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LAND USE COMMISSION
STATE OF HAWAII
2015 SEP 11 P 3:29

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

MAKILA LAND CO., LLC

To Amend The Agricultural Land Use District Boundaries Into The Rural Land Use District For Approximately 231 acres of land, consisting of Tax Map Key Nos. (2) 4-7-013:001, 002, 003, 004, 005, 006 (por.), 007 (por.), 008 (por.), 009, 010, 011, 012, And Into The Urban Land Use District For Approximately 40 acres of land, consisting of Tax Key Nos. (2) 4-7-013: 006 (por.), 007 (por.), 008 (por.) at Launiupoko, Polanui, Lahaina, Island and County of Maui, State of Hawai'i

DOCKET NO. A15-799

PETITIONERS' MOTION REQUESTING THE LAND USE COMMISSION TO BE THE ACCEPTING AUTHORITY FOR AN ENVIRONMENTAL IMPACT STATEMENT, AND REQUESTING THAT THE LAND USE COMMISSION DETERMINE THAT THE PROPOSED ACTION WARRANTS THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT, TO BE INITIATED WITH THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE; MEMORANDUM IN SUPPORT OF MOTION; APPENDIX "A"; CERTIFICATE OF SERVICE


PETITIONERS' MOTION REQUESTING THE LAND USE COMMISSION TO BE THE ACCEPTING AUTHORITY FOR AN ENVIRONMENTAL IMPACT STATEMENT, AND REQUESTING THAT THE LAND USE COMMISSION DETERMINE THAT THE PROPOSED ACTION WARRANTS THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT, TO BE INITIATED WITH THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE

Makila Land Co., LLC ("**Petitioner**"), by and through its counsel, respectfully asks this honorable Land Use Commission of the State of Hawai'i (the "**Commission**"): (1) to determine that it will be the accepting authority for an environmental impact statement ("**EIS**") under Chapter 343, Hawaii Revised Statutes ("**HRS**"); and (2) to determine, through its judgment and experience, that an EIS is warranted and that the environmental review process should be initiated by the preparation of an Environmental Impact Statement Preparation Notice ("**EISPN**").

This Motion is brought pursuant to Chapter 205, and Hawaii Administrative Rules ("**HAR**") § 15-15-70, HRS § 343-5(a), HAR §§ 11-200-14, 11-200-4(b), 11-200-12, and HRS § 343-5(e). In this Docket Petitioner will seek (1) to amend the State Land Use Agricultural District boundaries into the State Land Use Rural and Urban District boundaries.

Pursuant to HAR § 15-15-70(c), Petitioner respectfully requests that the Commission hold a hearing on this Motion.

DATED: Honolulu, Hawai'i, September 11, 2015.



JENNIFER A. LIM
Attorney for Petitioner
MAKILA LAND CO., LLC

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of

MAKILA LAND CO., LLC

To Amend The Agricultural Land Use District Boundaries Into The Rural Land Use District For Approximately 231 acres of land, consisting of Tax Map Key Nos. (2) 4-7-013:001, 002, 003, 004, 005, 006 (por.), 007 (por.), 008 (por.), 009, 010, 011, 012, And Into The Urban Land Use District For Approximately 40 acres of land, consisting of Tax Key Nos. (2) 4-7-013: 006 (por.), 007 (por.), 008 (por.) at Launiupoko, Polanui, Lahaina, Island and County of Maui, State of Hawai'i

DOCKET NO. A15-799

MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

As more fully described in Petitioner's Petition for Land Use District Boundary Amendment ("**Petition**"), filed concurrent with this Motion, Petitioner is requesting a Land Use District Boundary Amendment ("**DBA**") to allow the Petition Area to be developed as a rural residential community to be known as the Makila Rural Community. However, prior to implementing the proposed District Boundary Amendment request, Petitioner must first comply with the environmental review process established under HRS Chapter 343.

Petitioner's development plan calls for subdividing the Petition Area to provide approximately 150 rural residential lots that will range in size from one-half acre to one acre. Petitioner also plans a minimum of 50 single-family workforce housing units, with the potential of up to 75 single-family workforce housing units. The workforce housing units will be clustered

near a central "village core" that will offer basic conveniences and services for the Project, including a park, limited commercial space, a community center, and possibly a site for a fire and ambulance substation. In addition, approximately seven acres within the Petition Area will be made available to the Hawai'i State Department of Transportation for the construction of the Lahaina Bypass.

II. ENVIRONMENTAL REVIEW

In addition to the proposed DBA, other major land use entitlements that will be required in order to develop the Project include an amendment to the West Maui Community Plan (a Community Plan Amendment, or "CPA") and a change in zoning. Because the Petitioner will be required to seek a CPA in order to develop the Project, the Petitioner's request for a DBA must comply with HRS Chapter 343. In the general case, any action which proposes an amendment to a County plan must complete the environmental review process required under HRS Chapter 343. *See* HRS § 343-5(a)(6) ("Except as otherwise provided, an environmental assessment shall be required for actions that: . . . Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county").

Another trigger requiring environmental review is the construction of a wastewater treatment facility. *See* HRS §343-5(a)(9). ("Except as otherwise provided, an environmental assessment shall be required for actions that: . . . (9) Propose any: (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent."). The development of the Makila Rural Community is anticipated to require the construction of suitable wastewater treatment facilities to support the

Community. Petitioner anticipates constructing a package wastewater treatment facility within the Petition Area.

A third possible trigger requiring environmental review is the use of State or County lands or State or County funds. *See* HRS §343-5(a)(1). Although no use of State or County lands is anticipated at this time, as with any project that will be constructing new infrastructure, especially roads and water systems, there is a reasonable possibility that easements within State and County lands, or the construction of connection points to State or County lands or within rights-of-way, may be required as part of the proposed development. At this stage Petitioner has no expectation of making use of any State or County funds in its construction of the Project.

A. HRS CHAPTER 343 PROCESS & ACT 172 (2012)

Often the environmental review process begins with the preparation of an Environmental Assessment ("EA"). An EA is "a written evaluation to determine whether an action may have a significant environmental effect." *See* HAR § 11-200-2. The EA process concludes in one of two ways. Either the approving agency issues a negative declaration determination (also referred to as a "finding of no significant impact"), or the approving agency determines that the proposed action may have a significant effect on the environment, it instructs the applicant to prepare an Environmental Impact Statement Preparation Notice ("EISPN"), and complete the environmental review process through the preparation and processing of an Environmental Impact Statement ("EIS"). *See* HAR § 11-200-9(b)(8).

However, as a result of the Hawai'i State Legislature's passage of Act 172 in 2012, the accepting authority may authorize an applicant to proceed directly to the preparation of an EISPN in cases where the agency determines, through its judgment and experience, that an EIS is likely to be required. HRS § 343-5(3)(e) states, in relevant part, as follows:

. . . if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may authorize the applicant to choose not to prepare an environmental assessment and instead prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules.

It should be duly noted that the purpose of Act 172, as set forth in the preamble, is:

to allow agencies to determine, based on their judgment and experience, that an environmental impact statement is likely to be required for a proposed action, and, therefore, choose not to prepare an environmental assessment or to allow an applicant not to prepare an environmental assessment, and instead proceed directly to the preparation of an environmental impact statement.

A copy of Act 172 is attached as Appendix A.

B. SIGNIFICANCE CRITERIA

An EIS is required when the approving agency or accepting authority determines that the proposed action may have a significant effect on the environment. A determination of whether a proposed action may have a significant effect on the environment requires an agency to review the significance criteria under HAR § 11-200-12(b). In most instances a proposed action will be determined to have a significant effect on the environment if it is anticipated to cause one or more of the following:

1. Involves in an irrevocable commitment to loss or destruction of any natural or cultural resource;
2. Curtails the range of beneficial uses of the environment;
3. Conflicts with the state's long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS, and any revisions thereof and amendments there to, court decisions, or executive orders;
4. Substantially affects the economic welfare, social welfare, and cultural practices of the community or State;

5. Substantially affects public health;
6. Involves secondary impacts, such as population changes or effects on public facilities;
7. Involves a substantial degradation of environmental quality;
8. Is individually limited but cumulatively has a considerable effect upon the environment or involves a commitment for larger actions;
9. Substantially affects a rare, threatened, or endangered species, or its habitat;
10. Detrimentially affects air or water quality or ambient noise levels;
11. Affects or be likely to suffer damage by being located in an environmentally sensitive area such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal waters;
12. Substantially affects scenic vistas and view planes identified in county or state plans or studies; and
13. Requires substantial energy consumption.

In light of these considerations, and the fact that the proposed Makila Rural Community intends to provide for 150 rural residential lots, and 50, and perhaps as many as 75, single-family workforce housing units, within a 271-acre land area that is currently vacant, Petitioner does not believe it prudent to proceed under the assumption that development of the proposed Project could not have a significant effect on the environment.

The Petition Area was recently designated by the County of Maui as being within the Rural Growth Boundary under the Maui Island Plan, adopted by the County on December 28, 2012 ("MIP"), and is therefore in an area designated for "a mixture of agricultural activities, low-density residential areas and small villages" and which "may contain limited amounts of State and County urban designated lands including residential and small clusters of businesses and civic uses" (*see* MIP at Table 8-2). While the Makila Rural Community is clearly consistent

with the MIP, an assessment of the environmental impacts of implementing the MIP is needed. The MIP was prepared and adopted without the preparation of an EA or EIS, as allowed under HRS § 343-5(a)(6), which exempts amendments to such County plans if those amendments are initiated by a County. Therefore, the proposed DBA for the Makila Rural Community provides an opportunity for environmental review of the implementation of the vision expressed in the MIP.

It is anticipated that development of the Makila Rural Community will result in changes to population in the area, and those changes are likely to have effects on public facilities such roads, schools, and recreational facilities. The development of the Makila Rural Community is also likely to require substantial energy consumption, both during the construction phase of the Project, and after full build out when homes and some businesses are operating within the Community.

The Makila Rural Community is also expected to substantially affect the economic and social welfare of the community, as will be thoroughly assessed in the Draft EIS. Anticipated impacts include capital investment, job creation, and tax revenue generation during both the build out and on-going operations of the community. Social welfare of the community is anticipated to experience a substantial positive effect through the provision of new housing opportunities, and particularly new workforce housing opportunities for Maui residents.

The extent of these effects, and an analysis of the means of mitigating these effects, will be fully addressed in the EIS. As explained under HAR § 11-200-16, which sets forth the content requirements for an EIS, an EIS should contain an explanation of the environmental consequences of a proposed action, and discuss all relevant and feasible consequences of the proposed action. An EIS must also include responsible opposing views, if any, on significant

environmental issues raised by the proposed action. An EIS will provide this Commission important information about the anticipated impacts of the requested DBA so that the Commission can better assess the proposed DBA against the criteria for a DBA under Chapter 205, HRS and the Commission's administrative rules.

C. ACT 172 (2012) EISPN

The *Hawai'i Environmental Policy Act Citizen's Guide* (October 2014), prepared by the State of Hawai'i Office of Environmental Quality Control ("**OEQC**"), provides that an Act 172-12 EISPN should at a minimum indicate in a concise manner the following: (1) identification of the applicant; (2) identification of accepting authority; (3) brief description of the proposed action; (4) determination; (5) reasons for supporting the determination; and (6) name, address and phone number of contact person for further information. Petitioner's Act 172-12 EISPN provides this information and more. A copy of Petitioner's EISPN was filed as an Exhibit to the Petition.

Should the Commission grant Petitioner's requested relief and agree that it is the appropriate accepting authority for this EISPN, the EISPN will be submitted to OEQC and published in *The Environmental Notice*. Publication of the EISPN will start a public review and comment period of 30 days within which agencies, groups or individuals have an opportunity to request to become a consulted party and to make written comments regarding environmental effects of the proposed action. *See* HAR § 11-200-15(b).

III. ENVIRONMENTAL REVIEW - AUTHORITY FOR RELIEF SOUGHT

With respect to the preparation and processing of the EIS, the Commission has authority to take the requested action under HRS § 343-5(a), HAR §§ 11-200-14, 11-200-4(b), 11-200-12, and HRS § 343-5(e).

The Makila Rural Community cannot be developed as envisioned without a DBA. As

discussed above, should the DBA be approved, development of the Petition Area will include certain of the statutory triggers under HRS § 343-5(a). HRS Chapter 343 directs that the environmental review process should begin "at the earliest practicable time." HAR § 11-200-14 provides that "Agencies shall ensure that statements [Environmental Impact Statements] are prepared at the earliest opportunity in the planning and decision-making process. This shall assure an early open forum for discussion of adverse effects and available alternatives, and that the decision-makers will be enlightened to any environmental consequences of the proposed action." In light of these mandates, the appropriate time to prepare an EIS for the Makila Rural Community is now, before an acceptable Petition for District Boundary Amendment is filed with the Commission.

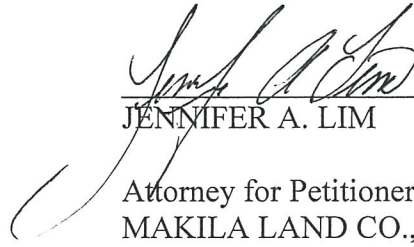
In light of the DBA, the Commission is the agency that will initially receive and process Petitioner's request for an approval. Thus, "the authority for requiring statements and for accepting any required statements that have been prepared" rests with this Commission. *See* HAR § 11-200-4(b). An EIS is required if a proposed action may have a significant effect on the environment. *See* HAR § 11-200-12. As addressed at length above, in light of Act 172 (2012) the Commission has the authority to authorize Petitioner to proceed directly to the preparation of an EISPN if the Commission determines, through its judgment and experience, that an EIS is likely to be required. *See* HRS § 343-5(e).

IV. CONCLUSION

Petitioner respectfully requests that this Commission: (1) agree to be the accepting authority to determine the acceptability of the environmental impact statement that Petitioner shall prepare to assess the environmental effects of the proposed District Boundary Amendment and development of the Petition Area; and (2) direct Petitioner to initiate the environmental review process by proceeding directly to the preparation of an environmental impact statement

preparation notice rather than an environmental assessment because, in the Commission's judgment and experience, the proposed District Boundary Amendment and development of the Petition Area, if authorized, may have a significant effect on the environment.

DATED: Honolulu, Hawai'i, September 11, 2015.



JENNIFER A. LIM
Attorney for Petitioner
MAKILA LAND CO., LLC



GOV. MSG. NO. 1275

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 27, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

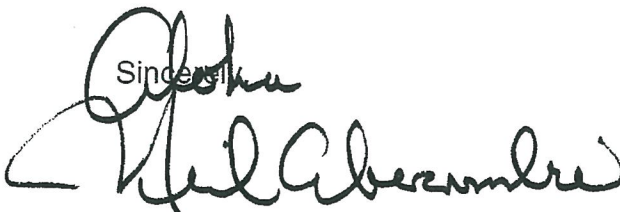
Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2012, the following bill was signed into law:

SB2281 SD1 HD1

RELATING TO ENVIRONMENTAL IMPACT
STATEMENTS.

Act 172 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 27 2012

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

ACT 172

S.B. NO. 2281
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that state agencies that
2 have experience with environmental review in Hawaii are able to
3 determine which projects are likely to require full
4 environmental review and should proceed directly to the
5 preparation of an environmental impact statement. While this
6 omits one layer of public participation through the
7 environmental assessment, opportunities for public participation
8 remain in the environmental impact statement process. The
9 legislature further finds that bypassing the environmental
10 assessment in certain situations will improve the efficiency of
11 the environmental review process and speed the progress of
12 completing those proposed actions.

13 The purpose of this Act is to allow agencies to determine,
14 based on their judgment and experience, that an environmental
15 impact statement is likely to be required for a proposed action,
16 and, therefore, choose not to prepare an environmental
17 assessment or to allow an applicant not to prepare an



1 environmental assessment, and instead proceed directly to the
2 preparation of an environmental impact statement.

3 SECTION 2. Section 343-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§343-5 Applicability and requirements. (a) Except as
6 otherwise provided, an environmental assessment shall be
7 required for actions that:

8 (1) Propose the use of state or county lands or the use of
9 state or county funds, other than funds to be used for
10 feasibility or planning studies for possible future
11 programs or projects that the agency has not approved,
12 adopted, or funded, or funds to be used for the
13 acquisition of unimproved real property; provided that
14 the agency shall consider environmental factors and
15 available alternatives in its feasibility or planning
16 studies; provided further that an environmental
17 assessment for proposed uses under section 205-
18 2(d)(11) or 205-4.5(a)(13) shall only be required
19 pursuant to section 205-5(b);

20 (2) Propose any use within any land classified as a
21 conservation district by the state land use commission
22 under chapter 205;



- 1 (3) Propose any use within a shoreline area as defined in
2 section 205A-41;
- 3 (4) Propose any use within any historic site as designated
4 in the National Register or Hawaii Register, as
5 provided for in the Historic Preservation Act of 1966,
6 Public Law 89-665, or chapter 6E;
- 7 (5) Propose any use within the Waikiki area of Oahu, the
8 boundaries of which are delineated in the land use
9 ordinance as amended, establishing the "Waikiki
10 Special District";
- 11 (6) Propose any amendments to existing county general
12 plans where the amendment would result in designations
13 other than agriculture, conservation, or preservation,
14 except actions proposing any new county general plan
15 or amendments to any existing county general plan
16 initiated by a county;
- 17 (7) Propose any reclassification of any land classified as
18 a conservation district by the state land use
19 commission under chapter 205;
- 20 (8) Propose the construction of new or the expansion or
21 modification of existing helicopter facilities within



1 the State, that by way of their activities, may
2 affect:

3 (A) Any land classified as a conservation district by
4 the state land use commission under chapter 205;

5 (B) A shoreline area as defined in section 205A-41;
6 or

7 (C) Any historic site as designated in the National
8 Register or Hawaii Register, as provided for in
9 the Historic Preservation Act of 1966, Public Law
10 89-665, or chapter 6E; or until the statewide
11 historic places inventory is completed, any
12 historic site that is found by a field
13 reconnaissance of the area affected by the
14 helicopter facility and is under consideration
15 for placement on the National Register or the
16 Hawaii Register of Historic Places; and

17 (9) Propose any:

18 (A) Wastewater treatment unit, except an individual
19 wastewater system or a wastewater treatment unit
20 serving fewer than fifty single-family dwellings
21 or the equivalent;

22 (B) Waste-to-energy facility;



- 1 (C) Landfill;
2 (D) Oil refinery; or
3 (E) Power-generating facility.

4 (b) Whenever an agency proposes an action in subsection
5 (a), other than feasibility or planning studies for possible
6 future programs or projects that the agency has not approved,
7 adopted, or funded, or other than the use of state or county
8 funds for the acquisition of unimproved real property that is
9 not a specific type of action declared exempt under section 343-
10 6, the agency shall prepare an environmental assessment for
11 ~~[such]~~ the action at the earliest practicable time to determine
12 whether an environmental impact statement shall be required[-
13 ~~(1)~~]; provided that if the agency determines, through its
14 judgment and experience, that an environmental impact statement
15 is likely to be required, the agency may choose not to prepare
16 an environmental assessment and instead shall prepare an
17 environmental impact statement that begins with the preparation
18 of an environmental impact statement preparation notice as
19 provided by rules.

20 (c) For environmental assessments for which a finding of
21 no significant impact is anticipated:



- 1 ~~[(A)]~~ (1) A draft environmental assessment shall be
2 made available for public review and comment for
3 a period of thirty days;
- 4 ~~[(B)]~~ (2) The office shall inform the public of the
5 availability of the draft environmental
6 assessment for public review and comment
7 pursuant to section 343-3;
- 8 ~~[(C)]~~ (3) The agency shall respond in writing to
9 comments received during the review and prepare
10 a final environmental assessment to determine
11 whether an environmental impact statement shall
12 be required;
- 13 ~~[(D)]~~ (4) A statement shall be required if the agency
14 finds that the proposed action may have a
15 significant effect on the environment; and
- 16 ~~[(E)]~~ (5) The agency shall file notice of ~~[such]~~ the
17 determination with the office. When a conflict
18 of interest may exist because the proposing
19 agency and the agency making the determination
20 are the same, the office may review the agency's
21 determination, consult the agency, and advise
22 the agency of potential conflicts, to comply



1 with this section. The office shall publish the
2 final determination for the public's information
3 pursuant to section 343-3.

4 The draft and final statements, if required, shall be
5 prepared by the agency and submitted to the office. The draft
6 statement shall be made available for public review and comment
7 through the office for a period of forty-five days. The office
8 shall inform the public of the availability of the draft
9 statement for public review and comment pursuant to section 343-
10 3. The agency shall respond in writing to comments received
11 during the review and prepare a final statement.

12 The office, when requested by the agency, may make a
13 recommendation as to the acceptability of the final statement.

14 ~~[(2)]~~ (d) The final authority to accept a final statement
15 shall rest with:

16 ~~[(A)]~~ (1) The governor, or the governor's authorized
17 representative, whenever an action proposes the
18 use of state lands or the use of state funds, or
19 whenever a state agency proposes an action
20 within the categories in subsection (a); or

21 ~~[(B)]~~ (2) The mayor, or the mayor's authorized
22 representative, of the respective county



1 whenever an action proposes only the use of
2 county lands or county funds.

3 Acceptance of a required final statement shall be a
4 condition precedent to implementation of the proposed action.
5 Upon acceptance or nonacceptance of the final statement, the
6 governor or mayor, or the governor's or mayor's authorized
7 representative, shall file notice of such determination with the
8 office. The office, in turn, shall publish the determination of
9 acceptance or nonacceptance pursuant to section 343-3.

10 ~~[(e)]~~ (e) Whenever an applicant proposes an action
11 specified by subsection (a) that requires approval of an agency
12 and that is not a specific type of action declared exempt under
13 section 343-6, the agency initially receiving and agreeing to
14 process the request for approval shall require the applicant to
15 prepare an environmental assessment of the proposed action at
16 the earliest practicable time to determine whether an
17 environmental impact statement shall be required; provided
18 that~~[-fe]~~ if the agency determines, through its judgment and
19 experience, that an environmental impact statement is likely to
20 be required, the agency may authorize the applicant to choose
21 not to prepare an environmental assessment and instead prepare
22 an environmental impact statement that begins with the



1 preparation of an environmental impact statement preparation
2 notice as provided by rules. For an action that proposes the
3 establishment of a renewable energy facility, a draft
4 environmental impact statement shall be prepared at the earliest
5 practicable time. The final approving agency for the request
6 for approval is not required to be the accepting authority.

7 For environmental assessments for which a finding of no
8 significant impact is anticipated:

- 9 (1) A draft environmental assessment shall be made
10 available for public review and comment for a period
11 of thirty days;
- 12 (2) The office shall inform the public of the availability
13 of the draft environmental assessment for public
14 review and comment pursuant to section 343-3; and
- 15 (3) The applicant shall respond in writing to comments
16 received during the review[7] and [~~the agency~~] the
17 applicant shall prepare a final environmental
18 assessment to determine whether an environmental
19 impact statement shall be required. A statement shall
20 be required if the agency finds that the proposed
21 action may have a significant effect on the
22 environment. The agency shall file notice of the



1 agency's determination with the office, which, in
2 turn, shall publish the agency's determination for the
3 public's information pursuant to section 343-3.

4 The draft and final statements, if required, shall be
5 prepared by the applicant, who shall file these statements with
6 the office.

7 The draft statement shall be made available for public
8 review and comment through the office for a period of forty-five
9 days. The office shall inform the public of the availability of
10 the draft statement for public review and comment pursuant to
11 section 343-3.

12 The applicant shall respond in writing to comments received
13 during the review and prepare a final statement. The office,
14 when requested by the applicant or agency, may make a
15 recommendation as to the acceptability of the final statement.

16 The authority to accept a final statement shall rest with
17 the agency initially receiving and agreeing to process the
18 request for approval. The final decision-making body or
19 approving agency for the request for approval is not required to
20 be the accepting authority. The planning department for the
21 county in which the proposed action will occur shall be a
22 permissible accepting authority for the final statement.



1 Acceptance of a required final statement shall be a
2 condition precedent to approval of the request and commencement
3 of the proposed action. Upon acceptance or nonacceptance of the
4 final statement, the agency shall file notice of [~~such~~] the
5 determination with the office. The office, in turn, shall
6 publish the determination of acceptance or nonacceptance of the
7 final statement pursuant to section 343-3.

8 The agency receiving the request, within thirty days of
9 receipt of the final statement, shall notify the applicant and
10 the office of the acceptance or nonacceptance of the final
11 statement. The final statement shall be deemed to be accepted
12 if the agency fails to accept or not accept the final statement
13 within thirty days after receipt of the final statement;
14 provided that the thirty-day period may be extended at the
15 request of the applicant for a period not to exceed fifteen
16 days.

17 In any acceptance or nonacceptance, the agency shall
18 provide the applicant with the specific findings and reasons for
19 its determination. An applicant, within sixty days after
20 nonacceptance of a final statement by an agency, may appeal the
21 nonacceptance to the environmental council, which, within thirty
22 days of receipt of the appeal, shall notify the applicant of the



1 council's determination. In any affirmation or reversal of an
2 appealed nonacceptance, the council shall provide the applicant
3 and agency with specific findings and reasons for its
4 determination. The agency shall abide by the council's
5 decision.

6 [~~d~~] (f) Whenever an applicant requests approval for a
7 proposed action and there is a question as to which of two or
8 more state or county agencies with jurisdiction has the
9 responsibility of preparing the environmental assessment, the
10 office, after consultation with and assistance from the affected
11 state or county agencies, shall determine which agency shall
12 prepare the assessment.

13 [~~e~~] (g) In preparing an environmental assessment, an
14 agency may consider and, where applicable and appropriate,
15 incorporate by reference, in whole or in part, previous
16 determinations of whether a statement is required and previously
17 accepted statements. The council, by rule, shall establish
18 criteria and procedures for the use of previous determinations
19 and statements.

20 [~~f~~] (h) Whenever an action is subject to both the
21 National Environmental Policy Act of 1969 (Public Law 91-190)
22 and the requirements of this chapter, the office and agencies




1 shall cooperate with federal agencies to the fullest extent
 2 possible to reduce duplication between federal and state
 3 requirements. Such cooperation, to the fullest extent possible,
 4 shall include joint environmental impact statements with
 5 concurrent public review and processing at both levels of
 6 government. Where federal law has environmental impact
 7 statement requirements in addition to but not in conflict with
 8 this chapter, the office and agencies shall cooperate in
 9 fulfilling these requirements so that one document shall comply
 10 with all applicable laws.

11 [~~g~~] (i) A statement that is accepted with respect to a
 12 particular action shall satisfy the requirements of this
 13 chapter, and no other statement for the proposed action shall be
 14 required."

15 SECTION 3. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 27 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII

**BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII**

In the Matter of the Petition of

MAKILA LAND CO., LLC

To Amend The Agricultural Land Use District Boundaries Into The Rural Land Use District For Approximately 231 acres of land, consisting of Tax Map Key Nos. (2) 4-7-013:001, 002, 003, 004, 005, 006 (por.), 007 (por.), 008 (por.), 009, 010, 011, 012, And Into The Urban Land Use District For Approximately 40 acres of land, consisting of Tax Key Nos. (2) 4-7-013: 006 (por.), 007 (por.), 008 (por.) at Launiupoko, Polanui, Lahaina, Island and County of Maui, State of Hawai'i

DOCKET NO. A15-799

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that due service of the within document was made by depositing the same with the United States Mail, postage prepaid, or by hand delivery, on September 11, 2015, addressed to:

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MAUI ELECTRIC COMPANY, LIMITED BY MAIL
c/o Phil Hauret
Hawaiian Electric Company
1100 ASB Tower
1001 Bishop Street
Honolulu, HI 96813

HAWAIIAN TELCOM, INC BY MAIL
Attn: Legal Department
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Honolulu, HI 96813

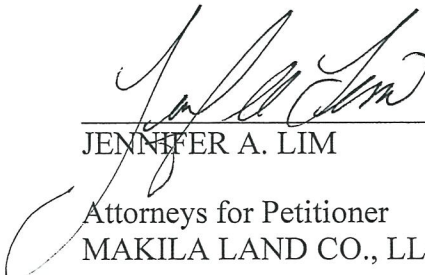
MAHANALUA NUI HOMEOWNERS BY MAIL
ASSOCIATION, INC.
c/o Management Consultants of Hawaii
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LAUNIUPOKO ASSOCIATES, LLC BY MAIL
&
MAKILA RIDGE PROPERTIES LLC
Attn: Peter Martin
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DATED: Honolulu, Hawai'i, September 11, 2015.



JENNIFER A. LIM
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