

ORIGINAL

OFFICE OF PLANNING

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2013 AUG 15 P 3:55
LAND USE COMMISSION
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A13-797
)	
CMBY 2011 INVESTMENT, LLC)	OFFICE OF PLANNING'S AMENDED
)	LIST OF WITNESSES; AMENDED LIST
To Amend the Land Use District Boundary)	OF EXHIBITS; EXHIBITS 2, 6, 7 AND 8;
of Approximately 86.03 Acres of Land from)	CERTIFICATE OF SERVICE
the Agricultural District into the Urban)	
District at Pulehunui, Wailuku, Island of)	
Maui, State of Hawaii, Tax Map Key No:)	
(2) 3-8-008: 019)	

OFFICE OF PLANNING'S AMENDED LIST OF WITNESSES, AMENDED LIST OF EXHIBITS, EXHIBITS 2, 6, 7 AND 8; CERTIFICATE OF SERVICE

LAND USE COMMISSION

DOCKET NO./PETITIONER: A13-797 CMBY 2011 INVESTMENT, LLC
 PARTY: OFFICE OF PLANNING (OP)

AMENDED

LIST OF WITNESSES

NAME/ORGANIZATION/POSITION (List in Order of Appearance)	TO BE QUALIFIED AS AN EXPERT IN:	SUBJECT MATTER	WRITTEN TESTIMONY (Yes or No)	EXHIBIT NUMBER(S)	LENGTH OF DIRECT
RODNEY FUNAKOSHI or REPRESENTATIVE Planning Program Administrator State Office of Planning	Land Use and Environmental Planning	State Position	Yes	2	20 min.
REPRESENTATIVE State Department of Health	Environmental Health and Water Quality	Impacts of the Heavy Industrial Uses	Yes No	8	15 min.

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LAND USE COMMISSION
STATE OF HAWAII

LAND USE COMMISSION

DOCKET NO./PETITIONER: A13-797 CMBY 2011 INVESTMENT, LLC
 OFFICE OF PLANNING (OP)

PARTY:

AMENDED
LIST OF EXHIBITS

EXHIBIT NUMBER	DESCRIPTION	PARTY: OBJECTIONS	ADMIT
1	Office of Planning (OP) Statement of Position		
2	Office of Planning (OP) Written Testimony		
3	Resume of OP Representative – Rodney Y. Funakoshi, Planning Program Administrator, Land Use Division		
4	State Department of Health (DOH) Written Testimony	Withdrawn	
5	Resume of DOH Representative	Withdrawn	
6	Map, Petition Area and Region, OP		
7	Letter from Office of Planning to Department of Health, Dated August 6, 2013		
8	Letter from State Department of Health, Dated August 13, 2013		
9			
10			
11			

BEFORE THE LAND USE COMMISSION
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In the Matter of the Petition of)	DOCKET NO. A13-797
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CMBY 2011 INVESTMENT, LLC)	OFFICE OF PLANNING’S TESTIMONY
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LAND USE COMMISSION
STATE OF HAWAII

OFFICE OF PLANNING’S TESTIMONY
IN SUPPORT OF PETITION WITH CONDITIONS

The Office of Planning (“OP”) recommends approval of CMBY 2011 Investment, LLC’s (“Petitioner”) Petition to reclassify approximately 86.03 acres of land from the State Agricultural District to the Urban District at Pulehunui, Wailuku, Maui, subject to conditions. OP’s recommendation is based on the representations of the Petitioner and documents filed to date in these proceedings, consultation with affected government agencies, and the statutes and regulations applicable to these proceedings.

PETITION OVERVIEW

General Information

The Petitioner CMBY 2011 Investment, LLC (“Petitioner”), requests that the Land Use Commission (“Commission”) reclassify approximately 86.03 acres of land from the State Agricultural District to the State Urban District at Pulehunui, Wailuku, Maui.

The Petitioner, a Washington limited liability company whose principal place of business is P.O. Box 220, Kihei, Hawaii, 96753, is the fee owner of the parcel, Tax Map Key (“TMK”) No. (2) 3-8-008: 019, being proposed for reclassification under this Petition.

Proposed Use of the Petition Area

Petitioner proposes to develop a heavy industrial subdivision. The Petitioner plans to subdivide the Petition Area into 28 lots ranging in size from 0.5 to 20 acres. Infrastructure will include grading, drainage system and retention basin, the construction of internal roadways, utilities, a private water system and individual wastewater systems. According to the Petition, the final number and size of the lots may change.

The Petition indicates that the proposed uses will be dependent upon the lot buyer, and that buyers will most likely be those who want to develop “pure industrial uses,” such as manufacturing from raw materials, warehousing, and secured baseyard uses. The Petition also states explicitly that “the Petition Area will not be used as a landfill, which is a permitted use within the M-3 District, unless the Petitioner seeks approval of the Commission pursuant to a Motion to Amend or such other procedure” (Petition, page 16).

OP recommends that Petitioner describe with some degree of specificity what uses will be on the Petition Area.

Petition Area Description and County Land Use Designations

The Petition Area is situated in Pulehunui, Wailuku and is currently vacant and undeveloped. Previously, the Petition Area was used as a part of the Puunene Naval Air Station, and subsequently used for sugar cane cultivation and a plantation camp. The Petition Area was also utilized as a pig farm, and then as an unofficial solid waste area for scrap metal. All uses were discontinued after 2007. According to the Petition, the area has access to Mokulele Highway through Kamaaina Road, South Firebreak Road and Lower Kihei Road. The Petition Area is shown in Petitioner’s Exhibit 1, Figure 1.

The Petition Area is designated Agriculture within the Kihei-Makena Community Plan. The Petitioner plans to rezone the Petition Area from Agriculture to the M-3 Restricted Industrial district. The Petition Area is within the approved Maui Island Plan’s Urban Growth Boundary. The Petitioner’s Final Environmental Assessment (“FEA”) was accepted on November 27, 2012 by the County of Maui Planning Commission.

The Petition Area is surrounded by sugar cane fields on the north, east, and south sides. An irrigation reservoir is located adjacent to the Petition Area on the north side. A Hawaiian Cement Quarry is approximately 0.2 mile east of the Petition Area. Lands to the west are within

the Kihei-Makena Community Plan Project District No. 10 and the Puunene Airport Master Plan. Project District No. 10 is managed by the County of Maui under an Executive Order from the State of Hawaii, and is currently used for the Maui Raceway Park dragstrip and other recreational activities. The Hawaii Army National Guard armory is located along Mokulele Highway. Kealia Pond National Wildlife Refuge (“KPNWR”) is located about 1.75 miles southwest from the Petition Area.

The lands to the north and east are primarily owned by the State Department of Land and Natural Resources. Lands to the south are owned by the Department of Hawaiian Home Lands.

DISCUSSION OF ISSUES OF CONCERN TO THE STATE

The following discusses Project impacts and recommendations to avoid, minimize, or mitigate reasonably foreseeable impacts caused by the proposed Project with respect to areas of State concern under Hawaii Revised Statutes (“HRS”) § 205-17 and Hawaii Administrative Rules (“HAR”) Chapter 15-15.

Impacts on Areas of State Concern, HRS § 205-17(3)

Natural Systems and Habitats

Water Resources. According to the FEA, the Central Maui Water System does not serve this area; however, some of the surrounding properties are served by the County system. The County system is at or near capacity and may not be able to provide potable water for the Petition Area. Thus, Petitioner proposes to construct a private water system, owned and maintained by the project owners’ association, including 3 new wells for potable and non-potable project needs. Projected demand for potable water is 118,800 gpd, and 305,200 gpd for the non-potable needs, including fire flow. A reverse osmosis (“RO”) system will be utilized to treat brackish ground water to satisfy the potable water needs for the project. The saline byproduct from the reverse osmosis system will be deposited into an injection well to be placed in the south side of the Petition Area. The Kahului aquifer is not within a Water Management Area subject to water use permits by the Commission on Water Resource Management (“CWRM”). Impacts of the proposed RO system will be discussed in the drainage section, *supra*.

CWRM recommends coordination with the County of Maui to incorporate this project into the County’s Water Use and Development Plan. Petitioner should contact the County

Planning Department and/or the Department of Water Supply for more information. As a precautionary measure, CWRM encourages aggressive incorporation of water efficiency, conservation, and reclamation and reuse in proposed projects, including installation of dual lines for non-potable water supply, and incorporating stormwater best management practices (“BMPs”) and low impact development (“LID”) practices to reduce impermeable surfaces and increase recharge.¹ CWRM also recommends that alternate water sources should be used if possible. CWRM acknowledges that the Petitioner should obtain a Well Construction Permit and that a Pump Installation Permit is required before ground water is developed as a source of supply for the project.

Flora and Fauna. The Petitioner conducted surveys of the Petition Area. These surveys are included in Petitioner’s Exhibit 1, Appendix E, Flora Survey, Appendix F, Faunal Survey, Appendix F-1, Anthropod Survey, and Appendix F-2, Nene Goose Survey. Surveys for the endangered Blackburn’s sphinx moth were included in the Anthropod survey, dated July 23, 2012. The survey concluded that the endangered moth, host plants, and eggs or larvae were not discovered on site.

Appendix F-2 indicates that no Nene were found on site, and that this site would be unattractive to them for foraging. The United States Fish and Wildlife Service (“USFWS”) indicates that the Petitioner should contact their office for additional information on avoiding impacts to the Nene goose.

Other concerns expressed by the USFWS were that the proposed retention basins may attract endangered waterbirds to the site, and that barbed wire fencing may adversely impact the Hawaiian hoary bat. They recommend that barbed wire not be used for fencing. According to the FEA, seabirds such as the Hawaiian petrel and Newell’s shearwater may transit through the Petition Area; therefore all outdoor lighting will be shielded to minimize impacts to seabirds.

¹ See Office of Planning, Coastal Zone Management Program, *Hawai’i Watershed Guidance*, August 2010, *Low Impact Development: A Practitioner’s Guide*, June 2006, and *The Cumulative and Secondary Impact (CSI):Stormwater Impact Assessment Guidance* available at:
<http://files.hawaii.gov/dbedt/op/czm/initiative/nonpoint/HI%20Watershed%20Guidance%20Final.pdf>
<http://planning.hawaii.gov/czm/initiatives/low-impact-development/> and:
<http://planning.hawaii.gov/czm/initiatives/cumulative-secondary-impact-csi-stormwater-impact-assessment/>

OP recommends conditions to ensure the downshielding of exterior lighting to minimize impacts to avifauna, and that barbed wire not be used on the Petition Area. The Petitioner should work with the USFWS to avoid impacts to the Nene goose and to listed waterbirds in the area.

Archaeological, Historic, and Cultural Resources. The Petitioner conducted a Cultural Impact Assessment that indicates that no specific ongoing traditional cultural practices were taking place on the Petition Area. The Petitioner also conducted an Archaeological Inventory Survey (“AIS”), FEA Appendix I in 2011. In addition, there was a previous AIS completed in 1999, which identified two sites. The 2011 AIS identified 15 additional sites which are associated with both of the sites originally discovered in the 1999 AIS. These sites are significant under Criterion D for their information content. Further, State Site no. 50-50-09-4164 is significant under Criterion A, yielding important information to the history of the island of Maui. The AIS recommended that no further work or mitigation measures are necessary.

A letter dated June 18, 2012 (FEA Appendix I-1), from the Department of Land and Natural Resources, State Historic Preservation Division (“SHPD”) indicates that they concur with the results of the AIS, and also recommends archaeological monitoring should an alternate access road alignment be planned, since the alternate roadway alignment was only subject to a pedestrian survey.

Appendix J of the FEA is the Archaeological Monitoring Plan that was approved by the SHPD, by letter dated August 24, 2012 (FEA Appendix J-1).

OP recommends a condition to ensure that appropriate mitigation measures are undertaken if any cultural, historic, or archaeological findings occur during construction-related activities. OP also recommends a condition for archaeological monitoring if the Petitioner constructs the alternate roadway alignment.

Natural Resources Relevant to Hawaii’s Economy

Agricultural lands. According to the State Department of Agriculture, the project will not adversely affect the existing agricultural activities or agricultural resources of the area. The Land Study Bureau rates the productivity of the lands on the Petition Area as ‘E’, and under the Agricultural Lands of Importance to the State of Hawaii (“ALISH”) system, the soils are unclassified.

OP recommends a condition related to HRS Chapter 165, Hawaii Right to Farm Act.

Sustainability, energy and resources. Act 181, Session Laws of Hawaii, 2011, established priority guidelines for sustainability in the Hawaii State Plan. Furthermore, the State of Hawaii's Clean Energy Initiative has adopted a goal of using efficient and renewable energy resources to meet 70 percent of Hawaii's energy demand by 2030, with 30 percent from efficiency measures and 40 percent from locally-generated renewable sources.

A sustainability plan was not provided in the Petition. The Petitioner indicates that lot owners will be encouraged to implement sustainability measures and practices during lot development and onsite operations. The proposed project will support small business and entrepreneurship during and after construction by creating new jobs.

OP recommends conditions be imposed related to energy and water conservation.

Commitment of State Funds and Resources

Transportation. The Petitioner included a Traffic Impact Analysis Report ("TIAR"), FEA Appendix Q. Access to the Petition Area will be from Mokulele Highway intersection with Kamaaina Road and Mehamaha Loop, about 1.4 miles northwest of the Petition Area. Within the TIAR, several mitigation measures were proposed, which include modifying Mokulele Highway.

A letter from the State Department of Transportation dated June 7, 2013, indicates that the TIAR should be revised, and that all recommended transportation improvements required to mitigate local and direct project generated impacts should be implemented, including the dedication of roadway right-of-ways on Mokulele Highway. Lastly, a fair share contribution for the cost of regional improvements related to and proportional to the reasonably foreseeable impacts of the project should be considered.

OP recommends conditions to mitigate traffic impacts of the proposed project.

Water Quality. The Petitioner is expected to ensure that best management practices and pollution prevention measures are used by establishments and users in the Project to prevent potential contaminants from infiltrating into soils and groundwater sources, as well as from being discharged to surface waters. CWRM also notes that there may be potential for ground or surface water degradation based on the proposed use of the Petition Area.

In a memorandum dated August 13, 2013, the State Department of Health ("DOH") recommends various conditions relating to injection wells, drainage catch basins, and pollution

prevention plans during the construction of the proposed project and for the operation of the Petition Area as a heavy industrial subdivision (OP Exhibit 8). This memorandum was in response to an OP request for DOH comments on proposed conditions (OP Exhibit 7)

OP recommends conditions requiring Petitioner to incorporate water conservation measures in the development of the Project. OP also recommends conditions relating to injection wells, debris catch basins, and the development of Pollution Prevention Plans that incorporate Best Management Practices for the operations of the heavy industrial lots.

Drainage. The Petition indicates that Covenants, Conditions and Restrictions (“CC&Rs”) will be required of all lot owners to prepare Best Management Practices and emergency response plans specific to their proposed heavy industrial use. Some proposed measures could be 1) to inspect the drainage system annually and after major storms; 2) prevent grass cuttings from entering the drainage systems; and 3) clean all parking areas as often as possible.

According to Appendix P of the FEA, Preliminary Engineering Report, the Petition Area is relatively level, with a slight slope from east to west. Currently, runoff from the Petition Area sheetflows towards the west side and Mokulele Highway. The current 50-year storm runoff from the project site is 75.2 cubic feet per second (“cfs”) and 135,400 cubic feet (“cf”) of runoff volume. Each individual lot will be required to install an onsite drainage system to collect runoff from the site and provide a drainline connection to the drain stubout to the master drainage system. The master drainage system within the roadways will include catch basins, manholes, drainlines, and a drain stubout to the individual lots. Retention basins constructed along the western side of the Petition Area will then capture the runoff within the roadways. The runoff after the development is constructed is projected to increase to about 325.5 cfs and generate 413,900 cf of surface runoff volume. The proposed project will be constructed in accordance with the County of Maui’s rules for storm drainage facilities.

Appendix O of the FEA, Groundwater Resource and Water System Assessment, also indicates that there will be some impacts to the 4.0 mdg of groundwater flowing directly beneath the Petition Area. This groundwater currently flows downgradient to the existing three wells in the Kealia National Wildlife Refuge. These wells are pumped seasonally to maintain the ponds and wetlands area. The post-project changes listed on page 14 of this report are 1) 5.7%

decrease in flowrate; 2) 3.6% increase in salinity; 3) 1.3% increase in nitrogen; and, 4) 7.1% increase in phosphorus.

DOH has recommended conditions to mitigate impacts from the Petition Area's proposed injection wells and drainage system (OP Exhibit 8). OP also has concerns regarding impacts to Maalaea Beach and other downstream properties, such as the KPNWR.

OP recommends conditions be imposed to mitigate impacts from storm water consistent with DOH recommendations.

Civil Defense. This location does not have an outdoor warning system. State Civil Defense recommends that one omni-directional 121 db solar powered siren be installed for coverage of the proposed project and will advise the developer on placement of the siren.

OP recommends a condition to address the provision of a siren system.

Other Issues of Concern

Wastewater. The Petition Area does not have connection to the County wastewater system. Individual lot owners will install aerobic-type individual wastewater systems with a leach field for each lot. Provisions for the installation and maintenance of each wastewater system will be included in the CC&Rs.

Provision for Employment Opportunities and Economic Development. The proposed project will increase employment opportunities. There is a projected direct increase of 32 jobs a year on Maui and an indirect increase of 33 jobs a year during the infrastructure development. Also, a demand for 17 jobs off-island will be created during the initial infrastructure development. During individual lot construction, an increase of 70 direct and 72 indirect jobs will be created on Maui. The increase in off-island indirect employment is projected to be 38 jobs a year.

SUMMARY OF CONFORMITY WITH APPLICABLE DISTRICT STANDARDS, STATE PLANNING STATUTES, COUNTY PLANS, AND OTHER DECISION-MAKING CRITERIA

The following summarizes OP's assessment of the Petition's conformity with applicable district standards, planning statutes, plans and other criteria the Commission must consider in decision-making for a district boundary amendment petition.

Conformance with State Urban District Standards.

The Petition meets the standards for determining State Urban District Boundaries as set forth in HAR § 15-15-18. Currently, the Petition Area is vacant and undeveloped, situated adjacent to agricultural uses, such as sugar cane fields and a quarry. The Petition Area has historically been in various urban uses with the Puunene Naval Air Station, and a plantation camp. The surrounding areas are agricultural on the north and east sides, with recreational and public uses (National Guard armory) on the south side. The State Department of Land and Natural Resources and the Department of Hawaiian Home Lands plan to develop some of these surrounding lands with a mixture of business and public uses.

Conformance with the Hawaii State Plan, Priority Guidelines, and the State Functional Plans

With appropriate mitigation, the proposed reclassification is generally consistent with one or more objectives, policies, and priority guidelines of HRS Chapter 226, the Hawaii State Plan. In particular, the proposal supports a steadily growing and diversified economic base. The reclassification will complement the Administration's priorities in its New Day Comprehensive Plan by supporting the economy, jobs, and small businesses.

Conformance with the Coastal Zone Management Objectives and Policies

The Petition generally conforms to the Coastal Zone Management objectives and policies set forth in HRS §205A-2. The Petition Area is not located within the County's Special Management Area.

Areas of State Concern

With respect to areas of State concern, the Project contributes favorably to the creation of jobs and business opportunities. With appropriate mitigation, Petitioner can minimize impacts on the commitment of State funds and resources with respect to State transportation infrastructure. The Petition Area does not meet the criteria for important agricultural lands as specified in HRS § 205-42.

County Plans

The recently approved Maui Island Plan designates the Petition Area and some of the surrounding State lands within the Urban Growth Boundary. This proposal is consistent with the County of Maui's plans for the Kihei-Makena area, and generally meets the standards for determining State Urban District boundaries as set forth in HAR §15-15-18.

Petitioner Representations and Commitments; Petitioner's Financial Capability

In general the Petitioner has represented that the project impacts will be mitigated as requested by impacted State and County agencies. The Petition identifies and discusses a number of mitigation measures to be taken to minimize adverse impacts of the project. Additionally, Petitioner will be held accountable for compliance with the representation made in all submittals provided on behalf of the Docket. Petitioner has submitted its financial capability and indicates that pre-development financing for infrastructure improvements will be through a variety of sources, including private investment sources, which may include financing from GBI Holding Co. and other banking institutions.

Public Trust Resources

HRS § 205-4 and § 225M-2(b)(5) authorizes OP to develop and present the position of the State in all boundary change petitions and proceedings before the Commission. We note that the Hawaii Intermediate Court of Appeals recently decided *Kauai Springs v. Planning Commission of the County of Kauai*, dated April 30, 2013, which required that decision-makers specifically consider the applicant's use of public trust resources pursuant to Article XI, section 1 of the Hawaii Constitution. Although the appellate process was not yet concluded at the time this testimony was submitted, OP has made "appropriate assessments" and "require(d) reasonable measures" to protect public trust resources. This public trust evaluation has been integrated into the analysis and recommendations provided herein.

RECOMMENDATION

Based on the foregoing information and analysis, OP recommends the approval of the Petition subject to Petitioner's commitments to avoid, minimize, or mitigate project impacts as represented herein and in this proceeding, and the imposition of the following conditions of approval in addition to the standard conditions of the Commission.

1. **Highway and Road Improvements.** The Petitioner shall abide by, complete and/or submit the following:
 - a. The Traffic Impact Analysis Report (“TIAR”) shall be revised and resubmitted to the State Department of Transportation (“DOT”) for review and acceptance prior to submitting a subdivision application to the County of Maui.
 - b. Petitioner shall fund and provide for the planning, design and construction of all recommended transportation improvements required to mitigate local and direct project generated and/or related transportation impacts, in accordance with the Revised TIAR and required updates to the TIAR, as accepted by DOT, at no cost to the State. Petitioner shall also dedicate land to accommodate auxiliary lanes on Mokulele Highway, as required.
 - c. Petitioner shall provide its fair share contribution toward the cost of regional transportation improvements to State highways, as determined by Petitioner and DOT. Regional improvements may also include the reservation and contribution of land for such improvements.
 - d. Petitioner shall provide and complete all transportation improvements, as recommended in the accepted Revised TIAR, prior to receiving Final Subdivision Approval from the County of Maui.
2. **Energy Conservation.** Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development.
3. **Water Conservation.** Petitioner shall implement water conservation measures including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping.
4. **Pollution Prevention Best Management Practices.** Petitioner shall prepare and implement a pollution prevention plan that incorporates Best Management Practices (“BMPs”) for use during construction and development and during the operational phase of the Project. BMPs shall be implemented during construction to control fugitive dust,

minimize infiltration and runoff from construction and vehicle operations, and reduce or eliminate soil erosion and groundwater and surface water pollution in accordance with Department of Health (“DOH”) rules and guidelines and County of Maui rules and ordinances. BMPs for the operational phase of the Project shall be directed at preventing all pollutants that may be associated with a specified industrial use from being released into the environment, including structural BMPs such as oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination. The pollution prevention plan shall include but not be limited to:

- a. Cleaning, repair, and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquids. Water drainage from these concrete floors shall, if necessary, pass through a separator sump before being discharged. The separated fluids shall be handled and disposed of in compliance with applicable Department of Health requirements for disposal of such materials. This material must be tested to determine whether it qualifies as hazardous waste and if determined to be hazardous waste, must be disposed of in compliance with hazardous waste rules.
- b. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain.
- c. All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial spill onto the bare ground.

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

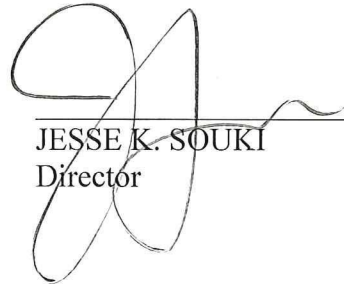
5. **Potable Water and Injection Wells.** Any injection well that would dispose of desalinization wastewater or other types of wastewater such as industrial process wastewater, sewage, or rainfall runoff, shall comply with Hawaii Administrative Rules Chapter 11-23, entitled Underground Injection Control, and shall demonstrate that the injections shall not adversely affect downgradient streams, Kealia Pond National Wildlife Refuge, and coastal waters.
6. **Debris Catch Basin.** All drainage injection wells or subsurface drainage structures shall be designed with a debris catch basin to allow the detention, before flowing into the drainage well, of rubbish and sediments that are often carried and deposited by runoff. The debris catch basin shall be periodically inspected and cleaned. An environmental precautionary sign shall be installed at, or painted on the ground next to, each drainage injection well that reads: “DUMP NO WASTE, GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII’S ENVIRONMENT.”
7. **Stormwater Management and Drainage.** Petitioner shall fund the design and construction and cause to be maintained stormwater and drainage system improvements for the Petition Area, and incorporate in the design and construction of backbone infrastructure low impact development features for stormwater capture and reuse, to the extent practicable and allowed by the County of Maui, to prevent runoff from adversely affecting downstream properties and facilities and receiving streams, Kealia Pond National Wildlife Refuge, and coastal waters, consistent with Federal, State, and County laws, rules, and ordinances. Petitioner shall include in the CC&Rs for the Project the requirement that low impact development features be incorporated in individual site design and development, to the extent practicable and allowed by the County of Maui.

8. **Civil Defense.** Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location identified by the State Civil Defense agency.
9. **Provisions of the Hawaii Right to Farm Act.** Petitioner shall notify all prospective buyers of the Petition Area that the Hawaii Right to Farm Act, HRS Chapter 165, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any lands in the Agricultural District adjacent to the Petition Area.
10. **Flora and Fauna.** Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.
11. **Hawaiian Hoary Bats.** Petitioner shall include a provision in the CC&Rs prohibiting the construction of barbed wire fences within the Petition Area.
12. **Archaeological and Historic Preservation.** Petitioner shall comply with mitigation measures recommended by the State Historic Preservation Division (“SHPD”). Archaeological monitoring shall be conducted should an alternative access road alignment be pursued.
13. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.
14. **Infrastructure Deadline.** The Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of this Decision and Order approving the Petition.

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

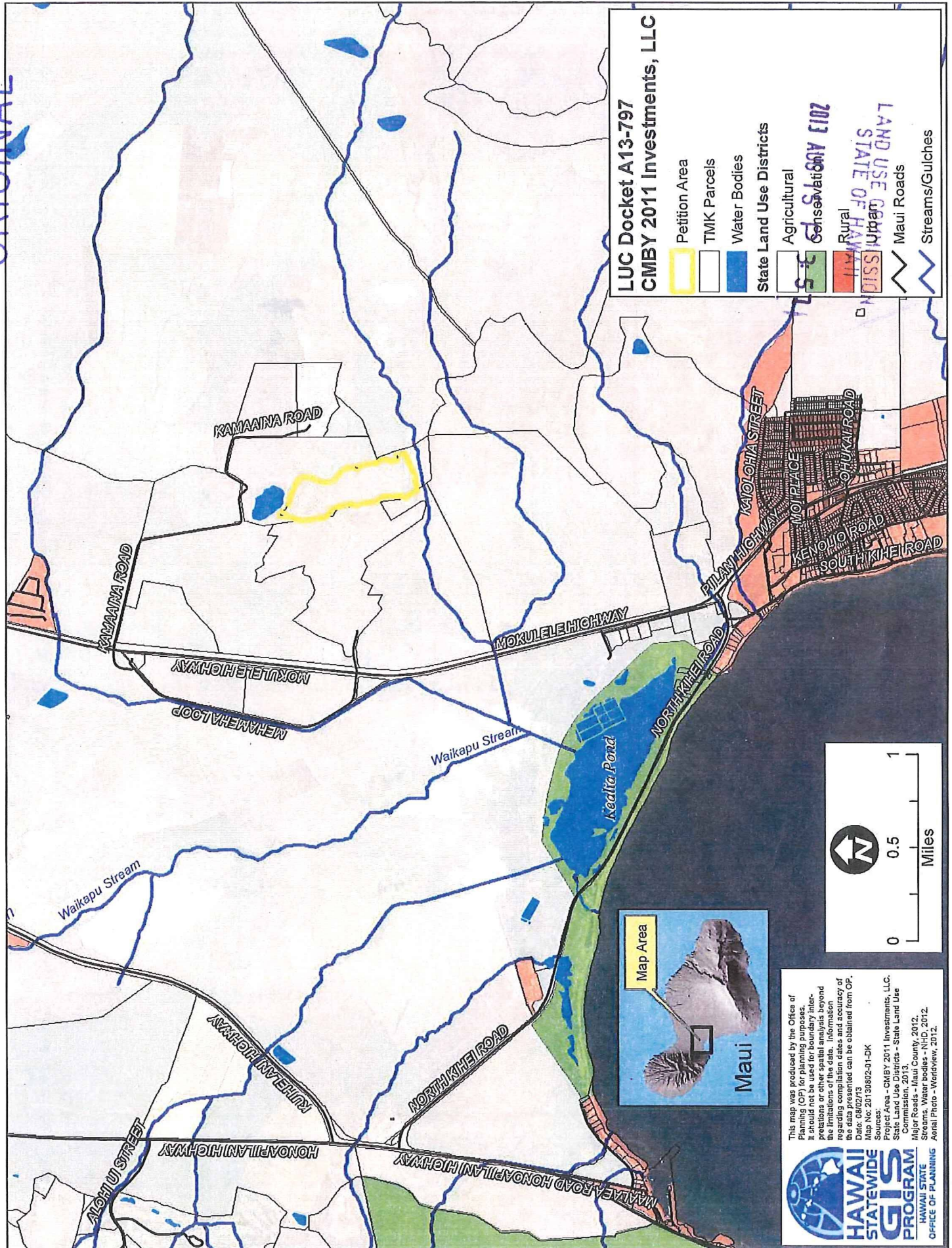
DATED: Honolulu, Hawaii, this 15th day of August 2013.

OFFICE OF PLANNING
STATE OF HAWAII



JESSE K. SOUKI
Director

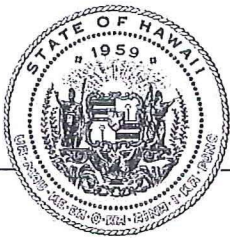
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This map was produced by the Office of Planning (OP) for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding completion dates and accuracy of the data presented can be obtained from OP.

Sources:
 Map No. 20130802-01-DK
 Project Area - CMBY 2011 Investments, LLC
 State Land Use Districts - State Land Use Commission, 2013.
 Major Roads - Maui County, 2012.
 Streams, Water Bodies - NHD, 2012.
 Aerial Photo - Worldview, 2012.

HAWAII STATEWIDE GIS PROGRAM
 HAWAII STATE OFFICE OF PLANNING



OFFICE OF PLANNING
STATE OF HAWAII

ORIGINAL

NEIL ABERCROMBIE
GOVERNOR

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Ref. No. P-14075

August 6, 2013

To: Gary Gill, Deputy Director
Environmental Health Administration
Department of Health

From: *Jesse K. Souki* Jesse K. Souki, Director *Roddy Lila*

Subject: **Petition for Amendment of the State Land Use District Boundaries:
Land Use Commission Docket No. A13-797, CMBY 2011 INVESTMENTS,
LLC**

Requested Change: State Agricultural to State Urban District,
approx. 86.030 acres

Proposed Use: Puunene Heavy Industrial Subdivision

Location: Wailuku, Maui, Hawaii

Tax Map Key No.: (2) 3-8-008: 019

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LAND USE COMMISSION
STATE OF HAWAII

As a follow-up to staff discussions with Laura McIntyre and Ed Bohlen regarding the subject petition, this is to request your consideration of a proposed condition to mitigate potential impacts on water resources.

Approval from the Land Use Commission (LUC) to reclassify the Petition area is required prior to rezoning and subdivision. On September 5-6, 2013, the LUC will be holding a public hearing on this petition. The Office of Planning (OP) is required to present testimony and make recommendations on this Petition by August 15, 2013.

Project Summary

The Petitioner proposes to develop the approximately 86-acre area with 28 lots, drainage areas and internal roadways. The Puunene Heavy Industrial Subdivision is proposed to be located approximately 1 mile southeast of the intersection of Mokulele Highway, Mehameha Loop, and Kamaaina Road. According to the Petition, the proposed heavy industrial subdivision will be situated adjacent to a reservoir located north in which waterbird species have been observed. The project area is about 1.75 miles away from the Kealia Pond National Wildlife Refuge. (See attached map.) According to the Final Environmental Assessment (FEA), stormwater runoff will be directed to the west side of the property within a series of retention basins. Also, according to the fauna study, no endangered waterbirds were found on the project site, however, its proximity to the Kealia Pond refuge and the adjacent reservoir suggests that

water birds might fly over and/or otherwise utilize this area while traveling within and among the water bodies within the entire region.

Mitigation is needed to address reasonably foreseeable water quality impacts to Maalaea Beach and other downstream properties, such as the Kealia Pond National Wildlife Refuge. As discussed with Department of Health staff, the following is our proposed condition for your consideration and approval. This condition is consistent with conditions for similar impacts addressed in previous LUC decision and orders.

Proposed Condition

- #. **Pollution Prevention Best Management Practices.** Petitioner shall prepare and implement a pollution prevention plan that incorporates Best Management Practices (“BMPs”) for the operational phase of the Project, and shall be directed at preventing all pollutants that may be associated with a specified industrial use from being released into the environment, including structural BMPs such as oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination. The pollution prevention plan shall include but not be limited to:
- a. Cleaning, repair, and maintenance of equipment involving the use of industrial liquid such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquids. Water drainage from these concrete floors shall, if necessary, pass through a separator sump before being discharged.
 - b. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain.
 - c. All employees shall be informed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be aware to prevent any industrial spill onto the bare ground.
 - d. For parking areas, BMPs emphasizing pollution prevention shall be established. Large vehicles such as trucks and construction equipment shall utilize drip pans to avoid release of petroleum onto paved surfaces. Areas

Gary Gill
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used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup of oil or other automotive fluids. Maintenance work other than emergency work on vehicles should be prohibited in parking areas.

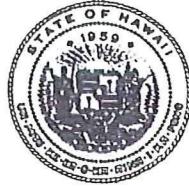
Our OP testimony which includes proposed conditions of approval is required to be submitted to the LUC by August 15, 2013. As such, we would appreciate a response no later than Tuesday, **August 13, 2013, 11:51 am**. Thank you for your consideration of our request. If you have any questions, please contact Lorene Maki of our Land Use Division at 587-2888, or lmaki@dbedt.hawaii.gov.

Attachment

c: Laura McIntyre, Department of Health
Bryan C. Yee, Department of the Attorney General

ORIGINAL

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

August 13, 2013

In reply, please refer to:
File: SDWB
Souki01.docx
2013 AUG 15 P 3: 51
LAND USE COMMISSION
STATE OF HAWAII

Jesse K. Souki, Director
Office of State Planning
State Office Tower
235 S. Beretania St., Room 600
Honolulu, Hawaii 96813

Dear Mr. Souki:

SUBJECT: PETITION FOR AMENDMENT OF THE STATE LAND USE DISTRICT BOUNDARIES: LAND USE COMMISSION DOCKET NO. A13-797, CMBY 2011 INVESTMENTS, LLC

*Requested Change: State Agricultural to State Urban District
Approx. 86.030 acres
Proposed Use: Puunene Heavy Industrial Subdivision
Location: Wailuku, Maui, Hawaii
Tax Map Key No.: (2) 3-8-008:019*

The Department of Health (DOH) agrees generally with the "Pollution Prevention Best Management Practices" condition you proposed in your memorandum of August 6, 2013, to mitigate potential impacts on resources from the heavy industrial subdivision. The DOH recommends the following additions to the "Pollution Prevention Best Management Practices" condition:

1. Please revise the condition to apply during construction and development as well as during operations. The first paragraph of the proposed condition (with proposed additions underlined) would read:

#. Pollution Prevention Best Management Practices. Petitioner shall prepare and implement a pollution prevention plan that incorporates Best Management Practices ("BMPs") for use during construction and development and during the operational phase of the Project. BMPs shall be implemented during construction to control fugitive dust, minimize infiltration and runoff from construction and vehicle operations, and reduce or eliminate soil erosion and groundwater and surface water pollution in accordance with Department of Health ("DOH") rules and guidelines and County of Maui rules and ordinances. BMPs for the operational phase of the Project shall be directed at preventing all pollutants that may be

associated with a specified industrial use from being released into the environment, including structural BMPs such as oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination. The pollution prevention plan shall include but not be limited to:

2. At the end of paragraph "a" of the proposed condition, please add the following sentences: "The separated fluids shall be handled and disposed of in compliance with applicable Department of Health requirements for disposal of such materials. This material must be tested to determine whether it qualifies as hazardous waste and if determined to be hazardous waste, must be disposed of in compliance with hazardous waste rules."
3. Groundwater needs to be protected from contaminants and debris entering through drainage injection wells (sometimes called drywells). Please add the following condition: "All drainage injection wells or subsurface drainage structures shall be designed with a debris catch basin to allow the detention, before flowing into the drainage well, of rubbish and sediments that are often carried and deposited by runoff. The debris catch basin shall be periodically inspected and cleaned. An environmental precautionary sign shall be installed at, or painted on the ground next to, each drainage injection well that reads: 'DUMP NO WASTE. GOES TO GROUNDWATER AND OCEAN. HELP PROTECT HAWAII'S ENVIRONMENT.'"
4. The Project Summary that was provided indicated that a brackish water source with a reverse osmosis treatment system would be used to meet the subdivision's potable water needs. This would necessitate compliance with state and federal safe drinking water regulations, including for underground injection wells. Please add the following condition: Any injection well or drywell that would dispose of desalination wastewater or other types of wastewater such as industrial process wastewater, sewage, or rainfall runoff, shall comply with Hawaii Administrative Rules (HAR), Title 11, Chapter 23, titled Underground Injection Control, and shall demonstrate that the injections shall not adversely affect downgradient streams, Kealia Pond National Wildlife Refuge, and coastal waters. "
5. Please add the following condition: Stormwater Management and Drainage. Petitioner shall fund the design and construction and cause to be maintained stormwater and drainage system improvements for the Petition Area, and incorporate in the design and construction of backbone infrastructure low impact development features for stormwater capture and reuse, to the extent practicable and allowed by the County of Maui, to prevent runoff from adversely affecting downstream properties and facilities and receiving streams, Kealia Pond National Wildlife Refuge, and coastal waters, consistent with federal, State, and County laws, rules, and ordinances. Petitioner shall include in the CCRs for the Project the requirement that low impact development features be incorporated in individual

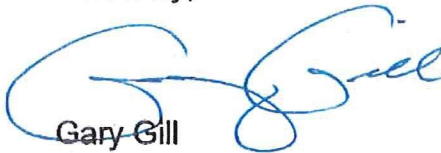
Jesse K. Souki, Director
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site design and development, to the extent practicable and allowed by the County of Maui.

I hope these comments meet your needs. Should you have any questions, please contact the following individuals on the following aspects:

Stormwater management and drainage, Clean Water Branch, Alec Wong, 586-4309
Safe Drinking Water Branch, Joanna Seto, 586-4258
Underground Injection Control, Norris Uehara, 586-4275
Solid and Hazardous Waste Branch, Steve Chang 586-4226
Fugitive dust, Clean Air Branch, Nolan Hirai, 586-4359.

Sincerely,



Gary Gill
Deputy Director for Environmental Health
Department of Health

cc: Stuart Yamada, Environmental Management Division
Laura McIntyre, Environmental Planning Office
Alec Wong, Clean Water Branch
Joanna Seto, Safe Drinking Water Branch
Steven Chang, Solid and Hazardous Waste Branch
Nolan Hirai, Clean Air Branch

Docket No. A13-797

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

STEVEN S.C. LIM
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Honolulu, Hawaii 96713

WILLIAM SPENCE
Director, Planning Department
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PATRICK K. WONG, ESQ. COUNTY CORPORATION COUNSEL
Corporation Counsel
Department of the Corporation Counsel
County of Maui
200 High Street
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 15th day of August, 2013.



JESSE K. SOUKI
Director
Office of Planning