filing pursuant to [HAR § 15-15-50(d)].*

Attached hereto as **Petitioner's Exhibit 8**, and incorporated herein by reference, is a true and correct copy of the Notification of Petition Filing of this Petition, required under HAR § 15-

15-50(d). Copies of said Notification were sent to all persons included on the mailing list provided by the Commission's Chief Clerk.

**F. Written Comments**

*HAR § 15-15-50(c)(21): Any written comments received by the petitioner from governmental, non-governmental agencies, organizations, or individuals in regards to the proposed reclassification;*

Lists of the various governmental and non-governmental agencies and organizations contacted with respect to the Project and the FEA is included as Appendix R (Early Consultation Letters) and S (Draft EA Comment Period) to the FEA. Written comments from various agencies, organizations and individuals, and responses thereto, are included in Appendix R and S of the FEA.

In addition to the consultation conducted as part of the FEA, Petitioner contacted the Kihei Community Association ("**KCA**") via email on February 18, 2013 and March 7, 2013, to alert the KCA that the FEA was accepted, and that Petitioner was preparing to file this Petition with the Commission. Petitioner invited the KCA to provide any comments on the proposed Project, and also offered to meet with the KCA Board if desired. By letter dated March 11, 2013, Petitioner contacted the Planning Department to request confirmation on certain procedural matters related to the FEA and Petition. The Planning Department's response, dated March 22, 2013, confirmed that the Planning Department consistently supported the proposed Project, and anticipated continuing support through the Commission process, and the subsequent County CPA and CIZ process. Copies of these correspondence are enclosed as **Petitioner's Exhibit 9**.

### III. PETITION AREA

#### A. Description of Subject Property and Surrounding Area

*HAR § 15-15-50(c)(9): Description of the subject property and surrounding areas including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawaii classification (ALISH), the productivity rating, the flood and drainage conditions, and the topography of the subject property;*

Historical data indicates that the average daily minimum and maximum temperatures for this area of Maui are 63°F and 86°F, respectively. FEA at 22. The Petition Area is located in the valley between Haleakala and the West Maui Mountains. *Id.* The valley is unobstructed to the north, and receives relatively good ventilation much of the time from the northeast trade winds. *Id.* The climate of the Petition Area is relatively dry with historical records indicating that this area of Maui averages about only 13 inches of precipitation per year. *Id.* at 23.

The Petition Area is vacant and undeveloped. FEA at 2. 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 sugarcane cultivation and as a plantation camp. *See* FEA App. L (Malama Environmental letter). The former property owner, Alexander and Baldwin, Inc. leased the property to a pig farmer in the 1960s. *Id.* Starting around 1995 the site was used as an unpermitted solid waste management facility, i.e., scrap metal storage. *Id.* However, no productive use or activity has occurred on the site since these activities were discontinued in 2007. FEA at 6.

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. Access from Mokulele Highway to the Petition Area is provided by Kama'aina Road, South Firebreak Road and Lower Kihei Road. FEA at 6.

## 1. Surrounding Areas

Maui County Kihei-Makena Community Plan Project District 10 and the Pu'unene Airport Master Plan area are to the west of the Petition Area. FEA at 19. As noted in the Kihei-Makena Community Plan, Project District 10 encompasses 561 acres and was established with the purpose of creating a master-planned, expansion area which would meet future recreational (motor sports) needs and provide space for industrial activities (including government facilities) whose locations are better suited away from urban areas. *Id.* at 20. Uses within Project District 10 include the Maui Raceway Park dragstrip (approximately 0.4 miles to the west of the Petition Area) and other recreational motor sport facilities, and a facility for radio-controlled model airplanes. *Id.* at 19. The Hawaii Army National Guard armory is also located within Project District 10, approximately 0.7 miles to the west of the Petition Area.

Sugar cane fields owned by Hawaiian Commercial and Sugar Company ("HC&S") are to the north, east and south of the Petition Area. FEA at 19. The Hawaiian Cement quarry is approximately 0.2 miles to the east of the Petition Area. *See* FEA Fig. 2.

No residential development is in the immediate vicinity of the Petition Area. The closest residential areas are in Kihei (2.3 miles to the south); Ma'alaea (3.6 miles to the southwest); Kahului (4.0 miles to the north); and Pukalani (6.4 miles to the east). FEA at 19.

## 2. Soil Classification

The Waiakoa-Keahua-Moloka'i soils are associated with the Petition Area. These soils are found on low uplands and are characterized by moderately deep and deep, nearly level to moderately steep, well-drained soils that have a moderately fine textured subsoil. FEA at 23. According to the *Soil Survey of Islands of Kaua'i, Oahu, Maui, Moloka'i, and Lana'i, State of Hawai'i* (August, 1972), prepared by the U.S. Department of Agriculture Soil Conservation



Service, the soil within the Petition Area is classified as Waiakoa extremely stony silty clay loam, with a 3 - 15% slope ("WID2"), and Alae cobbly sandy loam, with a 0 - 3% slope ("AcB"). See FEA Fig. 8 (Soil Classifications). WID2 is an eroded soil, and stones cover 3 - 15% of the surface. It is typically used for pasture and wildlife habitat. Most areas of AcB soils have cobblestones on the surface, and the soil can be used for sugar cane and pasture purposes. FEA at 23.

The *Detailed Land Classification — Island of Maui* (1967) contains productivity ratings for land prepared by the University of Hawai'i's Land Study Bureau ("LSB"). On the LSB ratings scale, the letter "A" represents the highest class of productivity, while "E" reflects the lowest. FEA at 68. According to the LSB, about 66% of the land within the Petition Area has an overall productivity rating of E73, while the remaining portion of the site is rated E71. See FEA Fig. 10; and see FEA at 68.

### 3. Agricultural Lands of Importance to the State of Hawai'i

The State Department of Agriculture has established three categories of Agricultural Lands of Importance to the State of Hawai'i ("ALISH"): Prime, Unique and Other. Lands that do not fall into one of the three ALISH categories are listed as Unclassified. "Prime" land is suited the best suited for the production of food, feed, forage, and fiber crops. "Unique" land is used for the production of specific high-value food crops. "Other" land does not qualify as Prime or Unique, but is still of Statewide or local importance for the production of food, feed, fiber, and forage crops. FEA at 69.

The Petition Area does not qualify as Prime, Unique or Other. The Petition Area is designated as Unclassified. See FEA Fig. 11.

#### 4. **Flood and Drainage**

According to Panel Number 1500030580E of the Flood Insurance Rate Map dated September 25, 2009, prepared by the U.S. Federal Emergency Management Agency, the Petition Area is located in Flood Zone "X." *See* FEA at 25; *see also* FEA Fig. 9; *and see* FEA App. A (the Planning Department's Zoning and Flood Confirmation Form). Zone X represents areas outside of the 0.2% annual chance flood plain. *See* FEA App. P. at 3.

The WID2 soils allow for medium runoff with a severe erosion hazard, and the AcB soils provide for slow runoff with a slight erosion hazard is slight. FEA at 23. Therefore, the ground surface across the Petition Area is very permeable. *Id.* at 78. Furthermore, 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. *Id.* at 86. Runoff from the Petition Area currently sheet flows across the site in an east to west direction onto downstream parcels and towards Mokulele Highway. FEA App. P. at 2.

#### 5. **Topography & Tsunami Hazard**

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. FEA at 23. 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. *Id.* at 25.

#### 6. **Water Bodies**

There are no wetlands, streams, ponds, or other water bodies found within the Petition Area. An irrigation reservoir owned by HC&S ("**Reservoir 90**") is located just north of the

Petition Area, on the other side of Lower Kihei Road.<sup>2</sup> See FEA Fig. 2; and see FEA at 24.

Reservoir 90<sup>3</sup> is an earthen embankment dam regulated by the State Department of Land and Natural Resources (the "DLNR"). Reservoir 90 is approximately 19 feet tall and 1,250 feet long and is considered small based on dam size criteria — less than 1,000 acre/feet of storage and less than 40 feet in height. FEA at 24.

Aside from Reservoir 90, the closest water bodies in the vicinity of the Petition Area are the Pacific Ocean and the Kealia Pond National Wildlife Refuge ("KPNWR"), both of which are located to the southwest of the Petition Area. See FEA Fig. 1. At its closest point, the Petition Area is approximately 1.75 miles from KPNWR, and about 2.25 miles from the ocean. FEA at 24. KPNWR encompasses 691 acres and is one of the few natural wetlands in Hawai'i. During certain times of the year, KPNWR supports a large number of the endangered A'eo or Hawaiian Stilt (*Himantopus mexicanus knudseni*) population. *Id.* By letter dated June 19, 2012 the U.S. Army Corps of Engineers confirmed that the Project area does not consist of any navigable waters of the United States subject to the Corps' regulatory jurisdiction, and that development of the Project will not involve the placement and/or discharge of dredged and/or fill material into the waters of the United States, including any wetlands. See FEA App. S. As such, no permits from the Department of the Army area required in order to develop the Project.

#### **IV. PU'UNENE HEAVY INDUSTRIAL SUBDIVISION: THE PROPOSED PROJECT**

##### **A. Location and Adjacent Land Use Districts**

*HAR § 15-15-50(c)(12): Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;*

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<sup>2</sup> Reservoir 90 was formerly known as Reservoir 6.

<sup>3</sup> State of Hawai'i Dam ID MA-0089.

The Petition Area is surrounded by lands in the Agricultural District. *See* FEA Fig. 12. Project District 10 is directly adjacent to the Petition Area, to the west. *See* FEA Fig. 14. The Pu'unene Airport Master Plan area is also to the west of the Petition Area. *See* FEA Fig. 7. Although the Land Use District Boundaries of most of the property within the vicinity of the Petition Area are Agricultural, a number of industrial-type uses are found in the vicinity, and more are planned.

Project District 10, consisting of approximately 561 acres, is located adjacent to the Petition Area. This area was designated under the Kihei-Makena Community Plan (1998) for industrial uses, as follows:

This area has been utilized extensively for recreational activities. Approximately 125 acres, including and adjacent to the Hawaiian Cement site, should be utilized for heavy industrial use. The remaining 189 acres, between Mokulele Highway and Mehameha Loop, are almost all in sugar cane cultivation and shall remain as such until sugar production no longer remains a viable commodity within the State.

The objective of this project district is to establish a master planned recreational and industrial expansion area to meet future recreational needs and to provide areas for industrial activities, including government facilities, whose locations are better suited away from urban areas. Site planning shall seek to maximize the range of potential user groups while minimizing potential for incompatibilities between recreational, governmental, and industrial activities.

Kihei-Makena Community Plan at 46.

Maui Raceway Park is within Project District 10 and located to the west of the Petition Area. The Raceway Park provides a wide range of recreational uses such as drag racing, auto cross racing, go kart racing, dirt oval track racing, radio controlled model aircraft flying and dirt bike racing. *See* FEA App. M, at 46 ("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") (hereinafter referred to as "**Market Study**"). Additional nearby uses include the Hawaiian Cement quarry, the Maui Consolidated Facility for the Hawaii Army National Guard and HC&S commercial sugarcane production. *Id.* The Central Maui Baseyard, which includes heavy industrial uses, is located approximately 1 mile to the north of the Petition Area. Market Study at 47.

Major landowners in the vicinity of the Petition Area include the State of Hawai'i Department of Hawaiian Home Lands ("**DHHL**") and the State Department of Land and Natural Resources ("**DLNR**"), both of which worked together to prepare the recent Pulehunui Master Plan (August 2012). DHHL owns approximately 184 acres of land to the west of Project District 10 (across Mokulele Highway) which it plans to lease for future commercial development. FEA at 20. DHHL also owns 646 acres of land to the south of the Petition Area, at TMK No. (2) 3-8-008: 034, of which 100 acres has been included in the Pulehunui Master Plan. *See* FEA Fig. 7A. DLNR owns various land areas, totaling approximately 655 acres, around the Petition Area which have been included in the Pulehunui Master Plan. *See Id.*

The proposed land uses within the Pulehunui Master Plan area include public/quasi-public, commercial, industrial and open space lands. It is envisioned that the public/quasi-public lands would accommodate such uses as public agency baseyards and training facilities for police and fire crews, wastewater treatment facility and onsite water treatment facility while tenants of the industrial lots would be engaged in warehousing, assembly, manufacturing, alternative energy uses and similar industrial activities. The Maui Regional Public Safety Complex is planned to be located within Pulehunui. FEA at 20.

The Petition Area is located about 1.0 mile southeast of the intersection of Kama'aina Road, Mehameha Loop, and Mokulele Highway. Mokulele Highway is a divided, four-lane

highway that links South and Central Maui. FEA at 108. The distance from the intersection to Kahului is approximately 3.25 miles to the north, and to North Kihei is about 3.75 miles to the south. *Id.* The Kahului Harbor and Kahului Airport are in Kahului. Adjacent to Kahului is Wailuku, which is Maui's center of governmental activities as well as focal point of professional and business services.

Thus, the Petition Area is ideally situated for heavy industrial activities. First, the Petition Area is physically separate and located at a distance from residential development. Second, the Petition Area is centralized and therefore will be convenient for customers and suppliers. Third, the Petition Area is in close proximity to the transportation facilities located at the Kahului Harbor and the Kahului Airport. FEA at 108. Finally, the use of the Petition Area for heavy industrial purposes will support trade and employment on Maui and is consistent with other existing heavy industrial uses in the area.

**B. Proposed Development**

*HAR § 15-15-50(c)(6): Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial one;*

The Project, a heavy industrial subdivision to be known as the Pu'unene Heavy Industrial Subdivision, is envisioned to consist of approximately 28 lots heavy industrial lots that will range in size from 0.5 acre to 20 acres. Related infrastructure improvements to support the Project include the construction of internal roadways, drainage retention systems, grading work, landscaping and utilities (e.g., water, telephone, cable, electric, private water system, individual wastewater systems, etc.). FEA at 9-10. Consistent with the requirements under HAR § 15-15-50(c)(14), because the Project does not propose residential development, Petitioner is not

providing a description of the manner in which it will address the housing needs of low income, low-moderate income and gap groups.

The precise uses that will be developed within each lot at the Project will be dependent upon the particular needs of the lot buyer. However, as stated in the Introduction, Petitioner has submitted to the County of Maui an application to have the zoning district of the Petition Area changed from Agricultural to M-3 Restricted Industrial. The M-3 Restricted Industrial District was established very recently, under Ordinance No. 3977, enacted on September 24, 2012. *See* FEA App. C.

Any number of the uses permitted within the M-3 District may be developed by end-users within the Project. However, 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.

The Project is expected to attract buyers or tenants who are looking for areas that allow pure industrial uses, rather than the more readily available light industrial areas. *See* Market Study at 32. Those looking for pure industrial space, such as planned for the Project, will likely include businesses that manufacture or treat goods from raw materials, in addition to industrial warehouse users and those seeking secured baseyards. *See* Market Study at 32.

Existing security measures for the Petition Area include perimeter fencing and locked entry gates. FEA at 73. Appropriate lighting and security measures will be utilized during and after construction of Project for crime prevention and deterrence and to ensure safe vehicular movement. *Id.*

Although the future lot owners will determine the particular heavy industrial use on their lots, the Petitioner will record Covenants, Conditions and Restrictions ("CC&R") against the

Petition Area which will require all lot owners to prepare and implement Best Management Practices ("**BMP**") and emergency response plans that are specific to the heavy industrial use on their lots. FEA at 36. The CC&R will also require lot owners to comply with all applicable Federal, State, and County laws. An association of subdivision lot owners shall be formed and will be responsible for reviewing the development plans of each lot owner and for ensuring compliance with the CC&R. *Id.*

1. **Roadways**

The Petition Area is in close proximity to Mokulele Highway, a State of Hawai'i four-lane highway. Access from Mokulele Highway to the Petition Area is provided by Kama'aina Road, South Firebreak Road and Lower Kihei Road. *See* FEA App. P, p. 4 ("Preliminary Engineering Report for Pu'unene Heavy Industrial Subdivision") (hereinafter the "**PER**"). Mokulele Highway and Kama'aina Road both fall under the jurisdiction of the State of Hawai'i Department of Transportation ("**DOT**"). *See* FEA at 89.

Access from Mokulele Highway to the Petition Area will be furnished over State land controlled by the DLNR. On April 12, 2013, Petitioner obtained approval from the State DLNR for a grant of non-exclusive access and utility easement over approximately 9.43 acres of State land, which provides a 56 foot wide access and utility easement from Mokulele Highway to the Petition Area. *See* **Petitioner's Exhibit 10**, attached hereto and incorporated herein, and noted as the "Primary Access Road" as shown on FEA Fig. 5.

Once all major land use entitlements for the Project have been obtained, and Petitioner receives subdivision approval from the County of Maui, Petitioner shall make the necessary improvements within portions of the DLNR-approved easement area to satisfy State requirements. *See* FEA App.D-1.



The interior streets within the Project will have 56 foot rights of way, and will be improved with two travel lanes, each being eighteen feet in width. Ten foot wide shoulders will be provided on both sides. PER at 4. Each lot owner will be responsible for installing a driveway to connect his lot to the interior Project roadway fronting the lot. FEA at 11.

The Project CC&R will establish a Project lot-owners association ("**Pu'unene Association**") that will be responsible for taking care of the common areas of the Project, including the interior roadways. FEA at 11. The Pu'unene Association will also be responsible for maintaining the access easement area over the DLNR lands. *See* Petitioner's Exhibit 10.

## 2. Drainage Retention

The Project drainage system will be constructed to accommodate the increase in runoff that will be generated by the proposed development. PER at 5. Petitioner's subdivision improvements will include a master drainage system constructed within the roadways, which will include catch basins, manholes, drainlines and a drain stubout to each lot. *Id.* As individual lots are developed, lot owners will be required to install their own onsite drainage system and provide a drain line connection to the drain stubouts on each lot. FEA at 87. Depending on the type of industrial activity on each lot, the lot owner may be required to install appropriate filtering devices to ensure that groundwater is not impacted by pollutants contained in runoff. Post-development runoff from each lot will be conveyed to a series of retention basins along the western edge of the Project. *See* FEA Fig. 5B.

Based on the 50-year, one-hour storm event, post-development runoff is projected to be 328.5 CFS, while runoff volume is projected to be 413,900 CF. The incremental increase between the pre- and post-development conditions is 253.3 CFS in runoff and 278,500 CF in

runoff volume. FEA at 87. 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). *Id.* at 88.

In order for the master drainage system to function as designed, provisions for maintenance of the system will be included in the CC&R. 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. FEA at 88. The CC&R will also require lot owners to comply with all applicable Federal, State, and County laws including regulations governing water use and water quality. *Id.* Once the drainage system is fully constructed, ownership and responsibility for the operation and maintenance of the system will be turned over to the Pu'unene Association. FEA at 87. The Pu'unene Association will be responsible for reviewing each lot owner's development plans to confirm compliance with the CC&R. *Id.*

Examples of measures to be incorporated into the CC&R to facilitate the operation and maintenance of the drainage system include the following:

- Inspect the drainage system on an annual basis and after major storms. Repair any damage and remove debris from grated drain inlets to allow unimpeded flow.
- Periodically inspect the drainage system. Remove debris and sediment build up as necessary especially inside grated drain inlets upstream of the subsurface retention basins.
- Prevent grass and landscape cuttings from entering the drainage system as they could cause blockages.
- Clean all parking areas as often as possible in order to keep debris and sediments from entering the drainage system.

- Keep lawns and landscaping in healthy condition to prevent soil erosion and reduce the possibility of sediments entering the drainage system.

FEA at 87 - 88.

### 3. Water System

The County of Maui Department of Water Supply ("DWS") does not serve the Petition Area. FEA at 75. Therefore, Petitioner intends to develop a water system for the Project using groundwater to be supplied from on-site wells. *See* FEA at 76. The Project water system will be privately owned and maintained by the Pu'unene Association. *Id.* at 10. The water system will include a drinking water well and a non-drinking water well. *Id.* The drinking water well will provide water for domestic use, while the non-drinking water well will provide water for irrigation and fire protection. Irrigation lines will be installed underground, within the Project roadways. *Id.* at 11. 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. *Id.*

The estimated water demand for the Project, based on DWS' design standards for industrial uses is 6,000 GPD/acre. Irrigation estimates for the drainage retention areas are 2,500 GPD/acre, and for the roadways the estimates are also 2,500 GPD/acre, but only 20% of the gross roadway areas are planned to be irrigated. *See* FEA Appendix O (Groundwater Resources and Water System Assessment for the Proposed Pu'unene Industrial Subdivision in Kahului, Maui, Tom Nance Water Resource Engineering (Sept. 2011)) (hereinafter "**TNWRE Report**"). Thus, based upon the anticipated lot configuration, the 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. FEA at 77.

The water system will consist of two, or possibly three, wells to be located along the north edge of the Petition Area. By letter dated July 2, 2012, Petitioner obtained assurance from the DLNR-Commission on Water Resource Management that it will issue the necessary Well Construction/Pump Installation Permit for two wells (Nos. 4927-02 and 4927-03), once Petitioner identified a licensed contractor for the well construction. *See* FEA App. O-1. Petitioner has retained a contractor for the well drilling.

In addition to the wells there will be two, or possibly three, 75 GPM reverse osmosis ("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. *See* TNWRE Report, Fig. 3. Based on the salinity of existing Well No. 4927-01, located within the Petition Area, it is anticipated that the RO treatment will convert 60% of the brackish water for drinking water uses. The remaining 40% will be too saline for non-drinking water uses. TNWRE Report at 4. This concentrate will be disposed of via disposal wells that are preliminarily planned to be located at the south end of the Petition Area. In any event, the disposal wells will be located at least 1,500 feet from the source wells, as required under DOH regulations. *Id.* at 5.

Prior to the start of construction, an application for the Project 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. *See* FEA at 82-83. The private water system will be owned by the Pu'unene Association.

The water system will also comply with the Rules and Regulations of the County of Maui Department of Water Supply. FEA at 83. As lots are developed, lot owners will be required to submit fire flow calculations to the Maui Department of Fire and Public Safety in conjunction with the building permit review and approval process. *Id.*

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. FEA at 83. The CC&R will also require lot owners to comply with all applicable Federal, State, and County laws including regulations governing water use and water quality. *Id.* The Pu'unene Association will be responsible for reviewing each lot owner's development plans to confirm compliance with the CC&R. *Id.* In addition, lot owners will be encouraged to utilize water conservation measures when developing their lots. FEA at 83. Examples of such measures include automatic drip and sprinkler irrigation systems with time controllers and rain sensors, drought-tolerant landscape plantings, and low-flow plumbing fixtures. *Id.* The requirement to comply with these conservation measures will be included in the Project CC&R.

#### 4. Sewer System

Wastewater service for the Project will be provided through individual wastewater systems ("IWS") to be constructed by each lot owner. Petitioner intends to develop a private sewer system for the Project. The CC&R will require each lot owner to construct an IWS that includes an aerobic treatment unit and an individual leach field. *See* FEA at 85. In addition to complying with the CC&R, all lot owners will have to comply with HAR Chapter 11-62, which regulates the disposal of wastewater such that wastewater (including gray water) does not contaminate or pollute water resources, create a public nuisance or pose an actual or potential hazard to public health, safety or welfare. Therefore, lot buyers will be required to submit their

IWS plans to the Department of Health for review and approval prior to obtaining any building permits. PER at 6.

As with the Project drainage and water systems, with respect to the IWS, the 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. FEA at 85. The CC&R will also require lot owners to comply with all applicable Federal, State, and County laws including regulations governing water use and water quality. *Id.* The Pu'unene Association will be responsible for reviewing each lot owner's development plans to confirm compliance with the CC&R. *Id.*

**C. Development Projections**

*HAR § 15-15-50(c)(7): A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;*

The Project is planned to consist of approximately 28 fee simple lots. The lot sizes are proposed to range from approximately 0.5 acres to 20 acres. Final lot sizes will be driven by market demand. However, the current plan is to provide ten lots ranging in size from 0.5 to 1 acre; five lots ranging in size from over one acre to two acres; and the thirteen remaining lots to range from two acres to twenty acres in size. FEA at 9. Preliminary estimates are that approximately 9 acres will be used as drainage retention basins, and approximately 11 acres have been designated for internal roadways. *Id. and see* FEA Fig. 5B.

Based on the Market Study, there is ample demand on Maui for heavy industrial land. The vast majority of available industrial land in Central Maui is zoned for light industrial use. Market Study at 35. Most of the land zoned for heavy industrial use is already in use. *Id.* Research into the Central Maui heavy industrial market revealed very little available vacant land. *Id.* at 36.

There have not been any purely heavy industrial projects developed in Central Maui for more than a decade. *Id.* at 38. Instead, the developments have been in the light industrial market. The most recent heavy industrial development is the Airport Triangle Subdivision, which now houses commercial retail/office centers and car dealerships, i.e., not heavy industrial uses. *Id.* 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. *Id.* at 43.

While supply has stagnated, demand has increased and is expected to rise even higher. 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. Market Study at 39, 42. However, the heavy industrial businesses that fabricate, process and manufacture the materials needed by light industrial users has not expanded. *Id.* at 42. Such heavy industrial users may include: boiler and steel works; chemical manufacturing; producers of concrete or cement products; producers of asphalt; lumber yards; manufacturers of petroleum product; petroleum storage facilities; machine shops; planing mills; rolling mills; quarry and stone mills; plastic manufacturers; rock, sand, gravel and earth excavation, crushing and distribution facilities; saw mills and refineries. *Id.* Other businesses that may wish to operate at the Project include automobile wrecking facilities, soap manufacturers, fertilizer manufacturers, and slaughterhouses. *Id.* at 43.

While the gross number of users of heavy industrial land is less than the number of light industrial users, many heavy industrial uses require larger land areas to function efficiently. *Id.* at 46. Thus, it is anticipated that all lots within the Project will be sold within 10 of being brought to market. *Id.* at 47. The projected absorption rate is 6.6 acres per annum.

The proposed, unimproved subdivided lots will be offered for purchase in fee simple interest. The preliminary sales price for the Project lots is projected to be \$20 per square foot in 2011 dollars. FEA at 12. Final sales prices will be based upon market conditions at the time final subdivision approval is granted and will reflect any conditions that may be imposed by the Commission and the County of Maui as a result of the entitlement process. *Id.*

Petitioner estimates that the land use entitlement process could take four to five years, through final subdivision approval, starting from 2011, when the studies for the FEA were commissioned. FEA at 12. As such, Project construction could begin in 2015 - 2016. Market Study at 48. The forecasted construction timeframe is approximately 30 months, subject to timely land use entitlements and market conditions. *Id.*

**D. Development Timetables**

*HAR § 15-15-50(c)(19): Petitioners submitting applications for reclassification to the urban district shall also represent that development of the subject property in accordance with the demonstrated need therefore will be accomplished before ten years after the date of commission approval. In the event full urban development cannot substantially be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each subject increment to be completed within no more than a ten-year period;*

Petitioner expects to complete development of the Project within ten years of the Commission's reclassification. As stated above, the land use entitlement and subdivision approval process is expected to take four to five years, starting from 2011. Construction of the Project infrastructure is anticipated to begin as soon as all permitting approvals have been received, and is projected to take approximately 30 months. It should be noted, however, that due to the volatility of the world, national and local economies, the timeframes related to subdivision construction will be heavily influenced by market conditions. After Petitioner's



completion of the Project, the subsequent individual lot build-out is projected at a rate of 6.6 acres per year.

**V. PETITIONER'S FINANCIAL CONDITION AND FINANCING**

*HAR § 15-15-50(c)(8): A statement describing the financial condition together with a current balance sheet and income statement, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development.*

Petitioner estimates the infrastructure construction costs will be \$20,000,000. Market Study at 48. Petitioner is a single purpose limited liability company formed for the purpose of acquiring and developing the Project. Thus, it is not yet an income generating entity.

Petitioner's manager is JSGNE Investments, Inc., a Washington corporation. Petitioner holds title to the Petition Area free and clear of any mortgage. See Petitioner's Exhibit 7.

Petitioner's current financial condition is sound as evidenced by Petitioner's balance sheet and income statement, prepared January 30, 2013, attached hereto as **Petitioner's Exhibit 11.**

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.

**VI. ASSESSMENT OF IMPACTS**

**A. HAR § 15-15-50(c)(10)**

*HAR § 15-15-50(c)(10): An assessment of the impacts of the proposed use or development upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area;*

HAR § 15-15-50(c)(10) specifies certain resources that must be considered by the Commission prior to reclassifying land. Based upon the studies conducted for the FEA, the

development of the Project is not expected to result in any significant, long-term negative impacts to environmental or cultural resources.

**B. Environmental Resources**

The proposed development of the Project is not expected to have any significant adverse impacts on the environment. While air quality and noise levels will be impacted to a certain extent during the course of construction (for example, exhaust emissions from on-site construction equipment, construction vehicle traffic and construction noise), these impacts will be short-term. BMP that include performing construction-related activities in strict compliance with all applicable air and noise regulations will mitigate any temporary, short-term adverse impacts. After full development of the Project, operational activities could produce noise, dust, or other effects that are commonly associated with heavy industrial uses. However, these effects are not expected to have an adverse impact on surrounding properties, such as Maui Raceway Park and the Hawaiian Cement, as those are not sensitive land uses.

**1. Air**

An Air Quality Study for the proposed Project is included as Appendix H to the FEA. Construction at the Petition Area may result in short-term impacts from fugitive dust, and possibly from exhaust emissions from construction vehicles. FEA at 38. These temporary effects will be addressed in accordance with the fugitive dust measures required under HAR § 11-60.1-33, and will also be minimized by instituting BMPs during Project construction. Dust controls will be instituted, including dust monitoring, dust barriers, wind screens, mulching and/or chemical soil stabilizers, routine road cleaning and/or tire washing, watering graded areas, and/or sprinklers to control dust during construction of the Project. FEA at 38-39.

As applicable, future lot owners will be responsible for obtaining the necessary Department of Health permits for activities associated with certain types of industrial uses (e.g., air quality permits, noise permits). *Id.* at 144.

## 2. Noise

An Acoustic Study for the proposed Project is included as Appendix G to the FEA. 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 in Kihei (2.3 miles), Ma'alaea (3.6 miles), Kahului (4.0 miles), and Pukalani (6.4 miles). FEA at 34-35. However, construction vehicles, machinery and equipment use will create some increase in noise during construction of the Project. While measures to reduce construction noise to inaudible levels will not be practical in all cases, proper equipment maintenance, the use of sound-dampening equipment, and limiting construction activities to daylight working hours will help minimize noise impacts. *Id.* If noise from construction activities or future industrial operations exceeds permissible sound levels (70 dBA) for lands zoned for agricultural and industrial use, a Community Noise Permit will be obtained from the Department of Health in accordance with HAR Chapter 11-46 Community Noise Control. *Id.* The requirement for all lot owners to comply with HAR Chapter 11-46 and other Federal, State and County laws will be incorporated into the CC&Rs.

No significant increase in traffic noise levels along Mokulele Highway is expected as a result of Project. Therefore, only very small changes in traffic noise are expected along Mokulele Highway 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 ("DNL"), while non-Project-related traffic is expected to provide an increase of 1.0 DNL. FEA at 34.

Traffic along the roadways between Mokulele Highway and the Project site are expected to experience an increase in traffic noise as a result of development of the Project. The expected increase is 3.7 DNL. *See* FEA, App. G at 16. However, this increase is not seen as significant because it will occur in the relatively undeveloped areas around the Petition Area, and far from any residential or other noise sensitive land uses. FEA at 34.

**C. Agricultural Resources**

An Agricultural Impact Assessment is included as Appendix N to the FEA (the "AIA"). According to the AIA, 402,352 acres of land in the County of Maui, 244,088 of which is on Maui Island, is in the State Land Use Agricultural District. AIA at 1. In 2009 the USDA National Agricultural Statistics Service reported that approximately 230,000 acres of land on Maui Island were in farms. Thus, the Petition Area represents only four-hundredths of one percent (0.04%) of Maui's farm land. *Id.* at 14.

As discussed in Sections III.A.2., 3, *supra*, the soils underlying the Petition Area are not well suited to agricultural activities. The overall LSB productivity rating is "E" (the lowest rating), and the ALISH rating of the soils is Unclassified (i.e., residual land). The AIA reports that 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). AIA at 15. It is generally recognized that the effective cutoff for agricultural use is Class IV. *Id.* Subclass VIIs soils have very severe limitations due to their undesirable texture or because they are extremely rocky or stony. Also included in this group are land types that are steep, rocky, or stony. Subclass VI soils have severe limitations because of stoniness or unfavorable texture. These soils are very stony, very rocky, extremely stony, or extremely rocky and have slopes of 0 to 35 percent. FEA at 68.

The unsuitable soil conditions and poor productivity ratings of the Petition Area preclude any feasible agricultural development on the site. AIA at 15. As such, the long-term agricultural/economic impact resulting from the development of the Project is expected to be very minimal. Furthermore, because no agricultural activities have taken place within the Petition Area for years, the reclassification to the Urban District is not expected to have any significant agricultural economic impacts. *Id.*

**D. Recreational Resources**

The Project is not expected to have any impact on recreational resources. FEA at 73. The development of the Project does not trigger any of the County's park dedication requirements. *Id.* at 72. Furthermore, no existing recreational resources will be reduced to allow for the development of the Project. Thus, development of the Project will not have any significant effect on recreational resources nor will the Project generate or increase the demand on recreational resources.

**E. Cultural and Historical Resources**

A Cultural Impact Assessment for the Project is included as Appendix K of the FEA ("CIA"). The CIA concluded that there are no specific ongoing traditional cultural practices being exercised at the Petition Area. Based on archival research and oral testimonies obtained from various individuals and government agencies interviewed as part of the CIA, the Petition Area has not been used for traditional cultural purposes within recent times. CIA at 24. In light of these findings, 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. *Id.* at 25. Since no cultural activities were identified within the Petition Area, no adverse effects are anticipated. *Id.*

**F. Archaeological Resources**

An Archaeological Inventory Survey of the Petition Area is included as Appendix I of the FEA ("AIS"). The DLNR State Historic Preservation Division ("SHPD") approved the AIS by letter dated June 18, 2012. *See* FEA App. I-1. Prior to the current AIS, a large portion of the Petition Area had been previously surveyed by International Archaeological Research Institute, Inc. ("IARII") in 1999. AIS at 1. The IARII survey identified two archaeological sites within the Petition Area. 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 site. *Id.* at 17. The current AIS relocated these Sites, and assessed the presence/absence of features within both Sites and identified previously undocumented features within each Site. *Id.* at 20. No pre-contact archaeological sites were identified. *Id.* at 52.

The AIS determined that the Petition Area was designated by the Naval Air Station as Housing Area A. AIS at 19. Most of the historic features within the Petition Area have been heavily impacted by modern mechanical clearing and ensuing debris removal. *Id.* at 20. In general, most of the features that comprise State Site 50-50-09-4164 were mechanically impacted, abandoned, and neglected. *Id.* The historic features associated with State Site 50-50-09-4801 were abandoned and neglected, but not mechanically impacted. 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. *Id.*

A total of 34 features were identified, of which 15 were previously unrecorded. AIS at 20. Thirty features were determined to be associated with the Pu'unene Naval Air Station; 12 of which had not been identified in the past. *Id.* at 24. Four features, only one of which had not

been previously identified, were associated with the post-World War II cattle ranching complex. *Id.* at 48.

To supplement the surface pedestrian survey, a total of 20 stratigraphic trenches were mechanically excavated as part of the AIS. AIS at 20. Only one stratigraphic trench (ST-6) revealed the presence of subsurface architecture at Facility 177 (SCS Site T-25). *Id.* The feature was initially utilized as a military storehouse and converted for animal husbandry purposes.

The 15 new features recorded by the AIS were evaluated and found to be significant under Criterion D for their information content. AIS at 53. State Site 50-50-09-4164 has also been assessed as significant under Criterion A, as it has yielded information important to the history of Maui. *Id.*

The AIS recommended no further archaeological work for the Petition Area. AIS at 53. 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 since that area was only subject to a pedestrian survey. *Id.* Because the DLNR approved Petitioner's request for a 56-foot wide access and utility easement over the existing asphalt roadway, Petitioner does not intend to pursue the Alternate Access Road. *See* Petitioner's Exhibit 10.

An Archaeological Monitoring Plan for the Project was submitted to SHPD in October 2011, a copy of which is included as Appendix J of the FEA ("AMP"). SHPD accepted the Archaeological Monitoring Plan by letter dated August 24, 2012, a copy of which is included with the FEA as Appendix J-1. Under the AMP, intermittent monitoring is recommended for the Petition Area in light of the fact that two inventory surveys have been conducted, and the Petition Area has been subject to intensive ground-altering activities in the past, and therefore contains only minimal probability that subsurface deposits will be identified. AMP at 1.

**G. Scenic and Open Space Resources**

Surrounding the Petition Area to the east and south are sugarcane lands, and the undeveloped lands of Project District 10 and the Pu'unene Airport Master Plan area lie to the west. FEA at 47; *and see* FEA Fig. 4. To the north of the Petition Area are Lower Kihei Road, Reservoir 90 and additional sugarcane fields. *Id.* The Petition Area does not contain any natural or manmade scenic features. FEA at 47. The Petition Area is not located within any important mauka or makai view corridors along Mokulele Highway, and the Petition Area cannot be seen from surrounding areas. While development of the Project will alter the visual character of the Petition Area, that modification will not have an adverse effect upon scenic resources or view corridors due to the distance of the Petition Area from Mokulele Highway and other public roadways, and from the residential areas in Kahului, Kihei, and Upcountry. *Id.*

**H. Flora and Fauna**

Several species studies were conducted for the Petition Area. A Botanical Resource Assessment is included as Appendix E of the FEA; an Avifaunal and Feral Mammal Survey is included as Appendix F; an Arthropod Study is included as Appendix F-1; and a Nene Survey is included as Appendix F-2. None of the plants within the Petition Area are designated as threatened or endangered species, no rare or endangered insects, including the Blackburns' sphinx moth, were seen within the Petition Area, no threatened or endangered birds or mammals were observed within the Petition Area, and the Petition Area was determined not to have an environment that would attract Nene. *See* FEA at 26-33.

The dominant onsite vegetation is Dry Kiawe/Buffelgrass (*Prosopis pallida*)/(*Cenchrus ciliaris*), with a koa haole (*Leucaena leucocephala*) scrub transition between the southern boundary of the Petition Area. Botanical Resource Assessment at 4. Several other weedy native



species were scattered throughout the Petition Area. Similar vegetation was observed within the DLNR easement area. *Id.* None of the plants observed during the field survey are threatened or endangered species, or considered a species of concern. *Id.* at 5. Furthermore, no wetlands were encountered. *Id.* The proposed Project is not expected to have any significant negative impact on botanical resources within the Petition Area or the general region. *Id.*

As described in Avifaunal and Feral Mammal Survey, no native land birds were observed on the Petition Area. The typical assemblage of non-native birds was observed during the field survey, none of which are listed as threatened or endangered. *See* Survey at 4. However, two endangered water birds (Koloa, Alaeke'oke'o) utilize the nearby Reservoir 90. *Id.* at 5. These water birds did not respond to any traffic noise from South Firebreak Road and Lower Kihei Road, which border Reservoir 90 to the west and south. An embankment and the vegetation around Reservoir 90 visually shield and buffer the birds from human disturbance. As such, the development of the Project should not adversely affect the water birds at Reservoir 90. *Id.*

The Nene Survey confirmed via a walk-through reconnaissance that no Nene were seen within or over the Petition Area. The Petition Area is not irrigated and is located in one of the driest parts of Maui. Even during a substantial wet season, the vegetation in and around the Petition Area is tough. The Nene Survey concluded that nothing in this environment would equate to preferred habitat for Nene or would attract Nene to feed or breed in or around the Petition Area.

The only feral mammal observed was the Small Indian Mongoose. No endangered Hawaiian Hoary Bats were detected by ultrasound devices during an evening search of the Petition Area. *See* Avifaunal and Feral Mammal Survey at 5.

A total of 15 arthropods were recorded under the Arthropod Study. These represents seven Orders of spiders and insects. No rare or endangered inserts were observed including the endangered Blackburn's sphinx moth (*Manduca blackburni*). None of the moth's preferred host plants, the tree tobacco (*Nicotiana glauca*) were found, and no adult moths, eggs or larvae were seen. The Study concluded that from an entomological standpoint, development of the Project will not have a significant negative impact on the arthropod resources in this area of Maui.

**I. Groundwater or Other Resources**

As analyzed in the TNWRE Report, the Project will have no significant impact to groundwater and no impact to other water resources. Project development will include construction of drainage retention areas consisting of approximately 9 acres. Disposal of that water will occur by evaporation and seepage, and therefore will not impact surface water resources. Nance Report at 5.

The groundwater flowrate beneath the Petition Area is 4.0 MGD. TNWRE Report at 9. The total groundwater pumpage for the Project's wells for non-drinking water uses, and as feed water for the RO treatment process, is estimated at 0.503 MGD. However, much of that will be returned to the groundwater.

- Disposal of the RO concentrate in on-site disposal wells is estimated to return 0.079 MGD to groundwater.
- Disposal of treated domestic wastewater in leach fields is estimated to return 0.107 MGD to the groundwater.
- Percolation of excess landscape irrigation water is estimated to return 0.012 MGD to the groundwater.
- Percolation from on-site drainage systems and the drainage retention basins is estimated to return 0.075 MGD to the groundwater.

- On-site rainfall percolating to groundwater is estimated to return 0.038 MGD to the groundwater. However, using a conservative approach, the TNWRE Report disregards this return.

Thus, the net use of groundwater to support the Project will be 0.23 MGD, which is a 5.8% reduction in the current groundwater flowrate. TNWRE Report at 12.

Changes in the salinity and nutrient (nitrogen and phosphorus) levels of the groundwater will not be significant. Salinity and nutrient levels of the current groundwater were established based on data from the existing on-site Well No. 4927-01 and other area wells. Current salinity is 0.8 parts per thousand; nitrogen is 330 micro-molar; phosphorus is 3.4 micro-molar. TNWRE Report at 13. 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. That process will remove more than 80% of the nitrogen and more than 95% of the phosphorus. However, to be conservative the TNWRE Report calculated the removal rates as 50% for nitrogen and 90% for phosphorus. *Id.* at 14. The net results are: 3.8% increase in salinity; 1.3% increase in nitrogen; and 7.1% percent increase in phosphorus. *Id.* These changes are modest and are considered insignificant from an aquifer-wide perspective. Currently, the only uses of groundwater down gradient of the Petition Area are three wells in the Kealia National Wildlife Refuge, which are only seasonally pumped when surface water is insufficient to maintain the pond and wetland areas.

#### **J. Drainage**

The proposed Project will not involve discharges into Class 1 (inland) waters or Class AA (marine) waters of the State of Hawai'i. FEA at 86. As described in Section IV.B.2. *supra*, the drainage system for the Project will be designed to accommodate the incremental increase in runoff generated by the development of the entire Petition Area. In addition, regardless of the

magnitude of a storm event, no surface water (runoff) is expected to reach Ma'alaea Beach. FEA at 87. 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 where it is thoroughly mixed to background ocean water levels. *Id.*

## **VII. AVAILABILITY OF PUBLIC SERVICES AND FACILITIES**

*HAR § 15-15-50(c)(11): Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or reclassification;*

### **A. Educational and Recreational Resources**

The State Department of Education operates several public schools in the Kihei area: Kamali'i Elementary School, Kihei Elementary School, and Lokelani Intermediate School. Area students from Grades 9 to 12 attend Maui High School in Kahului. Other schools in the area include the Montessori School (ages 3 to 14) and Kihei Charter School (Grades K to 12). FEA at 74. The proposed Project does not include a residential housing component. As such, no significant impacts to existing educational facilities are anticipated. *Id.* Similarly, the Project will not increase demand for recreational resources, and does not trigger any of the County's park dedication requirements. *Id.* at 72.

### **B. Wastewater Systems**

The nearest County sewer system is in Kihei, approximately 10,000 feet south of the Petition Area. FEA at 84. Because individual lot owners will be required to install aerobic-type IWS, as described in detail in Section IV.B.4. *supra*, the Project will not have any effect on the County's wastewater systems.

**C. Solid Waste Disposal**

Privately-owned commercial haulers will be used to dispose of any construction materials during the subdivision and development 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. FEA at 75. Once construction is completed, it is anticipated that the Project's solid waste collection and disposal will be provided by private commercial haulers under contract with the Pu'unene Association. *Id.* Therefore, development of the Project is not expected to have any impact on existing solid waste collection and disposal services and facilities. *Id.*

**D. Drainage**

The Project drainage system, as described in Section IV.B.2. *supra*, will ensure that there are no anticipated impacts on downstream properties.

**E. Water**

The Project will not be serviced by any public water system. Instead, as described in Section IV.B.3. *supra*, Petitioner will develop a private water system to provide for the drinking and non-drinking water needs of the Project, including landscaping needs.

**F. Transportation Systems**

A Traffic Impact Analysis Report is included with the FEA as Appendix Q ("TIAR"). The TIAR confirmed that there are no Maui Public Bus stops along Mokulele Highway, therefore the Petition Area cannot be accessed by public bus service. TIAR at 8. The TIAR revised the existing levels of service at the intersection of Mokulele Highway at Kama'aina Road/Mehameha Loop. Even at the AM and PM peak hours, the intersection operates at level of service D or better (the overall level of service at the intersection was A). *Id.* at 12. The TIAR

then assessed the 2015 anticipated background traffic conditions without the proposed Project. These background increases in traffic include general background growth in traffic of 1.6% per year, plus anticipated growth from newly proposed projects such as Kaiwahine Village (120 multi-family units), Maui Lu Resort (400 time share units), Kihei Residential Subdivision (400 single family, 200 multi-family, 2,000 square feet of commercial and 7,000 square feet of office space), Kihei High School (student capacity of 1,600), Kenolio 6 Affordable Housing Project (124 multi-family units), and Piilani Promenade (at that time anticipated to contain 290,000 leasable square feet of retail/commercial space and 410,000 square feet of leasable retain floor area). *Id.* at 14-16. Even with the addition of these projects, the Mokulele Highway intersection is expected to operate at a level of service of D or better in 2015. *Id.* at 20.

The TIAR next assessed the anticipated traffic impacts from the development of the Project. Based on 65.92 acres of the Petition Area being used as developable lots, the industrial park trip generation rates for the Project are 392 inbound and 80 outbound trips in the AM peak hours. TIAR at 22. The PM peak hours will generate 99 inbound and 372 outbound trips. *Id.* The overall intersection level of service in 2015 is projected to operate a level of service C or better. *Id.* at 26. However, PM peak hour service at two turning points is less than the acceptable level of service D.

The mitigation measures recommended in the TIAR to bring the level of service to D or better at Mokulele Highway are trifold: (1) Modify westbound approach to provide a separate right-turn lane; (2) Provide acceleration lane for westbound to northbound right turns; and (3) Lengthen southbound left-turn deceleration lane from 60 feet to 350 feet. TIAR at 32. Additional recommend mitigation measures include having Kama'aina Road, South Firebreak Road and Lower Kihei Road striped and signed per County of Maui standards. *Id.* Also

recommended is for the areas adjacent to Kama'aina Road, South Firebreak Road, and Lower Kihei Road to be monitored to insure that sugar cane growth does not impede sight distances, and that visibility to traffic control devices is maintained. *Id.* These sugar cane fields are owned by HC&S and not Petitioner. Therefore, to ensure that sugar growth does not impede sight distance and that the visibility of traffic control devices is maintained, Petitioner will work with HC&S to help minimize impacts. As part of the subdivision application process, a driveway sight distance analysis and worksheet (for the subdivision driveway) will be submitted to the Maui Department of Public Works for review and approval to ensure that adequate sight distance and visibility are provided. FEA at 97.

Petitioner will construct/have constructed all traffic mitigation measures required to mitigate the traffic impacts from the Project, as determined by the DOT and set forth in the final TIAR. In light of the foregoing, the Project is not expected to have an adverse impact upon traffic.

**G. Public Utilities**

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. PER at 3. As described in the PER, 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. *Id.* at 7. However, within the Petition Area the electric, cable, and telephone systems will be installed underground in accordance with the utility companies' rules and regulations. *Id.* Street lights will be installed within the Project at intervals to be determined by the Project's electrical engineer. *Id.*

Lot owners will be encouraged to utilize energy generation and energy conservation measures when developing their lots. Examples of such measures include, but are not limited to: the use of windmills or photovoltaic panels to generate electricity, and the use of solar water heating systems, energy-efficient lighting and appliances, fiberglass insulation, double-glazed windows, skylights, and extended (roof) eaves to minimize heat gain through windows. FEA at 98. As such, there are no anticipated impacts on public utility systems.

**H. Police, Fire, Emergency Medical Services**

The proposed reclassification and Project are not anticipated to impact the service capacity and capability of police, fire, and emergency medical operations. FEA at 73. 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. *Id.* The Project will not expand nor extend the existing service area limit of emergency medical services, and will not generate demand for new or additional health care facilities. *Id.* at 74. 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. *Id.* at 73.

**I. Civil Defense**

The County of Maui Civil Defense Agency is responsible for administering and operating the various local, state and federal civil defense programs for the County of Maui. This includes planning, preparing and coordinating civil defense operations in meeting disaster situations and coordinating post-disaster recovery operations. The closest civil defense warning siren is approximately two miles to the southwest near the intersection of North Kihei Road and South Kihei Road. FEA at 25. Pursuant to recommendations made by the State of Hawai'i Department



of Defense, State Civil Defense Division, Petitioner will work with the agency to install an omnidirectional 121 db(c) siren to provide coverage for the Petition Area. *Id.* at 26.

**J. Public Agencies**

Since the proposed action should not affect population parameters on both long- and short-terms, the Project is not anticipated to have any adverse impacts on public agencies. Due to the nature of the Project, in reviewing the cumulative impact on public services, it was concluded that their collective effects would be minimal since these industrial projects do not generate the need for recreational and educational facilities and services. Other services, such as police, fire and emergency medical services, are currently servicing the Petition Area. Development of the Project will not require an extension to any current service limits.

**K. Commitment of State Funds and Resources**

No public funds will be used in the development of the Project. Infrastructure systems for the Project will include private drainage, water, and wastewater systems. The external roadways providing access to the Project, and the internal roads within the Project, will be constructed by Petitioner, and will be privately owned and/or and maintained by the Pu'unene Association. FEA at 113. 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. *Id.* Solid waste disposal generated from the Project will be hauled by privately-owned commercial haulers, and paid for by the Pu'unene Association. *Id.*

**VIII. ECONOMIC IMPACTS OF THE PROPOSED RECLASSIFICATION OR DEVELOPMENT**

*HAR § 15-15-50(c)(13): Economic impacts of the proposed reclassification, use, or development including, without limitation, the provisions of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county of and State;*

Development of the Project is expected to general significant expenditures by the Petitioner, as well as by secondary owners of the lots within the Project. Market Study at 55. These investments will have positive impacts on the County and State economies. *Id.* Using 2011 dollars, average construction costs for the 30-month infrastructure development are expected to be \$8,000,000 per year. *Id.* at 48. Based on State economic multipliers, off-Island indirect sales are estimated to be about \$5,920,000 per year during this infrastructure phase of development. *Id.* at 49. Maui indirect sales are estimated at \$4,144,000 per year. *Id.*

Individual lot construction and development is expected to generate average costs of &17,504,000 per year. Market Study at 49. Based on State economic multipliers, off-Island indirect sales are estimated to be about \$14,348,000 per year during individual lot build out. *Id.* Maui indirect sales are estimated at \$10,044,000 per year. *Id.*

The 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. Cumulative expenses to the State are not anticipated. Market Study at 53. The initial conveyance taxes expected are approximately \$132,000. County real property taxes are expected to generate \$1,161,000 per year once the lots are developed. *Id.* at 54. Over the course of infrastructure development and subsequent lot construction, excise tax will exceed \$5,000,000. *Id.* at 53.

As previously discussed, the unsuitable soil conditions and poor productivity ratings of the Petition Area preclude any feasible agricultural development on the site. As such, the long-term economic impact on agriculture resulting from the development of the Project is expected to be very minimal to none.

Development of the Project will create new job opportunities, starting with the design and entitlement process (using architects, engineers, surveyors, land planners and other consultants).

Market Study at 50. Infrastructure development will require heavy equipment operators, tractor-trailer drivers and utility personnel. Vertical construction will require masons, carpenters, sheet metal works, roofers, plumbers, electricians, etc., and finish work will require cabinet makers, carpet and tile installers and landscapers. *Id.* 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. *Id.*

The Project is projected to cause a direct increase of 32 jobs a year on Maui, and an indirect increase of 33 jobs a year during infrastructure development alone. Market Study at 51. In addition, the development will create a demand for 17 jobs off-Island during the initial infrastructure development period. Total direct and indirect payroll attributed to this phase of development is forecasted to be \$3,871,000 per year. *Id.*

Individual lot construction is expected to create a demand for 70 direct and 72 indirect jobs on Maui a year. Market Study at 51. The increase in off-Island indirect employment is estimated at 38 jobs a year. *Id.* Total direct and indirect payroll attributed to this period is forecasted to be \$8,494,000 per year. *Id.*

**IX. CONFORMITY OF THE RECLASSIFICATION TO THE STANDARDS FOR DETERMINING THE BOUNDARIES OF THE URBAN DISTRICT**

HAR § 15-15-50(c)(4): The reclassification sought and present use of property, including an assessment of conformity of the reclassification to the standards for determining the requested district boundary amendment.

Petitioner seeks to have the Petition Area reclassified from the Agricultural District to the Urban District. The Petition Area is vacant and undeveloped. FEA at 2. 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 sugarcane cultivation

and as a plantation camp. *See* FEA App. L (Malama Environmental letter). The former property owner, Alexander and Baldwin, Inc. leased the property to a pig farmer in the 1960s. *Id.* Starting around 1995 the site was used as an unpermitted solid waste management facility, i.e., scrap metal storage. *Id.* However, no productive use or activity has occurred on the site since these activities were discontinued in 2007. FEA at 6. HAR § 15-15-18 sets forth the standards used by the Commission for determining Urban District boundaries. The proposed reclassification of the Petition Area conforms to those standards as described and shown by the following analysis:

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

Although the Petition Area is not currently characterized by "city-like" concentrations or conditions, it is located in an area that is designated for future urban development under the recently enacted Maui Island Plan. *See* Petitioner's Exhibit 3. The Central Maui Baseyard, an existing industrial development on 52 acres of land in the State Urban District, is located just 1.3 miles to the north of the Petition Area. FEA at 100; *and see* FEA Fig. 12.

Other lands planned for future urban development include the Pu'unene Airport Master Plan area (encompassing 222 acres of land west of and adjacent to the Petition Area). The Pu'unene Airport Master Plan area is adjacent to the Petition Area. *See* FEA Fig. 7. As are the areas planned for future development by DHHL and DLNR under the Pulehunui Master Plan. *See Id.* at Fig. 7A.

B. **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;**

The Petition Area is located about 1.0 mile southeast of the intersection of Kama'aina Road, Mehameha Loop, and Mokulele Highway. Mokulele Highway is a divided, four-lane

highway that links South and Central Maui. FEA at 108. The distance from the intersection to Kahului is approximately 3.25 miles to the north, and to North Kihei is about 3.75 miles to the south. *Id.* The Kahului Harbor and Kahului Airport are in Kahului. Adjacent to Kahului is Wailuku, which is Maui's center of governmental activities as well as focal point of professional and business services.

Also as previously noted, development of the Project, as a heavy industrial subdivision, will bring new jobs to the Petition Area. The Project is projected to cause a direct increase of 32 jobs a year on Maui, and an indirect increase of 33 jobs a year during infrastructure development alone. Market Study at 51. Individual lot construction is expected to create a demand for 70 direct and 72 indirect jobs on Maui a year. *Id.*

C. **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;**

The State Department of Education operates several public schools in the Kihei area: Kamali'i Elementary School, Kihei Elementary School, and Lokelani Intermediate School. Area students from Grades 9 to 12 attend Maui High School in Kahului. Other schools in the area include the Montessori School (ages 3 to 14) and Kihei Charter School (Grades K to 12). FEA at 74. The proposed Project does not include a residential housing component. As such, no significant impacts to existing educational facilities are anticipated. *Id.*

The Project will not increase the need for park space, and does not trigger any County requirements for park dedication. FEA at 72.

The nearest County sewer system is located in Kihei, approximately 10,000 feet south from the Petition Area. FEA at 84. Therefore, the Project is being developed to require each lot

owner to install an IWS that includes an aerobic treatment unit and individual leach field. *Id.* at 85. Thus, the lack of County wastewater service will not inhibit development of the Project.

County landfills located in Hana, Central Maui, Lanai, and Molokai accept residential and commercial solid waste for disposal. FEA at 75. In addition to the disposal of solid waste, the Central Maui Landfill, which is located near Pu'unene, contains recycling and composting facilities, and also accepts green waste and used motor oil. The Maui Demolition and Construction Landfill, a commercial facility near Ma'alaea, accepts construction and demolition waste for disposal. *Id.* It is expected that during the infrastructure development stage of the Project, cleared and grubbed material may be used as mulch or transported to the Central Maui Landfill. *Id.* Construction waste material will be hauled to the Maui Demolition and Construction Landfill for disposal. Once the Project is developed, the Pu'unene Association will maintain a contract with a private waste disposal service. *Id.*

The Project will be constructed to include an on-site drainage system to accommodate any runoff that will be generated as a result of the Project development. *See* PER at 5. Petitioner's subdivision improvements will include a master drainage system constructed within the roadways, which will include catch basins, manholes, drainlines and a drain stubout to each lot. *Id.* As individual lots are developed, lot owners will be required to install their own onsite drainage system and provide a drain line connection to the drain stubouts on each lot. FEA at 87.

The County DWS does not serve water to the Petition Area. Therefore, Petitioner will construct a private water system to provide drinking water and non-drinking water for the Project. *See* FEA at 76. This private system, to consist of groundwater wells, RO treatment trains, a storage tank for drinking water, and a separate storage tank for non-drinking water, will

provide for the drinking water, irrigation water, and fire flow needs for the Project. *See generally* TNWRE Report; *and see* PER.

The Petition Area is in close proximity to transportation routes. It is approximately 1.0 mile southeast of the intersection of Kama'aina Road, Mehameha Loop and Mokulele Highway. FEA at 108. Mokulele Highway is a four-lane divided highway that links South and Central Maui. *Id.* As described in Section VII.F. *supra*, the TIAR identified the traffic mitigation measures necessary to ensure that the Mokulele Highway intersection continues to operate at an acceptable level of service. In addition, on April 12, 2013, DLNR approved a grant of access and utility easement in favor of Petitioner, which will provide access from Mokulele Highway to the Petition Area. *See* Petitioner's Exhibit 10.

Adequate public utilities are available for the Project. 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. PER at 3. As described in the PER, 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. *Id.* at 7. However, within the Petition Area the electric, cable, and telephone systems will be installed underground in accordance with the utility companies' rules and regulations. *Id.*

Adequate police and fire protection is available for the Project. The Maui Police Department's Kihei Patrol District is one of six districts located within the County of Maui. In addition to regular patrol duties, the 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. FEA at 73. The County of Maui Department of Fire and Public Safety has 14 stations throughout the County of Maui including 10 stations on the island of

Maui. In South Maui, the department has two stations, one in Kihei at 11 Waimahaihai Street and a second in Wailea at 300 Kilohana Drive. *Id.*

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

As noted previously, 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. *See* Petitioner's Exhibit 3. However, as shown on FEA Fig. 12, relatively little land within the area of the Petition Area is within the State Land Use Urban District. Therefore, sufficient reserve areas for foreseeable urban growth will remain after the reclassification of the Petition Area.

**E. 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;**

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. FEA at 23. 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. *Id.* at 25. The Petition Area is located in Flood Zone "X." *See* FEA at 25; *see also* FEA Fig. 9; *and see* FEA App. A (the Planning Department's Zoning and Flood Confirmation Form). Zone X represents areas outside of the 0.2% annual chance flood plain. *See* PER at 3. In addition, 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. FEA at 109.



F. **HAR § 15-15-18(4): Land 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;**

The Petition Area is not contiguous with State Land Use Urban lands. *See* FEA Fig. 12. However, as previously indicated, the Petition Area and the lands in the vicinity of the Petition Area 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 Maui Island Plan Urban Growth Boundaries. *See* Petitioner's Exhibit 3.

DHHL owns approximately 184 acres of land bordered by Mehameha Loop which is designated for future commercial development. FEA at 110. The nearby Hawaiian Cement Quarry and Hawai'i Army National Guard Armory are both operating under a Land Use Commission Special Use Permit (the Quarry also has a County Conditional Permit). *Id.* The Central Maui Baseyard is within the State Land Use Urban District and is located 1.3 miles north of the Petition Area. *See* FEA Fig. 12. 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.

G. **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;**

The reclassification of the Petition Area, and the subsequent approval of the Petitioner's applications for CIZ and CPA, will permit the Petition Area to be developed in conformity with the Maui Island Plan's recently designated Urban Growth Boundaries.

**H. HAR § 15-15-18(6): 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;**

With respect to the standards for determining Urban District boundaries as set forth in paragraphs (1) to (5) of HAR § 15-15-18, arguably the Petition Area is not land characterized as "city-like" as set forth in paragraph (1). This said, other standards of HAR § 15-15-18 are met. The Petition Area 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 Maui Island Plan encourages the contiguous location of these lands within an Urban Growth Boundary. Therefore, the Petition Area meets the standards set forth in HAR § 15-15-18(1) - (5) and need not comply with paragraph (6).

**I. HAR § 15-15-18(7): 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;**

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 objective of which under the Kihei-Makena Community Plan is to establish a master planned recreational and industrial expansion area. The Petition Area is also adjacent to the Pu'unene Airport Master Plan area and the Pulehunui Master Plan area, both of which anticipate future urban type develop.

Maui Raceway Park is within Project District 10 and located to the west of the Petition Area. The Maui Raceway Park provides a wide range of recreational uses such as drag racing, auto cross racing, go kart racing, dirt oval track racing, radio controlled model aircraft flying and

dirt bike racing. Additional nearby uses include the Hawaiian Cement quarry, the Maui Consolidated Facility for the Hawaii Army National Guard and HC&S commercial sugarcane production. The Project will not necessitate unreasonable public investment for infrastructure or public services as there is no residential component within the proposed subdivision, water will be developed privately, and wastewater will be handled on-site.

- J. **HAR § 15-15-18(8): 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.**

The Petition Area has an average slope of 1.8 percent and does not include any slope of 20 percent or more.

X. **ASSESSMENT OF NEED FOR RECLASSIFICATION**

*HAR § 15-15-50(c)(15): An assessment of need for the reclassification based upon the relationship between the use or development proposed and other projects existing or proposed for the area and consideration of other similarly designated land in the area;*

Reclassification of the Petition Area to the Urban District is necessary for Petitioner to develop the Project. The Project is expected to attract buyers or tenants who are looking for areas that allow pure industrial uses, rather than the more readily available light industrial areas. See Market Study at 32. Those looking for pure industrial space, such as planned for the Project, will likely include businesses that manufacture or treat goods from raw materials, in addition to industrial warehouse users and those seeking secured baseyards. *Id.*

As discussed in detail in Section IV.C. *supra*, there is ample demand on Maui for heavy industrial land because most of the available industrial land is zoned for light industrial use, and most of the heavy industrial land is already in use. Market Study at 35. There have not been any

purely heavy industrial projects developed in Central Maui for more than a decade. *Id.* at 38. Instead, the developments have been in the light industrial market.

While supply has stagnated, demand has increased and is expected to rise even higher. 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. Market Study at 39, 42. However, the heavy industrial businesses that fabricate, process and manufacture the materials needed by light industrial users has not expanded. *Id.* at 42. While the gross number of users of heavy industrial land is less than the number of light industrial users, many heavy industrial uses require larger land areas to function efficiently. *Id.* at 46. Based on this demonstrated strong demand, Petitioner anticipates that all lots within the Project will be sold within 10 years of being brought to market. *Id.* at 47.

**XI. CONFORMITY OF THE RECLASSIFICATION TO THE GOALS, OBJECTIVES, AND POLICIES OF THE HAWAII STATE PLAN, PRIORITY GUIDELINES AND FUNCTIONAL PLANS POLICIES**

*HAR § 15-15-50(c)(16): An assessment of conformity of the reclassification to applicable goals, objectives, and policies of the Hawaii state plan, chapter 226, HRS, and applicable priority guidelines and functional plans policies;*

The Hawai'i State Planning Act found in HRS Chapter 226 (the "HSP"), is a comprehensive guide for the future long-range development of the State of Hawai'i. Among other things, the HSP's purposes are to identify the goals, objectives, policies, and priorities for the State of Hawai'i, provide a basis for allocating limited resources, and improve coordination between Federal, State and County agencies. The three themes underlying the HSP are: (1) individual and family self-sufficiency; (2) social and economic mobility; and (3) community or social well-being. *See* HRS § 226-3.

The HSP also provides numerous State goals and specific objectives and policies to achieve those goals. The State goals include a strong, viable, stable and diverse economy, the development of physical environments that are beautiful, clean and unique, and that enhance the mental and physical well-being of the residents, and the physical, social, and economic well-being for the people of Hawai'i that nourishes a sense of community responsibility and participation. *See* HRS § 226-4. The development of the Project will further the above-described goals of the HSP.

The proposed reclassification is consistent with the goals, objectives, and policies of the HSP because it will increase the economic and employment opportunities for individuals and families who live in Maui County. Increased employment and well-paying jobs support residents' self-sufficiency, social and economic mobility, and lead to a stronger feeling of community and social well-being. A point-by-point analysis of the Project's conformance with the numerous objectives, policies, priority guidelines and functional plans of the HSP, is provided in Section IV.E of the FEA. A more streamlined analysis of the Project's conformance with specific HSP objectives and policies is provided below.

**A. Goals, Objectives and Policies of the Hawai'i State Plan**

In particular, the proposed reclassification conforms to the following goals, objectives and policies of the HSP:

**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.*

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. The Project is projected to cause a direct increase of 32 jobs a year on Maui, and an indirect increase of 33 jobs a year during infrastructure development alone. *See* Market Study at 51. In addition, the development will create a demand for 17 jobs off-Island during the initial infrastructure development period. Total direct and indirect payroll attributed to this phase of development is forecasted to be \$3,871,000 per year. *Id.*

Individual lot construction is expected to create a demand for 70 direct and 72 indirect jobs on Maui a year. Market Study at 51. The increase in off-Island indirect employment is estimated at 38 jobs a year. *Id.* Total direct and indirect payroll attributed to this period is forecasted to be \$8,494,000 per year. *Id.*

**B. Hawaii State Plan Priority Guidelines**

**1. HRS § 226-103 - Economic Priority Guidelines**

*HRS § 226-103(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.*

**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.*

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.

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.



**C. State Functional Plans**

The HSP called for the creation of functional plans to further define and implement the statewide goals, objectives and policies set forth under the HSP. *See* HRS § 226-56. Developed in the late 1980s and early 1990s, the State Functional Plans (the "SFP") are the primary guidance tools for implementing the HSP. While the HSP establishes long-term objectives for the State of Hawai'i, the SFP are intended to identify major state-wide concerns, define current strategies, identify major relationships and provide strategies for departmental policies, programs, and priorities. Section IV.F of the FEA addresses the relationship of the Project to the various SFP. The reclassification requested by Petitioner is consistent with the following specific SFP:

**1. Agricultural Functional Plan**

The current Agricultural Functional Plan ("AFP") was prepared by the State of Hawai'i, Department of Agriculture in 1991. The AFP set as an objective the "achievement of productive agricultural use of lands most suitable and needed for agriculture" (Objective H). Under State ratings systems, the Petition Area is land least suitable for productive agriculture. While the Petition Area was formerly utilized for hog farming, it has not been used for agriculture cultivation due to its poor soil and currently lies fallow. For these reasons, reclassification of the Petition Area from the Agricultural to the Urban district is consistent with the policies and objectives of the HSP and the AFP.

**2. Employment Functional Plan**

The current Employment Functional Plan ("EFP") was developed by the State of Hawai'i, Department of Industrial Relations in 1990. Portions of the HSP pertain to employment in the State and the EFP's development was guided by these provisions. For example, HRS §

226-3 values individual and family self-sufficiency and economic mobility. HRS § 226-6 sets forth objectives and policies to increase and diversify employment opportunities, foster cooperation between the public and private sectors, and stimulate the development and expansion of economic activities. In turn, the EFP through job training, education, and other employment support services seeks to improve the qualifications of Hawai'i workers to enter and compete in the labor force.

The Project supports the goals, policies and objective of the HSP and EFP in several ways. First, the development and construction of the infrastructure will result in an annual average of 65 direct and indirect Maui jobs a year. After the initial infrastructure development, individual lot construction is expected to create a demand for an average of 142 direct and indirect Maui jobs a year.

### **3. Transportation Functional Plan**

The current Transportation Functional Plan ("TFP") was developed by the State DOT in 1991. Among the policies and objectives of the TFP are: (1) maximizing joint efforts with the private sector; (2) pursuing land use initiatives which help reduce travel demand; and (3) encourage resident quality-of-life improvements through improved mobility opportunities and travel reduction. Petitioner has identified traffic mitigation measures to be constructed as part of the development of the Petition Area. In addition, Petitioner will improve the portions of the State DLNR easement area to satisfy State requirements as part of the Project's infrastructure development.

## **XII. CONFORMITY OF THE RECLASSIFICATION TO THE OBJECTIVES AND POLICIES OF THE COASTAL ZONE MANAGEMENT PROGRAM**

*HAR § 15-15-50(c)(17): An assessment of the conformity of the reclassification to objectives and policies of the coastal zone management program, chapter 205A, HRS;*

Hawaii's Coastal Zone Management Program ("CZMP"), found in Chapter 205A of the HRS, establishes numerous objectives, policies, and standards to guide and regulate public and private uses in the coastal zone management area. The Petition Area is not within the County Special Management Area. See FEA Fig. 16. However, the Project's relationship to the following CZMP objectives and policies is reviewed and assessed under the FEA and below.

**A. 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.

The Project does not have an adverse effect on historical or cultural resources. As set forth in Sections VI.E., and F. of this Petition, the Petitioner has assessed the Petition Area for cultural and historical resources that may be impacted by the Project. The CIA concluded that there are no specific ongoing traditional cultural practices being exercised at the Petition Area. The AIS, which has been accepted by DLNR-SHPD, determined that no further archaeological work is required for the Petition Area. An Archaeological Monitoring Plan was accepted by DLNR-SHPD in August 2012. The AMP recommended intermittent monitoring in light of the fact that the Petition Area has been subject to two archaeological surveys, and has been subject to intensive ground disturbance activities for decades.

**B. 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-term 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.

The Project is not a coastal dependent development. This said, the Project will provide private facilities that will improve the economy by generating good permanent jobs and construction-related job opportunities for Maui residents. Therefore, the Project is consistent with the objective and policies for economic uses.

**C. 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.

As previously noted, the Petition Area is located in Flood Zone "X." Zone X represents areas outside of the 0.2% annual chance flood plain. *See* FEA App.P, at 3. In addition, the tsunami inundation parameters do not apply to the Petition Area. Drainage improvements for the Project will be designed in accordance with the Drainage Standards of the County of Maui to ensure that the Project will not adversely affect downstream properties from the effects of flooding and erosion.

**D. 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.

The Petition Area is located miles inland, away from the shoreline, and as a result, there is no impact on the use of beaches by the public and for recreation.

**E. 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.

As stated previously, the Petition Area is located miles inland and away from the ocean and therefore has no impact on marine or coastal resources. This said, appropriate BMPs will be utilized to ensure that construction runoff is appropriately captured, minimizing the impact on coastal waters.

**F. 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.

The Project will meet County of Maui public awareness, education and participation objectives. An early consultation letter and the Draft EA were sent to the Kihei Community Association for review and comment. However, no comments were provided. Petitioner has kept in contact with the Kihei Community Association in the months leading up to the filing of this Petition. *See e.g.*, Petitioner's Exhibit 9.

**XIII. CONFORMITY OF THE RECLASSIFICATION TO THE COUNTY GENERAL PLAN, COMMUNITY PLANS, AND ZONING DESIGNATIONS AND POLICIES**

*HAR § 15-15-50(c)(18): An assessment of conformity of the reclassification to the applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required;*

The relevant County plans are: (i) the Maui County General Plan; (ii) the Countywide Policy Plan; (iii) the Maui Island Plan; and (iv) the Kihei-Makena Community Plan.

**A. Maui County General Plan**

The purpose of the General Plan is to recognize and state major problems and opportunities concerning the needs and the development of the County and the social, economic and environmental effects of such development and set forth the desired sequence, patterns and characteristics of future development. *See* Maui County Charter. The proposed reclassification is consistent with the land use objectives and policies of the General Plan.

Listed among the land use objectives is "To use the land within the County for the social and economic benefit of all the County's residents." Policies that will be supported by development of the Project include the following:

1b. Provide and maintain a range of land use districts sufficient to meet the social, physical, environmental, and economic needs of the community.

1d. Formulate a directed growth strategy, which will encourage the redevelopment and infill of existing communities allowing for mixed land uses, where appropriate.

**B. Countywide Policy Plan**

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

The Countywide Policy Plan is an over-arching values statement and is an umbrella policy document for the MIP and community plans. The Countywide Policy Plan is the keystone document prepared during the General Plan update process and supports the more detailed Maui Island Plan and the community plans.

Through a series of outreach efforts with the public, certain core themes were identified and noted in the Countywide Policy Plan, along with general goals related to each core theme, along with objectives and policies, which are more specific, to support each core theme. The core themes are:

- A. Protect the Natural Environment*
- B. Preserve Local Cultures and Traditions*
- C. Improve Education*
- D. Strengthen Social and Healthcare Services*
- E. Expand Housing Opportunities for Residents*
- F. Strengthen the Local Economy*
- G. Improve Parks and Public Facilities*
- H. Diversify Transportation Options*
- I. Improve Physical Infrastructure*
- J. Promote Sustainable Land Use and Growth Management*
- K. Strive for Good Governance*

The core themes that will be supported by development of the Project are: (A) Protect the natural environment; (F) Strengthen the local economy; (I) Improve physical infrastructure; and (J) Promote sustainable land use and growth management.

**1. 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.

**2. Analysis:**

The Project's potential short and long-term impacts to the natural environment have been identified, evaluated and addressed. All lot owners and all buildings and accessory structures that are built within the proposed subdivision will be required to comply with the CC&Rs that will enforce the design, development, and land use standards intended to create a cohesive project and develop a sense of place.

**3. 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.

**4. Analysis:**

As stated throughout this Petition and also in the Market Study, the Project will have a positive effect on Maui's economy and will encourage diversification of the county's economic base. The Project will also contribute to the larger, statewide economy through increased job opportunities, purchases of goods, and demand for services. For example, the infusion of capital investment to develop the Project will significantly contribute to Maui's short-term economic

growth while the continued investment and long-term commitment of the businesses that locate within the Project will strengthen Maui's economic base and support a sustainable rate of growth. The short and long-term contributions of the Project will address both the social and economic welfare needs of the community. The Project will show immediate, short-term economic benefits as a result of design, construction and construction-related employment during the build out and development phases of the Project. In the long term, the Project will support local businesses and provide needed reasonably-priced heavy industrial lots that are centrally located.

**5. Improve Physical Infrastructure.**

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

Policies: Promote the retrofitting of existing buildings and new development to incorporate energy-saving design concepts and devices.

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

Policies. Capitalize on existing infrastructure capacity as a priority over infrastructure expansion.

Promote land use patterns that can be provided with infrastructure and public facilities in a cost-effective manner.

**6. Analysis:**

The Petitioner will promote the use of renewable and green technologies by future lot owners. The lot owners will be encouraged to utilize water and energy conservation measures when developing their parcels in the future. Examples of such measures include, but are not limited to, the following: solar water heating systems, energy-efficient lighting and appliances,

fiberglass insulation, double-glazed windows, skylights, and extended (roof) eaves to minimize heat gain through windows.

The Petition Area will be located in the vicinity of, or contiguous to, other areas that are urban and used for industrial purposes. Improvements to infrastructure will be made to best develop local resources and to complement existing systems.

**7. 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.

**8. Analysis:**

The Petition Area has been designated as an area suited for urban expansion and development by the Maui community. The Petition Area and lands in the vicinity of the Project site are either planned or designated for future urban development. The Petition Area, the Pu'unene Airport Master Plan area and nearly all of Project District 10 fall within the Maui Island Plan Urban Growth Boundaries.

**C. Maui Island Plan**

The Maui Island Plan 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 Maui Island Plan was reviewed by the General Plan Advisory

Committee, the Maui Planning Commission, and approved by the County of Maui Council. It has been adopted by County of Maui Ordinance No. 4004, enacted December 28, 2012.

The Petition Area is within the Urban Growth Boundary of the Maui Island Plan. *See* Petitioner's Exhibit 3. Therefore, this area has been selected by the people of Maui County for future urban development. One of the implementing actions under the Maui Island Plan is to consider the establishment of a new zoning category that strictly defines and limits uses for heavy industrial areas. *See* Maui Island Plan at 7-25. Furthermore, the Maui Island Plan anticipates development in the area in and around the Petition Area, designated as the Pulehunui planned growth area, as "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." *Id.* at 8-33. The reclassification of the Petition Area to the Urban District would promote the Maui Island Plan by allowing 86 acres of poor, unproductive agricultural land to be used for a higher and better use that will serve the needs of the Maui community as determined by the general planning process.

**D. Kihei-Makena Community Plan**

The Project site is located within the Kihei-Makena Community Plan region. *See* FEA Fig. 14. The Community Plan was first adopted by Ordinance No. 1490 in 1985, and was updated in 1997 as part of the County's decennial review of the various community plans. The existing Kihei-Makena Community Plan was adopted by Ordinance No. 2641 and went into effect on March 6, 1998. The Petition Area is designed as Agriculture on the Community Plan land use map. *See* FEA, Fig. 14. However, Petitioner has submitted an application for an amendment to the Community Plan designation, and the County has confirmed its support for

that amendment. *See* Petitioner's Exhibit 9. The development of the Project is consistent with the following goals, objectives, policies and standards of the Kihei-Makena Community Plan.

**1. 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.

**2. 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.

**3. 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.

**4. 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.

**5. Energy and Public Utilities**

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

**6. 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.

**E. County Zoning and Proposed Amendments**

The Petition Area is zoned "Agricultural" by the County of Maui. See FEA Fig. 15.

Principal permitted uses within the County's Agricultural zoning district include: (1) agriculture, (2) agricultural land conservation, (3) agricultural parks, (4) animal and livestock raising, (5) private agricultural parks, and (6) minor utility facilities. Permitted accessory uses include, among other uses, two farm dwellings per lot and one farm labor dwelling (per five acres of lot area). As such, the Project cannot be developed without the CPA to change the Community Plan designation to Heavy Industrial, and the CIZ, to change the zoning district to the M-3 Restricted Industrial zoning district. In addition to the proposed uses not being allowed within the State and County Agricultural Districts, the Maui subdivision ordinance requires consistency among the State and County land use designations prior to subdivision approval. The County subdivision

code (Maui County Code Section 18.04.030) states that "the director shall not approve any subdivision that is not consistent with the county general plan, community plans, State land use classification, and zoning."

As discussed above, a consolidated application for the CPA and CIZ was filed with the Planning Department on April 16, 2012, and the CPA/CIZ applications are currently being held in abeyance until the DBA process is complete.<sup>4</sup> Assuming the DBA is granted, the Planning Commission will review the CPA and CIZ application and make a recommendation to the Maui County Council, which will then take final action on the CPA and CIZ requests.

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. *See* FEA App. C (M-3 Restricted Industrial Zoning regulations).

#### **XIV. HAWAIIAN CUSTOMARY AND TRADITIONAL RIGHTS**

*HAR § 15-15-50(c)(20): A statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawaii State Constitution;*

Petitioner is aware of, and is sensitive to, the protections afforded to Native Hawaiian customary and traditional rights under Article XII, section 7 of the Hawai'i State Constitution.

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<sup>4</sup> The original CIZ application sought a rezoning to the M-2 Heavy Industrial district. However, CIZ application was amended on October 29, 2012, to reflect the County's adoption of the M-3 Restricted Industrial zoning district.

As described in the CIA, the Petition Area has not been used for traditional cultural purposes within recent times. CIA at 24. Based on historical research and contacts made pursuant to the CIA, it is reasonable to assume that development of the Project will not affect the exercise of any native Hawaiian rights, or any ethnic groups, related to gathering, access or other customary activities. *Id.* at 25. In other words, development of the Project will not result in any adverse effects to customary or traditional rights. *Id.* Petitioner will follow the recommendations set forth in the CIA and AIS, as discussed in detail in Sections VI.E., F., *supra*.

## **XV. CONCLUSION**

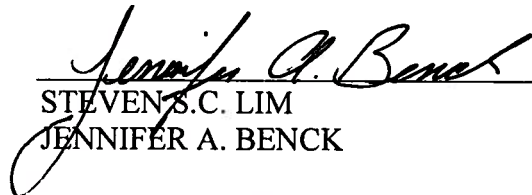
The Pu'unene Heavy Industrial Subdivision will be located in an area that is designated for future urban use under the Maui Island Plan. The Project will meet a portion of the significant demand for heavy industrial subdivision lots. The soils within the Petition Area are not of a good quality, and have not been used for agricultural activities in years. As such, development of the Project will not impact agricultural pursuits in the area. In light of the need for heavy industrial subdivision lots, the central location of the Project site, the proximity of the Project to existing urbanized areas, and the negligible impact on the availability of agricultural lands on the Island of Maui, the development of a heavy industrial subdivision is a reasonable and appropriate use of the Petition Area.

Based on the foregoing, Petitioner respectfully requests that the Commission find that this Petition complies with the necessary requirements of a petition for district boundary amendment pursuant to HAR § 15-15-50. Petitioner also respectfully requests that the Commission find that the proposed development of the Petition Area meets with the standards for determining the Urban District boundaries pursuant to HAR § 15-15-18, and therefore grant,



the reclassification of the approximately 86.030-acre Petition Area from the Agricultural District to the Urban District.

DATED: Honolulu, Hawai'i, May 3, 2013.

  
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