



APPENDIX N
Conditions of Motion to Amend with Proposed
Changes

Below is a list of the existing conditions in the 1995 Decision and Order that would be included in the new Findings of Fact, Conclusions of Law and Decision and Order and would apply only to the Piilani Parcels, as sought by Applicant in the Motion to Amend.

1. 1995 Condition 1:

“The Petitioner shall obtain a Community Plan Amendment and Change in Zoning from the county of Maui.”

Request for Modification or Deletion of Condition 1:

Piilani requests that Condition 1 be deleted.

Following the issuance of the 1995 Decision and Order, in 1998, the Original Petitioner applied to the County of Maui for a change in zoning from Agricultural to M-1 Light Industrial, and the Original Petition Property was rezoned to M-1 Light Industrial in 1999 without any limitation on uses. M-1 Light Industrial Zoning permits all of the proposed uses in the Piilani Project. In addition, as anticipated at the time the Original Petition was presented, the County of Maui adopted the current KMCP in 1998 by Ordinance 2641, effective March 6, 1998. The adoption of the KMCP changed the designation from Project District 3, allowing a mixture of single family and multi-family uses, to the current designation of Light Industrial (LI). As noted *supra*, it is the County of Maui’s position that the current designation of “Light Industrial” in the Kihei-Makena Community Plan permits all of the proposed uses in the Piilani Project. Therefore, because this condition has been met, and because the uses proposed in

the Piilani Project all are allowed within the LI designation as implemented by the M-1 zoning, no community plan amendment is necessary.

2. 1995 Condition 2:

Petitioner shall cooperate with the State Department of Health and the County of Maui Department of Public Works and Waste Management to conform to the program goals and objectives of the Integrated Solid Waste Management Act, Chapter 342G, Hawaii Revised Statutes.

Request for Modification or Deletion:

Piilani requests that the name of the agency “County of Maui Department Environmental Management” be substituted for the name “County of Maui Department of Public Works and Waste Management” to reflect the change of County of Maui governmental agencies responsible for solid waste and waste water within the County of Maui.

3. 1995 Condition 3:

Petitioner shall contribute its pro-rata share to fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the State Department of Health and the County of Maui Department of Public Works and Waste Management.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 3.

4. 1995 Condition 4:

Petitioner shall fund and construct adequate civil defense measures as determined by the State and County Civil Defense Agencies.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 4.

5. 1995 Condition 5:

Petitioner shall fund, design and construct necessary local and regional roadway improvements necessitated by the proposed development in designs and schedules accepted by the State Department of Transportation and the County of Maui. Petitioner shall provide traffic signals at the intersection of Piilani Highway and Kaonoulu Street, and shall submit a warrant study in coordination with the Department of Transportation. Petitioner shall also install a fence and appropriate screening, i.e., landscaping, etc., along the highway right-of-way in coordination with the State Department of Transportation. Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.

Request for Modification or Deletion:

Piilani requests that the following language be deleted from Condition 5:

“Petitioner shall provide for a frontage road parallel to Piilani Highway and other connector roads within the Petition area, in coordination with other developments in the area with the review and approval of the State Department of Transportation and the County of Maui.” According to testimony of Ken Tatsuguchi of the State Department of Transportation (“SDOT”) at the Order to Show Cause hearing, as well as the testimony of Piilani’s expert Phillip Rowell at

the Order to Show Cause hearing, a frontage road adjacent to Piilani Highway would result in the Piilani Highway and Kaonoulu Street intersection being in close proximity to the frontage road causing traffic operation and safety issues. A frontage road would create a new intersection with East Kaonoulu Street less than a desirable distance east of Piilani Highway, making coordination of signals difficult and likely leading to traffic backups onto Piilani Highway and interference with traffic flow. It was the SDOT's opinion that a frontage road parallel to Piilani Highway at the Kihei Upcountry Highway intersection would not be feasible. Appropriate local accesses from the Piilani Parcels to the State Highway System will be addressed in the TIAR without the necessity of frontage roads. Therefore, Piilani requests the deletion of the requirement of a frontage road, which according to the experts at the SDOT is not feasible or desirable.

6. 1995 Condition 6:

Petitioner shall fund and construct adequate potable and non-potable water source, storage, and transmission facilities and improvements to accommodate the proposed project. Water transmission facilities and improvements shall be coordinated and approved by the appropriate State and County agencies.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 6.

7. 1995 Condition 7:

Petitioner shall participate in an air quality monitoring program as determined by the State Department of Health.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 7.

8. 1995 Condition 8:

Petitioner shall fund the design and construction of its pro-rata share of drainage improvements required as a result of the development of the Property, including oil water separators and other filters as appropriate, and other best management practices as necessary to minimize non-point source pollution into Kulanihakoi Gulch, in coordination with appropriate state and county agencies, such as the following:

a. All cleaning, repairs and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, where roofed or unroofed. The concrete floor shall be constructed so as to be able to contain any drips or spills and to provide for the recovery of any spilled liquid. Water drainage from these concrete floors, if necessary, shall pass through a separator sump before being discharged.

b. All employees shall be instructed to immediately collect and contain any industrial liquid spills on the concrete floor and should be informed against discharging or spilling any industrial liquids. Employees shall be instructed to prevent any industrial liquid spills onto the bare ground.

c. Barrels for the temporary storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The barrels shall be

sealed and kept under shelter from the rain. (The Department of Labor and Industrial Relations' Occupational Safety and Health regulations, sections titles, "Housekeeping Standards" and "Storage of Flammable or Combustible Liquids," shall be followed, along with the local fire code.)

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project. Piilani does not seek any further modification or deletion of Condition 8.

9. 1995 Condition 9:

Should any human burials or any historic artifacts, charcoal deposits, or stone platforms, pavings or walls be found, the Petitioner shall stop work in the immediate vicinity and contact the State Historic Preservation District. The significance of these finds shall be determined and approved by the Division, and an acceptable mitigation plan shall be approved by the Division. The Division must verify that the fieldwork portion of the mitigation plan has been successfully executed prior to work proceedings in the immediate vicinity of the find. Burials must be treated under specific provisions of Chapter 6E, Hawaii Revised Statutes.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 9.

10. 1995 Condition 10:

A long term preservation plan for the petroglyph stone (Site 50-10-3746) that was removed from the project area shall be reviewed and approved by the State Historic Preservation Division. Long term preservation measures shall be implemented within 60 days after final approval of the preservation plan.

Request for Modification or Deletion:

Piilani request that this condition be deleted because it has already been satisfied. As stated in the Fifth Annual Report (submitted on February 11, 2000), the Petitioner prepared a long term preservation plan which has been approved by the State Historic Preservation Division, Department of Land and Natural Resources, State of Hawaii, a copy of which was transmitted to the Land Use Commission. See Exhibit "O," Letter from the State Historic Preservation Division, dated June 2, 1998.

11. 1995 Condition 11:

Petitioner shall contribute its pro-rata share to a near shore water quality monitoring program as determined by the State Department of Health and the State Division of Aquatic Resources, Department of Land and Natural Resources.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 11.

12. 1995 Condition 12:

Petitioner shall implement effective soil erosion and dust control methods during construction in compliance with the rules and regulations of the State Department of Health and the County of Maui.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 12.

13. 1995 Condition 13:

Petitioner shall create a buffer zone between lands designated as SF (Single-Family) by the County's Kihei-Makena Community Plan and industrial uses on the Property to mitigate impacts between future residential activities and the proposed industrial development.

Request for Modification or Deletion:

Piilani requests that Condition 13 be deleted, because the KMCP does not have any lands designated Single-Family (SF) that are adjacent to the Piilani Parcels, and therefore this condition is not necessary.

14. 1995 Condition 14:

In the event Petitioner sells its interest in the Project, Petitioner shall subject the Property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.

15. 1995 Condition 15:

Petitioner shall develop the Property in substantial compliance with the representatives made to the Commission. Failure to so develop the Property may

result in reversion of the Property to its former classification, or change to a more appropriate classification.

Request for Modification or Deletion:

Piilani requests that the term “Property” be deleted and replaced with “Piilani Parcels” to indicate the applicability of this condition solely to the Piilani Project.

16. 1995 Condition 16:

Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily after the ownership interests in the Property, prior to development of the Property.

Request for Modification or Deletion:

Piilani requests that the term “Property” be deleted and replaced with “Piilani Parcels” to indicate the applicability of this condition solely to the Piilani Project.

17. 1995 Condition 17:

Petitioner shall timely provide without any prior notice, annual reports to the Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the subject Project and Petitioner’s progress in complying with the conditions imposed herein. The annual report shall include written documentation from each State and County agency responsible, indicating that the terms of the condition(s) are progressing satisfactorily or have been completed to the satisfaction of the agency. The

annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 17.

18. 1995 Condition 18:

Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92 Hawaii Administrative Rules.

Request for Modification or Deletion:

Piilani does not seek any modification or deletion of Condition 18.

19. 1995 Condition 19:

Within seven (7) 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 Property is subject to conditions imposed herein by the Land Use Commission in the reclassification of the Property; and (b) shall file a copy of such recorded statement with the Commission.

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.

20. 1995 Condition 20:

The Commission may fully or partially release the conditions provided herein as to all or any portion of the Property upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

Request for Modification or Deletion:

Piilani requests that the term "Property" be deleted and replaced with "Piilani Parcels" to indicate the applicability of this condition solely to the Piilani Project.