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

In the Matter of the Petition of:)	DOCKET NO. A15-798
)	
WAIKAPU PROPERTIES, LLC; MTP LAND)	<u>SUPPLEMENTAL</u> PROPOSED FINDINGS OF
PARTNERS, LLC; WILLIAM S. FILIOS,)	FACT, CONCLUSIONS OF LAW,
Trustee of the William S. Filios)	DECISION AND ORDER; CERTIFICATE
Separate Property Trust dated)	OF SERVICE
APRIL 3, 2000; and WAIALE 905)	
PARTNERS, LLC,)	
)	
To Amend the Agricultural Land Use)	
District Boundaries into the Rural)	
Land Use District for certain)	
lands situate at Waikapu, District)	
of Wailuku, Island and County of)	
Maui, State of Hawaii, consisting)	
of 92.394 acres and 57.454 acres,)	
bearing Tax Map Key No. (2) 3-6-)	
004:003 (por) and to Amend the)	
Agricultural Land Use District)	
Boundaries into the Urban Land Use)	
District for certain lands situate)	
at Waikapu, District of Wailuku,)	
Island and County of Maui, State)	
of Hawaii, consisting of 236.326)	
acres, 53.775 acres, and 45.054)	
acres, bearing Tax Map Key No. (2))	
3-6-002:003 (por), (2) 3-6-004:006)	
and (2) 3-6-005:007 (por).)	
)	
)	
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SUPPLEMENTAL PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, DECISION AND ORDER

WAIKAPU PROPERTIES, LLC, a Hawaii limited liability company, MTP LAND PARTNERS, LLC, a Hawaii limited liability company, WILLIAM S. FILIOS, Trustee of the William S. Filios Separate Property Trust dated April 3, 2000, and WAILE 905 PARTNERS, LLC, a Hawaii limited liability company (collectively "Petitioners"), submitted an Amended Petition for Land Use District Boundary Amendment ("Petition") on May 1, 2017, pursuant to Chapter 205, Hawai'i Revised Statutes ("HRS") and Chapter 15-15, Hawai'i Administrative Rules ("HAR"), to amend the State Land Use District Boundary to reclassify about 145.286 acres of land situated at Waikapu, Maui, Hawai'i, identified as Tax Map Key No. (2) 3-6-004:003 (por.), from the State Land Use Agricultural District to the State Land Use Rural District and to reclassify about 351.582 acres of land situated at Waikapu, Maui, Hawai'i, identified as Tax Map Key Nos. (2) 3-6-004:006, (2) 3-6-004:007 and (2) 3-6-002:003 (por.) from the State Land Use Agricultural District to the State Land Use Urban District to allow for the development of the Waikapu Country Town Project ("Project").

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence and argument of counsel and the parties present during

the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On April 16, 2015, Petitioners filed a Verified Petition for Land Use District Boundary Amendment, Exhibits 1-18, Affidavit of Mailing and Certificate of Service.

2. On April 16, 2015, Petitioners filed a Motion to Designate the Commission as Approving Agency for Environmental Statement Under HRS Chapter 343 and for Authority to Prepare Environmental Impact Statement.

3. On April 23, 2015, Petitioners filed an Affidavit of Service of Petition for Land Use District Boundary Amendment and Affidavit of Sending Notification of Petition Filing.

4. On April 24, 2015, the County of Maui Department of Planning ("DOP") filed a Statement of No Opposition to Petitioners' Motion to Designate the Commission as the Approving Agency for Environmental Statement Under HRS Chapter 343.

5. On May 1, 2015, the Commission entered its Order Determining that the Commission is the Accepting Authority Pursuant to Chapter 343, HRS, and that the Proposed Action May Have a Significant Impact Upon The Environment to Warrant Proceeding Directly to The Preparation of An Environmental

Impact Statement.

6. On January 18, 2017, the Commission considered acceptance of Petitioners' proposed Final Environmental Impact Statement and found that the Petitioners' proposed FEIS generally satisfied the criteria and procedures governing acceptance of a FEIS under HRS Chapter 343 and HAR Title 11, Chapter 200.

7. On January 20, 2017, the Commission entered its Findings of Fact, Conclusions of Law and Decision and Order Accepting Petitioners' Final Environmental Impact Statement.

8. On May 1, 2017, the Petitioners filed with the Commission their Amended Petition for Land Use District Boundary Amendment, together with Exhibits 19 to 24.

9. On May 1, 2017, the Commission Accepted the Amended Petition for Land Use District Boundary Amendment as a complete filing.

10. On July 11, 2017, Petitioners filed their Affidavit of Mailing of Notice of Filing Amended Petition.

11. On July 10, 2017, the State of Hawaii Office of Planning ("SOP") filed its Statement of Position concerning the Amended Petition.

12. On August 1, 2017, the DOP filed its Testimony and Position Statement.

13. On August 4, 2017, a prehearing conference was

held at which certain dates for the filing of direct testimony, exhibits, and rebuttal testimony was established.

14. On August 23, 2017, an inspection of the petition area was conducted by the Commission pursuant to notice.

15. On August 4, 2017, a Pre-Hearing conference was held in Honolulu, Hawaii, and conducted by Commission staff to identify the issues and positions of the parties, arrange for the exchange of proposed exhibits and names of witnesses, establish deadlines for the submission of Position Statements by the Interveners, the submission of Exhibit Lists, Witness Lists and Exhibits by all parties, the submission of Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by all parties, and the submission of written direct testimony for all expert witnesses, and such other matters to expedite the orderly conduct and disposition of the hearings. All parties in the proceeding were in attendance.

16. On October 3, 2017, the Parties Stipulation Regarding Filing Dates was received and acknowledged by the Commission setting the following dates for submissions in this Docket: (a) all parties to file Exhibit Lists and Witness Lists by October 30, 2017; (b) all parties to file Written Direct Testimony and Exhibits by November 3, 2017; and, (c) all parties to file Rebuttal Exhibits and Rebuttal Testimonies by November 15, 2017.

17. On October 27, 2017, Petitioners filed their Witness and Exhibit Lists.

18. On October 30, 2017, the SOP filed its Witness and Exhibit Lists.

19. On August 14, 2017, the DOP filed its List of Witnesses and Exhibits.

20. On November 2, 2017, Petitioners filed their Exhibits and Direct Witness Testimonies.

21. On November 3, 2017 the SOP filed its Testimony in Support with Conditions, and Exhibits.

22. On November 2, 2017, the DOP filed its Exhibits and Direct Witness Testimony.

23. On November 28, 2017, the Commission mailed the notice and agenda for its December 6-7, 2017, meeting to the Parties and the Statewide, Maui, and O'ahu mailing lists.

24. On December 6 and 7, 2017, the Commission held hearings in Kahului, Maui. The Commission received oral and/or written public testimony from the following individuals: Albert Perez; Robert H. Pahia; Mike Foley; Kent Hiranaga; Richard Mayer; Michael Takahara; Stan Franco; and Mercer Vicens. (TR (12/6/2017) 17:3 to 44:25).

25. On December 6, 2017, Commissioners Jonathan Scheuer, Gary Okuda and Lee Ohigashi disclosed contacts with the parties, their counsel, and their consultants, none of which

would prevent the disclosing Commissioners from being fair and impartial. The parties had no objections to the disclosures. (TR (12/6/2017) 13:1 to 16:9 and 155:1-15).

26. On December 6 and 7, 2017, the Commission admitted into the record Petitioner's Exhibits 1- 50. (TR (12/6/2017) 45:6 to 45:12, 52:23 to 53:6 and 58:5 to 58:9; 89:2-11 and 92:10-14;104:10-20; 123:17 to 124:5;141:7-17; 171:25 to 172:9; 180:18 to 181:4; 194:20 to 195:6; and 204:14-20 and TR (12/7/2017) 9:13 - 24; 13:6-17; 23:5-18; 42:17-25; and 52:19 to 53:6).

27. On December 6, 2017, the Commission admitted into the record DOP's Exhibits 1 - 4. (TR (12/6/2017) 45:23 to 46:10).

28. On December 6, 2017, the Commission admitted into the record OP's Exhibits 1 - 11. (TR (12/6/2017) 46:12 to 46:21).

29. On December 6, 2017, the Commission commenced the evidentiary hearing for this docket in Kahului, Maui. The following witnesses presented their testimony: Michael Atherton; Bill Mitchell; Netai Basu; Michael Summers; Lisa Rotunno Hazuka; Hōkūao Pellegrino; Thomas w. Holliday; Stacy A. Otomo; Steven M. Parabolicoli; Leo R. Asuncion; and Robert M. Hobdy. (TR (12/6/2017) 47:16 to 205:21).

30. On December 7, 2017, the Commission held its continued evidentiary hearing on this docket, during which the

following witnesses presented their testimonies: Barry D. Neil; John R. Garretson; Daniel Lum; Albert G. Boyce V; Netai Basu; William Spence; David Goode; and Leo R. Asuncion. (TR (12/7/2017) 5:14 to 81:1).

31. All hearings were conducted on the Island of Maui.

32. On December 7, 2017, the Commission closed the evidentiary portion of the proceedings. (TR (12/7/2017) 84:8-13)

33. On December ~~7~~, 21, 2017, the Commission received Petitioners' Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

34. On December ~~7~~, 29, 2017, the Commission received DOP's ~~comments~~Comments on Petitioners' Proposed Findings of Fact, Conclusions of Law, and Decision and Order- and on January 23, 2018, the DOP submitted additional Comments on To Petitioner's [sic] Proposed Findings of Fact, Conclusions of Law, Decision and Order.

35. On ~~December 7, 2017~~January 12, 2018, the Commission received SOP's comments on Petitioners' Proposed Findings of Fact, Conclusions of Law and Decision and Order.

36. On January ~~7~~, 18, 2018, the Commission mailed the notice and agenda for its ~~January 25, 2018~~January 25, 2018, meeting to the Parties, and the Statewide and Maui

mailing lists.

37. On January ~~====~~,25, 2018, the Commission held an action meeting in ~~Honolulu~~Kahului, Hawaii, to consider the Petition. There were ~~no~~ public witnesses. The parties presented oral argument on the matter. Thereafter, a motion was made and seconded to grant the Petition subject to conditions. The motion received _____ votes, and therefore _____.

38. On _____, 2018, the Commission mailed a notice and agenda for its _____, 2018, meeting to the Parties, and the Statewide and Maui mailing lists.

39. On _____, 2018, the Commission held an action meeting in _____ to adopt the form of the Findings of Fact, Conclusions of Law, and Decision and Order, granting the Petition. A motion to adopt the Findings of Fact, Conclusions of Law, and Decision and Order received _____ aye votes, _____ nays, with _____ excused; and therefore, the motion _____.

40. On _____, 2018, the Commission sent electronic copies and mailed the adopted Findings of Fact, Conclusions of Law, and Decision and Order to all parties.

A. DESCRIPTION OF THE PETITION AREA

~~40-41.~~ The Petition Area is in Waikapu, District of

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Wailuku, Island and County of Maui, State of Hawai'i, and consists of about 487 acres. (EX. 25, pp. I-23 and III-6, EX. 12 Revised, and EX. 13 Revised).

~~41-42.~~ About 145 acres in the Petition Area is proposed for reclassification as Rural and about 342 acres is proposed for reclassification as Urban. (EX. 12 Revised and EX. 13 Revised).

~~42-43.~~ Most of the Petition Area is vacant with some portions being leased to persons growing vegetables and similar crops. (EX. 25, pp. II-4 to 5; and App. G, p. 4).

~~43-44.~~ The Petition Area slopes from northwest to southeast. (EX. 25 App. H, pp. 4-5).

~~44-45.~~ The northwest corner of the Petition Area has an elevation of about 710 feet above sea level while the southeastern corner has an elevation of about 256 feet above sea level. (EX. 25, p. V-28).

~~45-46.~~ Most of the Petition Area has a slope of three to seven percent. (EX. 25, pp. IV-2 to IV-4 and App. G, p. 63).

~~46-47.~~ The slope of the Petition Area is suitable for the planned uses of residential, commercial and small farms. (FOF 43 - 46).

~~47-48.~~ Almost all the Petition Area is situated within Flood Zone X, an area of minimal flooding as designated

on Flood Insurance Rate Maps dated November 4, 2015, for the island of Maui. (EX. 25, pp. IV-9 to IV-15).

~~48-49.~~ A portion of the Petition Area adjacent to the Waikapu Stream lies within Flood Zones AE and AEF. (EX. 25, pp. IV-13 to IV-14).

~~49-50.~~ The portions of the Petition Area that are within Flood Zones AE and AEF will not be developed for residential purposes. (EX. 25, p. IV-15).

~~50-51.~~ The bulk of the Petition Area is listed as Prime Agricultural Lands according to the Agricultural Lands of importance to the State of Hawai'i ("ALISH"). (EX. 25, App. G, pp. 56 to 58).

~~51-52.~~ Prime Agricultural Lands describes lands with soils having the best physical, chemical and climatic properties for mechanized field crops. (EX. 25, App. G, p. 46).

~~52-53.~~ A small portion of the Petition Area is listed as Other Important Agricultural Lands under the ALISH classification. (EX. 25, p. V-43).

~~53-54.~~ Other Important Agricultural Lands describes lands which have state or local importance for production of crops but which need irrigation or which possess characteristics like seasonal wetness or erodibility that require further management for commercial production. (EX. 25, App. G, pp. 46 to 47; Agricultural Lands of Importance to the State of Hawaii

Revised, State of Hawaii Department of Agriculture, November, 1977).

~~54-55.~~ The productivity of the land underlying the Petition Area was classified as "A" and "B" by the University of Hawai'i Land Study Bureau. The Bureau's classification system rates lands on the scale of "A" to "E" reflecting land productivity characteristics. Lands designated "A" are considered to be of the highest productivity with "E" rated lands ranked as the lowest in productivity. (EX. 25, App. G, pp. 46 to 49)

~~55-56.~~ The "A" and "B" designations mean that the land underlying the Petition Area is productive. (EX. 25, App. G, p. 56).

B. DESCRIPTION OF THE PROPOSED WAIKAPU COUNTRY TOWN PROJECT

~~56-57.~~ The Petition Area is bisected by Honoapiilani Highway. (EX. 25, p. III-7).

~~57-58.~~ The Project will consist of two distinct but interconnected neighborhoods that are located on both sides of Honoapiilani Highway. (EX. 25, p. III-7).

~~58-59.~~ Upon full build out of the Project, there will be 1,433 residential units that include a mix of single-family, multi-family and live-work properties. (EX. 25, p. III-7).

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~~59-60.~~ Each of the neighborhoods will have a commercial core. (EX. 25, pp. III-7 and III-16).

~~60-61.~~ The commercial core of the mauka neighborhood, which also will be the social core for the Project, will be a village center located at the site of the existing Maui Tropical Plantation. (EX. 25, p. III-7).

~~61-62.~~ The Maui Tropical Plantation, located on a 14-acre portion of TMK (2) 3-6-005:007 is zoned as Project District and is classed as Urban. (EX. 25, pp. I-13, I-19, and III-6).

~~62-63.~~ The existing buildings and grounds of the Maui Tropical Plantation will be incorporated into the Waikapu Town Village Center to provide space for commercial uses. The commercial uses may include a town grocery, a farmers' market, specialty and boutique retail stores, cafes, professional offices, personal service businesses, restaurants and light craft making. (EX. 25, p. III-7).

~~63-64.~~ About 198,000 square feet of commercial space, consisting of about 58,000 square feet for country-town mixed uses and about 140,000 square feet for commercial uses, will be developed in the Waikapu Town Village Center. (EX. 25, p. III-51).

~~64-65.~~ The portion of the Petition Area that lies to the mauka of Honoapiilani Highway and the Waikapu Town

Village Center will be residential neighborhoods of mixed sized lots. These neighborhoods will be designed to provide convenient vehicular, pedestrian and bicycle access to the Maui Tropical Plantation village center. (EX. 25, p. III-16).

65-66. Beyond the single-family residential neighborhoods located in the mauka portion of the Petition Area will be rural lands. The lots in the rural lands will be between one-half acre and about two acres in size. (EX. 25, p. III-16).

66-67. The portion of the Petition Area that lies makai of Honoapiilani Highway will be single-family and multi-family housing. (EX. 25, p. III-21).

67-68. The makai portion of the Project will be defined by a main street that will facility mixed-use, live-work and townhome units. (EX. 25, pp. III-16 and III-21).

68-69. The makai portion of the Project will be bordered by the planned expansion of Waiale Road. (EX. 25, p. III-7).

69-70. In addition to residential and commercial uses, the makai portion of the Project will include a school and a community park. (EX. 25, p. III-21).

70-71. The Project will be developed to support walking and biking as preferred modes of transportation by implementation of extensive pedestrian and bicycle networks

allowing for short commutes. (EX. 25, pp. III-25 and III-28).

71-72. Lots for single family dwellings within the Project will range in size with the actual size being established in the final ~~project district~~-zoning ordinance that is approved by the Maui County Council. (Summers, TR (12/6/2017) 103:12-16 and 108:4-8).

72-73. Chapter 19.35, Maui County Code, allows owners of lots that are 7,500 square feet or greater in area to construct an accessory dwelling or 'ohana unit on their lot if they choose.

73-74. Although the Project would allow a significant number of accessory dwellings or 'ohana units, the total number of accessory dwellings and 'ohana units will be limited to no more than 146. (Summers, TR (12/6/2017) 102:24-25).

C. PROPOSAL FOR RECLASSIFICATION FROM AGRICULTURAL TO RURAL AND URBAN

74-75. The Petition Area was used for sugar cane cultivation beginning in the late 1800s. (EX. 25, App. G, pp. 64-65).

75-76. From the formation of Wailuku Sugar Company through 1988, the Petition Area was used for sugar cane cultivation. (EX. 25, App. G, p. 65).

76-77. In 1989, Wailuku Sugar Company leased the

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Petition Area to Maui Land & Pineapple Company for pineapple production that continued through 1997 when the lands were leased to Hawaiian Commercial & Sugar Company ("HC&S"), at which time the Petition Area was again placed in sugar cane cultivation. (EX. 25, App. G, p. 65, EX. 39, p. 5).

~~77-78.~~ HC&S used the Petition Area for sugar cane production until 2016, when it ceased production on the Petition Area. (EX. 25, p. VII-20 and EX. 39, p. 5).

~~78-79.~~ Since 2016, the Petition Area has seen limited agricultural use, primarily for the growing of herbs, specialty fruits and vegetable crops, grazing of livestock and the growing of biofuel crops. (EX. 25, pp. VII-20 to VII-21 and EX. 39, p. 5).

~~79-80.~~ Although the Petition Area is zoned and classified as agricultural, the Petition Area was identified as an area that was desired for directed growth in Maui County. (EX. 39, pp. 8 to 9 and EX. 25, pp. II-20 and II-23).

~~80-81.~~ In March, 2010, the County of Maui adopted by ordinance the Countywide Policy Plan which updated the existing General Plan. (EX. 25, pp. VII-117 and VII-38).

~~81-82.~~ The Countywide Policy Plan established a set of guiding principles and goals, objectives and policies to portray the desired direction of Maui County. (EX. 25, pp. VII-117 to VII-118).

~~82-83.~~ An objective of The Countywide Policy Plan was the promotion of sustainable land use and implementation of a directed-growth strategy. (EX. 25, p. VII-118).

~~83-84.~~ Among the implementing programs identified in The Countywide Policy Plan was the Maui Island Plan which would achieve the objective of directed-growth management. (EX. 25, p. II-5).

~~84-85.~~ The Maui Island Plan, adopted by ordinance in 2012, is a directed-growth plan that established the geographic locations on Maui in which future growth was desired. (EX. 25, pp. II-5 and II-20).

~~85-86.~~ Protection of Maui's small towns and rural character is an important component of the Maui Island Plan. (EX. 25, p. III-2).

~~86-87.~~ Three growth areas were identified in the Maui Island Plan: Urban; Small Town; and Rural. (EX. 39, p. 8; EX. 25, p. I-22).

~~87-88.~~ The Petition Area is located within the Wailuku-Kahului Planned Growth Area in the Maui Island Plan. (EX. 25, p. I-22).

~~88-89.~~ The Project was identified as the Waikapu Tropical Plantation Town in the Maui Island Plan. (EX. 25, pp. I-20 to I-23).

~~89-90.~~ The Maui Island Plan designated the Petition

Area as being within the Small Town and Rural growth areas, recognizing that the Project would provide a mix of single-family and multifamily housing units, park land, open space, commercial uses and a school. (EX. 25, pp. I-20 to I-23).

D. CONSISTENCY OF RECLASSIFICATION OF THE PETITION AREA WITH POLICIES AND CRITERIA ESTABLISHED PURSUANT TO SECTIONS 205-16, 205-17, AND 205A-2, HRS

~~90-91.~~ The six criteria that must be reviewed in determining whether the reclassification is consistent with policies and criteria are: 1) conformance with the Hawai'i State Plan and adopted functional plans; 2) conformance with urban district standards; 3) impact on areas of state concern; 4) conformance with county general plan; 5) the economic ability of the Petitioner to complete the proposed Project; and 6) whether the lands were in intensive agricultural use for two years before the date of the Petition or whether the lands have a high capacity for intensive agricultural use. (HAR § 15-15-77).

1) Conformance with the Hawai'i State Plan and Adopted Functional Plans

~~91-92.~~ The first criterion under which the proposed reclassification is examined is the extent to which it conforms to the goals, objectives, and policies of the; Hawai'i State Plan and adopted functional plans. (HAR § 15-15-77(b)(1)).

~~92-93.~~ The Hawai'i State Plan serves as a guide for the future long-range development of the State. (HRS § 226-1).

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~~93-94.~~ The Hawai'i State Plan is implemented through functional plans which identify needs, problems and issues in thirteen separate areas such as agriculture, employment, housing, recreation and transportation. (HRS § 226-52 and §§ 226-5 to 226-27).

~~94-95.~~ The Agriculture Functional Plan seeks the growth, diversification and increased self-sufficiency of diversified agriculture and the stability and viability of the sugar and pineapple industries. (HRS § 226-7).

~~95-96.~~ At the end of 2016, sugar cane production ceased in Hawaii with the closure of HC&S which was the last sugar plantation in Hawaii. (EX. 25, p. VII-20; EX. 39, p. 5).

~~96-97.~~ Maui Land & Pineapple stopped production of pineapple on the Petition Area in 1997 and stopped production of pineapple on Maui in 2009. (EX. 25, App. G, p. 65; EX. 39, p. 5).

~~97-98.~~ While pineapple remains in cultivation in a limited area in Maui, there has been no interest in leasing the Petition Area for pineapple production. (EX. 25, App. G, p. 50).

~~98-99.~~ As such, conformance with the objective of the Agricultural Functional Plan to promote the stability and viability of the sugar and pineapple industries is not reasonable. (FOF ~~95-9796-98~~).

~~99-100.~~ Limited portions of the Petition Area have been used for diversified agriculture such as the growing of herbs and the grazing of livestock. (EX. 25, App. G, pp. 65 to 67).

~~100-101.~~ About 145 acres of the Petition Area will be classified as Rural which will allow for pursuit of diversified agriculture on the one-half to 2-acre lots located in the rural lands. (EX. 12-Revised; EX. 25, p. III-16).

~~101-102.~~ Petitioners own about 1,077 acres of lands adjacent to the Petition Area that will remain classified as Agricultural. (EX. 25, p. III-6).

~~102-103.~~ Petitioners will permanently dedicate to agricultural use about 800 acres of land that is owned by one or more of the Petitioners and is adjacent to but outside the Petition Area. (EX. 25, p. III-6).

~~103-104.~~ The classification of about 145 acres of the Petition Area as Rural and the dedication to agricultural use of the adjacent lands will conform to the goals, objectives and policies of the Agricultural Functional Plan. (FOF ~~98-102100-103~~).

~~104-105.~~ The Conservation Lands Functional Plan seeks to balance the use of the State of Hawaii's natural resources with the protection of those resources. (HRS § 226-12).

~~105-106.~~ The Petition Area borders the Waikapu Stream

which is a natural resource. (EX. 25, p. VII-86).

~~106-107.~~ While the Petition Area was in agricultural production, storm water runoff was directed toward the Waikapu Stream. (EX. 25, p. V-97).

~~107-108.~~ Petitioners will re-direct the storm water runoff from the Petition Area away from the Waikapu Stream. (EX. 25, pp. V-97, V-99 and V-101).

~~108-109.~~ Development of the Petition Area adjacent to the Waikapu Stream will be limited to open area recreational uses. (EX. 25, p. IV-15).

~~109-110.~~ The Project will conform to the Conservation Lands Functional Plan by a) directing storm water runoff away from the Waikapu Stream and b) establishing a buffer zone adjacent to the Waikapu Stream. (FOF ~~107 and 108~~ 106 to 109).

~~110-111.~~ The Education Functional Plan seeks to provide the instructors and facilities that will allow students to attain the high levels of knowledge, skills and attitudes that will equip them to live meaningful and productive lives now and in the future. (HRS § 226-21).

~~111-112.~~ Under HRS Chapter 302A, developers of land must pay school impact fees for residential development that happens within identified school impact districts. (EX. 25, p. V-72, EX. 22).

~~112-113.~~ The Project is within the Central Maui

School Impact District. (EX. 25, p. VII-65).

~~113-114.~~ The Project is within the Wailuku Cost District. (EX. 25, p. VII-65).

~~114-115.~~ Projects within the Central Maui School Impact District and the Wailuku Cost District must pay a construction fee and either dedicate land to the Department of Education or provide a fee-in-lieu of the land dedication. (EX. 25, p. VII-65).

~~115-116.~~ Petitioners will dedicate a school campus of about 12-acres that is adjacent to an 18.5-acre community park. (EX. 25, p. VII-65).

~~116-117.~~ Additionally, Petitioners negotiated an Educational Contribution Agreement with the Department of Education. (EX. 22).

~~117-118.~~ The Project will conform to the Educational Functional Plan by compliance with the provisions of HRS Chapter 302A which in turn will provide instructors and facilities to meet the goals of the Educational Functional Plan. (FOF ~~111-116~~~~112-117~~).

~~118-119.~~ The Employment Functional Plan seeks to improve the qualifications of entry-level workers, develop education and training to ensure and maintain a quality workforce, improve work conditions, improve the quality of life for workers and their families and improve the planning of

economic development, employment and training. (HRS § 226-6).

~~119-120.~~ The Project is located near the employment center of Wailuku-Kahului, providing access to employment by residents within the Project. (EX. 25, pp. I-7 and V-49).

~~120-121.~~ The Project will include commercial space that can provide a town grocery, a farmers' market, specialty and boutique retail stores, cafes, professional offices, personal service businesses, restaurants and light craft making, all of which uses can provide access to employment by residents of the Project. (EX. 25, p. III-7).

~~121-122.~~ The Project is designed to support walking and biking as preferred modes of transportation by implementation of extensive pedestrian and bicycle networks allowing for short commutes. (EX. 25, pp. III-25 to III-30).

~~122-123.~~ The Project promotes the quality of life of the workers and their families by being in close proximity to places of employment and by allowing healthy forms of commuting by walking or bicycling. (FOF ~~120121~~ and ~~121122~~).

~~123-124.~~ The Project will conform to the goals and objectives of the Educational Functional Plan by providing access to employment, providing access to educational opportunities and by providing housing in close proximity to employment. (FOF ~~119120~~ to ~~121123~~).

~~124-125.~~ The Energy Functional Plan seeks to achieve

dependable, efficient and economical energy systems that will result in energy self-sufficiency and a significant reduction in reliance on fossil fuels for energy needs. (HRS § 226-18).

~~125-126.~~ The Project will support walking and biking as preferred modes of transportation by implementation of extensive pedestrian and bicycle networks allowing for short commutes for shopping, entertainment or employment. (EX. 25, pp. III-25 to III-30).

~~126-127.~~ The Project will adopt design guidelines to encourage the use of energy efficient technologies in lighting, air-conditioning and heating of water. (EX. 25, p. VII-61).

~~127-128.~~ The Project will encourage the use of photovoltaic energy systems on residential and commercial structures. (EX. 25, p. VII-61).

~~128-129.~~ The Project will conform to the goals and objectives of the Energy Functional Plan by implementation of pedestrian and bicycle networks, adoption of design guidelines and encouragement of use of energy efficient technologies. (FOF ~~125-127,126-128~~).

~~129-130.~~ The Health Functional Plan seeks to emphasize preventative health, insure access to a health care system, protect Hawaii's environment, and upgrade administrative and leadership capabilities. (HRS § 226-20).

~~130-131.~~ The Project will provide commercial space

which can be used by health care professionals as a space from which to provide health care services. (EX. 25, p. III-7).

~~131-132.~~ The Project will provide pedestrian and bicycle paths for use to commute for employment and shopping which also will provide exercise for preventative health. (EX. 25, pp. III-25 to III-30).

~~132-133.~~ The Project, by providing commercial space for use for health care providers and by providing walking and bicycling paths to assist in preventative health, will conform to the Health Functional Plan. (FOF ~~130~~131 and ~~131~~132).

~~133-134.~~ The Higher Education Functional Plan seeks to provide educational opportunities to Hawaii residents. (HRS § 226-22).

~~134-135.~~ The Project will be located about five miles from the University of Hawaii Maui College which provides certificate programs, associate degree programs and bachelor's degree program. (EX. 25, pp. I-7 and VII-26).

~~135-136.~~ The Project will allow residents the ability to access the University of Hawaii Maui College to pursue educational opportunities. (FOF ~~134~~135).

~~136-137.~~ The Project, while not directly providing higher educational opportunities, will allow residents to pursue higher education and as such conforms to the Higher Education Functional Plan. (FOF ~~134~~136).

~~137-138.~~ The Historic Preservation Functional Plan seeks to preserve historic properties, collect and preserve historic records and oral histories, and provide public information and education on the ethnic and cultural heritages and history of Hawaii. (HRS § 226-25).

~~138-139.~~ A History of Waikapu identifying the founders, residents, churches, and industry of Waikapu was prepared for Petitioners and is a part of the Final EIS for the Project. (EX. 25, App. N).

~~139-140.~~ An Archaeological Inventory Survey was prepared for Petitioners and is a part of the Final EIS for the Project. (EX. 25, App. E; EX. 32).

~~140-141.~~ The State Historic Preservation Division of the Department of Land and Natural Resources commented on the Archaeological Inventory Survey in August, 2017. (EX. 40, pp. 6 to 7).

~~141-142.~~ The Archaeological Inventory Survey was updated and resubmitted for review by the State Historic Preservation Division which approved the Survey in September, 2017. (EX. 32).

~~142-143.~~ The Archaeological Inventory Survey revealed four historic sites, the majority of which were related to sugar cane cultivation such as concrete lined ditches, sluice gates, and dirt culverts with concrete lined headwalls. (EX. 32; EX.

40, pp. 7-8).

~~143-144.~~ Also found within the Petition Area were a L-shaped stacked rock retaining wall and secondarily deposited historic materials. (EX. 40, pp. 8-9).

~~144-145.~~ Finally, a World War II aerial observation bunker was located near the Petition Area. (EX. 40, p. 8).

~~145-146.~~ Subsurface testing of the Petition Area was negative for cultural remains. (EX. 40, pp. 9-10).

~~146-147.~~ The historic sites will be preserved in place during development of the Project. (TR. (12/6/2017) 124:18-24)

~~147-148.~~ Archaeological monitoring of mass ground altering actions will occur. (EX. 40, p. 11).

~~148-149.~~ If the property which is subject to a conservation easement is developed, an Archaeological Inventory Survey for that development is required. (EX. 33).

~~149-150.~~ A Cultural Impact Assessment for the Petition Area was prepared. (EX. 25, App. F).

~~150-151.~~ The Cultural Impact Assessment determined that Waikapu has a long and rich cultural history and strong representation of traditional cultural practices, most of which occurred outside the Petition Area. (EX. 25, App. F).

~~151-152.~~ The cultural practices that exist in the area include Hawaiian subsistence and residential agriculture on

kuleana lands, the use of the Waikapu Stream as a cultural resource, and the preservation of native dryland and mesic forests. (EX. 25, App. F; EX. 41, p. 9).

~~152-153.~~ A Ka Pa`akai Cultural Analysis was prepared for the Petition Area. (EX. 25, App. F, Part A).

~~153-154.~~ The analysis identified the access to and use of Waikapu Stream for loi kalo cultivation on kuleana lands, access to the interior part of Waikapu Valley for the gathering of endemic and native medicinal plants and Hawaiian food crops, native forest and habitat restoration, and archaeological stabilization and cultural resource management of kuleana lands. (EX. 25, App. F, Part A).

~~154-155.~~ The analysis recommended, among other things, that a permanent access easement for families seeking to access the Kauihou and Mahi parcels be established to allow those families to exercise traditional practices. (EX. 25, App. F, Part A; EX. 41, pp. 18-19).

~~155-156.~~ Based upon the History of Waikapu, the Archaeological Inventory Survey, the Cultural Impact Assessment and the Ka Pa`akai Cultural Analysis and the implementation of the mitigation measures proposed in those documents, the Project conforms to the Historic Preservation Functional Plan. (FOF 138 to 154).

~~156-157.~~ The Housing Functional Plan, updated in

February, 2017, seeks to expand and preserve rental housing opportunities, increase home ownership, address barriers to residential development and maintain a housing information system. (HRS § 226-19).

~~157-158.~~ Recognizing that Hawaii's housing market suffers from a persistent shortage of housing, particularly housing that is affordable, an objective of the plan is to increase housing units, increase home ownership, and reduce regulatory barriers to the land use entitlement process. (EX. 25, pp. VII-63 and V-51).

~~158-159.~~ The Maui Island Plan indicated a demand for an additional 29,589 housing units between 2012 and 2030. (EX. 25, p. V-51).

~~159-160.~~ Of the 29,589 additional housing units, 10,845 were expected to be built on lands not then entitled for urban development. (EX. 25, p. V-51).

~~160-161.~~ The Project will provide about 1,433 housing units and 146 ohana units, which is about five percent (5 %) of the additional housing units needed. (EX. 25, pp. V-51, V-55, and VII-22; FOF 158).

~~161-162.~~ While housing units will be sold at market rates, about 140 for sale residential workforce housing units and about 140 for rent residential workforce housing units will be developed. (EX. 25, p. V-54).

~~162-163.~~ As the Project will provide housing units to address a housing shortage, and as the Project will provide residential workforce housing units for sale and for rent, the Project conforms to the objectives and goals of the Housing Functional Plan. (FOF ~~157159~~ to ~~161162~~).

~~163-164.~~ The Human Services Functional Plan seeks to offer support to individuals and families to provide elder care, to preserve the family unit through the prevention of abuse and neglect and to achieve economic and social self-sufficiency. (HRS § 226-22).

~~164-165.~~ The Project does not have components that would support the goals and objectives of the Human Services Functional Plan. (EX. 25, p. VII-91).

~~165-166.~~ The Recreation Functional Plan seeks to provide adequate recreation facilities and programs and to assure public access to recreation areas. (HRS § 226-23).

~~166-167.~~ The Project will provide about 8 miles of trails, pedestrian pathways and bicycle pathways. (EX. 25, p. III-28).

~~167-168.~~ The Project will provide neighborhood and community parks, including an 18.5-acre community park adjacent to the Waikapu Stream. (EX. 25, p. V-65).

~~168-169.~~ The Project will comply with the requirements of the County of Maui concerning dedication of

lands for open area recreational use. (EX. 25, p. V-65).

~~169-170.~~ As the Project will provide recreation facilities and public access to those facilities, the Project conforms to the objectives and goals of the Recreation Functional Plan. (FOF ~~166167~~ to ~~168169~~).

~~170-171.~~ The Tourism Functional Plan seeks to maintain the growth of the visitor industry while diversifying the market mix of visitors to reduce dependence on traditional markets. (HRS § 226-8).

~~171-172.~~ The Project will result in the repurposing of the Maui Tropical Village from a visitor attraction to a small-town center that will serve residents and non-residents. (EX. 25, p. III-7).

~~172-173.~~ The theme of the small-town center will reflect the history of Waikapu as a sugar cane production area which will provide a more diverse view of Hawaii's history to visitors. (EX. 25, pp. III-7 to III-15).

~~173-174.~~ While the Project will not directly conform to the Tourism Functional Plan, the Project will provide diversity to the typical visitor experience that will partially conform to the goals and objectives of the Tourism Functional Plan. (FOF ~~171172~~ to ~~172173~~).

~~174-175.~~ The Transportation Functional Plan seeks to develop a balanced, multi-modal transportation system to promote

the efficient, economical, safe and convenient movement of people and goods. (HRS § 262-17).

~~175-176.~~ The Project design incorporates pedestrian oriented streets with a network of pedestrian paths, bike paths, greenways and parkways to facility movement within the Project. (EX. 25, pp. III-25 to III-28).

~~176-177.~~ The internal roadway system within the Project will support all travel modes for access to neighborhoods, employment centers, commercial areas and institutional uses. (EX. 25, pp. III-25 to III-30).

~~177-178.~~ Pedestrian and bicycle trips are promoted by the location of commercial uses in proximity to residential uses. (EX. 25, pp. III-25).

~~178-179.~~ A traffic impact analysis report was prepared which identified the effect of the Project on existing and proposed intersections. (EX. 25, App. L; App. M).

~~179-180.~~ The impacts of the increase in traffic due to the Project will be mitigated by the improvement of intersections that are impacted by the Project. (EX. 38, pp. 11 to 16).

~~180-181.~~ Connectivity between residential neighborhoods within the Project as well as connectivity with areas of commercial use will be increased by the internal roadway system of the Project. (EX. 25, p. III-25).

~~181-182.~~ As such, the design of the Project to promote pedestrian and bicycle usage, together with the connectivity of the internal roadway system, conforms to the goals and objectives of the Transportation Functional Plan. (FOF ~~175-180~~176-181).

~~182-183.~~ The Hawai'i State Plan sets out priority guidelines and principles for sustainability, as codified in HRS § 226-108, Sustainability, which guidelines include: (a) encouraging balanced economic, social, community, and environmental priorities; and (b) encouraging planning that respects and promotes living within the natural resources and limits of the State. (HRS § 226-108).

~~183-184.~~ The Project proposes to balance housing with commercial, civic and employments uses by having residential neighborhoods in proximity to areas of commercial use. (EX. 23; EX. 25, p. III-45).

~~184-185.~~ The Project proposes to reduce potable water demand by providing a non-potable water system used for irrigation of parks, open space and landscape plantings on residential and commercial lots. (EX. 23; EX. 25, pp. III-47 to III-48).

~~185-186.~~ The Project proposes to use retention basins to capture and retain storm water runoff to allow for the recharge of the ground water aquifer. (EX. 23; EX. 25, p. III-

48).

~~186-187.~~ The Project proposes to reduce the volume of waste entering landfills during construction and operations by implementation of a construction waste management program and the location and operation of recycling and composting collection centers within the Project. (EX. 25, p. III-49).

~~187-188.~~ Based on FOF ~~8892~~ through ~~185187~~, reclassification of the Petition Area from agricultural to urban and agricultural to rural will conform to the Hawai'i State Plan and applicable adopted Functional Plans.

2) **The extent to which the reclassification conforms to applicable district standards**

~~188-189.~~ Section 15-15-18, HAR, outlines the standards applied to classify lands as urban. (HAR § 15-15-18).

~~189-190.~~ The first standard is whether the lands are characterized by city-like concentrations of people, structures, streets, and urban levels of services. (HAR § 15-15-18(1)).

~~190-191.~~ The eastern boundary of the mauka portion of the Petition Area is adjacent to Honoapiilani Highway and surrounds the Maui Tropical Plantation which is urbanized and contains commercial uses. (EX. 25, p. VII-25).

~~191-192.~~ The northern boundary of the mauka portion of the Petition Area is adjacent to an existing residential area that has single-family dwelling units. (EX. 25, p. VII-25).

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~~192-193.~~ The northern boundary of the makai portion of the Petition Area is adjacent to existing residential and urbanized areas. (EX. 25, p. VII-25).

~~193-194.~~ The western boundary of the makai portion of the Petition Area is adjacent to lands that will be used by the County of Maui for offices, baseyards and a regional fire station. (EX. 25, p. VII-25).

~~194-195.~~ The part of the Project that will be reclassified as urban will contain the streets, residential and commercial dwellings, water, sewer, electric and cable television services that are reflected in a city-like concentration of people. (EX. 25, p. VII-25).

~~195-196.~~ The second standard has three subparts, the first of which is the proximity of the Petition Area to centers of trading and employment. (HAR § 15-15-18(2)(A)).

~~196-197.~~ The Project is located about three miles from the cities of Wailuku and Kahului. (EX. 25, p. VII-26).

~~197-198.~~ Wailuku is the civic center of the island of Maui housing State of Hawaii and County of Maui offices, including the vast majority of government office buildings and offices. (EX. 25, p. VII-26).

~~198-199.~~ Kahului is the trade center of the island of Maui with four shopping centers, multiple big box outlets, the only commercial harbor on the island of Maui and a major

airport. (EX. 25, p. VII-26).

~~199-200.~~ The towns of Kahului and Wailuku were the largest employment center on the island of Maui with about 32,900 jobs as of 2010, which represented over fifty percent (50 %) of all jobs on the island of Maui. (EX. 25, p. VII-26).

~~200-201.~~ The Project will include commercial uses such as retail space, office space and service establishments. (EX. 25, p. III-7).

~~201-202.~~ The commercial uses will provide employment opportunities to persons residing in the Petition Area. (EX. 25, pp. VII-26 to VII-27).

~~202-203.~~ As such, the Petition Area is in proximity to centers of trading and employment. (FOF ~~196197~~ to ~~201202~~).

~~203-204.~~ The second subpart of the standard requires a review of the availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection. (HAR § 15-15-18(2)(B)).

~~204-205.~~ The Petition Area is within the Department of Education's Baldwin-Kakaulike-Maui Complex Area. (EX. 25, pp. V-69 and VII-28).

~~205-206.~~ The Complex Area contains three elementary schools, an intermediate school and a high school. (EX. 25, p. V-70).

~~206-207.~~ In connection with obtaining the entitlements for the Petition Area, Petitioners will dedicate a 12-acre site for a public school that will be adjacent to the Project. (EX. 25, p. VII-65).

~~207-208.~~ The Project will contain about 80 acres of community and neighborhood parks, which include an 18.5-acre community park adjacent to Waikapu Stream. (EX. 25, p. V-65).

~~208-209.~~ To the north of the Petition Area is the Waikapu Community Center which has a community hall and small park. (EX. 25, p. V-62).

~~209-210.~~ Within 5 miles of the Petition Area are the Wailuku Heights Park, the Wailuku Elementary School Park, the Wailuku Gymnasium and the Wells Park Complex that includes tennis courts. (EX. 25, p. V-63).

~~210-211.~~ The County of Maui has proposed a 209-acre regional park that will be located about one-half mile from the Petition Area. (EX. 25, p. V-64).

~~211-212.~~ A 24-acre Central Maui Regional Sports Complex is located about one-half mile from the Petition Area. (EX. 25, p. V-64).

~~212-213.~~ The first phase of the Regional Sports Complex, which opened in 2016, has a multi-purpose field, two softball fields, comfort stations and parking. (EX. 25, p. V-64).

~~213-214.~~ When completed, the Regional Sports Complex will have a baseball field, eight softball fields, and three multi-purpose fields together with open space. (EX. 25, p. V-64).

~~214-215.~~ The wastewater system operated by the County of Maui has existing lines in the vicinity of the Petition Area. (EX. 25, pp. V-116 and VII-27 to VII-28).

~~215-216.~~ Although wastewater lines exist, the County of Maui's wastewater reclamation facility lacks the capacity to service the Project. (EX. 25, p. V-116).

~~216-217.~~ Petitioners propose installation of wastewater lines that will connect the Project with a wastewater reclamation facility to be built on lands owned by Petitioners that are adjacent to the Petition Area. (EX. 25, pp. III-55 to III-62 and V-119 to V-120).

~~217-218.~~ The wastewater reclamation facility proposed for service of the Project uses food chain reactors that are comprised of tropical plants, engineered media and fine bubble aeration to intensify the wastewater treatment process. (EX. 25, App. K; EX. 49, p. 5).

~~218-219.~~ The wastewater reclamation facility is expected to require a smaller footprint, use less energy for operation and generate less sludge than a conventional wastewater treatment facility. (EX. 47, pp. 7-8).

219-220. Petitioners have and will continue to coordinate wastewater reclamation and treatment with the County of Maui so that should additional capacity for the Kahului wastewater treatment facility exist or should a regional wastewater treatment facility be developed, treatment of wastewater will be handled in a manner consistent with the development of additional capacity for treatment. (EX. 49, pp. 5-6).

220-221. Solid waste disposal is provided by the County of Maui to the residential dwellings adjacent to the Petition Area. (EX. 25, p. VII-28).

221-222. The Petition Area is on a gentle slope which runs from the northwest to the southeast. (EX. 25, App. H., pp. 4-5; EX. 25, pp. IV-2 to IV-4; EX. 25, App. G, p. 63).

222-223. Drainage sheet flows in the west to east direction. (EX. 43, p. 6).

223-224. A series of retention basins will be incorporated into the Project to capture and hold the storm water runoff in accordance with the requirements of the County of Maui. (EX. 43, p. 17).

224-225. Drainage within the Petition Area will be directed away from the Waikapu Stream to reduce the amount of materials that might otherwise enter the stream in storm events. (EX. 43, p. 17).

~~225-226.~~ The County of Maui operates potable water service by way of existing lines near the Petition Area. (EX. 43, p. 11).

~~226-227.~~ Water and fire protection for the Project will be provided from a private onsite water service. (EX. 43, p. 19).

~~227-228.~~ Petitioners developed three wells for potable water and two wells for non-potable water. (EX. 43, p. 19).

~~228-229.~~ Development of the wells is being done with input from the County of Maui's Department of Water Supply and the Commission on Water Resource Management. (EX. 25, p. VII-95).

~~229-230.~~ Based on test pumping, the wells will have sufficient capacity to supply the project. (EX. 48, p. 5).

~~230-231.~~ A public transportation system exists known as the Maui Bus. (EX. 25, p. III-32).

~~231-232.~~ The route for the Maui Bus includes a bus stop in Waikapu at Honoapiilani Highway and Waiko Road. (EX. 25, p. III-32).

~~232-233.~~ The Project allows for introduction of additional bus stops. (EX. 25, p. III-32).

~~233-234.~~ Electrical, telephone and cable television service to Waikapu is provided by companies that have

certificates issued by the Public Utilities Commission. (EX. 25, p. V-96).

~~234-235.~~ The Petition Area is within the Wailuku (Central) Police Station service area which houses the headquarters of the police department for the County of Maui. (EX. 25, p. V-66).

~~235-236.~~ The Wailuku (Central) Police Station is about 4 miles from the Petition Area. (EX. 25, p. V-66).

~~236-237.~~ The Wailuku Fire Station is about three miles from the Petition Area and the Kahului Fire Station is about 4.5 miles from the Petition Area. (EX. 25, p. V-68).

~~237-238.~~ The County of Maui uses a distance standard of 2 to 3 miles to provide adequate coverage to residential areas. (EX. 25, p. V-68).

~~238-239.~~ As the Project is more than the distance standard applied by the County of Maui, construction of a new fire station is planned for Waikapu. (EX. 25, p. V-68).

~~239-240.~~ The new fire station will be located off the proposed Waiko Road extension and within the 100-acres acquired by the County of Maui adjacent to the Petition Area for location of police, fire and other county services. (EX. 25, p. V-68).

~~240-241.~~ Basic services such as schools, parks, wastewater lines, solid waste disposal, potable water, police and fire protection, transportation and public utilities either

cover the Petition Area or are adjacent to the Petition Area.
(FOF 204 to 239).

~~241-242.~~ The last subpart of the second standard is whether there are sufficient reserve areas for foreseeable urban growth. (HAR § 15-15-18(2)(C)).

~~242-243.~~ The Petition Area is within the Maui Island Plan's Small-Town growth boundary. (EX. 25, p. VII-29).

~~243-244.~~ The Maui Island Plan's directed growth strategy is intended to allocate sufficient land to accommodate foreseeable urban growth through 2030. (EX. 25, p. VII-29).

~~244-245.~~ As a part of the Maui Island Plan, the Petition Area is intended to provide the reserve area needed for future urban growth. (FOF ~~242243~~ to ~~243244~~).

~~245-246.~~ The third standard is whether the Petition Area is suitable for urban use by virtue of topography, drainage, and dangerous conditions arising from flood, tsunami, unstable soils or adverse environmental effects. (HAR § 15-15-18(3)).

~~246-247.~~ The Petition Area slopes from a high of about 710 feet above sea level to a low of about 350 feet above sea level. The average slope is about 8 % in the mauka portion of the Petition Area and about 4 % in the makai portion of the Petition Area. (EX. 25, p. VII-30).

~~247-248.~~ The soils of the Petition Area are highly

permeable with slow runoff and slight erosion hazard, which are highly suited for urban development. (EX. 25, p. VII-30).

~~248-249.~~ The Petition Area is not an area that is prone to flooding, being classified as Zone X, an area of minimal flooding, by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps revised in November, 2015, except for a minimal amount of land adjacent to Waikapu Stream. (EX. 25, pp. VII-30 and IV-9 to IV-14).

~~249-250.~~ Use of the lands of the Petition Area adjacent to Waikapu Stream will be restricted to open space, park and agriculture and no structures will be allowed within that area. (EX. 25, p. VII-30).

~~250-251.~~ The Petition Area is not within the tsunami inundation zone. (EX. 25, p. IV-7).

~~251-252.~~ The soils in the Petition Area are stable and good for building structures. (EX. 25, p. VII-30).

~~252-253.~~ On January 8, 2017, the Final Environmental Impact Statement for the Project was published. (EX. 39, p. 4).

~~253-254.~~ The Final Environmental Impact Statement was reviewed by this Commission and accepted with the mitigation measures identified in the statement. (Findings of Fact, Conclusions of Law, and Decision and Order Accepting A Final Environmental Impact Statement, January 20, 2017).

~~254-255.~~ The Decision and Order of this Commission

accepting the Final Environmental Impact Statement was published on February 8, 2017.

~~255-256.~~ Based on the topography, drainage, and dangerous conditions that might arise from floods, tsunamis, soils or adverse environmental effects, the Petition Area is suitable for urban use with the mitigation measures identified in the Final Environmental Impact Statement. (FOF ~~246247~~ to ~~253254~~).

~~256-257.~~ The fourth standard is that land contiguous with existing urban areas will be given more consideration than non-contiguous land. (HAR § 15-15-18(4)).

~~257-258.~~ The Petition Area is contiguous with lands that are existing urban uses on the north and surrounds the existing Maui Tropical Plantation which is an urban use. (EX. 25, p. VII-31).

~~258-259.~~ The fifth standard is whether the Petition Area is in an appropriate location for new urban concentrations and whether the area is shown as urban growth on state and county general plans. (HAR § 15-15-18(5)).

~~259-260.~~ The Petition Area was identified as an area that was desired for directed growth in Maui County. (EX. 25, p. VII-31).

~~260-261.~~ In March, 2010, the County of Maui adopted by ordinance the Countywide Policy Plan which updated the

existing General Plan. (EX. 25, pp. VII-117 and VII-38).

~~261-262.~~ The Countywide Policy Plan established a set of guiding principles and goals, objectives and policies to portray the desired direction of Maui County. (EX. 25, p. VII-117 to VII-118).

~~262-263.~~ An objective of The Countywide Policy Plan was the improvement of land use management and implementation of a directed-growth strategy. (EX. 25, p. VII-118).

~~263-264.~~ Among the implementing programs identified in The Countywide Policy Plan was the Maui Island Plan which would achieve the objective of directed-growth management. (EX. 25, p. II-5).

~~264-265.~~ The Maui Island Plan, adopted by ordinance in 2012, is a directed-growth plan that established the geographic locations on Maui in which future growth was desired. (EX. 25, pp. II-5 and II-20).

~~265-266.~~ Protection of Maui's small towns and rural character is an important component of the Maui Island Plan. (EX. 25, p. III-2).

~~266-267.~~ Three growth areas were identified in the Maui Island Plan: Urban; Small Town; and Rural. (EX. 25, p. I-22; EX. 39, p. 9).

~~267-268.~~ The Petition Area is located within the Wailuku-Kahului Planned Growth Area in the Maui Island Plan.

(EX. 25, P. I-22).

~~268-269.~~ The Project was identified as the Waikapu Tropical Plantation Town in the Maui Island Plan. (EX. 25, pp. I-20 to I-23).

~~269-270.~~ The Maui Island Plan designated the Petition Area as being within the Small Town and Rural growth areas, recognizing that the Project would provide a mix of single-family and multifamily housing units, park land, open space, commercial uses and a school. (EX. 25, pp. I-20 to I-23).

~~270-271.~~ The Petition Area is an appropriate location for urban growth and has been so designated by the County of Maui. (FOF ~~259269~~ to ~~260270~~).

~~271-272.~~ The seventh standard is whether the urbanization of the Petition Area will contribute to spot zoning. (HAR § 15-15-18(7)).

~~272-273.~~ The Petition Area is contiguous with lands that are existing urban uses. (EX. 25, p. VII-33).

~~273-274.~~ The Petition Area was designated by the County of Maui as an area in which urban growth was desired. (FOF ~~270271~~).

~~274-275.~~ Changing the State land use classification of the Petition Area will not amount to or contribute to spot zoning. (FOF ~~272273~~ to ~~273274~~).

~~275-276.~~ Based on a review of the standards which

lands classified as urban must meet, the Petition Area conforms with those standards. (FOF ~~194, 202, 240, 244, 255, 257,~~ ~~270~~195, 203, 241, 245, 256, 258, 271 and ~~274~~275).

~~276-277.~~ Section 15-15-21, HAR, outlines the standards to classify lands as rural. (HAR § 15-15-21).

~~277-278.~~ The first standard is whether the area consists of small farms. (HAR § 15-15-21(1)).

~~278-279.~~ The portion of the Petition Area which is to be reclassified as rural is on the mauka side of Honoapiilani Highway and surrounds the portion of the Petition Area which is to be classified as urban. (EX. 25, p. VII-34).

~~279-280.~~ The Project proposes that the lands to be classified as rural will be lots that range in size from about one-half acre to about two acres. (FOF 65).

~~280-281.~~ Excluding sugar cane and pineapple crops, Maui County had about 7,850 acres in crop production in 2010. (EX. 25, App. G, p. 51).

~~281-282.~~ Maui County had about 1,128 farms in 2012, of which 711 farms were 9 acres or less. (Maui County Data Book, 2015, p. 100).

~~282-283.~~ The median size of a farm in Maui County was about 5 acres. (Maui County Data Book, 2015, p. 100).

~~283-284.~~ As such, the portion of the Petition Area which is to be reclassified as rural would consist of small

farms, consistent with the size of most farms in Maui County and in conformance with the first standard. (FOF ~~279~~280 to ~~282~~283).

~~284~~-285. The second standard is whether the uses are characterized by low-density residential lots of not less than one-half acre and a density of not more than one single-family dwelling per one-half acre in areas where city-like concentration of people, structures, streets and urban level of services are absent and where small farms are intermixed with low-density residential lots. (HAR § 15-15-21(2)).

~~285~~-286. The portion of the Petition Area to be reclassified as rural will have about 80 lots on about 150 acres. (EX. 25, p. III-52).

~~286~~-287. The average size of the lots within the area to be reclassified as rural will be about 0.64 acres. (EX. 25, p. III-52).

~~287~~-288. None of the lots within the area to be reclassified as rural will be less than one-half acre. (FOF 65).

~~288~~-289. Section 19.29.030, Maui County Code, limits the number of dwellings on lots from one per one-half acre within the RU-0.5 and County rural districts and one per acre within the RU-1 district. (Maui County Code § 19.29.030).

~~289~~-290. Based on the size of the portion of the Petition Area to be reclassified as rural and the limitations

placed on rural districts by the County of Maui, there will be no more than one single-family dwelling per one-half acre. (FOF ~~287288~~ and ~~288289~~).

~~290-291.~~ As such, the portion of the Petition Area which is to be reclassified as rural would conform to the second standard. (FOF ~~285286~~ to ~~289290~~).

~~291-292.~~ The third standard is whether the lands to be reclassified as rural are surrounded by, or contiguous to, rural classified lands and are not suited to low-density residential uses for small farm or agricultural uses. (HAR § 15-15-21(3)).

~~292-293.~~ The portion of the Petition Area to be reclassified as rural border lands classified as agricultural on the north, east and south, Honoapiilani Highway to the west, and lands to be reclassified as urban to the west. (EX. 25, pp. VII-35 to VII-36).

~~293-294.~~ The lands classified as agricultural will be dedicated to agricultural use by way of an easement as a part of the entitlement process, making them not suited for low-density residential uses. (FOF 102).

~~294-295.~~ The portion of the Petition area to be reclassified as rural will act as a buffer from the lands to be reclassified as urban and the lands that will remain in agricultural use. (FOF ~~292293~~ and ~~293294~~).

~~295-296.~~ As such, the reclassification of a portion of the Petition Area as rural meets the third standard. (FOF ~~292293~~ to ~~294295~~).

~~296-297.~~ Having met each of the standards for determining rural district classification, the portion to the Petition Area that consists of about 150 acres may be reclassified as rural. (FOF ~~283, 290284, 291~~ and ~~295296~~).

3) The impact of the reclassification on areas of State concern

~~297-298.~~ The first area of State concern is the preservation or maintenance of important natural systems or habitats. (HAR § 15-15-77(b)(3)(A)).

~~298-299.~~ The Petition Area is located in central Maui with the West Maui mountains visible to the east and Haleakala visible to the west. (EX. 25, p. VII-99).

~~299-300.~~ The Petition Area is bisected by Honoapiilani Highway. (EX. 25, p. VII-99).

~~300-301.~~ To protect any views of the West Maui Mountains or of Haleakala, the Project will be developed as an architecturally integrated area with low-rise residential structures and setbacks from Honoapiilani Highway. (EX. 25, p. VII-99).

~~301-302.~~ A biologic resources study of the Project was conducted by Robert W. Hobdy, Environmental Consultant, in

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February, 2013. (EX. 44, p. 2; EX. 25, App. B).

~~302-303.~~ No endangered plant species were found on the Petition Area. (EX. 44, p. 7).

~~303-304.~~ Two tree tobacco plants, which might act as a host to the Blackburn's Sphinx Moth, were observed in 2013. (EX. 44, p. 6).

~~304-305.~~ One of the plants was found to have two maturing eggs of the moth. (EX. 44, p. 6).

~~305-306.~~ Measures recommended by the US Fish & Wildlife Service to mitigate the impact of the Project on the moth will be implemented. (EX. 44, pp. 6 to 7; EX 25, p. VII-4).

~~306-307.~~ The vegetation of the property is dominated by non-native, abundant species. (EX. 44, p. 7).

~~307-308.~~ From a botanical standpoint, other than the tree tobacco plants as a host for the moth, nothing in the Petition Area warranted protection either as a plant species or as plant habitat. (EX. 44, pp. 6 to 7).

~~308-309.~~ Four mammal species were detected, which were mongoose, cats, dogs and cattle. (EX. 44, p. 5).

~~309-310.~~ Twenty-one species of non-native birds were observed. (EX. 44, p. 5).

~~310-311.~~ No evidence was found of the native Hawaiian Hoary bat. (EX. 44, pp. 5 and 7).

~~311-312.~~ No mammal or bird species or habitats warranting protection were observed during the biological survey of the Petition Area. (EX. 44, p. 7).

~~312-313.~~ Federally-listed threatened and endangered seabirds, the Newell's shearwater and the Hawaiian petrel, are known to fly over the Petition Area. (EX. 25, p. VII-4).

~~313-314.~~ The U.S. Fish & Wildlife Service recommended minimizing or down-shielding of external artificial lighting to reduce seabird mortality due to disorientation. (EX. 25, p. VII-4).

~~314-315.~~ Down-shielded lights will be required within the Project to mitigate seabird mortality. (EX. 25, p. VII-4).

~~315-316.~~ Petitioners propose installation of wastewater lines that will connect the Project with a wastewater reclamation facility to be built on lands owned by Petitioners that are adjacent to the Petition Area. (FOF ~~216217~~).

~~316-317.~~ The wastewater reclamation facility proposed for service of the Project uses food chain reactors that are comprised of tropical plants, engineered media and fine bubble aeration to intensify the wastewater treatment process. (FOF ~~217218~~).

~~317-318.~~ The wastewater reclamation facility is expected to require a smaller footprint, use less energy for operation and generate less sludge than a conventional

wastewater treatment facility. (FOF ~~218~~219).

~~318-319.~~ Petitioners have and will continue to coordinate wastewater reclamation and treatment with the County of Maui so that should additional capacity for the Kahului wastewater treatment facility exist or should a regional wastewater treatment facility be developed, treatment of wastewater will be handled in a manner consistent with the development of additional capacity for treatment. (FOF ~~219~~220).

~~319-320.~~ Petitioners developed three wells for potable water and two wells for non-potable water. (FOF ~~227~~228).

~~320-321.~~ Development of the wells is being done with input from the County of Maui's Department of Water Supply and the Commission on Water Resource Management. (FOF ~~228~~229).

~~321-322.~~ Based on test pumping, the wells will have sufficient capacity to supply the project. (FOF ~~229~~230).

~~322-323.~~ The wells draw water from the Waikapu aquifer. (EX. 48, p. 2).

~~323-324.~~ The Waikapu aquifer is believed to have a sustainable yield of 3.0 million gallons per day. (EX. 48, p. 3).

~~324-325.~~ The projected average daily demand for the Project about 683,000 gallons per day. (EX. 48, p. 5).

~~325-326.~~ Based on projected demands and the

sustainable yield of the Waikapu aquifer, the Project will not exceed the groundwater available from the Waikapu aquifer. (EX. 48, pp. 5 to 6).

~~326-327.~~ Storm water runoff from the Petition Area will be detained in ~~a~~-detention basins and grassed swales to allow pollutants to settle out, keeping the pollutants from entering ocean waters. (FOF ~~223224~~).

~~327-328.~~ Storm water runoff from agricultural lands outside the Petition Area will be directed away from Waikapu Stream and into the detention basins within the Project Area to reduce the amount of storm water runoff that might enter Waikapu Stream. (FOF ~~224225~~).

~~328-329.~~ The drainage system of the Project has sufficient capacity to meet the rules for post-construction storm water quality proposed by the County. (EX. 43, pp. 15 to 17).

~~329-330.~~ The Project drainage system will need to comply with storm water runoff and water quality rules when construction permits are sought. (EX. 43, p. 16).

~~330-331.~~ If properly designed, constructed and maintained, the proposed drainage system and construction activities should not increase off-site runoff nor cause an adverse impact to adjacent or downstream properties or surface and coastal resources and water quality. (FOF ~~326327~~ to

~~329~~330).

~~331-332.~~ Petitioner will be required to obtain a National Pollutant Discharge Elimination System permit from the State Department of Health for storm water discharge associated with construction activity. (EX. 25, p. VII-13).

~~332-333.~~ Petitioner will employ best management practices to ensure that fugitive dust and soil erosion are avoided, minimized or mitigated during Project construction. (EX. 25, p. VII-13).

~~333-334.~~ If the mitigation measures proposed by Petitioners are implemented, the reclassification of the Petition Area to rural and urban will not have a significant impact on the preservation or maintenance of important natural systems or habitats. (FOF ~~298~~299 to ~~332~~333).

~~334-335.~~ The second area of State concern is the maintenance of valued cultural, historical or natural resources. (HAR § 15-15-77(b)(3)(B)).

~~335-336.~~ An Archaeological Inventory Survey Report was completed for the Project by Archaeological Services Hawaii, LLC in 2013. (FOF ~~139~~140).

~~336-337.~~ The Archaeological Inventory Survey Report was reviewed and comments made by the State Historic Preservation Division (SHPD) on August, 2017. (FOF ~~140~~141).

~~337-338.~~ Based on comments made by SHPD, the

Archaeological Inventory Survey Report was updated in September, 2017. (EX. 40, p. 7).

~~338-339.~~ SHPD reviewed the updated Archaeological Inventory Survey Report and approved the report in September, 2017. (FOF 141).

~~339-340.~~ The Archaeological Inventory Survey covered about 503 acres. (EX. 32, p. i)

~~340-341.~~ The area was divided into five sections. (EX. 40, pp. 5 to 6)

~~341-342.~~ Over 20 existing archaeological survey reports for the lands within the Petition Area, and adjacent and nearby lands, were reviewed and analyzed for information. (EX. 32, pp. 51 to 52).

~~342-343.~~ Pedestrian surveys were made of each of the five zones of the Petition Area. (EX. 40, p. 5).

~~343-344.~~ One hundred fifty trenches were excavated throughout the Petition Area to obtain a broad coverage of the property. (EX. 40, p. 9).

~~344-345.~~ The trenches were located near areas identified by other archaeological reports, areas identified by the pedestrian surveys, areas that contained Land Commission awards or Grants, and areas that reflected a representative sample of the Petition Area so that the Archaeological Inventory Survey would achieve an accurate assessment of the existence of

archaeological deposits and features. (EX. 40, p. 5).

~~345-346.~~ The trenches yielded little evidence of archaeological deposits and no evidence of archaeological features. (EX. 40, p. 9).

~~346-347.~~ The archaeological deposits were limited to bottle glass fragments in two trenches and a few pieces of ceramics and metal in association with charcoal in a trench. (EX. 40, p. 10).

~~347-348.~~ Based on stratigraphic sequencing and the archaeologist's experience, it is likely that land alterations from sugar cane operations substantially obliterated archaeological deposits in the Petition Area. (EX. 40, pp. 5 to 6 and p. 9).

~~348-349.~~ Four historic features were found in the Petition Area and received State Inventory of Historic Place site numbers. (EX. 40, pp. 7 to 9).

~~349-350.~~ One previously identified historic feature (the Waihee Ditch) was located in the Petition Area. (EX. 32, p. 2).

~~350-351.~~ Most of the features were associated with the growing of sugar cane and consisted of cement ditches and earthen ditches with cement control structures, which features were identified as irrigation features. (EX. 40, p. 8).

~~351-352.~~ One feature was found consisting of a

stacked rock structure in a L-shape. (EX. 40, p. 8).

~~352-353.~~ A second feature which was identified as an aircraft observation bunker that was built in connection with the Second World War. (EX. 40, p. 8).

~~353-354.~~ Preservation plans for the irrigation features and the aircraft observation bunker will be developed and implemented. (FOF ~~146147~~).

~~354-355.~~ SHPD, in approving the Archaeological Inventory Survey Report, stated that archaeological monitoring shall be conducted for all ground disturbing activities. (EX. 33).

~~355-356.~~ A Cultural Impact Assessment was done in February, 2014 by Hana Pono, LLC. (EX. 41, p. 4 and EX. 25, App. F and App. F, Part A).

~~356-357.~~ Archival research from forty-two separate sources and interviews of nine persons knowledgeable of the Waikapu area were conducted. (EX. 25, App. F).

~~357-358.~~ In the pre-contact period, portions of the Petition Area probably were used for loi kalo cultivation through the use of auwai to bring waters from Waikapu Stream to the loi. (EX. 25, p. V-20).

~~358-359.~~ At the time of the Mahele in 1848, seventy-four claims were made for Land Commission Awards on or near the Petition Area with most of the lands being used for some form of

agriculture. (EX. 25, App. F, p. 52).

~~359-360.~~ Following the Mahele and for well over 150 years, the Petition Area was used for sugar cane and pineapple cultivation. (FOF ~~7475~~ to ~~7778~~).

~~360-361.~~ Most Mahele claim awarded in the Petition Area and the traditional uses associated with those awards were obliterated by sugar cane and pineapple cultivation. (EX. 25, App. F, p. 52).

~~361-362.~~ The boundaries of the Petition Area were revised to remove any kuleana lands or Land Commission Awards on which descendants of the awardees have expressed an interest in accessing and practicing traditional and cultural rights. (EX. 41, pp. 17 to 18).

~~362-363.~~ A Ka Pa`akai Cultural Analysis was done in December, 2016 by Hokuao Pellegrino. (EX. 25, App. F, Part A; EX. 41, p. 7).

~~363-364.~~ While the Petition Area has no current use for cultural practices and traditional cultural practitioners, cultural practices in lands adjacent to the Petition Area exist. (EX. 41, p. 8).

~~364-365.~~ The cultural practices on the adjacent properties include: a) use of Waikapu Stream for irrigation of loi kalo; b) use of Waikapu Stream to access Waikapu Valley for the gathering of endemic and native medicinal plants and good

crops; c) native forest and habitat restoration; d) archaeological stabilization; and e) access to kuleana lands. (EX. 41, pp. 8 to 9).

~~365-366.~~ The Cultural Analysis recognized that the Project will not adversely affect Hawaiian cultural practices related to loi kalo cultivation on neighboring properties. (EX. 25, p. V-25).

~~366-367.~~ The Cultural Analysis recognized that the Project will not adversely impact an area used for the gathering of medicinal herbs as a cultural practice. (EX. 25, p. V-25).

~~367-368.~~ The Cultural Analysis noted that to the extent that access through the Petition Area is necessary for the exercise of traditional and cultural rights, such access will be allowed. (TR (12/6/2017) 145:8-24).

~~368-369.~~ The Cultural Analysis noted that while two privately owned kuleana parcels were identified and the boundaries of the Petition Area were revised to remove the two parcels from the Petition Area, easement rights for the kuleana parcel owners should be granted to provide access over the Petition Area if necessary. (TR (12/6/2017) 134:15-19 and 142:14 to 143:4).

370. The Cultural Analysis advised that Petitioners consult with the neighboring south kuleana loi kalo farmers and Hui O Na Wai Eha to ensure that infrastructure improvements have

minimal to no adverse effects to traditional and customary rights and practices. (TR (12/6/2017) 142:6-14).

371. The Cultural Analysis consultant indicated that there was a sand dune system within the northeast corner of the Petition Area. While much of the sand dune system has been impacted by sugar cane farming operations, there may still be burials within the sand dune system. The Cultural Analysis consultant recommended that the area be subject to archaeological monitoring should any work be conducted in that area. (TR (12/6/2017) 156:3 to 157:17).

369-372. If mitigation measures proposed by Petitioners are implemented, reclassification of the Petition Area will not have a significant impact on the maintenance of valued cultural, historical or natural resources. (FOF ~~335~~336 to ~~368~~371).

370-373. The third area of state concern is the maintenance of other natural resources relevant to Hawaii's economy, including but not limited to agricultural resources. (HAR § 15-15-21(b)(3)(C)).

375-374. The bulk of the Petition Area is listed as Prime Agricultural Lands. (FOF 50).

376-375. Prime Agricultural Lands describes lands with soils having the best physical, chemical and climatic properties for mechanized field crops. (FOF 51).

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~~377-376.~~ A small portion of the Petition Area is listed as Other Important Agricultural Lands under the ALISH classification. (FOF 52).

~~378-377.~~ Other Important Agricultural Lands describes lands which have state or local importance for production of crops but which need irrigation or which possess characteristics like seasonal wetness or erodibility that require further management for commercial production. (FOF 53).

~~379-378.~~ The productivity of the land underlying the Petition Area was classified as "A" and "B" by the University of Hawai'i Land Study Bureau. The Bureau's classification system rates lands on the scale of "A" to "E" reflecting land productivity characteristics. (FOF 54).

~~380-379.~~ Lands designated "A" are considered to be of the highest productivity with "E" rated lands ranked as the lowest in productivity. (FOF 54).

~~381-380.~~ The "A" and "B" designations mean that the land underlying the Petition Area is productive. (FOF 55).

~~382-381.~~ Maui has about 82,500 acres of land which have productivity ratings of A, B or C. (EX. 25, App. G, p. 49).

~~383-382.~~ Maui has about 244,000 acres of land that is classified as agricultural. (EX. 25, App. G, p. 50).

~~384-383.~~ The Petition Area, which is about 487 acres,

represents less than one percent of all the productive lands on Maui, less than one-fourth of one percent of the lands being farmed on Maui and about one-fifth of one percent of all lands classified as agricultural on Maui. (FOF 40, 382 and 383).

~~385-384.~~ In January, 2016, HC&S announced that the sugar plantation would cease operations after the last harvest which occurred in December 2016. (EX. 25, p. VII-14).

~~386-385.~~ As a result of ceasing operations, HC&S has about 33,000 acres of land in the central Maui area that is available for use as agricultural lands. (EX. 25, p. VII-14).

~~387-386.~~ Additionally, Petitioners own lands adjacent to the Petition Area that have similar productivity ratings. (EX. 25, p. VII-14).

~~388-387.~~ Petitioners, as a part of the entitlement process, will dedicate about 800 acres to agricultural use with a restriction that no residential structures, including farm dwellings, will be permitted on that land. (FOF 102).

~~389-388.~~ If mitigation measures proposed by Petitioners are implemented, the reclassification of the Petition Area will not have a significant impact on the maintenance of other natural resources relevant to Hawai'i's economy. (FOF ~~375374~~ to ~~388387~~).

~~390-389.~~ The fourth area of State concern is commitment of state funds and resources. (HAR § 15-15-

21(b)(3)(D)).

~~391-390.~~ A Traffic Impact Analysis Report was developed for the Project in December, 2014 by Fehr & Peers. (EX. 38, p. 6, EX. 25, App. I, FOF ~~178179~~).

~~392-391.~~ A Technical Memorandum was prepared by Fehr & Peers in September, 2016. (EX. 38, p. 6; EX. 25, App. J).

~~393-392.~~ The Technical Memorandum analyzed the impact of traffic within the area surrounding the Petition Area in the event that a proposed street, the Waiale Bypass, was not built. (EX. 38, p. 6, EX. 25, App. J).

~~394-393.~~ Traffic at a total of fourteen intersections was analyzed. (EX. 38, p. 8).

~~395-394.~~ Eight of the intersections presently exist; six of the intersections will be operational when the Project is built. (EX. 38, p. 8).

~~396-395.~~ Based on the Traffic Impact Analysis, future intersection operating conditions will be significantly affected by regional growth and development before the Project is built. (EX. 38, p. 9).

~~397-396.~~ Five of the 14 intersections will operate at an undesirable level of service if the Project is not built. (EX. 38, p. 10).

~~398-397.~~ If the Project is built, one additional intersection will operate at an unacceptable level of service.

(EX. 38, pp. 10 to 11).

~~399-398.~~ The additional intersection which will be impacted by the traffic from the Project is located at Waiale Road and Waiko Road. (EX. 38, p. 16).

~~400-399.~~ Petitioners propose entry into a Master Roadway Agreement with the County of Maui which contains fair share calculations and triggering events for the funding of the improvements to the intersections which the Traffic Impact Analysis Report identified as being impacted by the Project. (TR (12/6/2017) 90:21 to 91:3 and (12/7/2017)).

~~401-400.~~ Petitioners will implement, as part of the development of the Project, the recommendations of the Traffic Impact Analysis Report.

~~402-401.~~ The State Department of Transportation (“DOT”) reviewed the Project and concluded the Project will be responsible for the fair share of transportation improvements to mitigate the impacts of the traffic from the Project, that the developer will work with the Department of Transportation on spacing of intersections internal to the Project, and that the Project should assure integration with the Department’s bicycle and pedestrian policies and plans. (SOP EX. 7).

402. The DOT indicated that Petitioners should provide additional information and enter into a Memorandum of Agreement with the DOT before the submittal of a subdivision application

to the County of Maui. (SOP Ex. 2).

403. The DOT submitted a letter dated September 12, 2017 indicating that the Petition Area is approximately 4.3 miles from the Kahului Airport. The DOT expressed the following concerns because of the proximity of the Petition Area to the Kahului Airport and its operations: 1) Petitioners should be aware that the Project must conform with the requirements of the Technical Assistance Memorandum relating to wildlife attractants around airports, and other land uses, which is available at <http://files.hawaii.gov/dbedt/op/docs/TAM-FAA-DOT-Airports08-01-2016.pdf>. Any activity that can potentially attract wildlife within 5 miles from the airport must meet the requirements of FAA Advisory Circular 150/5200-33B Hazardous Wildlife Attractants on or Near Airports; and 2) If photovoltaic systems are proposed, Petitioners should be aware that photovoltaic systems, if located in or near the approach path of an aircraft into Kahului Airport, can create a hazardous condition for a pilot due to possible glint and glare from the photovoltaic array. If a photovoltaic system is proposed, a FAA form may be required. Also, Petitioners should insure that any photovoltaic system not create interference or disrupt radio frequency air-to-ground communications. (SOP EX. 2).

404. The State Department of Defense ("DOD") submitted a letter dated July 18, 2017 indicating that they recommend that

three (3) Omni-directional 121-dbc solar powered sirens mounted on 45-foot H2 composite poles be provided within the Project area. (SOP EX. 2).

403-405. The State Department of Education ("DOE") and the Petitioners executed an Educational Contribution Agreement to satisfy both the land and construction components of the DOE school impact fee requirements, which are imposed because of the Petition Area's location. (EX. 22).

404-406. The Educational Contribution Agreement was adopted by the DOE pursuant to HRS Sections 302A-1601 to 1612, which require a fee payment for all new dwellings within the Impact Fee District. (EX. 22).

405-407. Under the Educational Contribution Agreement for the Project, a total of \$2,610,329 will be paid to the DOE for the Project. (EX. 22).

406-408. If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will not have a significant impact on the commitment of state resources or funds. (FOF ~~391390~~ to ~~405407~~).

407-409. The fifth area of State concern is the impact of the reclassification on providing employment opportunities and economic development. (HAR § 15-15-21(b)(3)(E)).

408-410. The Project will provide construction and

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construction-related employment during the build out of the project. (EX. 25, p. V-57 to V-60; EX. 42, p. 5).

~~409-411.~~ The construction of the Project will result in about \$644,100,000 in capital investment. (EX. 25, p. V-60).

~~410-412.~~ The construction of the Project will generate over 2,475 worker years of employment in the trades and associated businesses. (EX. 25, p. V-57).

~~411-413.~~ The commercial uses within the Project will generate about 4,250 full time equivalent worker years providing stabilized employment for about 530 permanent positions. (EX. 25, p. V-57).

~~412-414.~~ The Project will generate over 65 worker years for maintenance and common area element employment. (EX. 25, p. V-57).

~~413-415.~~ If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will provide employment opportunities and economic development. (FOF ~~408410~~ to ~~412414~~).

~~414-416.~~ The sixth area of State concern is the impact of the reclassification on providing housing opportunities to all income groups and particularly to low, low-moderate, and gap income groups. (HAR § 15-15-21(b)(3)(F)).

~~415-417.~~ The Project will comply with the County of Maui's residential workforce housing ordinance. (EX. 25, p.

VII-63).

~~416-418.~~ The residential workforce housing ordinance requires between twenty and twenty-five percent of the Project's housing units be sold to low, low-moderate and gap income groups in accordance with sales price and resale restrictions. (EX. 25, pp. V-51 to V-52).

~~417-419.~~ As such between 285 and 350 of the 1400 plus units will be sold in accordance with the residential workforce housing ordinance. (FOF ~~416418~~).

~~418-420.~~ In addition, the Project as designed will be geared toward providing housing at market rates to Maui County residents who earn between 100 and 140 percent of the median income as determined by the Department of Housing and Urban Development. (EX. 25, p. V-54).

~~419-421.~~ The market rate housing to be made available to those earning between 100 and 140 percent of the median income will be multi-family condominiums, small cottage homes on small lots, and ohana type dwelling units. (EX. 25, p. V-54).

~~420-422.~~ If mitigation measures proposed by Petitioner are implemented, the reclassification of the Petition Area will provide housing opportunities to low and gap income groups. (FOF ~~415417~~ to ~~419421~~).

4) Conformance With Maui County General Plan.

~~421-423.~~ In March, 2010, the County of Maui adopted

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by ordinance the Countywide Policy Plan which updated the existing General Plan. (FOF 80).

~~422-424.~~ The Countywide Policy Plan established a set of guiding principles and goals, objectives and policies to portray the desired direction of Maui County. (FOF 81).

~~423-425.~~ An objective of The Countywide Policy Plan was the improvement of land use management and implementation of a directed-growth strategy. (FOF 82).

~~424-426.~~ Among the implementing programs identified in The Countywide Policy Plan was the Maui Island Plan which would achieve the objective of directed-growth management. (FOF 83).

~~425-427.~~ The Maui Island Plan, adopted by ordinance in 2012, is a directed-growth plan that established the geographic locations on Maui in which future growth was desired. (FOF 84).

~~426-428.~~ Protection of Maui's small towns and rural character is an important component of the Maui Island Plan. (FOF 85).

~~427-429.~~ Three growth areas were identified in the Maui Island Plan: Urban; Small Town; and Rural. (FOF 86).

~~428-430.~~ The Petition Area is located within the Wailuku-Kahului Planned Growth Area in the Maui Island Plan. (FOF 87).

~~429-431.~~ The Project was identified as the Waikapu Tropical Plantation Town in the Maui Island Plan. (FOF 88).

~~430-432.~~ The Maui Island Plan designated the Petition Area as being within the Small Town and Rural growth areas, recognizing that the Project would provide a mix of single-family and multifamily housing units, park land, open space, commercial uses and a school. (FOF 89).

~~431-433.~~ The Petition Area is zoned Agricultural by the County of Maui except for about 45 acres that is adjacent to the Maui Tropical Plantation that is zoned Project District. (EX. 25, p. I-19).

~~432-434.~~ The bulk of the Petition Area is designated Agricultural by the Wailuku-Kahului Community Plan with about 45 acres that is adjacent to the existing Maui Tropical Plantation being designated as Project District. (EX. 25, p. I-16).

~~433-435.~~ The implementation of the Project will require an amendment to the Wailuku-Kahului Community Plan. (EX. 25, p. I-20).

~~434-436.~~ Petitioners will seek an amendment of the classification of the Petition Area under the Wailuku-Kahului Community Plan from the existing classification of Agriculture to the classification Project District ~~-, or a comparable~~ combination of Community Plan land use categories and mixed uses. (EX. 25, p. I-20).

~~435-437.~~ If the amendment of the Wailuku-Kahului Community Plan is approved, the Project and the Petition Area will conform to the goals, objectives and policies of the Wailuku-Kahului Community Plan. (FOF ~~421423~~ to ~~434436~~).

5) **The economic ability of the Petitioner to carry out the commitments**

~~439-438.~~ Petitioners provided financial statements pursuant to HAR Section 15-15-50(c)(8). (EX. 24; EX. 49, p. 3).

~~440-439.~~ Petitioners will obtain funding for improvements by bank or private financing. (EX. 49, pp. 3-5).

~~441-440.~~ Petitioners have the financial capability to undertake the Project. (FOF ~~439438~~ to ~~440439~~).

6) **Whether the Petition Area was in intensive agricultural use**

~~442-441.~~ The Petition Area was last used for sugar cane production in 2016. (FOF 77).

~~443-442.~~ After sugar cane production stopped, the Petition Area was leased for the following agricultural uses: about 110 acres for livestock grazing; about 235 acres for growing of organic crops; about 150 acres for growing of biofuel crops. (EX. 25, App. G, pp. 65 to 67).

~~444-443.~~ During completion of the entitlement process, the tenants who have leased portions of the Petition Area will be relocated to adjacent lands owned by Petitioners for continuation of the farming activities that were begun in

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the Petition Area. (EX. 25, App. G, p. 69; TR (12/6/2017) R. Pahoa Testimony 20:22 to 21:3).

~~445-444.~~ As such, the reclassification of the Petition Area from Agriculture to Rural and Urban will not result in the decrease of agricultural pursuits. (FOF ~~442441~~ to ~~444443~~).

E. FINDINGS CONCERNING REQUEST TO RECLASSIFY PETITION AREA FROM AGRICULTURAL TO URBAN AND RURAL

~~446-445.~~ Petitioners established by a clear preponderance of the credible evidence that 342.373 acres of the Petition Area should be reclassified from Agricultural to Urban and that 145.286 acres of the Petition Area should be reclassified from Agricultural to Rural.

~~447-446.~~ Any finding of fact submitted by any party not already ruled upon by the Commission by adoption herein or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

~~448-447.~~ Any conclusion of law improperly designated as a finding of fact, shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to HRS Chapter 205, and the Commission

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rules under HAR Chapter 15-15, and upon consideration of the Commission decision-making criteria under HRS Section 205-17, the Commission finds upon the clear preponderance of the evidence, that the reclassification of the Petition Area, consisting of about 145.286 acres of land situated at Waikapu, Maui, Hawai'i, identified as Tax Map Key No. (2) 3-6-004:003 (por.), from the State Land Use Agricultural District to the State Land Use Rural District and to reclassify about 342.373 acres of land situated at Waikapu, Maui, Hawai'i, identified as Tax Map Key Nos. (2) 3-6-004:006, (2) 3-6-004:007 and (2) 3-6-002:003 (por.) from the State Land Use Agricultural District to the State Land Use Urban District, and subject to the conditions stated in the Order below, conforms to the standards for establishing the boundaries of the State Land Use Rural District and the State Land Use Urban District, is reasonable, is not violative of HRS Section 205-2, and is consistent with the policies and criteria established pursuant to HRS Sections 205-16, 205-17 and 205A-2, Article XII, Section 7 and other relevant sections of the State Constitution and the Hawaii Revised Statutes.

2. Article XII, Section 7, of the Hawaii State Constitution requires the Commission to protect native Hawaiian traditional and customary rights.

3. The State of Hawai'i 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 Hawaiian islands prior to 1778, subject to the right of the State to regulate such rights.

4. The State of Hawai'i and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible. (*Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission*, 79 Haw. 425, 450, n.43, *certiorari denied*, 517 U.S. 1163 (1996)).

5. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. (*Ka Pa 'akai O Ka'Aina v. Land Use Com 'n*, 94 Haw. 31, 7 P.3d 1068 (2000)).

6. Article XI, Section 1, of the Hawai'i State Constitution requires the State of Hawai'i to conserve and protect Hawai'i'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 the conservation and in furtherance of the self-sufficiency of the State.

7. Article XI, Section 3, of the Hawai'i State Constitution requires the State of Hawai'i to protect

agricultural lands, to promote diversified agriculture, to increase agricultural self-sufficiency, and to ensure the availability of agriculturally suitable lands.

8. Article XII, Section 7, of the Hawai'i State Constitution states that the State of Hawai'i has the obligation to protect, control and regulate the use of Hawai'i's water resources for the benefit of its people.

9. HRS Section 205-16 provides that "no amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawai'i state plan."

DECISION AND ORDER

IT IS HEREBY ORDERED that the portion of the Petition Area, consisting of about 145.286 acres of land situated at Waikapu, Maui, Hawai'i, identified as Tax Map Key No. (2) 3-6-004:003 (por.), as shown approximately on Exhibit "A" attached hereto and incorporated herein by reference, shall be reclassified from the State Land Use Agricultural District to the State Land Use Rural District and the State Land Use District Boundaries shall be amended accordingly, and that the portion of the Petition Area consisting of about 342.373 acres of land situated at Waikapu, Maui, Hawai'i, identified as Tax Map Key Nos. (2) 3-6-004:006, (2) 3-6-004:007 and (2) 3-6-002:003 (por.), as shown approximately on Exhibit "B" attached

hereto and incorporated herein by reference, shall be reclassified from the State Land Use Agricultural District to the State Land Use Urban District and the State Land Use District Boundaries shall be amended accordingly.

Based 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. Education Contribution Agreement. Petitioners shall contribute to the development, funding, and/or construction of school facilities in compliance with the *Educational Contribution Agreement for WAIKAPU COUNTRY TOWN*, undated but executed as of January 31, 2017 entered into by Petitioners and the DOE. Petitioners shall ensure that prospective buyers, purchasers, and subsequent owner builders of lots are given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the *Educational Contribution Agreement*. Such notice shall be recorded and shall

run with the land.

2. Storm Water Management and Drainage. Petitioners shall maintain existing drainage patterns and shall implement applicable Best Management Practices a) to minimize infiltration and runoff from construction and vehicle operations, b) to reduce or eliminate the potential for soil erosion and ground water pollution, and c) to formulate dust control measures to be implemented during and after the development process in accordance with Department of Health guidelines and County of Maui ordinances and rules. The Best Management Practices shall include a program for the maintenance of drainage swales within the Petition Area for the life of the project.

3. Residential Workforce Housing. Petitioners shall design and construct the Project, and provide residential workforce housing opportunities in ~~substantial~~ compliance accordance with the County of Maui's residential workforce housing requirements.

4. Wastewater. Petitioners shall ~~fund~~ participate in the funding and ~~construct~~ /or construction of adequate private or public wastewater source, storage, and transmission facilities to accommodate the proposed uses for each phase of the project. The private wastewater source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County

of Maui. If applicable, the public wastewater source, storage, and transmission facilities shall be controlled or operated by the County of Maui. If the private wastewater source, storage, and transmission facilities are located outside the Petition Area and within the State and County agricultural districts, Petitioners shall apply for a Land Use Commission special use permit in accordance with the provisions of HRS Chapter 205. In the event that Petitioners participate in a regional wastewater system which is controlled or operated by the County of Maui, ~~this condition~~ the requirements made under this condition applicable to private wastewater source, storage and transmission facilities, shall no longer be applicable to the project.

5. Air Quality. Petitioners shall participate in an air quality monitoring program if so required by the Department of Health.

6. Energy Conservation Measures. Petitioners shall implement, to the extent feasible and practicable, measures to promote energy conservation, sustainable design and environmental stewardship, such as the use of solar water heating and photovoltaic systems, into the design and construction of the project. Petitioners also shall provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners within

the project.

7. Notification of Proximity to Kahului Airport.

Petitioners, and all subsequent owners, shall notify and disclose to all prospective developers, purchasers, and/or lessees within the Project, as part of any conveyance document (deed, lease, or agreement of sale, etc) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from the Kahului Airport, such as noise, right of flight, emissions, vibrations and other incidences of aircraft operations, ~~at and from the Kahului Airport. The notice and disclosure shall be a part of any conveyance document such as a deed, lease or agreement of sale.~~

8. Transportation - Highways.

a. Petitioners shall ~~implement~~submit to the State Department of Transportation and the County of Maui for review and approval a supplemental analysis to evaluate the "No Waiale Bypass" with Petitioners' project in 2022 (Phase I), due to the current memorandum/addendum limited only to build-out year 2026 (Phase II).

~~a.~~ b. Petitioners shall mitigate all project-generated traffic ~~improvements and mitigation measures, if any,~~ impacts as recommended and/or required by the State Department of Transportation and the County of Maui, ~~Department of Public~~

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~~Works in accordance with the "No Waiale Bypass" analysis. The mitigation measures, including. Petitioners shall initiate, coordinate, and meet with State Department of Transportation Highways and the County of Maui to agree upon the regional pro-rata cost sharing, shall be agreed upon and contained in share and to develop a Memorandum of Agreement and/or Master Roadway Agreement with the State Department of Transportation and/or County of Maui, which Highways and another Memorandum of Agreement and/or Master Roadway with the County of Maui. The Memoranda of Agreement shall be executed before the final approval prior to submittal of any subdivision of the Petition Area by application to the County of Maui.~~

~~The agreement shall include, but not be limited to, the following information: a) Petitioners' responsibilities for funding, construction, and implementation of improvements and mitigation; b) a schedule of agreed upon improvements and a schedule of future traffic impact analysis report updates or revisions; c) development of the project shall be in substantial conformance with the agreement; and d) fees or in kind contributions shall be roughly proportional to any indirect or secondary impacts caused by the project.~~

~~Petitioners shall submit to the State Department of Transportation for review and approval a supplemental analysis to evaluate the "No Waiale Bypass" for phases I and II of the~~

~~project.~~

9. Transportation - Regional Planning. Petitioners shall continue to work with the County of Maui to develop a timetable for the construction of the Waiale Bypass and shall work with appropriate County of Maui and State of Hawaii agencies, including the Metropolitan Planning Organization of the County of Maui, to develop a comprehensive traffic review of the Central Maui region.

10. Transportation - Airports. Petitioners shall ~~enter into a Memorandum of Agreement~~work with the State Department of Transportation, ~~which Memorandum of Agreement shall be executed before application for subdivision of the Petition Area by the County of Maui is submitted to the County of Maui, outlining measures~~minimize hazards to be taken by ~~Petitioner~~aircraft operations from Kahului Airport, including but not limited to ~~address~~impacts from wildlife attractants, ~~PV~~photovoltaic glint and glare, electromagnetic radiation, ~~aviation~~navigation easements, notices of ~~proposed~~proposes construction or alteration. ~~In the event that the, and~~ prospective purchaser/owner liability and covenants. As deemed necessary by the State Department of Transportation ~~determines that wildlife attractants, such as open swales, storm drains, retention and detention basins, that serve the project create a hazard~~to minimize the hazards to aircraft operations from

Kahului Airport, Petitioners shall fund and implement a program to control ~~the wildlife in such attractants to minimize the hazards created by such wildlife to aircraft operations.~~any birds nesting or occupation and any insect, pest or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities or associated settling ponds) serving the Project. Petitioners shall enter into a Memorandum of Agreement with State Department of Transportation before final subdivision approval of the initial phase of on-site development by Petitioners outlining measures to be taken by Petitioners to address impacgts.

11. Water Conservation Measures. Petitioners shall implement water conservation measures and best management practices such as the use of indigenous plants to the extent practicable and as required by the County of Maui.

12. Water System. Petitioners shall ~~fund~~participate in the funding and ~~construct~~/or construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each phase of the project. The private water source, storage, and transmission facilities shall be in accordance with the applicable standards and requirements of the Department of Health and/or the County of Maui, with plans submitted for approval by the appropriate

department. In the event that Petitioners participate in a regional water system which is controlled or operated by the County of Maui, the requirements under this condition applicable to a private water system shall no longer be applicable to the project.

Additionally, Petitioners shall work with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapu aquifer.

Further, Petitioners shall submit such information as may be requested by the County of Maui to the County of Maui to reflect changes in water demand forecasts and to supply the proposed uses in the County of Maui's water use and development plan.

13. Street Lights. Petitioners shall use fully-shielded street lights within the Project to avoid impacts to avifauna and other populations and to prevent light diffusion upward into the night sky.

14. Sirens. Petitioners shall fund and install three (3) civil defense warning sirens as specified by and in the locations identified by the State Department of Defense.

15. Parks. Petitioners shall comply with the park dedication requirements of the County of Maui.

16. Established Gathering and Access Rights Protected. Pursuant to Article XII, Section 7 of the Hawaii

State Constitution, Petitioners shall preserve any established gathering and access rights of ~~native~~Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, gathering, and religious practices or for access to other areas for such purposes, ~~all in accordance with Article XII, Section 7 of the Hawaii State Constitution.~~

17. Agriculture Easement. Petitioners shall submit an executed copy of the conservation easement or relevant instrument for the about 800 acres of adjacent agricultural lands to the Commission.

If any development is proposed in the area made subject to the conservation easement or relevant instrument, the State Historic Preservation Division shall be notified and such Division shall make a determination on whether an archaeological inventory survey is to be provided by Petitioners for such area.

18. Notification of Agricultural Use. Petitioners, and all subsequent owners, shall notify and disclose to developers, purchasers, and/or lessees of the provisions of HRS Chapter 165, the Hawaii Right to Farm Act. The notice and disclosure shall be a part of any conveyance document such as a deed, lease or agreement of sale.

The notice and disclosure shall contain at least the following information: a) that the developers, purchasers and/or lessees 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 State Land Use Agricultural District; and b) that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands.

For the purpose of this condition, the term "farming operations" shall have the same meaning as provided in HRS § 165-2.

19. Previously Unidentified Burials and Archaeological/Historic Sites. In the event that historic or archaeological resources, including human skeletal remains, are found and/or identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division shall be contacted immediately as required by HRS Chapter 6E and its applicable regulations. Without limitation to any condition found herein, if any burials or archaeological or historic sites or artifacts not previously identified in studies referred to in these Findings of Fact and Conclusions of Law are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the State Historic Preservation

Division that mitigation measures have been implemented to its satisfaction.

20. Archeological/Historic Sites. ~~Petitioners shall submit a preservation plan for two historic sites, identified as Site 50-50-04-7884 (irrigation features) and Site 50-50-04-7883 (World War II bunker) to the State Historic Preservation Division before any ground disturbing activities occur in the Petition Area. State Historic Preservation Division shall review and accept or approve the preservation plan for the two historic sites before any ground disturbing activities occur in the Petition Area, including any area identified as being a part of the Na Wai Eha sand dune system. Petitioners shall provide notice to the Commission of compliance with this condition before any ground disturbing activities occur in the Petition Area. Before any ground disturbing activities occur in the vicinity of the two historic sites, Petitioners shall obtain a determination from State Historic Preservation Division that the preservation plan has been implemented to its satisfaction.~~
Petitioners shall provide the following prior to any ground disturbance, as agree upon with the State Historic Preservation Division's ("SHPD") acceptance of the Petitioners Archaeological Inventory Survey:

a. Archaeological monitoring, which shall include data recovery of archaeological and historic sites;

b. If site 50-50-04-5197 is impacted by the proposal, it will be further documented in consultation with SHPD;

c. Archaeological monitoring shall be conducted for all ground disturbing activities, including the Na Wai Eha sand dune system area. An archaeological monitoring plan shall be developed and submitted for SHPD's review and acceptance prior to commencing project work;

d. If any development is proposed for the area to be dedicated to agriculture, SHPD shall be notified and SHPD will make a determination on whether an archaeological inventory survey is to be provided by Petitioners;

e. Petitioners shall submit a preservation plan to SHPD for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker (Site 50-50=04-7883). The preservation plan shall be submitted to the SHPD for review and acceptance prior to the initiation of the project. Petitioners shall comply with all interim and/or permanent mitigation and preservations measures recommended and approved by the SHPD. Petitioners shall confirm in writing to the Commission that the SHPD has found Petitioners' preservation mitigation commitments to be acceptable and has determined that any required historic preservation measures have been successfully implemented. The SHPD shall be notified at the initiation of the Project.

21. Archaeological/Archaeological Monitoring.

Petitioners shall employ archaeological monitors to ensure that all ground disturbances associated with mass grading of the Petition Area, and the trenching and excavation related to the installation of utilities, do not impact any subsurface cultural remains within the Petition Area. Petitioners shall submit an archaeological monitoring plan for ground disturbing activities within the Petition Area to the State Historic Preservation Division for its review and acceptance or approval. Acceptance or approval of the archaeological monitoring plan shall be a condition to performing any ground disturbing activities. Data obtained from the archaeological monitoring plan shall be provided to the State Historical Preservation Division upon the completion of the monitoring of the project.

In the event that Site 50-50-04-5197 is impacted by any ground disturbances, Petitioners shall document the site in accordance with the directions of the State Historic Preservation Division.

22. Cultural. Petitioners shall consult with those persons known as Waikapu Stream south kuleana lo`i kalo farmers and Hui o Na Wai `Eha to minimize the impacts on their traditional customary rights and practices from backbone infrastructure improvements before beginning construction on such improvements.

Additionally, Petitioners shall grant access easements over the appropriate portions of the Petition Area in favor of the owners of the Mahi-Puleloa parcels, identified as LCA 2944:3 to Ehunui (TMK (2) 3-6-005:010) and as Grant 1513 to Ehunui (TMK (2) 3-6-005:009) and in favor of the owners of the Kauihou parcels, identified as LCA 3340:1 (por.) to Nahau (TMK (2) 3-6-005:067), as LCA 3103 to Kalawaia (TMK (2) 3-6-005:014) and as LCA 3110:3.2 to Kuolaia (TMK (2) 3-6-005:066).

23. Endangered Species. Petitioners shall implement the following procedures to avoid potential impacts to endangered species. Petitioners shall not clear dense vegetation, including woody plants greater than 15 feet, along the periphery of the Petition Area during the period from June 1 to September 15 of each year which is the time that the Hawaiian hoary bat may be carrying young and thus could be at risk from the clearing activities. Petitioners shall consult with the United States Fish & Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and shall implement such measures in connection with the development of the Petition Area.

Additionally, for any nighttime work required during construction of the backbone infrastructure, and for long term operation of any private wastewater treatment facility servicing the project, exterior lighting shall be shielded so as to reduce

the potential for interactions of nocturnally flying Hawaiian Petrels and Newell's Shearwaters with external lights and man-made structures.

24. Development in Compliance with Maui Island Plan.

Petitioners shall develop the project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies and implementing actions described in the Maui Island Plan for the project identified as the "Waikapu Tropical Plantation Town."

25. Infrastructure Deadline. Petitioners shall

complete construction of the proposed backbone infrastructure, which consists of primary roadways and access points, internal roadways, on- and off-site water, sewer, and electrical system improvements, and storm water/drainage and other utility system improvements, within ten years from the date of the Decision and Order approving the Petition.

26. Order to Show Cause. If Petitioners fail to

complete the construction of the proposed backbone infrastructure within ten (10) years from the date of the Decision and Order approving reclassification of the Petition Area, the Commission may issue and serve upon Petitioners an Order to Show Cause and Petitioner shall appear before the Commission to explain why the Petition Area should not revert to its previous State Land Use District Agricultural Classification

or be changed to a more appropriate classification.

27. Compliance With Representations to the Commission. Petitioners shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in these Findings of Fact, Conclusions of Law, and Decision and Order. Failure to so develop the reclassified area in accordance with such representations may result in reversion of the reclassified area to its former classification or a change to a more appropriate classification.

28. Annual Reports. Petitioners shall timely provide, without any prior notice, annual reports to the Commission, the State Office of Planning, and the County of Maui Planning Department, and their respective successors, in connection with the status of the development of the Petition Area and Petitioners' progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall consist of one original, one paper copy and one electronic copy and shall be due prior to or on the anniversary date of the approval of the Petition.

29. Release of Conditions. The Commission may fully or partially release conditions provided herein as to all or any part of the Petition Area upon timely motion and upon the provision of adequate assurances of satisfaction of these

conditions by Petitioners or their permitted successors and/or assigns.

30. Notice of Change of Ownership. Petitioners shall provide 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 at any time prior to completion of construction of the backbone infrastructure of the Project.

31. Notice of Imposition of Conditions. Petitioners shall (a) within seven (7) days of issuance of the Commission's Decision and Order reclassifying the Petition Area, record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to the conditions imposed in this Decision and Order by the Commission and (b) promptly thereafter file a copy of such recorded statement with the Commission.

32. Recordation of Conditions. Petitioners shall record the conditions imposed herein by the Commission with the Bureau of Conveyances of the State of Hawai'i pursuant to HAR Section 15-15-92.

DATED: Kahului, Hawai'i, January 24, 2018.

PAUL R. MANCINI
JAMES W. GEIGER
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served by depositing same in the United States Mail, postage prepaid, to the following at their last known address:

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County of Maui Planning Commission
c/o County of Maui
Department of Planning
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DATED: Kahului, Hawai'i, January 24, 2018.

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