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LAND USE COMMISSION
STATE OF HAWAII

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

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

**MOTION FOR EXTENSION OF TIME
TO COMPLETE CONSTRUCTION OF
INFRASTRUCTURE IMPROVEMENTS;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF JORDAN
E. HART; DECLARATION OF MARK
LANE; CERTIFICATE OF SERVICE**

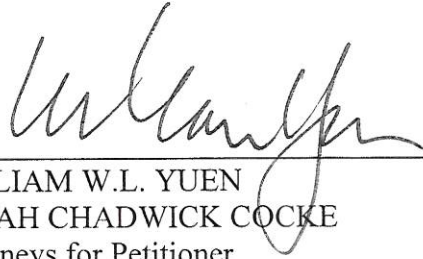
**MOTION FOR EXTENSION OF TIME TO COMPLETE CONSTRUCTION OF
INFRASTRUCTURE IMPROVEMENTS**

COMES NOW PUKALANI ASSOCIATES, LLC, a Hawaii limited liability company,
("Petitioner"), by and through its attorneys, Alston Hunt Floyd & Ing, and moves the Land Use
Commission of the State of Hawaii (the "Commission") to issue an order amending Condition
Nos. 18 and 19 of the Commission's Findings of Fact, Conclusions of Law, and Decision and
Order filed on June 29, 2009 (the "Decision and Order"), to allow for a five-year extension of
time from June 29, 2019, until June 29, 2024, to complete construction of backbone
infrastructure improvements.

Petitioner requests this five year extension of time to complete construction of the backbone infrastructure, including the primary roadways and access points, internal roadways, and water supply, sewage and electrical infrastructure pursuant to Condition Nos. 18 and 19 in the Decision and Order. Conditions Nos. 18 and 19 provided that these improvements are to be completed within ten years of the filing of the Decision and Order, or by June 29, 2019.

This Motion is made pursuant to Hawaii Revised Statutes, Chapter 205, and Hawaii Administrative Rules ("HAR") §§ 15-15-70, 15-15-79 and 15-15-94, and is based on the Memorandum in Support of Motion, Declaration of Jordan E. Hart, Declaration of Mark Lane, and the pleadings, records and files of the Commission. Pursuant to HAR § 15-15-70(c), Petitioner requests a hearing on this Motion.

DATED: Honolulu, Hawai'i, June 1, 2017

A handwritten signature in black ink, appearing to read 'W. Yuen', is written over a horizontal line.

WILLIAM W.L. YUEN
SARAH CHADWICK COCKE
Attorneys for Petitioner

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**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. BACKGROUND

By Findings of Fact, Conclusions of Law, and Decision and Order filed on June 29, 2009 (the “Decision and Order”), the Land Use Commission of the State of Hawaii (the “Commission”) reclassified approximately 87.702 acres of land located at Kula, Makawao, Maui, Hawaii, identified as Maui TMK No.: 2-3-09:07 and 64 (the “Petition Area”), from the State Land Use Agricultural District to the State Land Use Urban District.

Pukalani Associates, LLC, a Hawaii limited liability company (“Petitioner”), is the owner in fee simple of the Petition Area. Petitioner intends to develop the Petition Area as a master-planned residential community consisting of approximately 176 single family lots (the “Project”).

Condition No. 18 in the Decision and Order (“Condition No. 18”) states that:

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.

Condition No. 19 in the Decision and Order (“Condition No. 19”) states that:

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.

The ten (10) year period will expire on June 29, 2019.

The purpose of this Motion is to extend the period to complete the construction of the backbone infrastructure for the Project by an additional five (5) years, or until June 29, 2024.

II. APPLICABLE LAND USE COMMISSION RULES

The Commission’s Rules applicable to this proceeding are set forth in the Hawaii Administrative Rules (“HAR”), Title 15, Chapter 15. Motions before the Commission are governed by HAR § 15-15-70 which provides in pertinent part that “Any party may make motions before, during, or after the close of a hearing.”

The Commission imposed Condition No. 18 pursuant to HAR § 15-15-79 which provides in pertinent part that: “Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary amendment, in developing the property receiving the boundary amendment.”

Petitioner brings this Motion to amend Conditions Nos. 18 and 19 to extend the time to complete construction of the backbone infrastructure by an additional five (5) years, until June

29, 2024. For the reasons described in Section III and in the attached Declarations of Jordan E. Hart and Mark Lane, Petitioner will be unable to complete the construction of the backbone infrastructure by June 29, 2019.

The Commission's rule regarding the modification of conditions of approval is set forth in HAR § 15-15-94, which provides in pertinent part as follows:

(a) If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed by the commission, or imposed pursuant to section 15-15-90(e) or (f), or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.

(b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.

Petitioner believes that there is good cause for the Commission to modify its Decision and Order, as more fully described in Section III.

III. JUSTIFICATION FOR EXTENSION

A. Delay Due to Unprecedented Financial Crisis

The global financial crisis and recession that originated in September 2008 was the most severe recession since the Great Depression of the 1930's. The 2008 financial crisis froze capital markets and sent real estate markets into a tailspin worldwide. The effect of this strain on the real estate market has reverberated through many business sectors in Hawaii. No business sector was impacted as hard by the faltering economy than real estate development.

Real estate development in Hawaii is typically financed using a combination of equity and debt financing. Petitioner had and continues to have sufficient equity to pursue development of the Petition Area. As residential real estate sales prices and demand for housing on Maui both

dropped significantly during the financial crisis, financing for new real estate developments disappeared. In light of the severity and length of the financial crisis, and the resulting lack of debt financing opportunities for development projects in the early years of this decade, Petitioner determined that it was unfeasible to expend time and resources to pursue land use entitlements for the Project on an expedited basis.

The real estate market has now recovered and financing for real estate developments such as the Project is now available. Petitioner has renewed its efforts to develop the Petition Area. Petitioner has the equity resources necessary to complete the land use entitlement process, and is willing to commit these resources to the development of the Petition Area. There continues to be a critical need for affordable housing and housing for the local market on Maui. Petitioner's development of the Project will help satisfy this need.

B. Petitioner's Need for Additional Time to Develop the Petition Area

There will not be sufficient time for Petitioner to complete construction of the backbone infrastructure before the original deadline of June 29, 2019. The following is a list of steps that Petitioner has taken and must take to develop the Project.

On June 16, 2010, Petitioner filed an application with the County of Maui Department of Planning (the "Planning Department") for a Change in Zoning of the Petition Area (the "Change in Zoning Application") from the Agricultural District to the R-2 Residential District. The Planning Department ceased processing this Change in Zoning Application on May 18, 2015.

Petitioner is preparing a new Change in Zoning Application to change the zoning of the Petition Area from the Agricultural District to the R-2 Residential District. In order to complete the Change in Zoning Application, Petitioner is actively engaged in preparing the necessary studies and completing the necessary arrangements to complete the Change in Zoning Application.

Petitioner is required to engage a traffic engineer to update the Traffic Impact Analysis Report (“TIAR”) and to address concerns raised by the State of Hawaii Department of Transportation in 2011. Petitioner is also required to demonstrate the availability of utility service to the Petition Area. Petitioner has engaged Randall Okaneku, P.E. dba The Traffic Management Consultant, as a traffic engineer to prepare a revised TIAR. Mr. Okaneku is expected to complete the TIAR in June 2017.

Petitioner must complete planning for provision of utility service to the Petition Area. Petitioner’s project manager Mark Lane has provided a declaration describing the difficulty Petitioner has experienced in obtaining a source of potable water for the Project. Petitioner subsequently retained Tom Nance, Water Resource Engineering to assess the availability of water resources to serve the Petition Area. Mr. Nance evaluated proposed water demand for the Project and groundwater conditions beneath the Project Site. In a report prepared in April 2017, Mr. Nance recommended a well be drilled in the Petition Area on Maui Tax Map Key No. 2-3-09:64 approximately 150 feet in elevation mauka of the portion of the Petition Area designated for residential development. Mr. Nance believes a well drilled at this location will generate sufficient potable water to serve the Project. Petitioner has determined that developing its own well source is the most expeditious method of providing potable water to the Petition Area.

On June 17, 2010, the State of Hawaii, Public Utilities Commission (“PUC”) issued a decision and order approving the application of Petitioner and Hawaii Water Service Company, Inc. (“HWSC”) to expand HWSC’s existing service area to provide wastewater collection and treatment services to the Petition Area. Petitioner must negotiate a will-serve letter and Contribution in Aid of Construction Agreement regarding Petitioner’s cost to provide wastewater treatment service to the Petition Area.

Petitioner must also provide an archeological monitoring plan (the "Monitoring Plan") with the Change in Zoning Application. Petitioner has retained Scientific Consultant Services, Inc. to prepare the Monitoring Plan. The Monitoring Plan must be approved by the State of Hawaii Department of Land and Natural Resources Historic Preservation Division ("SHPD"). Completion of the Monitoring Plan will depend on the time required for SHPD to review and approve the Monitoring Plan.

Petitioner's planning consultant Jordan E. Hart of Chris Hart & Partners, Inc. will require approximately two to three weeks to complete the Change in Zoning Application after he receives the last consultant report. Given the undetermined length of time expected for SHPD to approve the Monitoring Plan, Mr. Hart expects Petitioner will file the Change in Zoning Application by late July 2017.

For the reasons set forth in the attached Declaration of Jordan E. Hart, Petitioner anticipates that approximately 18 months to two years will be required to complete preparation of and receive approval of the Change in Zoning Application and obtain an amendment to the Zoning Ordinance for the Petition Area.

Following approval of the Zoning Ordinance, Petitioner must prepare engineering design plans for the Petition Area in order to apply for preliminary subdivision approval. After the County of Maui Department of Public Works grants preliminary approval to the subdivision, Petitioner may commence construction of the backbone infrastructure improvements for subdivision of the Petition Area. Petitioner estimates that at least five years will be required to obtain the necessary permits and to complete construction of the backbone infrastructure improvements for subdivision of the Petition Area.

IV. SUMMARY AND CONCLUSION

Based on the foregoing and the attached Declarations of Jordan E. Hart and Mark Lane, HAR §§ 15-15-70, 15-15-79 and 15-15-94, and the records and files in this Docket, Petitioner respectfully requests that the Commission grant this Motion and modify Conditions Nos. 18 and 19 to extend the period allowed for completion of the construction of the backbone infrastructure by an additional five (5) years, until June 29, 2024.

DATED: Honolulu, Hawai'i, June 1, 2017



WILLIAM W.L. YUEN
SARAH CHADWICK COCKE
Attorneys for Petitioner

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OF THE STATE OF HAWAII

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DECLARATION OF JORDAN E. HART

DECLARATION OF JORDAN E. HART

I, JORDAN E. HART, declare as follows:

1. I make this Declaration upon my personal knowledge and belief.
2. I am a principal planner with Chris Hart & Partners, Inc.
3. I am assisting Pukalani Associates, LLC, a Hawaii limited liability company (“Petitioner”), with the preparation of a Change in Zoning Application (the “Change in Zoning Application”) to change the zoning of the land that is the subject of this Petition (the “Petition Area”) from the Agricultural District to the R-2 Residential District.
4. I am submitting this Declaration in support of Petitioner’s Motion for Extension of Time to Complete Construction of Infrastructure Improvements.
5. Petitioner filed an application with the County of Maui Department of Planning (the “Planning Department”) in 2010 for a Change in Zoning of the Petition Area (the “Change in Zoning Application”). The Planning Department ceased processing the original Change in Zoning Application on May 18, 2015.
6. I am preparing a new Change in Zoning Application to change the zoning of the Petition Area from the Agricultural District to the R-2 Residential District.

7. In order to complete the Change in Zoning Application, Petitioner must engage a traffic engineer to update the description of traffic conditions observed in 2010, to update Traffic Impact Analysis Report (“TIAR”) and to revise the TIAR to address concerns raised by the State of Hawaii Department of Transportation in 2011.

8. Petitioner has engaged Randall Okaneku, P.E. dba The Traffic Management Consultant, as a traffic engineer to prepare a revised TIAR. Mr. Okaneku is expected to complete traffic counts on roads adjacent to the Petition Area and complete the TIAR in June 2017.

9. Petitioner must complete planning for provision of utility service to the Petition Area. Petitioner retained Tom Nance Water Resource Engineering to assess the availability of water resources to serve the Petition Area. Mr. Nance evaluated proposed water demand for the Project and groundwater conditions beneath the Project Site. In a report prepared in April 2017, Mr. Nance recommended a well be drilled in the Petition Area on Maui Tax Map Key No. 2-3-09:64 approximately 150 feet in elevation mauka of the portion of the Petition Area designated for residential development. Mr. Nance believes a well drilled at location will generate sufficient potable water to serve the Project.

10. Petitioner must also provide an archeological monitoring plan (the “Monitoring Plan”) with the Change in Zoning Application. Petitioner has retained Scientific Consultant Services, Inc. to prepare the Monitoring Plan. The Monitoring Plan must be approved by the State of Hawaii Department of Land and Natural Resources Historic Preservation Division (“SHPD”). Completion of the Monitoring Plan will depend on the time required for SHPD to review and approve the Monitoring Plan.

11. I anticipate I will require approximately two to three weeks to complete preparation of the Change in Zoning Application after I receive the last consultant report. Given


the undetermined length of time expected for SHPD to approve the Monitoring Plan, I expect Petitioner will file the Change in Zoning Application by late July 2017.

12. Following submission of the Change in Zoning Application, the Planning Department will solicit comments from County of Maui and State of Hawaii departments and agencies, and then prepare a recommendation. The Planning Department will make a recommendation on the Change in Zoning Application to the Maui Planning Commission. The Planning Commission will conduct a public hearing and provide a recommendation to the Maui County Council for final decision on the Change in Zoning Application. The Council must conduct a public hearing and approve the Change in Zoning Application as an Amendment to the Zoning Ordinance. Finally the Mayor must approve the Amendment to the Zoning Ordinance. I anticipate that approximately 18 months to two years may be required to complete the Change in Zoning process to obtain an approval of the Amendment to the Zoning Ordinance.

13. Following approval of the Amendment to the Zoning Ordinance, Petitioner must prepare engineering design plans for the Petition Area in order to apply for preliminary subdivision approval. After the County of Maui Department of Public Works grants preliminary approval to the subdivision and issues the necessary grading permits, Petitioner may commence construction of the backbone infrastructure improvements for subdivision of the Petition Area. I estimate that at least five years will be required to obtain the necessary permits and to complete construction of the backbone infrastructure improvements for subdivision of the Petition Area.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Wailuku, Maui, Hawai'i, on May 23, 2017.


JORDAN E. HART

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DECLARATION OF MARK LANE

DECLARATION OF MARK LANE

I, MARK LANE, declare as follows:

1. I make this Declaration upon my personal knowledge and belief.
2. I am a project manager for Pukalani Associates, LLC, a Hawaii limited liability company ("Petitioner").
3. I am assisting Petitioner with the development of the land that is the subject of this Petition (the "Petition Area").
4. I am submitting this Declaration in support of Petitioner's Motion for Extension of Time to Complete Construction of Infrastructure Improvements.
5. Beginning in March 2014, I have been responsible for obtaining potable water for the Kauhale Lani project (the "Project").
6. Since that time I and other Petitioner representatives have met with County of Maui Department of Planning (the "Planning Department"), private land use planners, Petitioner's Maui land use attorney Paul Mancini, Esq., representatives of Pukalani Country Club (an adjacent property owner) and a hydrological engineer to establish a viable solution for a



domestic water source and transmission system to the Petition Area or, in the alternative, to drill a well on the Petition Area or an adjacent property.

7. In April 2015, Mr. Mancini and I met with representatives of the County of Maui Department of Water Supply ("DWS") to discuss availability of water from the DWS system. DWS stated that the County was not accepting new applications for water meters, and that the County would not supply potable water to the Petition Area.

8. At that time I was informed that there were over 1800 applicants for County water meters, and that the County would only grant 500 new water meters. The County stopped accepting new applications for water meters in 2012.

9. In May 2015, I met with representatives of the Planning Department to discuss subdivision approval for the Petition Area. The Planning Department informed me that Petitioner must provide assurance that adequate domestic water was available to the Petition Area from a source other than DWS in order for the Planning Department to process the Change in Zoning Application.

10. In the spring of 2015, Pukalani County Club determined that it did not have enough surplus water to provide any domestic water to Petitioner for the Petition Area.

11. In March 2016, I met with a local developer to discuss a joint venture to share the cost of developing a well on a parcel in the vicinity of the Petition Area. Petitioner is waiting for test results from pumping a pilot well.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Los Angeles, CA, on May 18, 2017.



MARK LANE

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Motion for Extension of Time to Complete Construction of Infrastructure Improvements* has been duly served on the following parties at their last known addresses by hand delivery, electronic mail or depositing in the U.S. mail, postage prepaid on June 1, 2017.

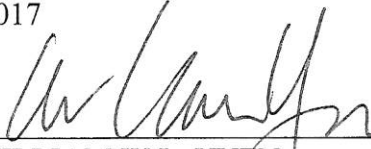
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DATED: Honolulu, Hawai'i, June 1, 2017



WILLIAM W.L. YUEN
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