

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Amended Petition of:

PUKALANI ASSOCIATES, LLC, a Hawaii  
limited liability company

To Amend the Agricultural Land Use District  
Boundaries Approximately 87.702 acres of  
land at Kula, Makawao, Maui, Hawaii, Maui  
Tax Map Key Nos. 2-3-09: 07 and 64.

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) DOCKET NO. A05-760

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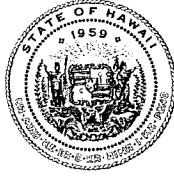
FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT  
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE  
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

JUN 29 2009

BY

Executive Officer



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FINDINGS OF FACT, CONCLUSIONS OF LAW  
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Maui Land & Pineapple Company, Inc., a Hawaii corporation (“MLP”), filed a petition for land use district boundary amendment on May 13, 2005, pursuant to Chapter 205, Hawaii Revised Statutes (“HRS”), and Chapter 15-15, Hawaii Administrative Rules (“HAR”), to amend the State Land Use District boundary to reclassify approximately 87.702 acres of land at Kula, Makawao, Maui, Hawaii , identified as Maui Tax Map Key No. 2-3-09:07 and 64 (collectively the “Petition Area”), from the State Land Use Agricultural District to the State Land Use Urban District for the master-planned Kauhale Lani residential subdivision (the “Project”). Pukalani Associates , LLC, a Hawaii limited liability company ("Petitioner"), as successor in interest to MLP, filed an amended petition on April 25, 2007.

The Land Use Commission of the State of Hawaii (the “Commission”), having heard and examined the testimony, evidence and arguments of counsel presented during the hearings and the stipulated proposed findings of fact, conclusions of law and decision and order

filed by Petitioner, the Maui County Planning Department (“County”) and the Office of Planning of the State of Hawaii (“OP”), and the objections and responses thereto, hereby makes the following findings of fact, conclusions of law and decision and order:

## FINDINGS OF FACT

### PROCEDURAL MATTERS

1. On May 13, 2005, Maui Land & Pineapple Company, Inc., filed a petition for Land Use District Boundary Amendment (the “Petition”) in this Docket. On April 25, 2007, Petitioner, successor in interest for MLP, filed an amended Petition.

2. On September 18, 2008, the Commission found, based on Petitioner’s Final Environmental Assessment, that development of the Petition Area would not have a significant effect on the environment.

3. By letter dated September 24, 2008, the Executive Officer of the Commission (“Executive Officer”) deemed the Petition a proper filing as of September 18, 2008.

4. On January 6, 2009, a pre-hearing conference was held, which was attended by all parties. No pre-hearing order was issued.

5. On January 22 and 23 and February 19, 2009, the Commission conducted hearings on the Petition pursuant to a public notice published on November 20, 2008, in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, The Maui News and Kauai Publishing Company dba The Garden Island.

6. Darlene Valencia, James Sato and David Valencia, testified as public witnesses on January 22, 2009, and James Sato, Gretchen Ladley and Steven Duarte testified as public witnesses on February 19, 2009.

7. On June 4, 2009, at its meeting at Makena Maui, Hawaii, the Commission acted to adopt findings of fact, conclusions of law and decision and order.

## DESCRIPTION OF PROPERTY

8. The Petition Area is located at Kula, Makawao, Hawaii and consists of two separate parcels of land bisected by Old Haleakala Highway. The larger parcel, identified as Maui Tax Map Key No. 2-3-09:07, containing an area of approximately 49.074 acres, is located on the western side of Old Haleakala Highway. This parcel, on which the residential subdivision will be developed, is referred to as "Parcel 7." The other parcel, identified as Maui Tax Map Key No. 2-3-09:64, located between Old Haleakala Highway and Haleakala Highway, consists of approximately 38.628 acres. This parcel is referred to as "Parcel 64."

9. Petitioner is the owner in fee simple of the Petition Area. On June 30, 2005, Petitioner and Bennett Capital, LLC, a California limited liability company, purchased the Petition Area from Maui Land & Pineapple Company, Inc. By deed dated February 7, 2007, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2007-030035, Bennett Capital, LLC quitclaimed its interest in the Petition Area to Petitioner.

10. Parcel 7 is adjacent to the Pukalani Terrace Subdivision. Parcel 7 is bordered by Haleakala Highway and Haleakala Road along its eastern boundary, A`eloia Road along its southern boundary and Alexander & Baldwin, Inc.'s Hamakua Ditch along its western and northern boundaries. Parcel 7 is generally sloping with elevations ranging between 1,088 feet mean sea level ("MSL") to approximately 1,186 feet MSL.

11. Parcel 64 is an "L" shaped parcel bounded by Haleakala Road along its western boundary, Haleakala Highway along its northern and eastern boundaries and Makani Road and other properties along its southern and western boundaries. Parcel 64 is a remnant parcel created by the construction of Haleakala Highway in the 1990s. Parcel 64 has a varying slope ranging between 1,110 feet MSL to 1,140 feet MSL.

12. The climate of the Petition Area is generally mild. Temperatures in the Pukalani area are generally moderate with an average daily range of approximately 60° to 75° Fahrenheit. Average annual rainfall in the Pukalani area is approximately 43 inches per year, with the summer months being the driest. Prevailing winds are northeast trade winds.

13. The U.S. Department of Agriculture Natural Resources Conservation Service classifies the soils of the Petition Area as the following types: Hali'imaile Silty Clays (HhB and HhC), Rough Broken Land (rRR), Hali'imaile Gravely Silty Clay (HkC2), Hali'imaile Silty Clay Loam (HgB and HgC), and Kahua Silty Clay Loam (KmC) (Pet. Ex. No. 13). The U.S.D.A. Natural Resources Conservation Service's Land Capability Grouping rates the above soil types according to eight levels, ranging from the highest classification level I, to the lowest level VIII. A description of each soil type follows:

a. The Hali'imaile Silty Clay (HhB), 3-7% slopes Series, consists of soils whose permeability is moderately rapid, runoff is slow, and erosion hazard is slight. This soil has subangular blocky and angular blocky structure. The soil is strongly acid in the surface layer and strongly acid to medium acid in the subsoil. This soil is used for sugarcane, pineapple and home sites.

Approximately 22.8 acres (25%) of the Petition Area contains HhB soils rated IIe, irrigated or nonirrigated. Class II soils have moderate limitations that reduce the choice of plants or that require moderate conservation practices. Subclass IIe soils are subject to moderate erosion if they are cultivated and not protected.

b. The Hali'imaile Silty Clay (HhC) 7-15% slopes Series, consists of soils whose runoff is medium and erosion hazard is moderate. This soil includes cobbly areas and small, moderately steep areas. This soil is used for sugarcane, pineapple and home sites.

Approximately 34 acres (39%) of the Petition Area contains HhC soils rated IIIe, irrigated or nonirrigated. Subclass IIIe soils have severe limitations that reduce the choice of plants, require special conservation practices, or both. They are subject to severe erosion if they are cultivated and not protected.

c. The Rough Broken Land (rRR) Series consists of very steep land broken by numerous intermittent drainage channels. Runoff is rapid, and geologic erosion is active. This soil type is used primarily for watershed and wildlife habitat. In places it is used also for pasture and woodland.

Approximately 3.2 acres (3.5%) of the Petition Area contains rRR soils, rated VIIe, nonirrigated. Subclass VIIe soils are very severely limited by risk of erosion

d. The Hali'imaile Gravely Silty Clay (HkC2) 7-15% Series, eroded has a similar profile to Hali'imaile Silty Clay, 3 to 7% Series slopes, except that in most places about 50% of the original surface layer has been lost through erosion. Runoff is medium to rapid, and the erosion hazard is severe. This soil is used for pineapple, pasture, and home sites.

Approximately 15.6 acres (17.5%) of the Petition Area contains HkC2 soils. HkC2 soils are rated as IVe, irrigated or nonirrigated. Subclass IVe soils are subject to severe erosion if they are cultivated and not protected.

e. The Hali'imaile Silty Clay Loam (HgB) 3-7% Series slopes has a similar profile to Hali'imaile Silty Clay 3 to 7% Series slopes, except for the texture of the surface layer. Runoff is medium, and the erosion hazard is moderate. This soil is used for pineapple, pasture and home sites.

Approximately 0.8 acres (1%) of the Petition Area contains HgB soils rated IIIe, irrigated or nonirrigated. Subclass IIe soils are subject to moderate erosion if they are cultivated and not protected.

f. The Hali‘imaile Silty Clay Loam (HgC) 7-15% slopes Series, has a similar profile to Hali‘imaile Silty Clay 3 to 7% slopes, except for the texture of the surface layer. Runoff is medium, and the erosion hazard is moderate. This soil is used for pineapple, pasture and home sites.

Approximately 9.6 acres (11%) of the Petition Area contain HgC soils rated IIe, irrigated or nonirrigated. Subclass IIIe soils are subject to severe erosion if they are cultivated and not protected.

g. Keahua Silty Clay Loam (KmC) 7-15% slopes Series, consists of well-drained soils developed in material weathered from basic igneous rock. On this soil, runoff is slow to medium and the erosion hazard is slight to moderate. This soil is used for sugarcane and pasture. Small acreages are used for pineapple and truck crops.

Approximately 2.8 acres (3%) of the Petition Area contains KmC soils rated IIIe if irrigated, IVe if nonirrigated. Subclass IIIe soils are subject to severe erosion if they are cultivated and not protected.

14. The University of Hawaii Land Study Bureau's *Detailed Land Classification for the Island of Maui* classifies the lands of the Petition Area as ranging from “C” and “D” to “E” in productivity rating. Soils rated “A” represent the highest class of productivity, and soils rated “E” represent the lowest. The “C” and “D” rated soils are suitable for pineapple production with irrigation. The “E” rated soils of the Petition Area are primarily within gulches and are considered as having little or no suitability for soil based agricultural production. Approximately 21.6 acres of the soils of the Petition Area are rated “C21,” 49 acres are rated “D44” under irrigated conditions, and 18 acres are rated “E96”.

15. The State Department of Agriculture’s Agricultural Lands of Importance to the State of Hawaii (“ALISH”) classification system classifies approximately 30 acres of

Parcel 7 as “Prime Agricultural Land,” the remaining 20 acres of Parcel 7 and approximately 32.6 acres of Parcel 64 as “Other Agricultural Land,” and approximately 6 acres of Parcel 64 as “Unclassified Land.” According to the ALISH system, when treated and managed, including using water management and modern farming methods, prime agricultural land has the soil quality, growing season and moisture supply needed to produce sustained high yields of crops economically. Land other than prime or unique agricultural land may also be of statewide or local importance for the production of food, feed, fiber and forage crops. Lands classified as other agricultural land may be important to agriculture, but may exhibit properties such as seasonal wetness, erosion, slope, flooding or drought that exclude them from the prime or unique agricultural land classifications. Unclassified lands have no value for soil-based agriculture.

16. The U.S. Federal Emergency Management Agency’s flood insurance rate maps designate the entire Petition Area in Zone C, which indicates an area of minimal flooding.

#### PROPOSAL FOR RECLASSIFICATION

17. Petitioner proposes to develop the Petition Area as a single family residential subdivision. Petitioner proposes to construct approximately 170 finished single family lots on Parcel 7. Parcel 7 will also include an open space area/neighborhood park.

18. Parcel 64 will contain a combination of open space, pedestrian/ bicycle trails running the entire length of this parcel, a BMX bicycle park, and other community amenities. This parcel will also serve as a landscape buffer between Haleakala Highway and the Pukalani community.



19. Single family lots in the Project will range in area from 7,500 square feet, to approximately 12,000 square feet. Sales prices of lots in the Project are estimated to range from \$375,000 to \$425,000.

20. Petitioner proposes to address the housing needs of low income, low-moderate income, and gap groups in a manner consistent with the recently enacted Residential Workforce Housing Policy of the County of Maui, Chapter 2.96 Maui County Code. This ordinance requires Petitioner to provide 40% of the number of lots to be offered in the Project for sale or rent to residents of the County of Maui whose incomes range from below-moderate to gap group income (between 80% to 160% of median household income). The ordinance permits Petitioner to satisfy this requirement through concurrent development of a combination of on site or off site for sale or rental units or payment of an in lieu fee. Petitioner intends to satisfy this requirement either through participation in an affordable development in the Makawao-Pukalani-Kula Community Plan Area, or by payment of an in lieu fee to the County of Maui.

21. Petitioner will not permit lot buyers to build any ohana units in the Project through the imposition of restrictive covenants.

22. Petitioner intends to commence construction of the Project after all necessary permits and approvals have been issued. Permitting, development, sale and build-out of the Project is proposed to be substantially completed within a ten-year period. The permitting and entitlement processing, including preparation of subdivision plans, is expected to take approximately two to three years. Construction of infrastructure improvements will take approximately two years, with lot sales and home construction to occur over the balance of the ten year period. Petitioner anticipates receiving County of Maui permits in late 2010 – early 2011, and starting construction of infrastructure improvements in 2011. Once construction has

commenced, Petitioner intends to develop the Project in a single continuous phase, to be substantially completed within a ten year period.

#### PETITIONER'S FINANCIAL CAPABILITY TO UNDERTAKE

#### THE PROPOSED DEVELOPMENT

23. Costs to develop the Petition Area are preliminary and will be better defined during the detailed site engineering phase. The order of magnitude costs for the development of on-site infrastructure and final subdivision layout is approximately \$37.6 million in direct construction costs.

24. Residential construction costs are estimated to be at least \$102 million in direct construction costs. In total, costs for the Project are estimated to exceed \$139.6 million in direct construction costs.

25. Petitioner's balance sheet showed that Petitioner had approximately \$16.3 million in assets, approximately \$5 million in liabilities and members' equity of approximately \$11.3 million as of December 31, 2007. Petitioner intends to finance the Project using a combination of bank loans and equity. Petitioner's equity represents cash contributions of the members to purchase the Petition Area, and is available to secure debt financing for development of the Project.

26. Petitioner's members are experienced real estate developers who own over a dozen properties in Hawaii in addition to the Petition Area. Petitioner's members have the capacity to contribute additional equity and the banking relationships to secure the necessary financing to develop the Project, thus demonstrating the necessary economic ability to carry out the development proposed for the Petition Area.

#### STATE AND COUNTY LAND USE PLANS AND PROGRAMS

27. The Petition Area is currently designated in the State Land Use Agricultural District, as reflected on the Commission's official maps.

28. The Makawao-Pukalani-Kula Community Plan Land Use Map currently designates the Petition Area for single family residential use. The Petition Area is also within the Proposed Urban Growth Boundary for the Makawao-Pukalani-Kula Community Plan region, being developed as part of the General Plan and Community Plan Update Process.

29. The Petition Area is not within the County of Maui's special management area.

#### NEED FOR THE PROPOSED DEVELOPMENT

30. The Hallstrom Group, Inc. prepared a market study and economic impact analysis report and a public cost/benefit assessment of the Project. The market study and economic impact analysis report analyzed the Upcountry Maui (Pukalani-Makawao-Kula) housing sector. Thomas W. Holliday of The Hallstrom Group, Inc. predicted that the Upcountry Maui housing sector and will require some additional 3,738 to 6,581 new housing units for the period 2007 thru 2030. Approximately 45% of the unit demand during the next two decades will be at prices (or rental equivalents) of under \$450,000 in constant 2007 dollars, 25% of the demand will be for units priced between \$450,000 and \$650,000, 17% for homes ranging between \$650,000 to \$1,000,000, and 12% for homes priced above \$1,000,000.

31. Single family homes presently comprise over approximately 88% of the offered inventory in Upcountry Maui. Projections are for multi-family units to take an increasing share of sales, given land, subdivision and construction costs, reaching approximately 30% of total new product in Upcountry Maui by 2030. Development in the Upcountry area has been slower paced than in West Maui, Central Maui and South Maui. Nevertheless, all offered product has been easily absorbed.

32. Including the Project, there are presently proposals for approximately 2,808 potential additional units in proposed Upcountry Maui developments. Some of these projects have received all necessary government permits, but not all of these developments are likely to be built in the mid to near term. Even if all proposed developments were completed in the future, the maximum potential supply of units would be short of projected mid-point demand for single family units through the year 2030.

33. The current 2008-2009 recession has had a minimal impact on estimates of projected demand for the Project. Because Hawaii's real estate market has been cyclical and characterized by peaks and valleys, Mr. Holliday extended his projections over a longer time frame to minimize the effect of near-term cyclical fluctuations. Mr. Holliday also projected that by the time Petitioner is scheduled to commence sales of the Project in 2011-2012, the economy will have recovered and returned to the typical cyclical path.

#### SOCIO-ECONOMIC IMPACTS

34. Upcountry Maui is among the most desirable residential areas in Maui. The Project is intended to create opportunities for home ownership among upper and middle income families.

35. During the construction and sales period for the Project, the number of jobs created by construction and related activities is expected to range from 36 to 94 positions annually. On a stabilized basis following the construction and sales period, the Project will generate approximately 21 permanent full-time equivalent jobs and/or enhanced employment opportunities.

36. Development and construction of the Project is anticipated to generate approximately \$139.6 million in direct new capital investment and spending into the Maui economy over the ten year construction and sales period. On a stabilized basis after construction

Petitioner estimates that the Project will generate 21 permanent full time equivalent jobs, with an overall impact in wages of approximately \$0.7 million annually.

## IMPACT ON RESOURCES OF THE AREA

### Agricultural Resources

37. MLP formerly cultivated the Petition Area in pineapple. Construction of the Haleakala Bypass Highway in the mid-1990's separated the Petition Area from other contiguous MLP fields on the Haiku side of the Highway. The resulting configuration of Parcel 64 as a roadway remnant rendered it impossible to cultivate.

38. MLP ceased pineapple cultivation on Parcel 7 in 2002. Parcel 7 became inefficient and uneconomic to farm as a stand alone remnant parcel as access and transportation of farm equipment became difficult.

39. Withdrawing the Petition Area from cultivation has not adversely affected MLP's business operations, as MLP is focusing on cultivating fresh pineapple on its best fields in West Maui and Central Maui.

40. Reclassification of the Petition Area will reduce the availability of diversified agricultural land by approximately 87 acres. This small loss of agricultural land will not limit the growth of diversified agriculture on a state wide basis since an enormous supply of agricultural land is now available due to the major contraction of plantation agriculture. The Petition Area is lower in elevation and receives less solar radiation than land presently being farmed in Kula. The Petition Area would not support the same flower or vegetable crops cultivated in Kula.

41. The Petition Area does not satisfy HRS §205-44 criteria for designation as important agricultural lands as it is no longer in cultivation, has no water service and is not highly rated by the various soil productivity rating systems. Petitioner has no other land to set aside for agriculture.

## Flora and Fauna

42. Phil Bruner, environmental consultant, conducted an avi-faunal and feral mammal survey of the Petition Area. No native land birds, water birds, sea birds or migratory birds were observed on the Petition Area. No endangered Hawaiian Hoary Bats (*Herpestes auropunctatus*) were observed on the Petition Area. Only introduced feral cats were observed on the Petition Area. It is also likely that rats, mongoose and mice occur in the Petition Area.

43. Winona P. Char conducted a survey of flora on the Petition Area. Much of the Petition Area is an extensively disturbed area cultivated for a long period of time. Weedy species commonly associated with agricultural fields were observed. Plantings of eucalyptus species were observed on Parcel 64. Seven native plant species were observed scattered about the Petition Area.

44. Ms. Char detected no plant species classified as an endangered or threatened species by the U.S. Fish and Wildlife Service on the Petition Area, nor any plant species proposed as a candidate for listing as an endangered or threatened species on the Petition Area. Development of the Project is not expected to have an adverse impact on the botanical resources of the Petition Area.

## Archeological, Historical and Cultural Resources

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

In order to fulfill its duty to preserve and protect customary and traditional Native Hawaiian rights to the extent feasible, the LUC, in its review of a petition

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

46. Jeffrey Pantaleo of Archaeological Services of Hawaii, LLC, conducted an archaeological inventory survey of the Petition Area. No cultural or archaeological remains were encountered in either the surface survey of the Petition Area or subsurface trenches on the Petition Area. The State of Hawaii Department of Land and Natural Resources Historic Preservation Division concurred with Archaeological Services Hawaii, LLC’s conclusion that no further archeological inventory work is recommended. However, due to the presence of significant sites in gulch areas which are not on the Petition Area, but are in the vicinity, an archeological monitoring plan will be prepared for approval by the Historic Preservation Division prior to construction. No other preservation actions are required.

47. Charles Kauluwehi Maxwell, Sr. conducted a cultural impact assessment of the Petition Area. The cultural impact assessment concluded that development of the Project will have no adverse impact to any cultural resources on the Petition Area or in the Pukalani community.

48. Kama‘aina interviewed as a part of the cultural survey all stated that all of Parcel 7 and a useable portion of Parcel 64 have been in pineapple cultivation since the early twentieth century. No kama‘aina was aware of access over the Petition Area for gathering or other cultural purposes.

#### Water Resources

49. The water source for the Petition Area is a well drilled by MLP at the 1,800 foot elevation along Piihola Road above Makawao. MLP has constructed the well in

accordance with the design standards of the County of Maui Department of Water Supply and will dedicate the well to the County. Under MLP's agreement with the County (the "Water Agreement"), 45% of the daily pump capacity of this well is the net pump capacity. Of the net pump capacity, 75% will be allocated to serve projects initiated by MLP, including the Project, with the balance of net pump capacity being allocated to the County of Maui.

50. The Piiholo Well must generate a total pump capacity of at least one million gallons per day in order for the county to accept dedication. Further pump tests must be conducted in order to determine the total pump capacity and net pump capacity of the Piiholo Well. The County of Maui has no objection to the approval of a district boundary amendment prior to determination of the total pump capacity of the Piiholo Well. The Water Agreement provides a mechanism to resolve any disagreement with respect to total pump capacity of the Piiholo Well.

#### . Recreational Resources

51. Petitioner proposes to develop pedestrian/bicycle trails running the entire length of Parcel 64 and a BMX bicycle park within Parcel 64, and proposes to dedicate these recreational facilities to the County of Maui. Parcel 7 will include an open space area/neighborhood park. The County of Maui, which prefers development of ball fields or payments of a park dedication fee, may not accept dedication of the trail and BMX bicycle park in Parcel 64 or the open space area/neighborhood park in Parcel 7, in which event, the open space area/neighborhood park would be maintained by the Project's homeowners association. The trail along Haleakala Highway would implement the Maui Upcountry Greenway Plan. Petitioner is discussing with non profit groups the possibility of maintaining the trail system and BMX bicycle park.

#### Visual Resources



52. Development of the Petition Area would change existing mauka views from Haleakala Highway from fallow agricultural fields to urban uses. Parcel 64 will include a greenway along the length of Haleakala Highway. This greenway, as well as biking and walking trails, will be located where the existing earthen berm and ironwood trees are currently found.

## ENVIRONMENTAL QUALITY

### Noise

53. D.L. Adams & Associates, Ltd. prepared a noise assessment for the Petition Area. The dominant noise sources during construction of the Project will be earth moving and other equipment. Following completion of construction, vehicular traffic volumes will increase due to the Project. Traffic noise predictions for the year 2010 indicate that the noise impact due to Project traffic is less than 1 Db over future predictions of ambient noise levels without the Project, an increase that is not considered significant. New homes in the Petition Area that are more than 350 feet from Haleakala Highway will comply with FHWA/HDOT noise criteria without noise mitigation. Noise mitigation such as air conditioning or building an earth berm or sound barrier wall will be considered for new homes within 350 feet of Haleakala Highway.

### Air Quality

54. B.D. Neal & Associates prepared an air quality study of the Petition Area. Ambient air quality of the Petition Area and the surrounding communities is anticipated to be adversely affected from fugitive dust during the construction phase. An effective dust control plan, which would include watering of active work areas and the use of windscreens in sensitive areas, will be implemented to ensure compliance with State Department of Health regulations. Following construction, motor vehicles entering, exiting and transiting the Petition Area will result in a long-term increase in air pollution emissions on the Petition Area. To assess the

impact of emissions an air quality modeling study was undertaken to estimate current ambient concentrations of carbon monoxide at several intersections near the Petition Area and to predict future levels both within and without the Petition Area. During worst-case conditions, model results indicated that 1-hour and 8-hour carbon monoxide concentrations will be well within both state and federal ambient air quality standards. Any impact development of the Project is expected to have on ambient air quality will not be significant; therefore implementing mitigation measures for traffic related air quality impacts is both unnecessary and unwarranted.

### ADEQUACY OF PUBLIC SERVICES AND FACILITIES

#### Transportation and Traffic

55. Phillip Rowell and Associates ("Rowell") prepared and revised a Traffic Impact Analysis Report ("TIAR") for the Project to identify the long range traffic impacts of development of the Petition Area on the Upcountry Maui regional transportation system at peak hour traffic conditions.

56. Haleakala Highway is a limited access arterial highway that provides the primary access between the Pukalani, Makawao and Kula communities to the rest of Maui. Haleakala Highway is a three lane, divided roadway bordering Parcel 64. Residents of Parcel 7 will use Old Haleakala Highway to obtain access to Haleakala Highway. Haleakala Highway is now a four lane divided roadway from the Old Haleakala Highway intersection to the intersection with Hana Highway.

57. The TIAR evaluated present (2007) and projected (2015) level of service conditions at all major intersections along Haleakala Highway in a makai direction from the intersection with Kula Highway, as well as the intersection of Pukalani Street and Iolani Street and the intersection of Old Haleakala Highway and the realigned A'elo Road. The TIAR also evaluated present and projected traffic at the intersection of Pukalani Street and Iolani Street.

Following modification of the Haleakala Highway-Old Haleakala Highway intersection and widening of Haleakala Highway in September 2008 Mr. Rowell recounted traffic at Haleakala Highway-Old Haleakala Highway intersection.

58. The TIAR concluded that there are no significant changes in the volume-to-capacity ratios or delays, and therefore the levels-of-service of any of the study intersections as a result of traffic generated by the Project. However, the background levels of service of several intersections will be below acceptable conditions whether or not the Project is constructed, because of projected background traffic volumes. Traffic generated by the Project comprises a small percentage of total traffic projected to use the study intersections during peak hours, which is an indication that low levels-of-service at study intersections are a regional issue that must be addressed on a regional basis.

59. In order to comply with the Makawao-Pukalani-Kula Community Plan, the County of Maui is requiring that Petitioner construct a single access point to Old Haleakala Highway near the present intersection of A'eloa Road, and provide a connection from A'eloa Road to Iolani Street. Thus, the other access to Old Haleakala Highway would be obtained through Iolani Street and Pukalani Street. The intersection of Pukalani Street and Iolani Street will require mitigation, with consideration to be given to either a four way stop sign, conversion of the intersection to a roundabout or traffic signals. Although the intersection of Old Haleakala Highway at A'eloa Road should not be signalized, a separate left turn lane should be provided for left turns from west bound Haleakala Highway in a southbound direction onto A'eloa Road.

60. The County of Maui Code provides for Impact Fees for traffic and roadway improvements in West Maui and South Maui but no other traffic impact fees in other

areas of the County. Petitioner's contributions to local and regional traffic improvements will be to make the traffic improvements contemplated in the Makawao-Pukalani-Kula Community Plan by improving A'eoloa Road to collector road status, and connecting A'eoloa Road to Iolani Street to provide additional access for the Pukalani Terrace Subdivision. Petitioner will also relocate the intersection of A'eoloa Road and Old Haleakala Highway. Petitioner's work will entail constructing the intersection improvements recommended for the relocated intersection, including a left turn storage lane and right turn deceleration lane. Petitioner will also provide access to the improved A'eoloa Road for present A'eoloa Road residents whose roadway is to be relocated. As projected increases in traffic will warrant installation of a traffic signal at the intersection of Haleakala Highway and Old Haleakala Highway under projected 2015 traffic conditions whether or not the Project is developed, Petitioner is willing to pay its fair share of the cost to install traffic signals at this intersection.

61. In a letter dated January 21, 2009, the State Department of Transportation ("DOT") objected to the adequacy and acceptability of the revised TIAR, alleging that it had failed to document properly the redistribution of exiting traffic due to new roadways as well as the traffic generated by other projects in the area. DOT also contended that Petitioner's contribution to mitigating Project generated traffic impacts should not be limited to the recommendations contained in the TIAR. Following receipt of this letter Petitioner met with DOT Maui Division to begin formulating a proposal to address DOT's concerns. Petitioner will be compiling additional data and proposing mitigation measures to address DOT's concerns.

#### Drinking Water Service

62. In consideration of MLP dedicating the new well to the County of Maui, the Department of Water Supply ("DWS") will furnish drinking water to the Project from its Pukalani-Makawao water system from a concrete reservoir located off Kula Highway near

Makawao Avenue. Petitioner will be required to install off-site water system improvements including extension of an existing 12-inch water main in Old Haleakala Highway approximately 2,300 ft. from Piimauna Street to A'eloa Road. No water service will be provided to Parcel 64.

63. The Project is expected to use approximately 0.16 MGD of drinking water at full build out. The distribution system will be designed to satisfy the fire demand of 1,000 gallons per minute for urban residential districts. MLP has estimated the capacity of the new well to be at least 1.25 MGD, affording sufficient capacity under the DWS formula to account for the water to be used by the Project.

#### Wastewater

64. When fully built-out, the Project is expected to generate an average daily flow of approximately 59,560 GPD of wastewater, a maximum flow of 298,000 GPD of wastewater and a peak flow at a rate of approximately 360,000 GPD of wastewater. Petitioner proposes to install a wastewater collection system, including a force main, to connect to the existing collection system serving the Pukalani community at the end of Iolani Street. This system will transport wastewater to the Pukalani Wastewater Treatment Plant. Pukalani STP Co., Ltd. ("Pukalani STP") and its owner Hawaii Water Service Company, Inc. ("HWSC") have filed an application with the Public Utilities Commission to construct a new wastewater treatment plant to replace the existing Pukalani Wastewater Treatment Plant and increase its daily capacity from approximately 200,000 GPD to approximately 400,000 GPD. Petitioner and Pukalani STP and HWSC have executed an agreement pursuant to which Pukalani STP will allocate 60,000 GPD of the increased capacity to Petitioner in order to serve the Petition Area. No wastewater service is being provided to Parcel 64.

#### Drainage

65. Development of the Project on Parcel 7 is expected to generate a 50 year, one hour peak storm runoff rate of 194.4 cubic feet per second (“cfs”) equating to a volume of 356,329 cubic feet (“cf”), increasing runoff rate by 86.4 cfs from the present rate of 108.0 cfs, and increasing runoff volume by 161,968 cf over the 194,361 cf presently generated by the Petition Area. Petitioner proposes to install an on-site storm water collection system to convey the increase in runoff to a central detention basin located on the open space areas of the proposed neighborhood park. Storm water runoff from lots makai of the open space area/neighborhood park will continue to discharge storm water in the new Hamakua Ditch. There will be no increase in runoff from the Petition Area sheet flowing into the Hamakua Ditch due to the construction of the on-site drainage system.

66. All drainage improvements will be developed in accordance with applicable DOH and County of Maui drainage requirements and standards.

#### Solid Waste

67. Petitioner anticipates that the County of Maui will provide weekly residential solid waste collection service to dispose of solid waste generated by residents of the Project. All solid waste will be disposed at the County Central Maui landfill at Pu‘unene. Petitioner will encourage recycling for all green waste generated on the Petition Area.

#### Schools

68. Petitioner and the DOE estimate that at full build out, the Project will generate approximately 95 school aged students. The Project is located within DOE’s King Kekaulike District. Children living in the Project would attend either Kula Elementary, Makawao Elementary or Pukalani Elementary and Kalama Intermediate and King Kekaulike High School. Private schools serving the area include the Kamehameha Schools Maui Campus, Seabury Hall, and St. Joseph’s School.

69. HRS §302A-1601, effective July 3, 2007, provides that new residential developments within designated school impact districts shall provide land for schools, pay a fee in lieu of land proportionate to the impact of the new residential development on existing school facilities and/or pay school impact fees proportionate to their impacts. To date the Board of Education has not designated any school impact districts on the Island of Maui. Therefore Petitioner is not required to pay a school impact fee for the Project at this time.

#### Police and Fire Protection

70. The Petition Area is located within the County of Maui Police Department's District 1-Wailuku (Central). This police district is served by the Wailuku Station, with a substation located in Makawao. Development of the Project is not expected to significantly impact the need for public police services. A new police substation at Kulamalu was dedicated in May 2005.

71. The County of Maui Fire Department will provide fire protection service to the Project from the Maui County's Engine 5, the Makawao Fire Station. The fire station is located on Makawao Avenue approximately 1.3 miles southeast of the Petition Area and is equipped with a 1,500 gallon pumper. The Project is not expected to significantly impact fire protection services.

#### Emergency Medical Services

72. Emergency medical services to the Petition Area are presently provided from the Maui Memorial Medical Center in Kahului.

#### Electrical Power and Telecommunications Services

73. Main electrical, telephone and CATV overhead transmission lines are located on the mauka side of Haleakala Highway. Electrical and telecommunications capacity is adequate to serve the Petition Area.

## COMMITMENT OF STATE FUNDS AND RESOURCES

74. Government costs to provide services are expected to exceed State and County tax revenues derived from the Project on a long term basis, which follows the normal trend of residential housing subdivisions. Government costs will include public education, fire service, emergency medical service and police service. Although Petitioner is expected to contribute its fair share for the capital cost of constructing government improvements, the cost of delivering public services to a housing development will exceed anticipated tax revenues.

75. State tax revenue for the ten year construction and sales period should exceed \$8.2 million from income tax and \$10.2 million from general excise tax, and will stabilize at \$1.3 million annually from income tax and \$1.3 annually from general excise tax following completion of construction. State costs associated with delivering services to the Project are estimated to be \$12.2 million during the construction and sales period and \$2.7 million a year thereafter. The State will experience a net revenue benefit of \$6.1 million during the build-out and sales period and a stabilized loss of approximately \$128,000 a year thereafter.

76. The County of Maui should receive \$4.75 million in real property tax revenue from the Project over the ten year construction and sales period and an estimated \$0.69 million a year thereafter. The County government operating costs associated with providing services to the Project on a per capita basis is estimated to total approximately \$4.8 million for the construction and sales period and approximately \$1.1 million thereafter on a stabilized basis. The County should expect a net revenue loss of \$46,000 during the construction and sales period and a loss of approximately \$366,000 a year thereafter. Property tax revenue from the Project is estimated using the assumption that approximately half of the homeowners are paying real property tax at the standard residential rate of \$4.85 per \$1,000, and the remaining homeowners are paying the discounted homeowner's rate of \$2.00 per \$1,000. The discounted homeowners'



rate applicable to homeowners occupying their principal residence forces other property owners to subsidize a portion of the homeowners' cost of county services.

#### ENERGY CONSERVATION AND SUSTAINABLE DEVELOPMENT

77. The US Green Building Council's Leadership in Energy and Environmental Design ("LEED") program's goal is to transform the way buildings are designed and constructed in order to improve neighborhoods' and buildings' energy efficiency, water conservation, indoor environmental quality, and reduce the amount of building materials sent to landfills. The LEED program is based on a rating system in nine different areas of home construction. In each area performance based rating points are offered for different design and construction solutions. The developer or homeowner must earn a minimum of 60 of 174 points to earn the Silver rating. Howard Wiig of the Department of Business Economic Development and Tourism, an energy efficiency expert, gave a number of examples of methods to earn LEED points in design and construction, such as insulation of roofs, installation of ceiling fans vs. air conditioning, installation of energy star appliances and solar water heaters and photovoltaic arrays. Mr. Wiig estimated that the cost of attaining the LEED silver rating would add between 3% to 5% to the cost of a single family home.

78. Petitioner's Development Manager Sharon Wright, an expert in development and construction management, estimated that the cost of LEED silver certification could add \$100,000 to the cost of a home at the Project. Among the difficulties that would preclude a homeowner at the Project from obtaining LEED points are: (1) the Project's location in a suburban/rural area not in close proximity to employment, community resources or transit services; (2) the proposed R-2 zoning which requires creation of larger lots; (3) a lack of rainfall and R-1 water would preclude water recycling; (4) the cost vs. efficiency of insulation, double

pane windows and a photovoltaic panel system; (5) the lack of cost effectiveness in ordering pre-cut lumber.

79. As of January 29, 2009, there were 1,300 homes in the United States rated LEED Certified or higher. Five of these homes are located in Hawaii. Four of these five homes were constructed by Actus Lend Lease, LLC at Schofield Barracks, Oahu. Actus is a mass production home builder who has contracted to build, manage and operate approximately 7,900 military housing units on Oahu. Actus estimates that LEED compliance will increase its hard construction cost by approximately 5%, which increase would be greater for an individual homeowner. Actus expects to achieve affordable LEED compliance through techniques not available to the purchase of lots in the Project, including its military base locations and its ability to design, procure materials for and construct homes on a mass production basis.

80. LEED standards measure responsible development such as runoff during construction, water savings, material conservation, indoor air quality and energy efficiency.

81. LEED construction results in an average reduction of 30-40% of energy use, an average reduction of 20-30% of water use, and an average increase of 40-50% of construction waste diversion.

82. In addition to the environmental benefits, energy efficient homes result in lower utility bills.

83. A general estimate for the additional cost of LEED provisions is about three percent (3%) of the total home cost. A LEED rater has said that the highest increase in the cost of a home due to LEED is five percent (5%).

84. Petitioner is intending to sell to the upper twenty-nine percent of the housing market, homes valued from \$650,000 to over \$1,000,000.

85. The market analysis submitted by Petitioner assumed an average construction cost of \$250/sq. ft., and an average house size of 2,200 sq. ft. When including an average lot cost of \$400,000, the total value of the average house is approximately \$950,000.

CONFORMANCE TO URBAN DISTRICT STANDARDS

86. The Petition Area satisfies the standards applicable to establishing the boundaries of the State Land Use Urban District set forth in section 15-15-18, HAR, in the following respects:

a. The Petition Area is immediately to the north and west of the Pukalani Terrace Subdivision, in the Urban District, an area characterized by “city-like” concentrations of people, structures, streets, urban level of services and other related land uses.

b. The location of the Petition Area adjacent to the Pukalani Terrace Subdivision in the existing urban district is an appropriate location for the Project and is in accord with widely accepted planning principles of placing new urban uses contiguous to existing urban uses.

c. The Petition Area is located adjacent to Pukalani and in close proximity to Makawao, two of Upcountry Maui’s primary centers of trading and employment.

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

e. Reclassification of the Petition Area is reasonably necessary for urban growth.

f. The Petition Area is reasonably free from danger of flood, tsunami, unstable soil condition and other adverse environmental effects. The Petition Area does not include land with a general slope of 20% or more, except for portions characterized as gulches.

Design and construction controls to be imposed on portions of the Petition Area planned for residential use will be adequate to protect the public health, welfare, and safety and the public's interests in the aesthetic quality of the landscape.

g. The Project will be designed to complement the Petition Area's natural attributes, mitigate environmental conflicts, enhance scenic amenities, and protect historic resources. Parcel 7, the part of the Petition Area planned for residential use, is characterized by gently sloping areas formerly cultivated in pineapple. To the extent possible, improvements will conform to the contours of the land, limiting the need for extensive grading.

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

##### Hawaii State Plan

87. Reclassification of the Petition Area generally conforms to the following applicable goals, objectives, policies and guidelines of the Hawaii State Plan:

##### Chapter 226-5, HRS, Objectives and Policies for Population.

*226-5(b)(1), HRS: Manage population growth statewide in a manner that provides increased opportunities for Hawaii's people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.*

*226-5(b)(3), HRS: Promote increased opportunities for Hawaii's people to pursue their socio-economic aspirations throughout the islands.*

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

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

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

*226-11(b)(3), HRS: Take into account the physical attributes of areas when planning and designing activities and facilities.*

*226-11(b)(8), HRS: Pursue compatible relationships among activities, facilities, and natural resources.*

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

*226-13(b)(6), HRS: Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.*

*226-13(b)(7), HRS: Encourage urban developments in close proximity to existing services and facilities.*

Chapter 226-19, HRS, Objectives and Policies for Socio-Cultural Advancement – Housing.

*226-19(a)(2), HRS: The orderly development of residential areas sensitive to community needs and other land uses.*

*226-19(b)(1), HRS: Effectively accommodate the housing needs of Hawaii's people.*

*226-19(b)(3), HRS: Increase home ownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing.*

*226-19(b)(5), HRS: Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas.*  
(PET 82 as modified)

88. The Petition Area and the Project comply with the following priority guidelines of the *Hawaii State Plan*:

Chapter 226-103, HRS, Economic Priority Guidelines.

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

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

*226-104(b)(1), HRS: 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.*

*226-104(b)(2), HRS: Make available marginal or non-essential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.*

*226-104(b)(12), HRS: 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.*

### Functional Plans

89. Reclassification of the Petition Area generally conforms to the functional plans in the following program areas: housing and recreation.

Housing. The State *Housing Functional Plan*, prepared by the Hawaii Housing Finance and Development Corporation, addresses six major areas of concern: 1) increasing home ownership; 2) expanding rental housing opportunities; 3) expanding rental housing opportunities for the elderly and other special need groups; 4) preserving housing stock; 5) designating and acquiring land that is suitable for residential development; and 6) establishing and maintaining a housing information system. The majority of the objectives, policies, and implementing actions of the State *Housing Functional Plan* apply to the government sector.

Forecasts of housing demand project a need for approximately 5,294 homes (mid-point estimate), or an increase of 60%, in the Upcountry area during the next 23 years. Approximately 91%, or more than 4,860 of the homes, would need to be single family homes. Fewer than 55% of this number is currently proposed for the area.

The Project will provide 170 market-priced residential lots for purchase and will comply with the County of Maui's Residential Workforce Housing Policy, to ensure that affordable housing needs are addressed.

Recreation. The *Recreation Functional Plan* outlines the public and private sectors' roles in serving the recreation and open space needs of the public. It organizes objectives, policies, and actions into six major issue areas: (1) ocean and shoreline recreation, (2) mauka, urban, and other recreational opportunities, (3) public access to shoreline and upland recreation areas, (4)

resource conservation and management, (5) management of recreation programs, facilities, and areas, and (6) wetlands protection and management.

Recreational facilities of the community, such as the central open space on Parcel 7 and the extensive trail system and BMX bicycle park on Parcel 64, will provide opportunities for increased physical fitness, contemplative views of Central Maui, and relief from daily stress.

#### CONFORMANCE WITH COASTAL ZONE MANAGEMENT OBJECTIVES AND POLICIES

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

##### *(1) Recreational Resources*

*(A) Provide coastal recreational opportunities to the public.*

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

##### *(2) Historic Resources*

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

The Project is not expected to impact cultural resources as no archaeological or cultural resources have been identified on the Petition Area. There is no evidence of past or present use of the Petition Area for Hawaiian cultural practices, resources, or beliefs. Nevertheless, Petitioner and its contractors will comply with all laws and rules regarding the preservation of archaeological, cultural, and historic sites should any sites be found during construction.

##### *(3) Scenic and Open Space Resources*

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

The Petition Area is not near the shoreline and its development will not impact coastal scenic and open space resources.

#### *(4) Coastal Ecosystems*

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

No direct impacts to the coastal or marine environment are anticipated. The Petition Area's drainage system will be designed in accordance with applicable regulatory standards to assure that there are no adverse effects to adjacent or downstream properties.

#### *(5) Economic Uses*

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

The Project is not a coastal dependant development. As represented by the "Single Family" designation on Makawao-Pukalani-Kula Community Plan, residential uses on the Petition Area are appropriate and represent the carefully thought out expansion of Pukalani.

#### *(6) Coastal Hazards*

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

The proposed construction on the Petition Area is not anticipated to impact any susceptibility to coastal hazards. The Petition Area is not on the shoreline and is unlikely to be impacted from tsunamis or storm waves. The Petition Area is reasonably free from danger of flood, unstable soil conditions and other adverse environmental effects.

The Petition Area drainage system will be designed in accordance with the Drainage Standards of the County of Maui to ensure that surface runoff from the Petition Area will not adversely affect downstream and adjoining properties.



*(7) Managing Development*

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

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

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

*(8) Public Participation*

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

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

*(9) Beach Protection*

*(A) Protect beaches for public use and recreation.*

*(10) Marine Resources*

*(A) Promote the protection, use, and development of marine and coastal resources to assure their sustainability.*

The Petition Area is located a significant distance from the shoreline and will not involve the use of marine and coastal resources. The Project is not expected to have any adverse impact on beaches, shorelines, or existing shoreline recreational activities.

CONFORMANCE WITH THE COUNTY'S GENERAL PLAN

91. Development of the Petition Area as represented to the Commission is consistent with the following objectives and policies of the Maui County General Plan and the Makawao-Pukalani-Kula Community Plan. The Maui County Planning Department has recommended approval of the boundary amendment for the Petition Area. The following General Plan objectives and policies are applicable to the Petition Area:

Land Use

*Objective 1: To preserve for present and future generations existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the County.*

The Project will provide a cohesive addition to Pukalani in character with the Upcountry region.

*Policy b: Encourage land use patterns that foster a pedestrian oriented environment to include such amenities as bike paths, linear parks, landscape buffer areas, and mini parks.*

The Project will meet the social, physical, environmental, and economic needs of the community by providing needed housing in conformance with in Makawao-Pukalani-Kula Community Plan.

*Objective 2: To use the land within the County for the social and economic benefit of all the County's residents.*

In addition to providing needed housing, the Project will have a direct beneficial effect on the local economy. Economic impacts associated with the Project include:

- \$139.6 million in direct, new capital investment and spending into the Maui economy during the planning and construction period;
- \$18.4 million in total gross tax revenues for the State of Hawaii and \$4.8 million in taxes for the County of Maui during the build out period;

- \$2.6 million annually in stabilized taxes for the State and approximately \$690,000 annually for the County after the build out period;
- 775 worker years (one worker/year is approximately equal to 2,000 hours) in construction related jobs during the build out period;
- \$39.2 million in total wages over the build out period;
- 21 full-time equivalent jobs related to on-site activities, on a stabilized basis, after build-out; and
- \$711,000 in annual wages after build out.

*Policy a: Mitigate environmental conflicts and enhance scenic amenities, without having negative impact on natural resources.*

The Project is not expected to have a negative impact on natural resources.

Impacts such as site grading, increased runoff, and use of resources will be mitigated with proper management techniques.

*Policy b: Encourage land use patterns that foster a pedestrian oriented environment to include such amenities as bike paths, linear parks, landscaped buffer areas, and mini-parks.*

Petitioner proposes to continue the use of Parcel 64 for walking trails and bicycle paths in conformance with the Upcountry Greenways Master Plan. Petitioner also proposes to develop a BMX bicycle park on Parcel 64.

### Agriculture

*Objective 1: To preserve lands that are well suited for agricultural pursuits.*

*Policy b: Discourage conversion, through zoning or other means, of productive or potentially productive agricultural lands to nonagricultural land uses, including but not limited to golf courses and residential subdivisions.*

While the Petition Area is zoned agricultural, the Makawao-Pukalani-Kula

Community Plan designates the site for single family residential uses. Cultivation of the Petition

Area was discontinued in 2002. The Petition Area became inefficient to farm as part of any sustainable large scale agricultural operations after construction of the new Haleakala Highway separated it from other contiguous, more suitable pineapple fields. In addition the long, narrow configuration and topography of Parcel 64 now renders the parcel inefficient for cultivation.

### Environment

*Objective 1: To preserve and protect the County's unique and fragile environmental resources.*

The design of the Project will be sensitive to the site on which it is located, and will be constructed in such a way as to minimize adverse impacts to the environment.

*Policy b: Preserve scenic vistas and natural features.*

The Project preserves the County's environmental resources by providing residential uses in an appropriate area contiguous to existing urban uses and in conformance with the *Makawao-Pukalani-Kula Community Plan*.

*Objective 2: To use the County's land-based physical and ocean-related coastal resources in a manner consistent with sound environmental planning practice.*

As represented by the "single family" designation on *Makawao-Pukalani-Kula Community Plan*, residential uses on the Petition Area are appropriate and represent the carefully thought out expansion of Pukalani consistent with sound environmental planning practice.

### Cultural Resources

*Objective 1: To preserve for present and future generations the opportunity to know and experience the arts, culture and history of Maui County.*

*Policy b: Encourage the recordation and preservation of all cultural and historic resources, to include culturally significant natural resources.*

*Policy e: Identify and maintain an inventory of significant and unique cultural resources for special protection.*

The Project is not expected to impact cultural resources as no archaeological or cultural resources have been identified on the Petition Area; there is no evidence of past or present use of the Petition Area for Native Hawaiian cultural practices or resources.

### Housing

*Objective 1: To provide a choice of attractive, sanitary and affordable homes for all of our residents.*

*Policy a: Provide or require adequate physical infrastructure to meet the demands of present and planned future affordable housing needs.*

The Project will provide 170 market-priced single family residential lots, and will comply with the County of Maui's Residential Workforce Housing Policy. Petitioner's consultant projected a need for approximately 5,294 homes (mid-point estimate), or an increase of 60%, in the Upcountry area during the next 23 years. Of this demand approximately 91%, or approximately 4,860 of the homes, would need to be single family homes. Approximately 2,808 units are currently proposed for the Upcountry area.

### Urban Design

*Objective 1: To see that all developments are well designed and are in harmony with their surroundings.*

*Policy a: Require that appropriate principles of urban design be observed in the planning of all new developments.*

The Project is the logical expansion of Pukalani, as the Petition Area is designated for single family residential uses in the Makawao-Pukalani-Kula Community Plan, and is adjacent to the existing Lower Pukalani Terrace Subdivision.

*Objective 2: To encourage developments which reflect the character and the culture of Maui County's people.*

*Policy b: Encourage community design that will establish a cohesive identity.*

The Project will provide a cohesive addition to Pukalani in character with the Upcountry region.

*Policy c: Encourage the establishment of continuous green areas, bike-paths, active and passive recreation areas and mini-parks in new subdivision development.*

Parcel 7 will include walkable streets and greenways. Parcel 64 will include a recreational pedestrian/bicycle trail running the length of the Petition Area from Old Haleakala Highway to Makani Road in conformance with the Upcountry Greenway Master Plan.

#### Water

*Objective 1: To provide an adequate supply of drinking and irrigation water to meet the needs of Maui County's residents.*

*Policy g: Seek new sources of water by exploration in conjunction with other government agencies.*

MLP has drilled a new well near Piiholo Road in Makawao to be dedicated to the County of Maui in consideration of source credits for the Project and other MLP developments. MLP is currently conducting tests to determine the net pump capacity of the Piiholo Well.

#### Public Utilities and Facilities

*Objective 2: To improve the quality and availability of public facilities throughout Maui County.*

*Policy a: Encourage the design of multi-purposed public facilities accessible to all age groups and the handicapped.*

#### Recreation and Open Space

*Objective 1: To provide high-quality recreational facilities to meet the present and future needs of our residents of all ages and physical ability.*

*Policy b: Maintain recreational facilities for both active and passive pursuits.*

*Policy d: Develop facilities that will meet the different recreational needs of the various communities.*

The extensive pedestrian/bicycle trail system and BMX bicycle park on Parcel 64 will provide opportunities for increased physical fitness, contemplative views of Central Maui, and relief from daily stress. These facilities will be accessible to people of all ages and ability and will be open to the public.

## MAKAWAO-PUKALANI-KULA COMMUNITY PLAN

The Petition Area is located within the Makawao-Pukalani-Kula Community Plan region, one of nine (9) community plan regions in Maui County. The Petition Area was designated for Single Family Residential uses in the Makawao-Pukalani-Kula Community Plan as updated.

The 1995-1996 Community Plan update process included technical studies and assessments, including a Land Use Forecast. The Land Use Forecast assessment provided a measure of existing vacant and undeveloped lands and addressed future needs for each Community Plan region. Designating the Petition Area for single family uses reflects the community's consensus to permit residential use of the Petition Area.

The Project is compatible with its Single Family Residential designation. The proposed improvements to A'eloa Road comply with Implementing Action No. 2 of the Transportation Policy Recommendations of the Makawao-Pukalani-Kula Community Plan.

*"Establish an additional roadway connection to Haleakala Highway from Pukalani Terrace through the 65-acre single family area located north of and adjacent to the existing Pukalani Terrace residential subdivision. The alignment of this new roadway shall not displace existing residences."*

The reclassification of the Petition Area is further in accord with the following Makawao-Pukalani-Kula Community Plan objectives and policies:

### LAND USE

***Goal:** The maintenance and enhancement of Upcountry's unique and diverse rural land use character with sensitivity to existing land use patterns, natural resource values, and economic and social needs of the region's residents.*

***Objective 1:** Recognize the value of open space, including agricultural lands and view planes to preserve the region's rural character.*

Primary scenic views will not be significantly impacted by the Project due to the topography of the Petition Area. Significant portions of the Petition Area, Parcel 64 in particular, will be preserved and enhanced as open space.

*Objective 6: Encourage new residential developments in areas which are contiguous extensions of, or infills within the established residential pattern, and which do not adversely affect agricultural uses.*

While the Petition Area is zoned Agricultural, the *Makawao-Pukalani-Kula Community Plan* designates the Petition Area for Single Family residential uses. The Petition Area is a logical expansion of Pukalani, as it is contiguous to residential uses at Pukalani and represents an in-fill of a recognized boundary.

*Objective 7: Ensure that adequate lands are set aside for recreational and open space purposes.*

Parcel 64 of the Petition Area will include extensive recreational open space, with a pedestrian/equestrian trail system and BMX bicycle park that ties into the Upcountry Greenway Master Plan. Petitioner proposes to use Parcel 64 to comply with Maui County park dedication requirements.

*Objective 16: Recognize the four (4) semi-urban centers of Makawao Town, Pukalani, Hali 'imaile, and Waiakoa Village. Within them, support the following land use and circulation patterns:*

- b. Within Pukalani:*
- Single family expansion contiguous with existing residential uses.*
  - Parks and open spaces within and surrounding commercial and residential areas.*

The Petition Area is the logical expansion of Pukalani, as it is contiguous to residential uses of Pukalani. Parcel 64 of the Petition Area will include extensive recreational open space, with a pedestrian/equestrian trail system and BMX bicycle park that ties into the Upcountry Greenway Master Plan.



*Objective 18: Where appropriate, support the reclassification of State Land Use districts to ensure consistency between State Land Use designations and land use designations defined by the Makawao-Pukalani-Kula Community Plan land use map.*

The Project is in conformance with and implements the *Makawao-Pukalani-Kula Community Plan*. The entire Petition Area is designated as Single Family Residential on the *Makawao-Pukalani-Kula Community Plan* Land Use Map, and is within the Urban Growth Boundary proposed in the Planning Department's draft 2008 General Plan Revision. Petitioner proposes a reclassification of the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District to establish consistency with the Makawao-Pukalani-Kula Community Plan.

*Objective 24: Ensure an adequate supply of land designated for residential use to provide opportunity for residents to participate in housing market "trade ups."*

The range of lot sizes within the Project (from 7,000 square feet to approximately 12,000 square feet) will provide for a range of prices and allow for residents to participate in housing market "trade ups."

*Objective 25: Establish water resource availability as a major criteria in establishing land uses.*

MLP has drilled a new well to be dedicated to the County of Maui, Department of Water Supply. Water from that well will be added to the County system, in order that a supply of water greater than required by the Petition Area will be added to County's infrastructural resources.

*Implementing Action 8: Utilize the land productivity inventory and assessment (i.e., Land Study Bureau "D" and "E" lands and ALISH) to identify low productivity lands which may be suitable for housing development.*

The lands of Parcel 7 are classified as "Poor" under the LSB classification system, and "Prime" and "Other" under the ALISH system. The lands of Parcel 64 are classified as "Fair" and "Very Poor" under the LSB classification system and "Other" and "Not Classified"

under the ALISH system. Combined with the Community Plan designation of Single Family Residential, the Petition Area is suitable for residential development.

*Implementing Action 11: Determine the need for an additional school site(s) within the planning region at the time of LUC boundary amendments and/or zoning applications for additional housing projects. Special consideration should be given in this regard to additional housing in Hali'imaile Town.*

The public schools that will service the Project are currently under capacity and are anticipated to remain underutilized through the year 2009 according to projections provided by the State Department of Education. The Project is estimated to produce 95 school-aged children. Private schools in the area such as the Kamehameha Schools Maui Campus, Seabury Hall and St. Joseph's School provide additional school choices outside of the State system.

#### Environment

*Goal: Protection of Upcountry's natural resources and environment as a means of preserving and enhancing the region's unique beauty, serenity, ecology, and productivity, in order that future generations may enjoy and appreciate an environment of equal or higher quality.*

The design of the Project will be sensitive to the site on which it is located, and will be constructed in such a way as to minimize the impacts to the environment.

*Objective 1: Preserve environmental resources by maintaining important agricultural lands as an integral part of the open space setting in each community.*

While the Petition Area is classified in the State Land Use Agricultural District, the University of Hawaii Land Study Bureau *Detailed Land Classification, Islands of Kauai, Oahu, Maui, Molokai, and Lanai* classifies the Petition Area as follows: approximately 21.6 acres as "fair" (C), 49 acres as "poor" (D), and 18 acres as "very poor" (F).

Although the development of the Project will require that the approximately 87.7 acres of land previously used for pineapple cultivation be permanently withdrawn from agricultural use, this acreage amounts to less than two percent (2%) of the approximately 5,800 acres in pineapple cultivation by MLP in 2005. Development of the Project will not lead to a

decrease in MLP's agricultural viability. Cultivation of the Petition Area was discontinued in 2002. Both parcels became uneconomic and inefficient to farm as part of MLP operations after construction of the Pukalani Bypass Highway separated these parcels from other contiguous, more suitable fields. Parcel 64 is an agricultural remnant; its long, narrow configuration and topography render the parcel inefficient for cultivation.

The Petition Area lands are also classified as ranging from Fair to Very Poor, in the Land Study Bureau's agricultural assessment of soils. The *Makawao-Pukalani-Kula Community Plan* designates the Petition Area for Single Family Residential uses, as the Petition Area is a logical expansion of Pukalani.

The proposed recreational facilities will provide open space in the community as well as a transition zone to the remaining agricultural lands adjacent to the Petition Area.

*Objective 3: Recognize and protect rare, endangered and unique biological resources in the region.*

There are no rare, threatened, or endangered flora, fauna, or avifauna species, or critical habitats for these species, on the Petition Area.

### Cultural Resources

*Goal: The identification, preservation and where appropriate, restoration and promotion of cultural resources and practices which reflect the rich and diverse heritage found in the Upcountry region.*

*Objective 1: Recognize the importance of historically and archaeologically sensitive sites, both known and undiscovered, and encourage their preservation and protection.*

The Project is not expected to impact cultural resources, as no archaeological or cultural resources have been identified on the Petition Area; there is no evidence of past or present use of the Petition Area for Native Hawaiian cultural practices or resources. Petitioner will comply with all laws and rules regarding the preservation of archaeological, cultural, and historic sites should any sites be found during construction.

## Urban Design

*Goal: Recognition and preservation of the unique design characteristics of the Makawao, Pukalani and Kula communities in order to enhance Upcountry's man-made environment.*

*Objective 7: Encourage the use of appropriate landscaping, with greenways where possible, along major roadways, parking areas and land use transition areas to establish and maintain landscape themes which are consistent with the character of each Upcountry community.*

Parcel 7 will include a landscape buffer area along Old Haleakala Highway and design standards will include a unified streetscape planting theme and program to ensure the appropriate use of landscaping and compliance with the Maui County Planting Plan.

## Liquid and Solid Waste Disposal

*Objective 3: Support wastewater reclamation and grey water alternatives as a means of reducing demands upon limited water resources in the Upcountry region.*

*Implementing Action 2: Construct a wastewater collection and treatment system for the Waiakoa, Makawao, Pukalani and all new urban developments.*

*Implementing Action 3: Utilize treated effluent for irrigation of farms, golf courses, parks and highway landscaping.*

The Project will have its wastewater pumped to the expanded Pukalani STP, to be treated and used as irrigation water for the nearby Pukalani golf course. This facility will be undergoing expansion and improvement and an extension of its service area in order to accommodate the Project.

## Drainage

*Objective 1: Respect and preserve natural drainage ways as part of good land development practices and recognize their value as open-space corridors.*

Natural drainage patterns on Parcel 7 (towards the New Hamakua Ditch) will be preserved. The majority of Parcel 64 will also be preserved as an open space corridor; it is a natural drainage way and will consist of mature trees and native vegetation.

## Energy

*Implementing Action 3: Use energy efficient street lights and develop appropriate street lighting standards for agricultural and rural areas.*

It is anticipated that public street lighting will be “dark sky” compliant to minimize light pollution and interference with observatories at the summit of Haleakala.

### Housing

*Goal: Housing opportunities for the residents of Makawao-Pukalani-Kula, to include all income and age groups, which are affordable, safe, and environmentally and culturally compatible.*

*Objective 2: Provide increased opportunities for affordable housing through:*

*Policy i: Provision of variable housing densities in areas designated for residential use.*

The Project will provide 170 market-priced single family residential lots for sale. Petitioner will comply with the requirements of the County of Maui’s Residential Workforce Housing Policy, in order to address affordable housing needs.

### Social Infrastructure

*Goal: An efficient and responsive system of people-oriented public services which enable residents to live a safe, healthy and enjoyable lifestyle, and offer the youth and adults of the region opportunities and choices for self and community improvement.*

### Recreation

*Objective 4: Pursue the development of equestrian trails, pathways, greenways and related facilities which will meet the recreational needs of runners, joggers, walkers, horseback riders and cyclists.*

The Project’s pedestrian/bicycle trail system and BMX bicycle park will provide opportunities for increased physical fitness, contemplative views of Central Maui, and relief from daily stress.

### Government

*Goal: The provision of accessible, cost effective and responsive government services and programs which meet the needs of Upcountry residents.*

### Planning Standards

*The following planning standards are specific guidelines or measures for development and design. These standards are essential in clarifying the intent of the land use and urban design objectives and policies and the Land Use Map.*

1. *Land Use*

b. *New residential subdivisions shall be reviewed for possible encroachment or other impacts to existing agricultural operations. Appropriate mitigative measures such as the provision of buffers and/or open spaces; larger building setbacks; significantly larger lot sizes; the incorporation of cluster housing to maintain overall allowable densities; or the use of other appropriate means to mitigate possible impacts shall be used. Possible uses for buffer spaces could be utilized for such uses such as bikepaths, equestrian trails and jogging.*

Landscape buffers and open spaces will be incorporated into the Project. The New Hamakua Ditch provides an effective buffer between Parcel 7 and the agricultural operations makai.

5. *Landscape Planting*

a. *Native plant species which are found in the region should be utilized for new public and quasi-public facilities. The use of native plants in landscaping should be encouraged in all new developments.*

The Project's landscaping will include non-invasive species and, where feasible, native and indigenous plants recommended by the County of Maui for the specific climate. Design standards for the Project will include a unified streetscape planting theme and program to ensure the appropriate use of landscaping and compliance with the Maui County Planting Plan.

6. *Subdivisions. Subdivision review for applications of four (4) lots or more shall include the following considerations:*

a. *Socio-Economic Considerations*

*The direct and cumulative impacts on agriculture and the socio-economic impacts on the community shall be assessed and considered.*

Petitioner has addressed the Project's impacts on agriculture and socio-economic impacts on the community.

c. *Improvements*

*County urban subdivision standards shall not apply to rural and agricultural lands of the Upcountry Region. The following rural standards shall be considered:*

- *Curbs and gutters shall not be required. Grassed shoulders and swales shall be allowed without curbs.*
- *Sidewalks shall be provided on one side of the street for County roads within a 3/4-mile radius of developed or proposed school sites.*
- *Street lighting shall not be required.*
- *Roadway pavement width shall provide for a minimum 4-ft. bikelane in each direction of travel.*
- *Highways and major roadways shall have a minimum pavement width of 20 feet (10 foot travel lanes), and shoulder width of 4 feet, to provide for the safe passage of two-way traffic, except in areas where natural landforms, historic structures and other environmental constraints preclude widening beyond existing roadway widths.*

Roadways within the Project will be built to County of Maui standards, while keeping in character with the Upcountry region. The typical street section design will be based on Chapter 18.16.050 “Minimum Right-of-Way and Pavement Widths”, Subdivision Design Standards of the Maui County Code for rural streets.

#### OFFICE OF ENVIRONMENTAL QUALITY CONTROL GUIDELINES FOR SUSTAINABLE DEVELOPMENT

The Office of Environmental Quality Control ("OEQC") has issued “Guidelines for Sustainable Building Design in Hawaii: A Planner’s Checklist” (OEQC May 1999) and has requested that consideration be given to applying sustainable building techniques to projects. The OEQC Guidelines state, “[a] sustainable building is built to minimize energy use, expense, waste and impact on the environment. It seeks to improve the region’s sustainability by meeting the needs of Hawaii’s residents and visitors today without compromising the needs of future generations.” Petitioner has complied with the OEQC Guidelines in the following respects:

##### *Site Selection & Site Design:*

1. *Select a site with short connections to existing municipal infrastructure (sewer lines, water, waste water treatment plant, roads, gas, electricity, telephone, data communication lines and services). Select a site close to mass transportation, bicycle routes and pedestrian access.*

The Petition Area is adjacent to existing residential uses. The Petition Area is adjacent to or close to existing roads, electrical and telephone facilities, and other services.

2. *Site building(s) to take advantage of natural features and maximize their beneficial effects. Provide for solar access, daylighting and natural cooling. Design ways to integrate the building(s) with the site that maximizes and preserves positive site characteristics, enhances human comfort, safety and health, and achieves operational efficiencies.*

The site plan for the Project has been optimized to minimize grading. Buildings will be sited to take advantage of natural features and maximize their beneficial effects where practical.

3. *Locate building(s) to encourage bicycle and pedestrian access and pedestrian oriented uses. Provide bicycle and pedestrian paths, bicycle racks, etc. Racks should be visible and accessible to promote and encourage bicycle commuting.*

The design of the Project provides for pedestrian-friendly streets. Street design includes slight cranks and bends of roads within the neighborhood to allow for natural traffic calming, and continuous sidewalks and street trees to provide a comfortable pedestrian environment. Petitioner proposes to provide pedestrian/bicycle trails, open space, and other community amenities on Parcel 64 between Old Haleakala Highway and Haleakala Highway.

Energy Use:

1. *Use renewable energy. Use solar water heaters and consider the use of photovoltaics and Building Integrated Photovoltaics (BIPV).*

Design controls to be contained in covenants for the Project will permit the installation of solar water heaters and photovoltaic cells in each home built in the Project.

Landscape and Irrigation:

1. *Incorporate water efficient landscaping (xeriscaping) using the following principles:*

a. *Soil analysis/improvement: Use (locally made) soil amendments and compost for plant nourishment, improved water absorption and holding capacity.*

b. *Appropriate plant selection: Use drought tolerant and/or slow growing hardy grasses, native and indigenous plants, shrubs, ground covers, trees, appropriate for local conditions, to minimize the need for irrigation.*

c. *Mulches: Use mulches to minimize evaporation, reduce weed growth and retard erosion.*



Where feasible, landscaping will include the use of locally-made soil amendments and compost for plant nourishment, improved water absorption, and holding capacity; the use of drought-tolerant and/or slow-growing hardy grasses, native and indigenous plants, shrubs, ground covers, and trees appropriate for local conditions to minimize the need for irrigation; and the use of mulches to minimize evaporation, reduce weed growth, and retard erosion.

### PROJECT PHASING

92. Permitting, development, sale and build-out of the Project is proposed to be substantially completed within a ten-year period. Permitting and entitlement processing is anticipated to take two to three years, and design and construction would commence as soon as all discretionary permits have been obtained. Construction of infrastructure improvements will be developed in a single continuous phase, over approximately 18 months to two years. Lot sales and home construction are expected to occur over the balance of the ten year period. Therefore incremental redistricting is inappropriate for the Petition Area.

### **RULING ON PROPOSED FINDINGS OF FACT**

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

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

### CONCLUSIONS OF LAW

1. Pursuant to Chapter 205, HRS, and the Hawaii Land Use Commission Rules under Chapter 15-15, HAR, and upon consideration of the Land Use Commission decision-making criteria under Section 205-17, HRS, this Commission finds upon a clear

preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 87.702 acres of land at Kula, Makawao, Maui, Hawaii, and identified as Maui TMK Nos.: 2-3-09:7 and 64, from the State Land Use Agricultural District to the State Land Use Urban District for development of the Project as a residential community with recreational uses, subject to the conditions in the Order below, conforms to the standards for establishing the Urban District boundaries, is reasonable, is not violative of Section 205-2, HRS, and is consistent with the Hawaii State Plan as set forth in chapter 226, HRS, and with the policies and criteria established pursuant to Sections 205-17 and 205A-2, HRS.

2. Article XII, Section 7, of the Hawaii Constitution requires the Commission to protect native Hawaiian traditional and customary rights: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaii an Islands prior to 1778, subject to the right of the State to regulate such rights.

3. No archaeological or cultural sites were encountered during the archaeological inventory surveys or the cultural impact study of the Petition Area.

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

5. Article XI, Section 1, of the Hawaii Constitution requires the State to conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and to promote the development and utilization of these resources

in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

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

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

8. The ambient air quality of the Petition Area and the surrounding communities is anticipated to be adversely impacted from fugitive dust during the construction phase of the development. A dust control plan that would include watering of active work areas and the use of wind screens in sensitive areas will be employed to minimize the potential for fugitive dust emissions.

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

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

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

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

13. Article XI, Section 7, of the Hawaii Constitution states that the State has an obligation to protect the use of Hawaii's water resources for the benefit of its people.

14. Development by MLP of a new well above Makawao to supply the drinking and non- drinking water service requirements of the Project will not adversely affect aquifers in the area.

#### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area being the subject of Docket A05-760 filed by Petitioner, consisting of approximately 87.702 acres of land in the State Land Use Agricultural District located at Kula, Makawao, Maui, Hawaii, identified as Maui TMK No: 2-3-09: 07 and 64 and approximately shown on Exhibit A attached and incorporated by reference shall be and hereby is reclassified to the State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

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

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

1.       **Affordable Housing.** Petitioner shall provide affordable housing opportunities for low, low-moderate, and gap group income residents of the State of Hawaii substantially in accordance with an the Residential Workforce Housing Policy of the County of Maui, Chapter 2.96 Maui County Code. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms and conditions as may be mutually agreeable to Petitioner and the County of Maui; provided however, that if the Petitioner builds affordable housing, then 100 per cent of the affordable housing shall be constructed prior to the sale of more than 50 per cent of the market lots. Petitioner will not permit lot buyers to build any ohana units in the Project through the imposition of restrictive covenants.

2.       **Transportation Improvements.** Petitioner shall implement traffic improvements and mitigation measures as recommended or required by the TIAR for the Project, and as accepted by the State of Hawaii Department of Transportation Highways Division ("DOT") and the County of Maui Department of Public Works, including, but not limited to, realignment and improvement of A‘eloa Road to County of Maui standards and connection of A‘eloa Road to Iolani Street and Old Haleakala Highway. Petitioner shall obtain DOT approval of the proposed traffic improvements and mitigation measures prior to the County of Maui approving an ordinance rezoning the Petition Area. Petitioner will contribute its fair share of the cost of State highway planned improvements and/or traffic mitigation measures to alleviate the impacts of the proposed development, as agreed to by Petitioner and DOT, in accordance with the findings of the TIAR and any required updates.

3.       **Civil Defense.** Petitioner shall, on a fair-share basis, fund and

construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawaii Department of Defense, Office of Civil Defense and County of Maui Civil Defense Agency.

**4. Archaeological Inventory Survey and Historic Preservation**

**Mitigation Plan.** Petitioner shall prepare, submit to, and obtain approval from the State of Hawaii Department of Land and Natural Resources, Historic Preservation Division of an archaeological monitoring plan to protect historic sites in the general vicinity of the Petition Area prior to commencement of any ground altering activities.

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

**6. Established Access Rights Protected.** Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

**7. Air Quality Monitoring.** Petitioner shall participate in an air quality-monitoring program if required by the State of Hawaii Department of Health.

**8. Notification of Potential Nuisances.** Petitioner shall disclose to

all prospective buyers and/or lessees of the Petition Area that potential odor, noise and dust pollution may result from agricultural uses on adjacent lands.

**9. No Restraint on Farming Operations.** Petitioner shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.

**10. Notification to Prospective Developers or Purchasers.** Petitioner shall notify all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under chapter 165, the Hawaii Right to Farm Act, and the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

**11. Drainage Improvements.** Petitioner shall fund the design and construction of drainage system improvements to prevent increased runoff resulting from the development of the Petition Area from adversely affecting State and County highway facilities to the satisfaction of appropriate State and County agencies, based on one hour of runoff from a 50 year storm. All drainage improvements will be developed in accordance with applicable DOH and County of Maui drainage requirements and standards.

**12. Integrated Solid Waste Management Plan.** Petitioner shall cooperate with the State of Hawaii Department of Health and County of Maui Department of Environmental Services to conform to the program goals and objectives of Chapter 342G, HRS, and the County of Maui's approved integrated solid waste management plan in accordance with a schedule and timeframe satisfactory to the State of Hawaii Department of Health. Petitioner

shall, in coordination with appropriate State and County government agencies, assist in the planning and promotion of solid waste recycling facilities within the Petition Area.

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

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

**15. Water Conservation Measures.** Petitioner, where feasible, shall implement water conservation measures and best management practices, such as use of endemic, indigenous and drought tolerant plants and turf, and incorporate such measures into any common area landscape planting.

**16. Public School Facilities.** Petitioner shall comply with HRS §302A-1603(a) regarding contribution to the development, funding and/or construction of school facilities.

**17. Energy Conservation Measures.** Petitioner shall implement to the extent feasible and practicable measures to promote energy conservation, sustainable design, and environmental stewardship, such as the use of solar energy and solar heating, consistent with the standards and guidelines promulgated by the Building Industry Association of Hawaii, the U.S. Green Building Council, the Hawaii Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawaii, Energy Star, and Green Communities,



into the design and construction of the Project and the structures within the Petition Area. Petitioner shall provide information to lot purchasers regarding energy conservation measures that may be undertaken by the individual homeowner.

**18. Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, including the primary roadways and access points, internal roadways, and water supply, sewage and electrical infrastructure for the Petition Area within ten (10) years from the date of the issuance of the Decision and Order.

**19. Order to Show Cause.** If: (a) Petitioner fails to complete construction of the proposed backbone infrastructure as described above or furnish a bond to the County of Maui for such completion within ten (10) years from the date of the Decision and Order, or (b) prior to the approval of an ordinance changing the zoning district of the portion of the Petition Area identified as Parcel 7 to an appropriate Residential District an ordinance shall be enacted by the County of Maui pursuant to which Parcel 7 shall no longer be designated for Single Family Residential use in the Makawao-Pukalani-Kula Community Plan Land Use Map or its equivalent, or placing Parcel 7 outside of the Urban Growth Boundaries adopted by the Maui County Council as part of the Maui Island Plan, then in any of the preceding events, the Commission may, on its own motion or at the request of any party or other interested person, issue an Order to Show Cause requiring Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural District classification or be changed to a more appropriate classification.

**20. Park Dedication.** Petitioner shall comply with the Parks Dedication requirements of the County of Maui as approved by the Director of Parks and Recreation.

**21. Parcel 64.** Parcel 64 of the Petition Area shall not be improved with any habitable structure.

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

**23. Notice of Change to Ownership Interests.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area. This condition shall not require notice of mortgage financing, and shall be satisfied by the giving of notice only, and shall not require approval by the Commission.

**24. Annual Reports.** Petitioner shall provide timely and without any prior notice, annual reports to the Commission, the Office of Planning and the Maui County Planning Department in connection with the status of the development proposed for the Petition Area, and Petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's Decision and Order.

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

**26. Statement of Imposition of Conditions.** Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall:

(a) record with the Bureau of Conveyances a statement that the Petition Area is subject to

conditions imposed by the Commission in the reclassification of the Petition Area, and (b) shall file a copy of such recorded statement with the Commission.


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

ADOPTION OF ORDER


The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 26 day of June, 2009. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

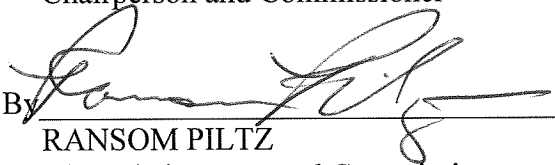
Done at Honolulu, Hawai'i, this 26 day of June, 2009, per motion on June 4, 2009.

APPROVED AS TO FORM

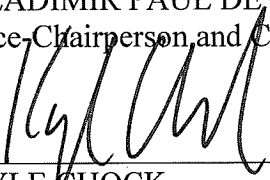
  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAII


By   
DUANE KANUHA  
Chairperson and Commissioner

By   
RANSOM PILTZ  
Vice-Chairperson and Commissioner

By ABSENT  
VLADIMIR PAUL DEVENS  
Vice-Chairperson and Commissioner

By   
KYLE CHOCK  
Commissioner

By   
THOMAS CONTRADES  
Commissioner

By   
LISA JUDGE  
Commissioner

By

  
NORMAN DIEZY  
Commissioner

By ABSENT

NICHOLAS W. TEVES, JR.  
Commissioner

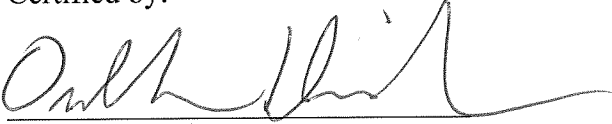
Filed and effective on:

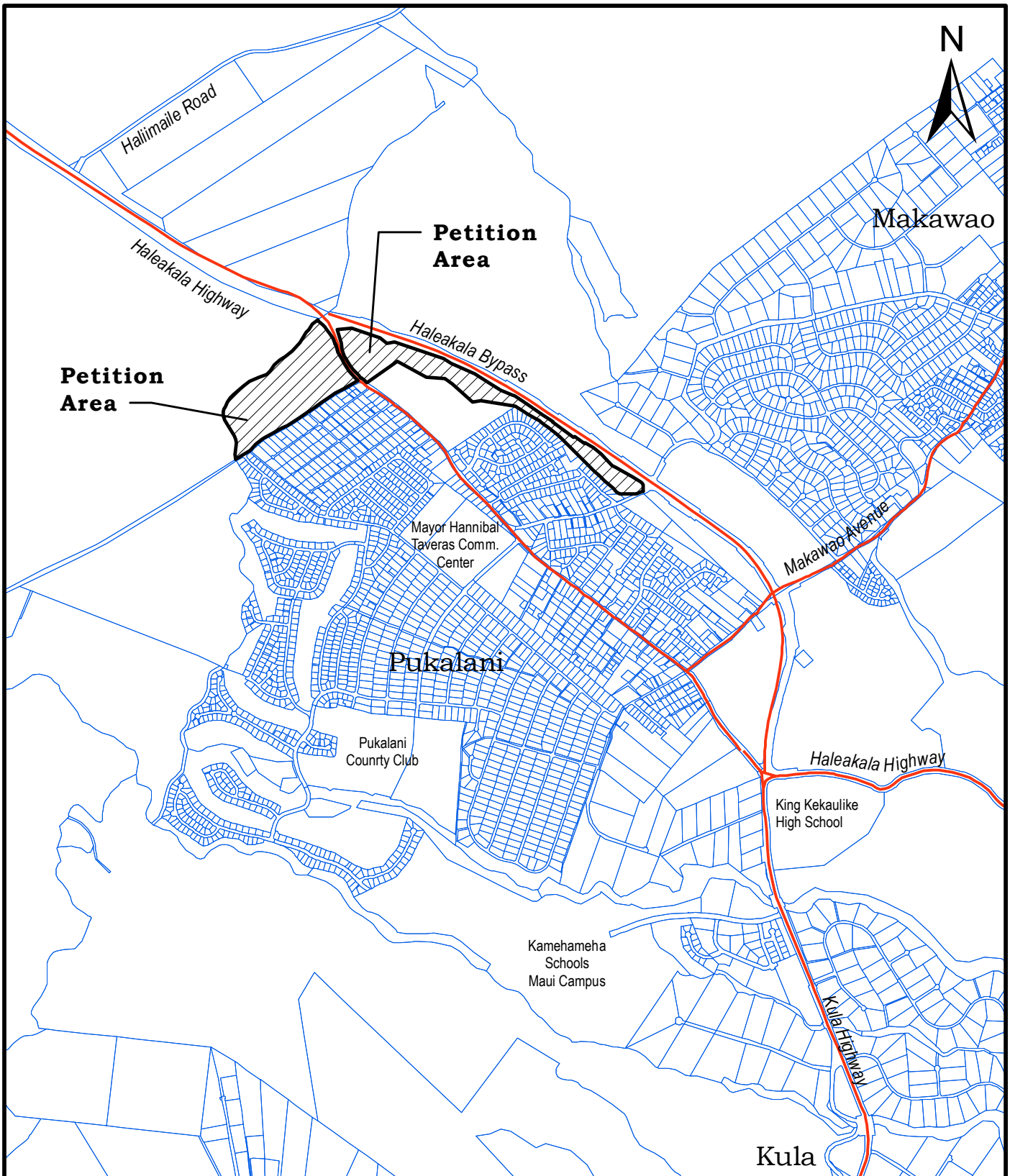
June 29, 2009

By ABSENT

REUBEN S.F. WONG  
Commissioner

Certified by:

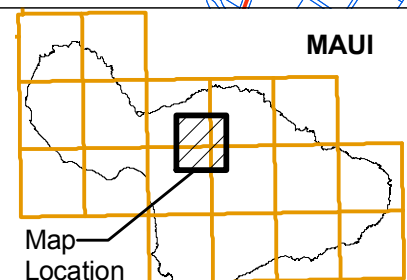
  
ORLANDO DAVIDSON  
Executive Officer



**A05-760 PUKALANI ASSOCIATES, LLC,  
a Hawaii limited liability company**

Location Map  
Tax Map Key: 2-3-009: 007 & 064,  
Pukalani, Maui, Hawai'i  
Scale : 1" = 2,000 ft.

**Exhibit "A"**



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Amended Petition of:

PUKALANI ASSOCIATES, LLC, a Hawaii  
limited liability company

To Amend the Agricultural Land Use District  
Boundaries Approximately 87.702 acres of  
land at Kula, Makawao, Maui, Hawaii, Maui  
Tax Map Key Nos. 2-3-09: 07 and 64.

DOCKET NO. A05-760

# CERTIFICATE OF SERVICE

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

HAND DELIVERED: ABBEY MAYER, Director  
State Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

REGULAR BRYAN C. YEE, Esq.  
MAIL: Deputy Attorney General  
425 Queen Street  
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REGULAR MAIL: JEFFREY HUNT, Director of Planning  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

REGULAR  
MAIL:

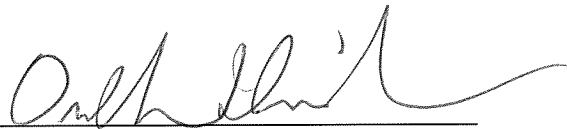
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JUN 29 2009

Dated: Honolulu, Hawaii, JUN 29 2009.

A handwritten signature in dark ink, appearing to read "Orlando Davidson", written over a horizontal line.

ORLANDO DAVIDSON  
Executive Officer